

## *Editorial*

### **An embarrassment of riches**

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This edition is so full of good things and arrives alongside the fantastic bounty of the joint IJCLE-CLEO-ENCLE [conference](#) (follow this link to find out the details of papers and later, to view presentations) that I am going to renege on my promise in the last edition to provide more editorial content.

I will simply urge you to feast on

- Recipes for mapping legal need from Richard Owen
- Sustaining data on the student experience of pro bono from Paul McKeown
- A palate cleansing look at the European Clinical literature from Rachel Dunn
- A seven course banquet of Streetlaw pedagogy from Seán Arthurs, Melinda Cooperman, Jessica Gallagher, Freda Grealy, John Lunney, Rob Marrs and Richard Roe
- Rich reflections from the development of clinic from Stefan Kreiger, Veronika Tomoskova and Maxim Tomoszek
- *and just when you thought your appetite was sated*, a tempting review of Research Methods in Human Rights: a Handbook by Christopher Morris.

Next edition will see the return of 'archive dive' in November – unless the flow of clinical scholarship continues at its current rate and we need to have an extra edition in September. Meanwhile, I look forward to meeting those clinicians who are able to come to Newcastle for the conference and encourage those of you who can't be there to follow us on twitter (@ijcle #IJCLE17). One final piece of exciting news, the 2018 IJCLE conference will take place in Hong Kong in collaboration with the Faculty of Law at the Chinese University of Hong Kong – more details soon!

## LAWZONE: MAPPING UNMET LEGAL NEED

**Richard Owen, Swansea University, UK**

*Abstract: Mapping unmet legal need assists university law clinics plan activities to meet the needs of the communities they serve. This article, by looking at a project where students started mapping unmet legal need in their locality, will consider the pedagogical issues associated with identifying unmet legal need and how it might enable university law clinics to be better embedded into their local communities by considering aspects of physical and human geography when considering injustice. It will also look at existing research methodologies in this area and how mapping unmet legal need can develop students' empirical research skills. The article also assesses the project's aims to develop attributes such as entrepreneurship, as well utilising teaching practices such as visualisation to enable students to think spatially to perceive and understand social inequalities more clearly. It will argue that involving students in mapping unmet legal need will help them make those services more accessible; devise holistic solutions to clients' problems; and enable them to work more effectively with other disciplines to both their own and their clients' benefit.*

There is a strong tradition within clinical legal education of advocating that clinics be embedded in their local communities. There are a number of related theories which reflect this idea such as rebellious lawyering: empowering clients through grassroots, community based advocacy in low income communities, facilitated by lawyers, to bring about meaningful social change; and client-centred lawyering: the idea that clients should be the primary decision-maker in determining the direction of their legal case or transaction, whereas their advisers should maintain the appearance of neutrality and be as

objective as possible. Both theories are united in their belief that the lawyer, and by extension the law clinic, must be strongly embedded in their local communities and serving their legal needs.

But what are those needs, when can they be defined as legal needs, and why is this of interest? If there is unmet legal need that should be of concern to us as citizens, as it undermines the rule of law; it should be of concern to the legal profession as it shows their services are inaccessible to a section of the public; and it should be of concern to policymakers as it reveals that a section of the public are unable to access the advice they need in order to allow policies to achieve their objectives. There is no one who wants to visit a law firm for its own sake. Clients instruct lawyers because they are viewed as the agents who can arrange their divorce, recover their debts, obtain their welfare benefits, etc. In other words, the demand for lawyers does not exist independently of the ends the client is seeking to achieve.

There is some evidence of failure on the part of the legal profession in England and Wales to identify and address their clients' needs. Some groups seem to prefer to avoid lawyers if they possibly can. A survey of small businesses in England and Wales found that almost 50% would use a lawyer only as a last resort and only 13% found them to be cost effective.<sup>1</sup> Representatives of small

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<sup>1</sup> Robert Blackburn, John Kitching and George Saridakis, 'The legal needs of small businesses: An analysis of small businesses' experience of legal problems, capacity and attitudes' (Kingston University for the Legal Services Board, 2015).

businesses have also talked of a ‘considerable failure’ by lawyers to meet their needs.<sup>2</sup>

Although there is a large body of literature on legal need there have been methodological problems in defining what is meant by the term. The early literature from the 1930s to 1970s presented survey respondents with problems to which there were potential legal solutions. If respondents had experienced the problem but had not received the assistance of a lawyer in resolving it then the problem was classed as an unmet legal need.<sup>3</sup>

The drawback with this approach is that it privileges legal solutions over all other possible outcomes. Clients might want to rationally avoid legal solutions to their problems. For example, if your line manager is harassing you at work you may take the conscious decision to avoid the problem and move to another job thereby avoiding the risk, the stigma, stress, and uncertainty of taking the case to an Employment Tribunal. Avoiding the issue as a legal problem could be the most rational, advantageous solution for that particular client. Whereas another client, faced with similar facts but lacking the same mobility, will have no choice but to face up to it as a legal problem.

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<sup>2</sup> John Hyde, ‘Small businesses say lawyers failing to meet their needs’ *The Law Society Gazette* (London 30 March 2016) <<http://www.lawgazette.co.uk/news/small-businesses-say-lawyers-failing-to-meet-their-needs/5054452.fullarticle>> accessed 2 August 2016

<sup>3</sup> Pascoe Pleasence and others, ‘Local Legal Need’ (Research Paper 7 Legal Services Research Centre, January 2001, London).

Since the 1970s the methodology has become more sophisticated and focuses more on the ends that the client wishes to achieve. In order to prevent privileging legal solutions over other types of resolution the focus is now on problems where a legal solution is just one out of a number of possible outcomes with greater emphasis on what the client wants.<sup>4</sup>

Mapping a community can assist in the process of identifying unmet legal need as particular groups are likely to encounter legal problems of a particular type.<sup>5</sup>

The more socio-economic data that is available about the community the clinic serves the better the clinic can prepare to meet the needs of that community, as data of a very large size, which is often referred to as Big Data, can help predict the problems they are likely to face. Not only are particular groups likely to face particular problems but also they are likely to face clusters of problems so Big Data is also likely to predict their correlation and interrelationship, as well.<sup>6</sup>

Big Data and its increased availability facilitates greater predictive modelling of a law clinic's needs. The availability of small area data means there is an abundance of data at the level of local council ward, which further increases the opportunities to target their services efficiently and effectively in an evidence-based way. However, there are limits to Big Data's efficacy.

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<sup>4</sup> Hazel Genn, *Paths to Justice: What People Do and Think About Going To Law* (Hart Publishing 1999). See also *Pleasance* and others (n 3) paras. 7 – 8.

<sup>5</sup> Pascoe Pleasance and others, 'Multiple Justiciable Problems: Common Clusters and Their Social and Demographic Indicators' [2004] 1(2) *Journal of Empirical Legal Studies* 301

<sup>6</sup> Pleasance and others (2004) (n 5)

Predictors can vary between geographical locations.<sup>7</sup> Some locations may simply buck the trend whilst it is possible to have ‘postcode deprivation’: a tiny pocket of deprivation surrounded by relatively more affluent neighbourhoods.<sup>8</sup> Variation in the prevalence of legal problems between different areas has also been found in other common law jurisdictions.<sup>9</sup>

Law clinics, therefore, need to balance the predictable whilst being simultaneously sensitive to the possibility of the statistically unpredictable in their communities. They can achieve this by being not just closely involved in but part of their local communities in ways that have been advocated by the rebellious lawyering school. This close engagement heightens their awareness of those myriad contextual issues, such as crime rates, affecting their communities which may or may not mean that they deviate from the statistical norm or come to realise that there are micro pockets of relative deprivation in otherwise more relatively affluent areas.

In this article, I will examine a project which started in the Essex Law Clinic, which is part of the University of Essex, in the 2014-15 academic year called LawZone Colchester. This is a long-term project that seeks to map unmet legal need in the town and eventually, it is planned, be rolled out to map unmet legal need throughout the county of Essex in the east of England.

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<sup>7</sup> Pleasance and others (2004) (n 5)

<sup>8</sup> Pleasance and others (2001) (n 3)

<sup>9</sup> Christine Coumarelos and others, *Legal Australia-Wide Survey: legal need in Australia* (Law and Justice Foundation of NSW, 2012) xiv

The Essex Law Clinic was established in 2008, but in 2014 a decision was taken to expand its activities. One member of staff was recruited to be dedicated to clinical activities. He was supported by the Students' Union Advice Centre who administered the Clinic, amongst other things, they took initial inquiries from potential clients and assessed whether they would be suitable cases for the Clinic's students and managed files. The Clinic had a few projects, but LawZone was intended to support the project that involved face to face interviews with clients. This project involved an initial forty-five-minute information gathering interview with clients followed by an advice letter providing initial advice and assistance to them. The interview and advice letters were either supervised by the Law Clinic Director or a member of the local legal profession. Starting in the 2014/15 academic year a maximum of twenty students could engage in this type of clinical activity on an assessed basis although more students could be assessed on other clinic activities. There were also opportunities for approximately thirty more students to be involved on an extracurricular basis for this clinical activity. Again, more students were involved on an extracurricular basis for other clinical activities.

It was decided that the student advisors should be involved in the Clinic's expansion as much as possible. One of the reasons behind this was to give students experience of all facets of the Clinic's activities such as strategic and business planning. The greater the degree of student autonomy over the



expansion plans the more authentic it became as an exercise in strategic and business planning.

The desire to introduce this type of planning was motivated by several factors. Firstly, to raise students' awareness of the need to work in an interdisciplinary way to best meet the complex and multifaceted needs of clients. Legal needs are often connected to non-legal needs, for example poor mental or physical health can lead to consumer issues if earning capacity is affected as only cheaper goods and services can be afforded, so an awareness of how other disciplines work will enhance students' effectiveness as clinicians. Secondly, there is evidence that legal students need to acquire business skills to enhance their employability. The Solicitors' Disciplinary Tribunal has claimed that some solicitors 'do not have the rounded set of skills to run a business'.<sup>10</sup> The leaders of the largest UK law firms say the skills future lawyers need will increasingly include business skills such as project management and financial acumen.<sup>11</sup> Thirdly, part of the liberalisation of legal services in the UK brought about by the Legal Services Act 2007 has been the creation of alternative business structures (ABSs). This allows non-lawyers to manage or have

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<sup>10</sup> Neil Rose 'Number of solicitors appearing before SDT on the up amid warning over poor business skills' *Legal Futures* (10 June 2016) <<http://www.legalfutures.co.uk/latest-news/number-solicitors-appearing-sdt-amid-warning-poor-business-skills>> accessed 4 August 2016

<sup>11</sup> Grania Langdon-Down, 'Well-targeted training will give solicitors the skills to succeed' *The Law Society Gazette* (London 4 November 2010) <<http://www.lawgazette.co.uk/analysis/well-targeted-training-will-give-solicitors-the-skills-to-succeed/57894.fullarticle>> accessed 4 August 2016

ownership-type interest in legal firms. The only restriction on the services an ABS can provide is that it must not engage in any activity which conflicts with a lawyer's role. Greater business acumen will allow law graduates to compete more successfully in such an environment.

It also seemed right in principle to involve students in the Clinic's development to ensure that it was meeting their career needs and aspirations. The students were an important resource in the Clinic's development bringing perspectives and skills that would otherwise be lacking.

There were significant cuts to civil legal aid in the United Kingdom in April 2013 as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in both the scope of assistance and the level of funding. Divorce, child contact, welfare benefits, employment, clinical negligence, and housing law cases are now outside the scope of civil legal aid unless there are exceptional circumstances.

This has created fresh challenges for access to justice and created greater pressure for innovation in the delivery of legal services, particularly in the fields of social welfare and family law. The Lord Chief Justice of England and Wales, Lord Thomas of Cwmgiedd, has said that: 'There is a vital need for young people to be involved in reshaping the civil justice system in light of the cuts to civil legal aid in April 2013.'<sup>12</sup>

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<sup>12</sup> The Right Hon. The Lord Thomas of Cwmgiedd, 'Reshaping Justice' (Lecture delivered to Justice on 3<sup>rd</sup> March 2014 at para. 21.)

Lord Thomas seems to suggest that young people, as digital natives, will respond to the challenges of providing access to justice in fresh ways which will be innovative in the use of information technology.

It is not just the affordability of legal services that restricts access to justice. There are other factors at play such as geographical access. Currently there is an extensive court closure programme currently being undertaken in England and Wales, which means that, in some areas, people will not be geographically proximate to a court.<sup>13</sup> Again, an ability to innovate in the use of information technology will be a particularly useful skill in meeting this challenge, as well. Typically, surveys of unmet legal need have been large-scale.<sup>14</sup> However, a number have reported on the possibility of small-scale local variations. This article will aim to put the literature into the context by looking at the communities the Essex Law Clinic serves, particularly the Greenstead and

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<<https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Speeches/lcj-speech-reshaping-justice.pdf> > accessed on 22nd October 2015

<sup>13</sup> Ministry of Justice and HM Courts and Tribunals Service, 'Response to the proposal on the provision of court and tribunal estate in England and Wales' Response published on 11 February 2016 < [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/499518/national-consultation-document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/499518/national-consultation-document.pdf) > accessed 4 August 2016

<sup>14</sup> There have been at least 26 large-scale surveys of the public's experience in the last twenty years in at least fifteen jurisdictions: Pascoe Pleasence, Nigel Balmer and Rebecca Sandefur, *Paths to Justice: A Past, Present and Future Roadmap Report prepared under a grant from the Nuffield Foundation* (UCL Centre for Empirical Legal Studies, August 2013), 3

Hythe areas of Colchester where many students live, as well as the pedagogical issues involved in clinic students assessing unmet legal needs.

In terms of the methodology used, a group of eight undergraduate students in the 2013/14 academic year initially identified all legal advice providers within the boundaries of Colchester Borough Council by pinning them on a map. The pins were colour coded way to denote whether the provider was a legal firm, on the one hand, or a not for profit provider, on the other.

This was a start but more significant progress was made in succeeding academic years. Mapping unmet legal need, and methodologies for approaching the topic, was included as part of the induction programme for the twenty undergraduate students who were assessed for this type of clinical activity, and classroom discussions reflected on approaches to this issue.

In the 2015/16 academic year one student adviser digitised this map, and added other locations which he felt were of actual or potential importance to the Clinic's clients. Future generations of students can make further additions to this digital map as further work is undertaken, so it is a living document.

A review of files since the Clinic's inception in 2008 was undertaken recording the subject matter of each inquiry. All the files relating to face to face interviews were recorded: the Clinic runs a number of other projects on prison law, miscarriage of justice and various contract research projects but these were not included in the review. The reason for their exclusion was that clients from these other projects are not drawn from the local area, and one of the reasons

behind embarking on the project was to become more knowledgeable about the legal needs of the local vicinity. A student adviser initially evaluated the data before the author undertook a further evaluation.

In order to provide guidance to students embarking on research into unmet legal need there had to be some definition of what was meant by the term. The definition that has been used is to identify whether there is any statistical or other evidence which suggests that people in the community are unable, or are encountering obstacles, in accessing advisory services to assist with problems where a legal solution may be one possible option in its resolution.

In Part One the possible pedagogical benefits of mapping legal need in a clinical legal environment is examined. In Part Two the project itself is evaluated. In Part Three the issues surrounding the educational management of a long-term project where different cohorts of students will work on the project over time is considered.

### **Part One: Pedagogical Benefits of Mapping Legal Need in a Clinical Environment**

There are good pedagogical reasons for teaching clinical students about legal need in their communities. At the most fundamental level it partially fulfils the regulatory requirements for law degrees in the United Kingdom. The Quality Assurance Agency for Higher Education (QAA) is the independent body entrusted with monitoring and advising on standards and quality in UK higher

education. Its *UK Quality Code for Higher Education* aims to give all higher education providers a shared starting point for setting, describing and assuring the academic standards of their awards and programmes. The *Subject Benchmark: Law* is the QAA document which defines what can be expected of a graduate on a legal studies programme, in terms of what they might know, do and understand at the end of their studies.<sup>15</sup> Paragraph 2.4 (vii) of the Benchmark Statement provides that law graduates must ‘demonstrate ability to work with a range of data, including textual, numerical and statistical’. Mapping legal need meets all aspects of paragraph 2.4 as it requires the need to be aware of how the wider societal context affects qualitative interpretation of data; the need to process Big Data together with an appreciation of its limits in terms of predicting legal need; and a need to understand how numerical information generated by clinic users relates to other numerical and statistical information.

Legal process individualises problems. Providing students with an overview of recurring problems in the clinic gives them a framework to consider issues of justice and lawyering. It incorporates a socio-legal dimension into their clinical legal education; it develops their quantitative and qualitative research skills as they need to be able not only to process Big Data but also interpret statistical evidence particularly by examining whether there are inherent biases

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<sup>15</sup> Quality Assurance Agency (QAA), *Subject Benchmark Statement Law* (QAA, July 2015)

in the collection of data; it develops their entrepreneurial skills as they seek to devise innovative methods to their community's challenges; and it will make them think of the need to work in an interdisciplinary way in order to devise solutions to the complex, multifaceted and interconnected problems that communities face.

There can be other socio-legal dimensions. It is an opportunity to reconceptualise the law and legal proceedings with students being encouraged to think about clients' wellbeing more generally, as well as seeing issues more clearly from a client's and potential client's perspective. A legal intervention can be seen as possible evidence that an opportunity to address wellbeing has been missed in the past. Students can be taught to see the need for intervention of legal process as a type of failure. They can rewind the client's problem and return to its origin. Can they then identify any form of earlier intervention that would have prevented the problem developing to the point where the stress, expense, delay, and risk of legal proceedings could have been avoided? To answer this question they will need to think holistically and draw on the experiences of neighbouring disciplines.

It also develops attributes not normally associated with legal education. For example, it develops their spatial thinking, and to think in a multi-dimensional way when it comes to space. Spatial thinking has been defined as consisting of three elements: 'concepts of space, tools of representation, and processes of

reasoning. <sup>16</sup> Although spatial thinking is a skill which pervades all disciplines, it develops in the context of specific disciplines and it 'becomes transformed and refined through training and extensive practice.'<sup>17</sup> A person is spatially literate when they 'can match the norms for what should be known about space, representation, and reasoning.'<sup>18</sup>

Spatial thinking, therefore, is a vital skill when it comes to mapping unmet legal need. It will assist students in identifying areas which buck the trend or 'postcode deprivation' when clinic data does not match legal need based on predictive modelling. They also need to think as to what space it is that their community occupies. There can be variable geometry when it comes to defining the catchment area of a clinic. Are the boundaries drawn according to neighbouring streets, council ward, city limits, interest group, subject matter, cyberspace or by other criteria to be defined by the students themselves?

It is not just physical space which can be spatialised. Are there needs of groups which could be defined by sex, race, religion, age, disability, social class, sexual orientation, nationality that the clinic is failing to meet? Whilst the initial manifestation of these groups will be non-spatial in nature, thinking about

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<sup>16</sup> Committee on the Support for the Thinking Spatially, Committee on Geography, National Research Council *Learning to Think Spatially: GIS as a Support System in the K-12 Curriculum*. (National Academies Press, 2005) ix

<sup>17</sup> N 16, 5

<sup>18</sup> N 16, 18



them spatially can bring new reasoning processes to bear, which will assist in the resolution of problems.<sup>19</sup>

A study of local unmet legal need will not only develop students' intellectual skills but also their professional skills. It is a particularly suitable vehicle to explore issues surrounding client care, and how advising involves a partnership between lawyer and client. In seeking to identify unmet legal need it is necessary to develop the service with the active involvement of the client and the community. This illustrates to students that the service is not something that is done to the client, but should be a product of a partnership: the outcome of research into the client base and discussions between clients and community groups.

It should give insight into business planning. Technological innovation has been recognised as creating the potential for realising 'latent demand'.<sup>20</sup> Digitising patterns of demand for legal services will create a database which will help identify gaps in the market where inhabitants may not have traditionally found legal services to be accessible.

Becoming knowledgeable about the client base and their socio-economic characteristics can also assist business planning as to a certain extent it can assist in the prediction of clients' needs. Whilst the limits of the ability to do

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<sup>19</sup> N 16, 31

<sup>20</sup> Richard Susskind and Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford University Press, 2015) 133 - 134

this are discussed above, it is still the best starting point for planning the clinic's future activities. If it can be seen that a particular problem is bedevilling a community that might condition the clinic's activities, as it offers the opportunity of targeting resources and strategising more effectively. For example, the clinic may decide to alter its activities and instead of giving individual assistance in a certain subject area it might decide it will have greater impact with more efficient use of resources if it focuses on public legal education instead.

To assess legal needs effectively requires a study of all facets of a community to gain greater insight into the causes of problems which face that community, and to imagine solutions to them. This includes assessing its social capital: the links, shared values and understandings in society that enable individuals and groups to trust each other and so work together,<sup>21</sup> and gauging the community's resilience: utilising available resources to withstand, respond to and recover from adversity.<sup>22</sup> Potential partners need to be identified who may assist in the resolution, or even the prevention, of these problems.

The identification of potential partners is a welcome broadening of law students' education. It demonstrates that law is not the only tool in the toolbox. It also gives them experience of working with people from other disciplines.

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<sup>21</sup> OECD Insights: Human Capital, 'What is Social Capital?' <  
<http://www.oecd.org/insights/37966934.pdf>> (accessed on 24<sup>th</sup> April 2017)

<sup>22</sup> RAND Corporation, 'Community Resilience' <  
<http://www.rand.org/topics/community-resilience.html>> (accessed on 24<sup>th</sup> April 2017)

Interdisciplinary working is not only right in principle because of its holistic approach; it also enhances the students' employability. Scholars who have investigated the future for legal services have identified the need for them to diversify and become increasingly multidisciplinary.<sup>23</sup> This will require meaningful engagement with neighbouring disciplines such as management science and business studies, but other areas too such as geography.<sup>24</sup>

In the United Kingdom the need for lawyers to work increasingly with other professions, such as accountants and management consultants, has been facilitated by regulatory change as a result of the introduction of ABSs. Working with other groups will give students experience of working with non-lawyers providing insight into their working methods which is a transferable skill of increasing importance in the legal workplace.

## **Part Two: Mapping LawZone**

In this section, the issues arising from the experience of running a long-term project currently called LawZone Colchester but eventually, it is planned, evolving into LawZone Essex will be assessed. The historic town of Colchester, which is the United Kingdom's oldest recorded town, has a two-tier local

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<sup>23</sup> Richard Susskind, *Tomorrow's Lawyers: An Introduction To Your Future* (Oxford University Press, 2013) 113

<sup>24</sup> N 23

authority structure and falls within the boundaries of Colchester Borough Council and Essex County Council.

Initially, the project was thought necessary because this part of the county of Essex has a weak legal identity. The local law society is the Suffolk and North Essex Law Society so its boundaries are not coterminous with either the borough or county boundaries with its remit reaching into the neighbouring county of Suffolk.

The institutional structure does not exist, therefore, to consider issues, which might affect the county uniquely or with a particular intensity. It was thought that a project of this nature had the potential to influence policy making at the borough and county level through the accumulation of anonymised socio-economic data from clinic clients and the mapping of unmet legal need. Whilst there have been a number of large-scale surveys which have increased understanding of unmet legal need, it is recognised that there are gaps in the evidence base.<sup>25</sup>

This project is an opportunity to give students experience of measuring impact in quantifiable and qualitative ways. Legal needs surveys have been shown to have impact and their use and impact has varied as a response to regulatory, economic and political change. There is evidence that they have influenced legal aid policy in the United Kingdom.<sup>26</sup> However, since the civil legal aid cuts

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<sup>25</sup> N 14, 51

<sup>26</sup> N 14, 42

of April 2013, and the liberalisation of legal services, they have also had an impact on understanding of public justice, as well as private and not for profit market service provision.<sup>27</sup>

When commencing a project of this sort the students can be given a large degree of latitude as to what they explore because there is so much data that could be mined which will potentially be useful. There is a balance to be struck between students needing support and guidance, on the one hand, and allowing the space they need to imagine the future of justice and legal services in relation to their clinic, on the other, if Lord Thomas's vision of young people shaping the civil justice system is to be realised, and we are to receive the benefits of their fresh perspectives as a result of their digital nativity.

The project started low tech with a group of students pinning the location of legal advisers in the town of Colchester on a paper map with different colours being used depending on whether or not it was a legal firm or a free advice provider. This map was then digitised. The exercise was then extended into the mapping of social infrastructure of the town. Various additions were made to it such as an emergency night shelter and railway stations. The more this is mapped the easier it will be to assess the town's resilience.

The inclusion of railway stations produced an interesting result. Colchester is approximately fifty minutes by express train from London Liverpool Street

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<sup>27</sup> N 14, 44

station, which is in the heart of the City of London (the financial district of the capital) where there are a great number of well-paid jobs in financial services. Hythe station is the closest to the university, and therefore Essex Law Clinic, and is in a relatively deprived socio-economic area compared to Wivenhoe station, which is the next closest to the university and is in a more prosperous area.

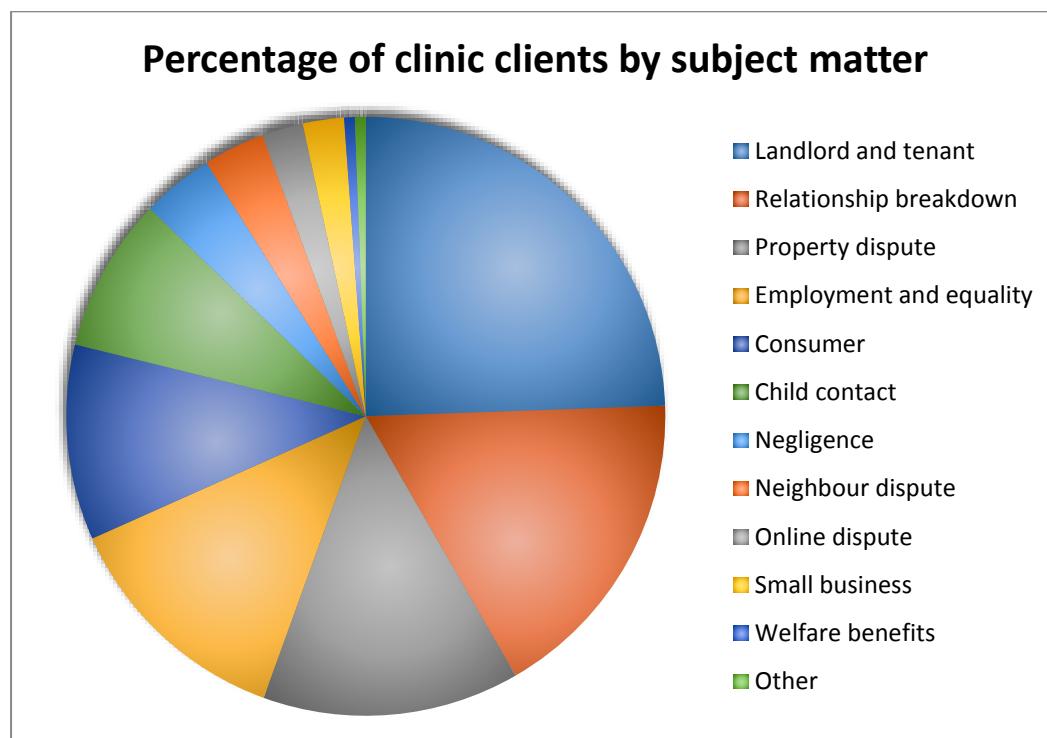
The students had mapped the stations as part of the mapping of the social infrastructure of the Clinic's catchment area to help assess the community's amenities. However, the author could point out to the students that this is possibly an example of inequality being designed into the environment as there are a greater number of direct trains to London Liverpool Street from Wivenhoe than from Hythe. This is also hard to understand as the two stations are on the same railway line.

Easier access to London Liverpool Street means easier access to the high paying jobs in financial services. Hythe residents will have their journey time increased by often having to change trains with on costs, such as extra child minding fees, often arising from this. In this way, it was possible to model to the students what was required.

The difference in the train service meant it was possible to consider whether there was a 'power geometry' i.e. 'relations to [the] flow and interconnections'

between different social groups and different individuals.<sup>28</sup> Why should Wivenhoe have so many more direct trains to London than Hythe when the two stations are on the same railway line? Is it because the people Wivenhoe are better organised? Or is it because of some other reason?

This example was also used to communicate the concept of social capital/infrastructure and how concepts such as spatial injustice may apply to their findings. It could be used to argue that inequality can be geographically constructed. The review of files since the Clinic's inception found the following:



*Table One: Percentage of Essex Law Clinic clients by subject matter since 2008*

<sup>28</sup> Doreen Massey, 'A Global Sense of Place' *Marxism Today* (June 1991)

The percentage of landlord and tenant disputes (24.44%) is not surprising. A high percentage of the Clinic's clients are students who frequently live in rented property and therefore more likely to encounter problems with landlords. If you also consider problems students also encounter from time to time with letting agents, which came within the category of property disputes, and were 13.88% of the Clinic's casework, then it can be seen that a total of 38.32% of cases were meeting the legal needs of predominantly students and some University staff.

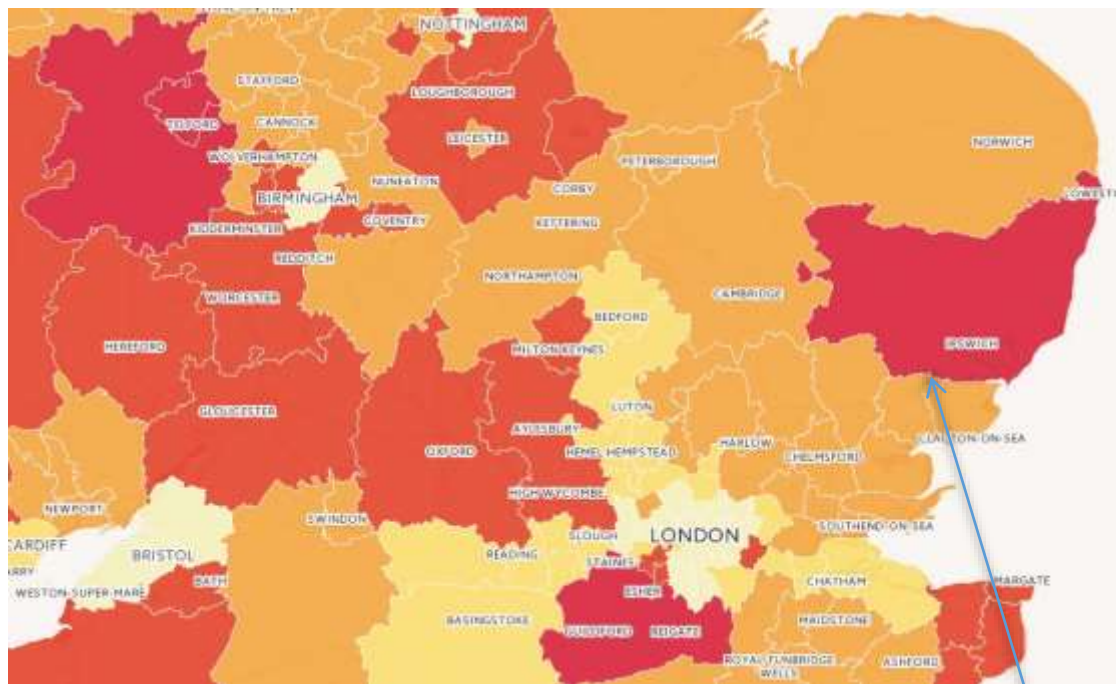
Whilst landlord and tenant cases make up a significant portion of the Clinic's caseload it is likely that the Clinic is not meeting the legal needs of a substantial part of the population it serves. Most housing cases are referred to the Clinic by the University's Students' Union and therefore the students are clients.

The Law Society of England and Wales have produced an interactive map which found a lack of State funded housing advice in England and Wales as a result of the civil legal aid cuts in April 2013.<sup>29</sup>

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<sup>29</sup> The Law Society, 'Legal Aid Deserts Campaign' (Briefing for Local Law Societies) August 2016





Location of Essex Law Clinic

Figure one: The Law Society’s Interactive Map showing the county of Suffolk as a legal aid housing advice red spot where no State funded legal advice is available

The map was useful in getting students to visualise the varied and scarce distribution of legally aided housing advice. The legal aid area to the immediate north of the Clinic, Suffolk, was a red spot with no legal aided housing advice available. Colchester is marginally better served as the charity, Shelter, provides free housing advice in the town; however, Shelter has had its own funding also cut which affects the volume of cases it can serve. This

strongly suggests that there is demand in the wider community for free housing advice which the Clinic is currently not able to meet.

It is just possible that all we were seeing was the clinic staff and student advisers' cosmology, i.e. how they make sense of the world based on their physical, social, spiritual and mental world, and failing to see a wider cosmology in respect of housing need in the Clinic's own local community. In this cosmology the Greenstead and Hythe areas of Colchester had housing advice needs dominated by their undoubtedly large student population. However, 'the cosmology of "only one narrative" obliterates the multiplicities, the contemporaneous heterogeneities of space'.<sup>30</sup> Within Greenstead and Hythe there would be those

with different cosmologies, and who would not imagine the place as being dominated by the University with the need to service its students' housing needs. They may not even give the University much thought at all. They will have their own cosmologies, which do not involve working or studying at the University, but involve an altogether separate existence. This is the 'contemporaneous heterogeneities' Massey is referring to.

The danger in just seeing the headline figure of 24.44% of the Clinic's caseload being landlord and tenant cases is that it can give a misleading impression as

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<sup>30</sup> Doreen Massey, *For Space* (SAGE Publications Ltd 2005) 5

to how well or otherwise the Clinic is meeting the local community's housing advice needs.

It would seem that the Clinic is doing well in meeting these needs in an area where housing advice is sorely needed. However, when the data is further examined then it can be seen that most of the clients in landlord and tenant cases had some connection with the University whether as students or, occasionally, staff. They were more likely to be aware of the Clinic and its services through their proximity to it on campus, but 'contemporaneous heterogeneities' within Greenstead and Hythe may mean that there are other communities co-located within the same locality who are not getting their housing advice needs met.

The problems the Clinic was encountering tended to be with issues such as representations made prior to letting properties, return of deposits, and properties in multiple occupation. These are problems that could be predicted from a client base involving largely students. It could be that clients with a different background might have other problems such as serious repairs, etc. The importance of this is to ensure that the data collected from clients can distinguish between the University's students and staff, on the one hand, and members of the general public not connected to the University, on the other. Only then will it be possible to assess if the Clinic is addressing the needs of all parts of the locality, which will prevent 'only one narrative' dominating thinking. This was a good topic from a pedagogic perspective as it was

possible to flip the normal question. Instead of asking what effect the students have or could have on the community the question was reversed and the students were asked what effect they might be having on the community.

The next most numerically significant area is in relationship breakdown, which comprised 17.22% of all cases; however, if child contact cases are also included which are 8.33% of all cases this makes a total of 25.55%. The scope of legal aid funding in the United Kingdom for relationship breakdown has been significantly reduced in scope since the cuts to civil legal aid spending were introduced in April 2013. This will explain the increase in the most recent periods of the Clinic's operation.

The increase in the volume of relationship breakdown cases is strongly suggestive of unmet legal need. The Essex Law Clinic only provides initial advice and assistance in such cases. Clients are frequently looking for on-going legal support which the Clinic is unable to provide beyond signposting further avenues of advice and assistance.

The effect that the civil legal aid cuts had on the levels of relationship breakdown cases coming to the Clinic illustrates the need not only to map the Clinic's activities by place, but to map temporally as well. This has been done by colour coding, by year, types of inquiries onto the map although in housing cases this has been done seasonally to reflect periods when undergraduate students are on vacation.

Mapping temporally showed a different pattern of advice needs before the legal aid cuts. They increased demand for relationship breakdown advice, but is this a spike or has demand in this area reached a new plateau? The immediate period after the cuts could have produced a shock which causes a spike in demand, but then as technological innovations, new business models, new advice providers enter the market the situation may ease and could change over time. It will only be possible to assess this if demand is mapped temporally in addition to mapping by place.

There has only been a slight increase in employment and equality cases in recent years, but this is probably evidence of unmet legal need of a different sort. Fees were introduced for bringing cases to Employment Tribunals for the first time in July 2013 except for those who could claim a waiver or reduced fee on the grounds of limited wealth or low income.

The introduction of Employment Tribunal fees saw a sharp decrease in the number of claims being taken to a tribunal in the first year with the Ministry of Justice recording a 70% reduction.<sup>31</sup> The fees were introduced as part of a change in policy whereby the government argued that the users of the tribunal system should pay, and it came after employers' organisations had long argued that there should be some restriction on the bringing of weak or vexatious

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<sup>31</sup> Ministry of Justice, *Tribunal Statistics Quarterly April – June 2014* (11 September 2014), 7 <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/352914/tribunal-statistics-quarterly-april-june-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352914/tribunal-statistics-quarterly-april-june-2014.pdf)> accessed 15 August 2016

claims. The fact that the demand for employment and equality advice has risen, despite such a decrease in claims being made, suggests that clients are still encountering problems in their relationship with their employers but now find it hard to access systems of redress.

Recording the number of employment and equality cases provided further evidence that mapping unmet legal need has to be a collaborative effort between tutor and students. Between 2008 and 2016 the Clinic did not receive a single inquiry for advice on an equality issue from the LGBT+ community as a result of clients attending face-to-face interviews. However, the Clinic is involved in another project advising on prison law with the Prisoners' Advice Service where 10% of all inquiries are requests for advice on aspects of equality law from the LGBT+ community, which statistically seems more in line with what could be predicted given the size of the LGBT+ community as a proportion of the general population.

This does raise issues about unmet legal need and the LGBT+ community. It could be argued that it is evidence that their needs are well met, and they have no need to access university law clinics. Stonewall is an organisation which lobbies and campaigns on issues of relevance to the LGBT+ community. They operate a telephone information helpline and will also give advice via email.

Assistance can also be accessed from the Equality Advisory Support Service (EASS) discrimination helpline. The service provides advice on discrimination

in employment and services and although it is possible to contact the service directly, they prefer referrals from advisory organisations.

Assistance is also available from the Equality and Human Rights Commission's website, and the normal channels for those looking for equality advice such as Citizens Advice Bureaux, Law Centres, the Free Representation Unit (for those on low income), etc.

Whilst it is possible that members of the LGBT+ community have a preference for using a service dedicated to their needs this is only provided nationally by Stonewall. The other services such as the EASS and the Equality and Human Rights Commission are services that deal with discrimination in relation to all protected characteristics under the Equality Act 2010, and the rest are general advisory services.

Despite the excellent work all these services do it seems unlikely that they will completely meet the legal needs of potential LGBT+ clients for the Essex Law Clinic. It may be that the Clinic is not perceived as being sufficiently welcoming to this particular community. Queen Mary, University of London has established a dedicated clinic, Pink Law, which through its marketing makes a public commitment to offer a welcoming and confidential environment to the LGBT+ community.<sup>32</sup> Previous studies of unmet legal need have concluded that a number of strategies are required to combat it including

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<sup>32</sup> Queen Mary University of London, 'Pink Law'  
<<http://www.lac.qmul.ac.uk/advice/pink/index.html>> accessed 16 August 2016

tailoring services for specific problems and for specific demographic groups.<sup>33</sup>

It might be that the Essex Law Clinic, and other university law clinics, will not respond to the legal needs of this community unless they clearly identify themselves as catering for the community's needs, which means that the marketing and presentation of clinics should be an integral part of students' legal education.

Negligence cases, mainly personal injury cases, constitute 3.88% of the Clinic's caseload, which is small. Litigation is a reserved activity in England and Wales so only members of the legal profession can undertake it, and it is not permissible for student advisers to do so. Therefore, the Clinic only gives preliminary advice in such cases.

The 3.33% of cases of the Clinic's caseload that relate to neighbourhood disputes seems low on a statistical modelling basis, i.e. the numbers of that type of case that could be expected using crime rates as a proxy for legal need. Many of the Clinic's clients come from the Greenstead area of the St Andrew's council ward. This is an area of relative social deprivation. High levels of deprivation are a predictor of civil justice problems with, on a statistical modelling basis, 25% greater chance of neighbourhood disputes.<sup>34</sup> The Clinic's clients do not all come from this area and many come from more economically affluent areas; it

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<sup>33</sup> N 9, xxi

<sup>34</sup> Vicky Kemp and others, 'The Problems of Everyday Life: Crime and the Civil and Social Justice Survey' (Briefing 5) [2007] Centre for Crime and Justice Studies, 3



is also possible that there is a local variation and the area does not accord with statistical modelling patterns.

However, this seems unlikely. Data is collected on a council ward basis. Looking at the accompanying map, if the Harwich Road is seen a boundary and the area north east and north of Greenstead but within the St Andrew's ward is excluded and the Hythe area, i.e. that area to the south east of Greenstead bound by the river and roads, is included then the crime rate is higher than that suggested by the figures at ward level indicate, which makes the caseload for neighbourhood disputes seem even lower than it should be on a predictive statistical basis.

The area of Greenstead and the part of Hythe bound by the river could be a 'social space', i.e. a space which is different from the physical space which planners normally use.<sup>35</sup> 'Social space' has to incorporate both the geographical and sociological imaginations and is an area with a 'different attractive power'.<sup>36</sup> Mapping unmet legal need can therefore lead to a form of variable geometry: redefining boundaries of communities according to their 'attractive power'. Redefining the boundary of the St Andrews ward not only brings the challenges that area faces into sharper focus but also offers the

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<sup>35</sup> David Harvey, *Social Justice and the City* (Revised Edition, University of Georgia Press, 2009), 35

<sup>36</sup> N 35

opportunity of embedding student advisers more deeply into the community as it is an area with a high density of student population.

This form of spatial analysis requires an interdisciplinary set of skills on the part of the students. They need the space-time analytical skills of a geographer and the personality trait analytical skills of the sociologist.



*Figure two: Map of the St Andrew's Ward, Colchester bordered in green. The red hatched area is that part of St Andrew's and Harbour wards where the crime rate was differentiated from data collected at ward level. It is also an area where large numbers of students live.*

The 2.22% of the Clinic's caseload which has assisted the legal needs of small businesses is also low even when taking into account that small businesses are known to be a hard to reach group for legal services generally.

As previously discussed, there is a high student density in the Greenstead area and that part of Hythe which hatched in red in figure one. Many of these will be undergraduate students who will not be resident for large parts of the year during vacations, etc. This in turn has implications for the economic development of the community. It is more difficult to establish a shop, for example, in an area where population numbers are not stable, and significantly decrease for lengthy periods of the calendar year. It also has implications for business advice to start ups in the area.

The percentage of caseload at 0.58% that is devoted to welfare benefits work seems, at first glance, shockingly low for a clinic operating in an area of relative deprivation. However, the Clinic has only recently marketed itself as having expertise in welfare benefits work. There are also issues in relation to the delivery of the service as there is a Citizens Advice Bureau located in Colchester town centre. This is a well-known and well-established brand for benefits advice work. Again, meeting any unmet need probably means thinking strategically about the service offered. The service offered by bureaux varies, the Essex Law Clinic could probably most effectively address unmet legal need in the area by taking referrals from Citizens Advice to do representation work

at first-tier Tribunals, which Citizens Advice tends not to do concentrating instead on initial advice and assistance.

The review of the Clinic's clients found a spatial injustice by group, as since its inception in 2008 it has only advised one retired person and, therefore, it appears it is not meeting the legal needs of a group defined by age.

There are several possible reasons for failing to meet the needs of this group. Other studies have shown that different demographic groups use different strategies in response to legal problems with the 65s and over amongst the least likely to take action in response to a legal problem of any age group.<sup>37</sup> It could be cultural: they could be reluctant to be seen to be complaining preferring to take a more stoical approach or they find the idea of accessing services via a university alienating; it could be practical: they find it difficult for a number of reasons such as mobility problems, to come to the university campus to access the Clinic's services; it could simply be that they are unaware of the university's services or aware of them but wrongly assume that they are not eligible to use them. The next stage is to evaluate whether this need can be met through outreach work: going out and holding pop up clinics in the community which will be easier for this age group to access.

This focus on one part of Colchester is intensely local. In order to be a useful part of students' legal education it has to avoid being parochial. We have

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<sup>37</sup> N 9, 17

already looked at social relations between the Greenstead and Hythe area, on the one hand, and Wivenhoe, on the other. But what lessons can be learnt from the locality's relations with other parts of the world?

Mapping a local area can be a vehicle for examining issues of global social justice with students, and how 'time-space compression', condensing or eliding spatial and temporal distances, affects different groups in the community and beyond. The University of Essex is international in its outlook with 40% of its students (over 5,000 people) coming from outside the UK.<sup>38</sup> On a statistical basis this is likely to be reflected in the composition of the student population of the Greenstead and Hythe areas of Colchester.

It could be argued that this shows a 'progressive sense of place' – a place which is outward looking and positively integrates the global and the local - in that it has relations with other places, and does not feel threatened by them.<sup>39</sup> These relations benefit the students' home countries who will gain their enhanced skills when they return to work. However, developments in one area will invariably affect another area. Less positively are the immigrant medical workers in the area working at Colchester General Hospital causing shortages in medical centres in their own countries?

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<sup>38</sup> University of Essex 'Key Statistics' (*About Us*) <  
[https://www.essex.ac.uk/about/university/facts\\_and\\_figures/key\\_statistics.aspx](https://www.essex.ac.uk/about/university/facts_and_figures/key_statistics.aspx)>  
accessed 20 February 2017

<sup>39</sup> Doreen Massey, 'Power geometry and a global sense of place' in Jon Bird, Barry Curtis, Tim Putnam, George Robertson, and Lisa Tickner (eds), *Mapping the Futures: Local Cultures, Global Exchange* (Routledge 1993) 68

### **Part Three: Management of a Long-term Educational Unmet Legal Need Project**

The LawZone Colchester project is intended to be long-term, which will continue after the student advisers, possibly several cohorts of student advisers, have completed their studies. This creates a challenge: how do students have the desired ownership of the project when they will have to relinquish control at some point and another cohort takes over? For these purposes a project is defined as something which ‘involves students solving legal problems through the use of strategies and tactics other than litigation.’<sup>40</sup> As has been discussed above, the project has been a collaborative effort between tutor and student adviser. It is submitted that this does not compromise student ownership, but the tutor involvement is a form of guidance and support to enhance the students’ work. Students still have ownership as there is a client whose needs the students must address, i.e. the community the Clinic serves.

The various stages of a project have been identified as:

- (1) problem identification/definition, (2) gathering evidence, (3) identifying and exploring alternatives, (4) developing and possibly implementing a strategy for solving the problem, and (5) repeating the

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<sup>40</sup> Anna E. Carpenter, ‘Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact’ 20 *Clinical L. Rev.* 2013-2014, 50

process again if necessary, as problem solving is typically an iterative process.<sup>41</sup>

The scale of the project means that it is overlapping a number of these stages. Stage one has been completed. The problem has been identified as it has arrived at a workable definition of unmet legal need: problems(s) being experienced by the community where legal process is a possible solution and for which a significant identifiable section of the community is experiencing difficulty in accessing advisory services. It has also spatially defined its community as that part of the St Andrews Ward which is south east of Harwich Road and that part of The Hythe bound by the river and major roads.

It is still at stage two, as the project continues to gather evidence. However, sufficient evidence has already been collected to identify two possible groups as not having their needs met: the LGBT+ community and the retired.

Stage four has been partially achieved as strategies have been identified to better meet the needs of the LGBT+ and retired communities by reaching out to them either through outreach activities and/or making it clearer through promotional literature, etc. that services are designed with their needs in mind. At the time of writing, preparations are being made to implement these strategies. However, there is a need to go beyond the paper sources and reach out to the community itself. A stakeholder group would enhance the project

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<sup>41</sup> N 40, 72

as well as a survey of local residents. This creates skills and development needs for the students who will have to become proficient in survey design. However, there is guidance available for such survey design.<sup>42</sup> In order to assist with the comparability of data, it is desirable that precedent questions are used unless there are compelling reasons due to local variation to depart from them.<sup>43</sup> If it is necessary to depart from precedent then this requires expert assistance.

As it is an iterative process then future cohorts of students will repeat various aspects of these stages. Whilst it will not be possible in an ongoing project to alter the definition of what is meant by unmet legal need it will still be possible to identify different communities within the Essex Law Clinic's catchment area. With regard to Stage Two, the collection of socio-economic data is an on-going process as this is collected from clients at each interview, and there is a need to keep up to date with governmental data. The more data collected the richer the picture. It will provide more opportunity to see if the community has changed over time, as well as assessing if there is 'postcode deprivation' or any other reason to think that there is a variation from predictive modelling. There is also further work required in terms of mapping social infrastructure. The project has so far mapped some physical resources. It now needs to identify

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<sup>42</sup> N 3

<sup>43</sup> N 14, 68



other resources, particularly human resources, such as community leaders, community activists, employers of local inhabitants, etc.

As the stages of the project are iterative, the strategies are the abstract conceptualisation; the experience of implementing strategies has to be kept under review; there needs to be reflection on the experience; which will then go onto create a new experience in the manner of Kolb's experiential learning cycle.<sup>44</sup>

External controls have been established for the next generation of students to work on the project: the work students undertake is confined to any research or activity which furthers understanding of unmet legal need within the jurisdiction of Colchester Borough Council and is within the remit of the Essex Law Clinic.

## **Conclusions**

Identifying unmet legal need is something which should concern clinics as it undermines the rule of law; it helps clinicians realise 'latent demand'; and it is of assistance to policymakers in their decision making.

It provides students with an opportunity to gain insight into systemic problems facing the communities they serve. They will gain experience of the methodological problems in establishing unmet legal need, as well as

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<sup>44</sup> David Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (2<sup>nd</sup> edition, Pearson 2014)

quantitative and qualitative research methods. It requires working with Big Data but also identifying the limits of the effectiveness of relying on it. They will also be equipped with an awareness of the impact research findings can have.

It is a particularly effective way of maximising student ownership as their experience as digital natives enables them to put forward fresh perspectives and participate in clinic on a basis of equality with tutors and practitioners. However, to work effectively, and to maximise student ownership, the mapping project has to set external controls so that its long-term operation can be broken down into discrete aspects which are achievable within the time that students will be working within the clinic.

In addition to research skills, it develops skills of project management, entrepreneurship, and interdisciplinary practice. It also allows students to examine issues from fresh perspectives. It can enhance their spatial thinking and allows them to see how causes of injustice can be embedded into the architecture of the environment, as well as developing their visual awareness. It embeds them more deeply into their local communities which enhances their understanding of the clients they serve as well as breaking down barriers between the clinic and the community and overcome the risk of the clinic as being seen as something other.

# PRO BONO: WHAT'S IN IT FOR LAW STUDENTS? THE STUDENTS' PERSPECTIVE

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## **Abstract**

In England and Wales, there is an increasing need for the provision of pro bono legal services. Law students may be a resource that can help fill the access to justice gap, whilst at university and onwards in their future careers. Whilst some students are intrinsically motivated towards altruistic behaviour, many are not. This article will consider what motivates students to undertake pro bono work whilst at law school.

The article will explore the range of intrinsic and extrinsic motivating factors for student participation in pro bono programmes and consider how students can be encouraged to engage in such activities. The article will also consider whether exposure to pro bono experience can instil a public service ethos in students.

In conclusion, the article will highlight experience as an influential factor in encouraging initial participation in pro bono work but also instilling a willingness to undertake pro bono work in the future.

## **Introduction**

Many would argue that lawyers have a moral obligation to promote access to justice.<sup>2</sup>

It is also arguable that it is more than a moral obligation and is in fact a professional

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<sup>2</sup> For discussion on the role of lawyers in promoting access to justice, see Alice Woolley, '*Imperfect Duty: Lawyers' Obligation to Foster Access to Justice*' (2008) 45:5 *Alberta Law Review* 107

obligation. The International Bar Association states that a lawyer is ‘an indispensable participant in the fair administration of justice.’<sup>3</sup> Further, the United Nations also recognise this duty stating that ‘[l]awyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.’<sup>4</sup> Pro bono work may be considered as one of the methods for fulfilling this obligation.<sup>5</sup>

The Law Society of England and Wales reports that 63% of solicitors had conducted pro bono work (undefined<sup>6</sup>) at some point in their career.<sup>7</sup> In 2015, 37% of solicitors reported that they had undertaken at least one hour of pro bono work (as defined by

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<sup>3</sup> International Bar Association, ‘International Principles on Conduct for the Legal Profession’ (2011) Available at [file:///C:/Users/intel\\_000/Downloads/IBA\\_International\\_Principles\\_on\\_Conduct\\_for\\_the\\_legal\\_prof%20\(4\).pdf](file:///C:/Users/intel_000/Downloads/IBA_International_Principles_on_Conduct_for_the_legal_prof%20(4).pdf) (accessed 10 October 2016)

<sup>4</sup> OHCHR, ‘Basic Principles on the Role of Lawyers’ (1990) Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx> (accessed 10 October 2016)

<sup>5</sup> See Debra D. Burke; George W. Mechling; James W. Pearce, ‘Mandatory Pro Bono: Cui Bono’ (1996) 25:4 Stetson Law Review 983; Deborah L. Rhode, ‘The Pro Bono Responsibilities of Lawyers and Law Students’ (2000) 27:2 William Mitchell Law Review 1201; Douglas L. Colbert, ‘Clinical Professors’ Professional Responsibility: Preparing Law Students to Embrace Pro Bono’ (2011) 18:3 Georgetown Journal on Poverty Law and Policy 309

<sup>6</sup> There is no universally accepted definition of ‘pro bono’. Evans highlights that ‘some lawyers consider work done for legal aid as pro bono because of the low level of remuneration, while other would also include matters in which that have substantially reduced, but not waived, their fees.’ (Adrian Evans, ‘Recognising the Conditional Nature of Pro Bono Motivation: Avoiding ‘Aspirational’ Compulsion and Developing an Appropriate Pro Bono Ethic in New Lawyers’ Available at [http://www.nationalprobono.org.au/conference/pdf/2003\\_papers/3a\\_evans.pdf](http://www.nationalprobono.org.au/conference/pdf/2003_papers/3a_evans.pdf) (accessed 23 September 2016))

<sup>7</sup> The Law Society of England and Wales, ‘The pro bono work of solicitors: PC Holder Survey 2015’ Available at <http://www.lawsociety.org.uk/support-services/research-trends/solicitors-pro-bono-work-2015/> (accessed 23 September 2016)

the Pro Bono Protocol<sup>8</sup>) in the preceding 12 months.<sup>9</sup> This is a statistically significant decline on the 42% reported in the 2014 survey.<sup>10</sup> Interestingly, 43% of solicitors who did not provide pro bono services suggested that there were not adequate opportunities to do so.<sup>11</sup> Unfortunately, it is not clear what is meant by the lack of opportunities. This phrase could be interpreted to mean that solicitors did not believe there was a need for pro bono work which seems unlikely. An alternative interpretation for this phrase is that their firm did not support pro bono opportunities. Reasons cited for not undertaking pro bono work include transactional lawyers stating that they are not litigators, lack of time, cost to the firm in terms of time and money, lack of knowledge in relation to relevant laws affecting the indigent, and not knowing how to get involved in an area of pro bono that interests the individual.<sup>12</sup> Some lawyers also express concern about a perceived conflict of interest.<sup>13</sup> All these reasons have been recognised as barriers to solicitors undertaking pro bono in England and

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<sup>8</sup> The Pro Bono Protocol defines pro bono as '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 and alternative means of funding are not available.' Further, '[l]egal 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.' The Joint Pro Bono Protocol for Legal Work available at <http://www.lawsociety.org.uk/Support-services/Practice-management/Pro-bono/The-pro-bono-protocol/> (accessed 23 September 2016)

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Robert S. Gerber, 'The Top Five Excuses for Not Doing Pro Bono Work, and Why They're All Bad' San Diego Daily Transcript 4 May 2005 Available at [https://www.sheppardmullin.com/media/article/324\\_pub388.pdf](https://www.sheppardmullin.com/media/article/324_pub388.pdf) (accessed 2 December 2016)

<sup>13</sup> For example, see Elisabeth Wentworth, 'Barriers to Pro Bono: Commercial Conflicts of Interest Reconsidered' (2001) 19 *Law in Context: A Socio-Legal Journal* 166

Wales.<sup>14</sup> Kutik however identifies one of the biggest barriers preventing pro bono work as ‘inertia’, explaining that lawyers ‘haven’t done it, [they] don’t know how to do it, and [they] won’t make the effort to learn.’<sup>15</sup>

Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 made significant cuts to the scope of legal aid in England and Wales as of 1 April 2013. As a consequence of these cuts, the number of unrepresented individuals in the family courts has increased. The National Audit Office reports an increase of 30% of family court cases in which neither party had legal representation in 2013-14 compared with 2012-13.<sup>16</sup> The number of litigants in person appearing before the civil courts is also likely to have increased but there is not sufficient data in relation to this.<sup>17</sup> The Master of the Rolls, Lord Dyson, in giving evidence to the House of Commons Justice Committee summed up the issue stating:

*“It is impossible to prove but it would be extraordinary, frankly, if there were not some cases that are decided adversely to a litigant in person which would have been decided the other way had that litigant in person been represented by a competent lawyer. It is inevitable.”<sup>18</sup>*

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<sup>14</sup> LawWorks, ‘The Case for Pro Bono and Getting Started’ Available at <file:///C:/Users/intel/Downloads/lawworks-pro-bono-mini-guide-the-case-for-pro-bono-and-getting-started.pdf> (accessed 2 December 2016)

<sup>15</sup> David A. Kutik, ‘Pro Bono: Why Bother’ (2005) 22:7 GPSolo 44, 46

<sup>16</sup> National Audit Office, ‘Implementing reforms to civil legal aid’ (2014) HC 784, Session 14-15 para. 1.25 Available at <https://www.nao.org.uk/wp-content/uploads/2014/11/Implementing-reforms-to-civil-legal-aid1.pdf> (accessed 23 September 2016)

<sup>17</sup> Ibid, para. 1.24

<sup>18</sup> House of Commons Justice Committee, ‘Eighth Report of Session 2014-15, 4 March 2015: Impact of the changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders

A further issue, as noted by Steven Matthews of the Magistrates' Association, was:

*"[individuals would be] put off making what may be a legitimate application because of the fact that they cannot get legal representation, have been unable to get advice and are put off by the forms and the process and so on."*<sup>19</sup>

It is difficult to quantify the numbers of individuals who decide not to pursue a legitimate legal claim because they are put off by the process. However, one Australian report estimated that not knowing what to do was cited as the reason for inaction in 30% of substantial civil legal problems not acted upon in 2008.<sup>20</sup>

A depressing picture is therefore emerging that at a time when demand, or at least a need, for pro bono legal services is increasing, the percentage of solicitors providing such services is decreasing. There is perhaps a need to consider what steps can be taken to increase the provision of pro bono services by the legal profession, or indeed whether the provision of pro bono should be increased. It has been argued that increasing the provision of pro bono encourages more legal aid cuts.<sup>21</sup> However, these

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Act 2012', para.137 Available at <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/31102.htm> (accessed 23 September 2016)

<sup>19</sup> Ibid

<sup>20</sup> Productivity Commission, 'Access to Justice Arrangements' Volume 1, 133 Available at <http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume1.pdf> (accessed 29 June 2017)

<sup>21</sup> For example, Michael Gove MP stated that '[w]hen it comes to investing in access to justice then it is clear to me that it is fairer to ask our most successful legal professionals to contribute a little more rather than taking more rather than taking more in tax from someone on the minimum wage.' (The Rt Hon Michael Gove MP, 'What does a one nation justice policy look like? 23 June 2015 Available at <https://www.gov.uk/government/speeches/what-does-a-one-nation-justice-policy-look-like> (accessed 6 March 2017)). The Law Society of England and Wales maintains that 'pro bono is never a substitute for a properly funded system of legal aid, which needs skilled and experienced solicitors to provide

issues are beyond the scope of this article which will focus upon the provision of pro bono services by law students.

The opportunities for students to undertake pro bono work at law school in the UK is good with at least 70% of all law schools offering pro bono opportunities to their students.<sup>22</sup> However, the evidence as to whether participation in pro bono programmes impacts upon a student's desire to undertake public service work in their future career is somewhat mixed. Some quantitative studies show little or no impact of clinical and pro bono programmes on students' desire to continue in pro bono/public service work in their future careers<sup>23</sup> whilst other studies suggest clinical

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expert legal advice to those who need it.' (The Law Society, 'Law Society statement on 'one nation justice system' 23 June 2015 Available at <http://www.lawsociety.org.uk/news/press-releases/law-society-statement-on-one-nation-justice-system/> (accessed 6 March 2017)). See also Richard Abel, 'The Paradoxes of Pro Bono' (2010) 78:5 Fordham Law Review 2443

<sup>22</sup> Damian Carney, Frank Dignan, Richard Grimes, Grace Kelly and Rebecca Parker, 'The LawWorks Law School Pro Bono and Clinic Report 2014' Available at <https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf> (accessed 23 September 2016). It should be noted that 'pro bono work' was defined as 'an activity organised and/or delivered by a law school that provides a legal service to an individual, group or organisation without charge'. This is a wide definition and encompasses mandatory and voluntary activities as well as credit and non-credit bearing activities. There has been discussion as to what work is included within the meaning of 'student pro bono' (for example, Dina R. Merrell, 'Pro Bono, Pro You' (2001) 29:7 Student Law. 39; Tracey Booth, 'Student Pro Bono' (2004) 29:6 Alternative L.J. 280). For a general discussion on the definition of 'pro bono' and 'clinical legal education' see Kevin Kerrigan, 'What is Clinical Legal Education and Pro Bono?' in *A Student Guide to Clinical Legal Education and Pro Bono* (Kevin Kerrigan and Victoria Murray eds. 2011)

<sup>23</sup> See Deborah L. Rhode, 'Pro Bono in Principle and in Practice' (2003) 53:3 Journal of Legal Education 413; Robert Granfield, 'Institutionalizing Public Service in Law School: Results on the Impact of Mandatory Pro Bono Programs' (2007) 54 Buffalo Law Review 1355; Paul McKeown, 'Law Student Attitudes towards Pro Bono and Voluntary Work: The Experience at Northumbria University' (2015) 22:1 International Journal of Clinical Legal Education [vi]



legal education and pro bono work can have a positive impact upon students and their willingness to undertake public service work.<sup>24</sup>

### **Why Should Students do Pro Bono?**

If a law student were to carry out a simple Google search asking ‘Why should students do pro bono’ it elicits pages of results from various professional bodies, universities and the wider media extolling the benefits of such work. Academic literature addressing this issue tends to encompass conceptual articles citing reasons why the authors believe students should engage in pro bono activities.<sup>25</sup> Surprisingly there has been little empirical research reporting the reasons students cite as motivating them into carrying out pro bono work.

The reasons for undertaking pro bono work can broadly be categorised as practical, tactical and ethical.<sup>26</sup> Practical reasons include enhanced legal skills, broader legal knowledge, experience, employability and increased job satisfaction. Tactical reasons include promoting the image of the individual, the organisation and the legal

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<sup>24</sup> See Sally Maresh, ‘The Impact of Clinical Legal Education on Decisions of Law Students to Practice Public Interest Law’ in *Educating for Justice: Social Values and Legal Education* (Jeremy Cooper and Louise G. Trubek eds. 1997); Deborah A. Schmedemann, ‘Priming for Pro Bono Publico: The Impact of the Law School on Pro Bono Participation in Practice’, in *Private Lawyers and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession* (Robert Granfield and Lynn Mather eds. 2009)

<sup>25</sup> For example, Howard Lesnick, ‘Why Pro Bono in Law Schools’ (1994) 13:1 *Law and Inequality* 25; Di Mari Ricker, ‘Pro Bono Pays’ (1997) 26:3 *Student Law* 30; Deborah L. Rhode, ‘The Pro Bono Responsibilities of Lawyers and Law Students’ (2000) 27:2 *William Mitchell Law Review* 1201; Craig Linder, ‘Student-Lawyer Partnerships for Pro Bono’ (2007) 35:7 *Student Law* 29

<sup>26</sup> Stephen Parker, ‘Why Lawyers Should Do Pro Bono Work’ (2001) 19 *Law in Context: A Socio-Legal Journal* 5

profession as a whole. From an ethical perspective, it has been argued that lawyers should undertake pro bono work because they are under a moral obligation to do so due to the privileged position the legal profession occupies in society.<sup>27</sup>

Further, the motivating factors to undertake pro bono work may also be categorised as intrinsic or extrinsic. Intrinsic motivation can 'be defined as the doing an activity for its inherent satisfactions rather than for some separable consequence.'<sup>28</sup> Within the context of pro bono work, those who undertake such work due to their own 'personal characteristics, values and attitudes'<sup>29</sup> are intrinsically motivated. Extrinsic motivation 'is a construct that pertains whenever an activity is done in order to attain some separable outcome.'<sup>30</sup> If pro bono work is carried out to improve skills, enhance reputation or for some other reward, this is extrinsically motivated behaviour. Alternatively, extrinsic motivation also encompasses behaviour motivated to avoid adverse consequences such as failing a programme of study if a pro bono requirement is mandated.

Extrinsic motivation has been criticised within education as:

'the more we reward people for doing something, the more likely they are to lose interest in whatever they had to do to get the reward. Extrinsic motivation,

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<sup>27</sup> See Parker n.26; Deborah Rhode, 'Cultures of Commitment: Pro Bono for Lawyers and Law Students' (1999) 67 *Fordham Law Review* 2415, 2419

<sup>28</sup> Richard M Ryan and Edward L Deci, 'Intrinsic and Extrinsic Motivations: Classic Definitions and New Directions' (2000) *Contemporary Educational Psychology* 54, 56

<sup>29</sup> Rhode, n.27, 2427

<sup>30</sup> *Ibid.* 60

in other words, is not only quite different from intrinsic motivation but actually tends to erode it.’<sup>31</sup>

Within clinical legal education it has been argued that extrinsic motivation is ‘less effective than, and may actually erode, intrinsic motivation.’<sup>32</sup> However, the fundamental problem is that ‘intrinsic motivation will occur only for activities that hold intrinsic interest for an individual’<sup>33</sup> and therefore if a student has not previously experienced any form of voluntary work, they may hold no interest in the subject matter. If it is envisaged that law schools can instil a pro bono ethos in students then it is necessary to look beyond intrinsic and towards extrinsic motivation to attract and encourage students to participate and value the activity.

Ryan and Deci posit that ‘[t]his problem is described within [Self-Determination Theory (SDT)] in terms of fostering the *[internalisation] and integration* of values and behavioural regulations.’<sup>34</sup> [original emphasis] Organismic Integration Theory, a sub-theory of SDT, was ‘introduced to detail the different forms of extrinsic motivation and the contextual factors that either promote or hinder *[internalisation]* and integration of the regulation for these *[behaviours]*.’<sup>35</sup> The OIT taxonomy can be visualised at *Fig.1* below.

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<sup>31</sup> Alfie Kohn, ‘How Not to Teach Values: A Critical Look at Character Education’ (1997) Phi Delta Kappan Available at <http://www.alfiekohn.org/article/teach-values/?print=pdf>

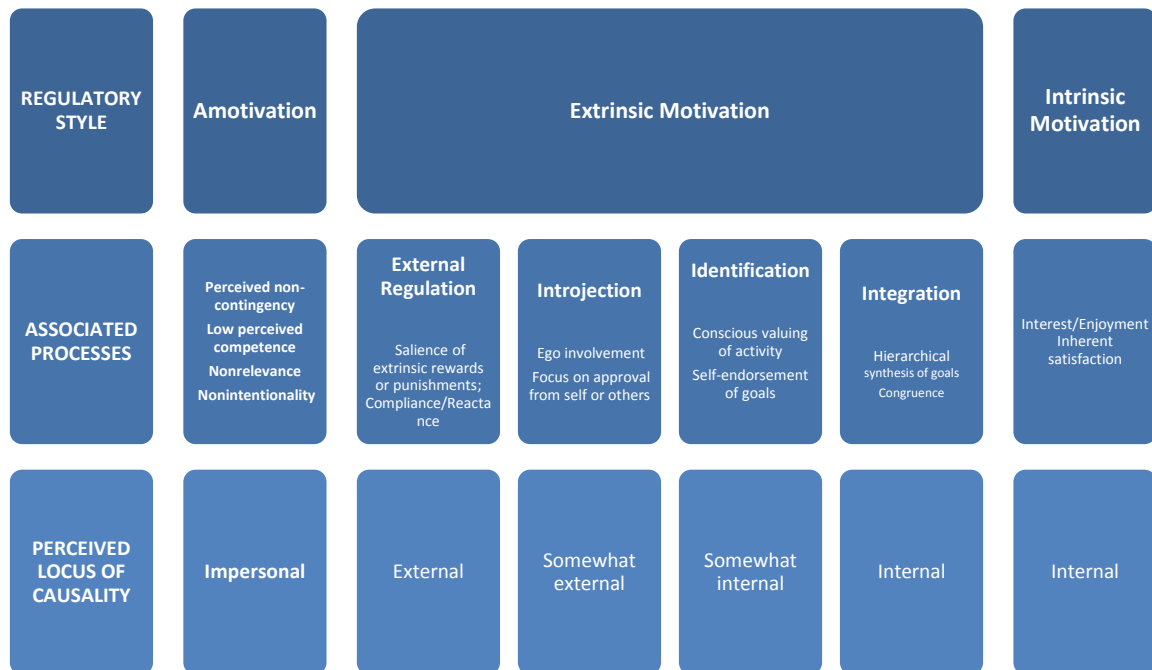
<sup>32</sup> Donald Nicolson, ‘Education, Education, Education: Legal, Moral and Clinical’ (2008) 42:2 Law Teacher 145, 154

<sup>33</sup> Ryan and Deci, n.28, 59

<sup>34</sup> *Ibid*, 60

<sup>35</sup> *Ibid*, 61

Fig.1 A taxonomy of human motivations<sup>36</sup>



Extrinsic motivation can be categorised as:

- *External regulation*  
Action performed due to an external demand or to obtain an external reward<sup>37</sup>
- *Introjected regulation*  
Actions performed with a feeling of pressure in order to avoid guilt or anxiety or to attain ego-enhancements or pride<sup>38</sup>
- *Identification*  
Person identifies the personal importance of the regulation and therefore accepts it as their own<sup>39</sup>
- *Integrated regulation*  
Fully assimilate identified regulations to the self through self-examination and alignment with other values and needs<sup>40</sup>

<sup>36</sup> Drawn from Ryan and Deci, n.28, 61

<sup>37</sup> Ryan and Deci, n.28, 61

<sup>38</sup> Ibid, 62

<sup>39</sup> Ibid

<sup>40</sup> Ibid

Within the context of pro bono work, as identified earlier, students may be motivated to undertake such work for a variety of reasons. If students conduct mandatory pro bono work, or if the work is performed for assessment purposes, this is an example of external regulation and therefore the behaviour is perceived as controlled and lacking autonomy. However, if students engage in pro bono work because they recognise it will enhance their legal skills and improve their employability, they will identify with the value of the activity in relation to their own career objectives. If this is taken a step further, and through reflection, the value of pro bono work is brought into congruence with the student's other values and needs, then the pro bono work becomes assimilated and extrinsically motivated actions become autonomous and self-determined. Whilst the student may originally become exposed to pro bono work because it is mandated, or they wish to achieve a good grade, they may then experience the intrinsic value of the work in itself thus shifting their own values. For example, Quigley, drawing upon the work of Mezirow, posits that educators can utilise the phenomenon known as the 'disorientating moment' where the student is exposed to a disorientating or disturbing experience to transform their 'societal and personal beliefs, values and norms.'<sup>41</sup>

There are very few reported empirical studies asking students what motivates them to conduct pro bono. Combe, with reference to the Aberdeen Law Project, reports that '[t]he highest ranking reason for joining was for experience, followed by social justice

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<sup>41</sup> Fran Quigley, 'Seizing the Disorientating Moment: Adult Learning Theory and Teaching Social Justice in Law School Clinics' (1995) 2 *Clinical Law Review* 37, 51-56

and skills development...social justice was not the primary factor in their joining the volunteer activity.<sup>42</sup> Nicolson, with reference to the Law Clinic at the University of Strathclyde, reports that 'self-centred reasons' ('To gain useful skills' and 'To put into practice theoretical knowledge') ranked higher than 'altruistic reasons' ('To help others' and 'To increase access to justice') as the reason for wanting to join the clinic.<sup>43</sup> However, those students 'who successfully completed the rigorous selection process seemed far more motivated by altruism in their decision to apply for membership compared to general Clinic applicants.'<sup>44</sup> This is probably explained by the fact students are selected on the basis of their commitment to social justice.<sup>45</sup>

A study by Evans and Palermo into Australian lawyers' values considered pro bono in the context of professional responsibility.<sup>46</sup> Respondents were fairly equally divided as to whether they would agree to pursue a hypothetical pro bono case.<sup>47</sup> Of those respondents who would accept the pro bono case, access to justice was ranked as the most important motivating factor for taking on the case. However, this is qualified as 'participants clearly expressed this issue in relation to personal interests

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<sup>42</sup> Malcolm M. Combe, 'Selling intra-curricular clinical legal education' (2014) 48:3 *The Law Teacher* 281, 290 DOI: 10.1080/03069400.2014.965950; See also 'Student Attitudes to Clinical Legal Education' Available at <https://basedrones.wordpress.com/student-attitudes-to-clinical-legal-education/> (accessed 22 September 2016)

<sup>43</sup> Donald Nicolson, 'Calling, Character and Clinical Legal Education: A Cradle to Grave Approach to Inculcating a Love for Justice' (2013) 16:1 *Legal Ethics* 36, 43

<sup>44</sup> *Ibid*

<sup>45</sup> Donald Nicolson, "'Our roots began in (South) Africa": Modelling law clinics to maximise social justice ends' (2016) 23:3 *International Journal of Clinical Legal Education* 87, 106

<sup>46</sup> Adrian Evans and Josephine Palermo, 'Zero Impact: Are Lawyers' Values Affected by Law School' (2005) 8:2 *Legal Ethics* 240

<sup>47</sup> *Ibid*, 249

and desires rather than mentioning any professional ethics'.<sup>48</sup> Other motivating factors determining how respondents would act include professional ambition (relating to the high profile nature of the case), employer loyalty (prioritise work for employer) and employment security (if they pursued a case against the will of their employer).<sup>49</sup>

An interesting qualitative study was conducted by Behre into student motivations for pro bono following a tornado that devastated Tuscaloosa, Alabama in April 2011.<sup>50</sup>

Whilst the circumstances of this study are very specific to the events at the time, the findings are useful. Behre reports that students were initially motivated through the 'need to help' and 'as a natural response to the shock of witnessing the tornado's destruction.'<sup>51</sup> '[S]urvivor guilt' and the 'need to give back to the community' were also cited as initial motivating factors to volunteering.<sup>52</sup> These motivating factors are intrinsic and 'as a direct response to witnessing a natural disaster.'<sup>53</sup> However, the student's rationale for their continued volunteer effort provides a good level of insight into student motivation. 'Meaningful volunteer experiences' such as 'personal, meaningful interaction with strangers',<sup>54</sup> organisation,<sup>55</sup> 'opportunities for students to

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<sup>48</sup> Ibid, 250

<sup>49</sup> Ibid

<sup>50</sup> Kelly Alison Behre, 'Motivations for Law Student Pro Bono: Lessons Learned from the Tuscaloosa Tornado' (2012-2013) 31 Buffalo Public Interest Law Journal 1

<sup>51</sup> Ibid, 28

<sup>52</sup> Ibid, 29

<sup>53</sup> Ibid

<sup>54</sup> Ibid, 30

<sup>55</sup> Ibid, 31

use their professional training’,<sup>56</sup> and the opportunity to gain ‘new legal knowledge and skills’<sup>57</sup> were all cited as motivating factors. Behre however notes that ‘[s]tudents in general were more concerned about how they could help people and less concerned about how the experience would benefit them.’<sup>58</sup> Finally, ‘membership in the community’ was also cited as a motivating factor for volunteering and the students ‘valued the experiences they had connecting to people from diverse backgrounds.’<sup>59</sup>

## **Methodology**

Law students at Northumbria University were invited to enter an essay competition entitled ‘Pro Bono: What’s in it for law students?’ The writer of the winning essay was awarded £125 voucher and the publication of their essay in the *International Journal of Clinical Legal Education*.<sup>60</sup> A representative of the *International Journal of Clinical Legal Education* adjudicated the competition. The students were not provided with any guidance as to the definition of ‘pro bono’ and therefore the essays reflect the students’ own interpretation of this term. Further, the competition was open to all law students at Northumbria University regardless of whether they had any pro bono or clinical legal education experience. This is not a comparative study, merely a study considering the student perspective. The essays were analysed using NVivo software.

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<sup>56</sup> Ibid, 34

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> Ibid, 34-38

<sup>60</sup> The decision was also taken to publish three High Commended essays at the conclusion of the competition. The writers of these essays also received a voucher to the value of £25.



The competition was arguably subjective; no criteria was set to determine the winning essay. This was deliberate to encourage honest views as to the motivating factor for undertaking pro bono work. The decision was taken to avoid pre-defined criteria as this may have resulted in essays becoming formulaic.

**What the students say:**

The essays reveal that the reasons students believe they should undertake pro bono work are varied.

The article will explore the various reasons and motivations for undertaking pro bono work in more detail below. Before these reasons and motivations are considered, I will first look at the students' understanding of pro bono.

*Understanding Pro Bono*

As stated above, there is no settled definition of pro bono work and this article is not intended to consider what type of work should or should not be included. Further, it is beyond the scope of this article to consider whether clinical type activities fall within the definition. Pro bono is shortened from the Latin term 'pro bono publico' meaning 'for the public good'. There is no requirement, at face value, for the work to be carried out for a particular group or individual, or indeed without charge, for it to be classified as pro bono. However, it is typically expected that work will only qualify as pro bono

work if it is carried out for free and on behalf of individuals, charities and community groups who cannot afford to pay for advice and representation.<sup>61</sup>

The consensus amongst the students is that pro bono work should be carried out for low income and vulnerable members of society with statements such as:

*“at its most primal level pro bono work protects those who do not have the financial means to benefit from the legal system.”<sup>62</sup>*

and

*“[p]ro bono operates with the aim of protecting those who are most vulnerable in society, whom are in need of legal representation and cannot afford it.”<sup>63</sup>*

Further, it is also apparent that the students recognise pro bono work as an innate part of the legal profession stating:

*“As future custodians of the legal profession, law students should embark on pro bono as it reflects the core values of justice.”<sup>64</sup>*

One student however recognised that there is a conflict within the legal profession between the Government (or the State) and the profession’s responsibility to ensure access to justice stating:

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<sup>61</sup> See for example The Law Society, The Joint Pro Bono Protocol for Legal Work Available at <http://www.lawsociety.org.uk/support-services/practice-management/pro-bono/the-pro-bono-protocol/> (accessed 15 September 2016); <sup>61</sup> American Bar Association, ABA Model Rule 6.1 Available at [http://www.americanbar.org/groups/probono\\_public\\_service/policy/aba\\_model\\_rule\\_6\\_1.html](http://www.americanbar.org/groups/probono_public_service/policy/aba_model_rule_6_1.html) (accessed 15 September 2016)

<sup>62</sup> Essay 4

<sup>63</sup> Essay 2

<sup>64</sup> Essay 5

*“the Government proposed that pro bono could fill the void left by the withdrawal of funding. Many in the profession attacked this notion as fanciful. However, to ignore such a notion would be ultimately unwise. It is clear there is mounting pressure on all entering the profession to complete their fair share of pro bono work.”<sup>65</sup>*

There is also explicit recognition that pro bono work is carried out for reputational advantage, in other words, for tactical reasons.

*“[Pro bono] also operates to support the reputation of the profession overall. Lawyers are required to uphold public confidence in the [profession] and pro bono work works to dispel the stereotypes which plague lawyers. It promotes the idea that [lawyers] are not here to charge extortionate fees, but are actually here to provide a public service. Pro bono work shows a clear dedication to the law for the right reasons, a desire to help people and an interest in the law, regardless of the time or effort they may have to expel in the process.”<sup>66</sup>*

The essays suggest that students understand pro bono to be an important aspect of the legal profession and further, it involves working for the benefit of vulnerable and indigent clients thus supporting access to justice. The students demonstrate that whilst there are conflicts arising as to where the responsibility lies for ensuring access to justice, there is recognition that the legal profession shares that responsibility.

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<sup>65</sup> Essay 4

<sup>66</sup> Essay 6

Further, the legal profession as a whole benefits from pro bono work due to the positive image it portrays.<sup>67</sup>

*Why should students undertake pro bono?*

We can broadly categorise the reasons cited by the students for undertaking pro bono as:

- Public service
- Skills
- Employability
- Networking
- Experience
- Satisfaction<sup>68</sup>

There are areas of natural overlap in the reasons cited by the student. For example, enhancing skills and experience are likely to improve employability. However, within the analysis, the focus has been on the primary motivating factor.

- *Public Service*

Public service was the only reason cited by every student as a reason to undertake pro bono work. However the weight given to public service among the essays varied

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<sup>67</sup> Although see Gary A. Hengstler, 'Vox Populi - The Public Perception of Lawyers: ABA Poll' (1993) 79 A.B.A. Journal 60, 62 which reports that 'minorities, the unemployed, members of low-income households, and adults under 30 were the most likely to feel favourably towards lawyers'

<sup>68</sup> The reasons cited by the students for undertaking pro bono work accord with reasons cited by Parker. See n.26

considerably. Whilst one student devoted over half their essay to public service, other students merely acknowledges the public service ethos and instead concentrates their essay on the benefits to the individual:

*“Whilst the case for the utility of pro bono for the aggrieved has been made extensively, this essay considers how the volunteers may benefit themselves in the process.”<sup>69</sup>*

The essays support the notion that law students see themselves as part of the wider community saying, for example, that:

*“by participating in pro bono work, law students contribute constructively to the community around them in a most unique way.”<sup>70</sup>*

It may be questioned as to how engagement with the wider community is a benefit to the student. In response to this question, the law school is about more than teaching students’ knowledge and skills; indeed it is a ‘professional socialization experience’.<sup>71</sup> This wider role is also recognised by The Quality Assurance Agency for Higher Education (QAA) in the United Kingdom in setting out benchmark standards to describe a law student’s skills and qualities of mind. The QAA states that a graduate of law with honours is expected to have demonstrated, amongst other things, an ‘awareness of principles and values of law and justice, and of ethics’ and a ‘knowledge and understanding of theories, concepts, values, principles and rules of public and

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<sup>69</sup> Essay 8

<sup>70</sup> Essay 4

<sup>71</sup> James L. Baillie and Judith Bernstein-Baker, ‘In the Spirit of Public Service: Model Rule 6.1, the Profession and Legal Education’ (1995) 13:1 Law & Inequality 51, 67

private laws within an institutional, social, national and global context'.<sup>72</sup> Engagement with the wider community fulfils this wider role for the law school by providing the student with a 'professional socialization experience' and facilitating their understanding of the role of law within the 'institutional, social, national and global context'.

Through exposure to a wide variety of people, especially those from backgrounds that the students may not have ordinarily been exposed to, the student becomes a more rounded individual and thus develops as a professional. This is explained by one student as follows:

*"Clients that students experience in [p]ro [b]ono work tend to come from a variety of social backgrounds. This helps to break down any unconscious social bias they may have, to ensure that in practice they approach each case with an open mind and with the necessary social awareness and empathy required of a lawyer. Working in [p]ro [b]ono work prior to going in[to] practice helps students to develop as lawyers whose primary concern is to help their clients rather than being purely motivated by money and career advancement."<sup>73</sup>*

There is further recognition within the essays that this engagement with the community can place the law into context for the student and add perspective to their aspirations as a lawyer that is unachievable in the classroom environment. For

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<sup>72</sup> QAA, 'Subject Benchmark Statement: Law' (2015) Available at <http://www.qaa.ac.uk/en/Publications/Documents/SBS-Law-15.pdf> (accessed 28 June 2017)

<sup>73</sup> Essay 12

example, Baillie and Bernstein-Baker considered a number of studies and concluded that merely including discussions on the need for pro bono in a classroom setting would not have an effect on student attitudes.<sup>74</sup> It is therefore important for students to experience pro bono so they can therefore feel the intrinsic benefit of pro bono work, a notion summarised as follows:

*“It is imperative to understand that the benefits of [p]ro [b]ono are not limited to professional applications; legal involvement within the community allows one to make meaningful contributions to those in need, and in doing so allows the student to appreciate the “vital role the law plays.” Legal [s]ervice has been denoted as being “unaffordable and out of reach.” The common view held is that “one of the most perplexing facts about our perplexing legal market is its failure to provide affordable services for just about anyone but the rich and corporations.” Thus, by providing legal aid to those who lack financial stability, the student is able to experience “intrinsic morale” and self-worth, something that all lawyers must be familiar with, and something that extends beyond the walls of the classroom.”<sup>75</sup>*

The students’ also demonstrated awareness that the altruistic value of pro bono work also improved the often-tarnished reputation of lawyers and therefore whilst the work

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<sup>74</sup> Baillie and Bernstein-Baker, n.71, 64

<sup>75</sup> Essay 11

is of benefit to the wider community, it is also of benefit to the legal profession as a whole.<sup>76</sup> This is illustrated as follows:

*“Lawyers are often branded with a reputation of arrogance and elitism. However, this does not stand well when those who are in need of legal help cannot access it, when [l]egal [a]id has been cut so drastically in the last 3 years. Therefore, the English [l]egal[s]ystem relies upon [pro bono] work to not only erode this stereotype, but to show that lawyers and law students alike, can show compassion by working on cases for free.”<sup>77</sup>*

- *Skills*

Ten of the students referred to skills development within their essays as a reason to undertake pro bono work.<sup>78</sup> Both legal and personal skills can be developed as summarised below:

*“It allows [students] to develop vital, practical legal skills (eg. advocacy, legal research, interviewing), as well as other relevant ones such as personal organisation, presentation and teamwork (useful in a legal working environment)”<sup>79</sup>*

There is also a distinct overlap between the development of skills through pro bono work and other motivating factors. Through the utilisation of lawyering skills,

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<sup>76</sup> For example, the Australian Pro Bono Manual explicitly cites ‘reputation’ as a benefit of pro bono work. (Australian Pro Bono Centre and Victoria Law Foundation, ‘The Australian Pro Bono Manual’ (2005) 1.4)

<sup>77</sup> Essay 2

<sup>78</sup> Earlier research suggests that students valued the personal benefits of pro bono such as skills development. See McKeown, n.23, xxvii

<sup>79</sup> Essay 3



students are able to experience what it is like to work as a lawyer in practice,<sup>80</sup> to gain confidence that they have the requisite ability and provided validation for their chosen career path:

*“The skills developed in [p]ro [b]ono legal practice are invaluable to the pursuit of a career as a practicing lawyer. Almost every role within the front line services of the legal profession requires basic abilities in client and case management. The focus on techniques such as interviewing, legal writing, organisation, and management of the expectations of client qualify students perfectly to move forward in their legal career. Not only does the development of such skills help undoubtedly benefit students going into practice, but in my own experience provides the confidence to embark on that course. I for one can say that prior to my experience in [p]ro [b]ono legal work [I] certainly [was not] confident in pursuing a career as a lawyer. However in developing these skills and confidence, and engaging in [first-hand] experience working as a trainee solicitor, albeit in a [p]ro [b]ono setting, verified the enjoyable and exciting nature a career as a lawyer presents.”<sup>81</sup>*

It is important that we do not under-estimate the role of the supervisor within the learning process. Within the context of clinical legal education, Cozens states that the ‘supervisor is possessed with the ability to place the student’s experiences into a

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<sup>80</sup> See also Pam Feinstein, ‘Gain Experience through Pro Bono’ (2012) 29:1 GPSolo 17; Dina R. Merrell, ‘Pro Bono, Pro You’ (2001) 29:7 Student Lawyer 39

<sup>81</sup> Essay 12

coherent learning structure so that they make sense to the student.’<sup>82</sup> There is an appreciation of this from one student who states:

*“Pro bono volunteers are generally supported and supervised throughout their volunteering enabling them to receive feedback for self-development.”<sup>83</sup>*

This is further supported through students reflecting as an important part of this development:

*“[U]ltimately it provides an opportunity for students of law to reflect upon their own weaknesses and strengths, to better their own legal skills, to engage with real clients”<sup>84</sup>*

In enabling this self-development, there must be clear boundaries as to the role of the supervisor. Cozens sets out two levels of supervisor intervention; the first is guidance thus allowing the student to act in the role of the lawyer and accept responsibility for that role; the second is direct intervention whereby the supervisor will replace the student’s control of the situation.<sup>85</sup> The latter intervention meant there is little educational value in the experience.<sup>86</sup> Whilst the supervisor is important within the student’s educational development, the student must assume responsibility for their own learning.

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<sup>82</sup> Michael Cozens, ‘Clinical Legal Education: A Student Perspective’ (1993) 2 Dalhousie Journal of Legal Studies 201, 226

<sup>83</sup> Essay 5

<sup>84</sup> Essay 9

<sup>85</sup> Cozens, n.82, 231-232

<sup>86</sup> *Ibid*, 233

- *Experience*

As cited earlier, a significant motivating factor to undertake pro bono work is the experience of practise.<sup>87</sup>

*“The ideals of [pro bono] give students the fundamental opportunity to experience the expectations of a prospective lawyer”<sup>88</sup>*

There is also a perception that the experience afforded by pro bono work is different to any other experience a law student may have through their university career. The students stated that the practise of law is different to how it is taught in the classroom. Further, the experience is more beneficial than work experience within a law firm as it is hands on.

*“There is a definitive difference between being taught the law and practicing the law. Any opportunity in which you can use the knowledge you have been taught, and putting this in to practice, will always be beneficial. Working on a [pro bono] basis is unlike any mini-pupillage or vacation scheme. You are not pushed aside and left to shadow the lawyers that are working on the case, but you yourself are involved. You have a legal duty to your client. You are responsible for your client. Working a case on a [pro bono] basis creates a strong platform for a future legal career.”<sup>89</sup>*

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<sup>87</sup> See n.80

<sup>88</sup> Essay 11

<sup>89</sup> Essay 2

*“The bridge between the way the law is taught at an academic level and the way the law works in reality is a very important distinction for students. Pro bono provides a degree of realism that no work experience can replicate, and is arguably a better introduction than anything preceding a [t]raining [c]ontract or [p]upillage.”<sup>90</sup>*

Further, the students also perceive that pro bono work will help them stand out from the crowd.

*“To the careerist, it offers necessary work experience to compliment applications for training contracts and pupillages. With attrition rates for career progression being as gruelling as ever (most notably in the case of the bar), pro bono work offers the aspiring lawyer a chance to apply their academics to real problems. In the current recruitment climate, work experience and a commitment to the legal profession has become a pre-requisite, not a bonus. Fortunately, pro bono work offers both, and is a valuable asset to any pragmatic law student.”<sup>91</sup>*

On a final note regarding experience, some of the students cited personal experience of engaging in pro bono work and the effect it has had on them. For example, one student stated:

*“having engaged with my [University’s] [pro bono] clinic...alongside volunteering at the Citizens Advice Bureau, the importance and value of [pro bono] work for the modern day law student cannot be stressed enough. The benefits are two-fold, first and foremost, the wealth of experience that a student can gain through practical work is incomparable*

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<sup>90</sup> Essay 6

<sup>91</sup> Essay 8

*to that of regular modular studies, secondly, engaging with [pro bono] work whether through a clinic or indeed volunteering, not only has the ability to give a law student a humbling experience, but also an appreciation for the legal sector and perhaps further motivation for the students own career.”<sup>92</sup>*

The student goes on to state:

*“Aside from the practical experience that [pro bono] work can provide, I believe it a great way in which to instil a sense of ethics and appreciation of the client-solicitor relationship from an early stage. Both the [pro bono] clinic and the Citizens Advice Bureau allowed me to engage with those who would not normally be able to receive legal advice and as a result, I was fortunate enough to experience the appreciation projected from those that I was helping.”<sup>93</sup>*

It is possible that this experience can be created through the provision of a university based law clinic as summarised by another student:

*“Speaking as a product of Northumbria University’s Exempting Law Degree and [having] worked in their prestigious Student Law Office the benefits of [p]ro [b]ono are benefits that I have experienced personally. My resounding support for [p]ro [b]ono legal work therefore comes from experience.”<sup>94</sup>*

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<sup>92</sup> Essay 9

<sup>93</sup> Essay 9

<sup>94</sup> Essay 10

- *Employability*

As discussed above, experience through pro bono work can also enhance employability. Students made frequent references to the opportunity to build their CV:

*“Pro bono work is invaluable to the CV of any law student, and is quickly becoming a necessity rather than an addition. It is not difficult to see why. Pro bono work provides hands-on experience with real life clients, cases and legal processes. If a candidate can demonstrate a proven ability for the kind of tasks which would be assigned to them during employment, then half the battle is already won.”<sup>95</sup>*

Further, another student considered the issue of pro bono from the perspective of potential employers and satisfying their own pro bono initiatives:

*“More and more law firms see the need for pro bono work and expect their lawyers to contribute. Why wait until it’s expected of you? Impress them by having made a start on your own initiative”*

Whilst the students suggest that pro bono will assist them in securing employment, interestingly, graduate recruitment is also cited as a reason for law firms to have pro bono programmes. The Law Society of England and Wales report that:

*‘New graduates expect much more than just a healthy remuneration package and good career prospects; many law firms report that students being interviewed for vacation*

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<sup>95</sup> Essay 1

*schemes ask detailed questions about their firm's pro bono programme and the opportunities available to them.*<sup>96</sup>

It appears that law firms, in part, will offer a pro bono programme to attract high-calibre graduates while students will undertake pro bono opportunities to secure employment. This suggests that pro bono capacity is potentially increased by both law firms and students desire to stand out to each other.

- *Academic*

Four of the students identified enhancing a student's academic understanding of the law as a motivating factor to undertake pro bono work.<sup>97</sup> The theme of this motivation is that pro bono work improves their academic understanding of the law by placing it into context as shown in the quote below:

*"Academics have long discussed the ramifications of graduates that are technically sound in knowledge of the law itself and the procedural steps that accompany statute, but could not begin to understand the effects on a client of the application of said statute. For example, you may understand that an application can be made under Section 33 of the Family Law Act 1996 for an Occupation Order but until you have met the client who happens to be a victim of domestic violence, who fears for the safety of her children and*

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<sup>96</sup> The Law Society of England and Wales, 'Pro Bono Manual: A practical guide and resource kit for solicitors' (2016); See also Australian Pro Bono Centre, n.76

<sup>97</sup> See McKeown, n.23, xxix. Students also reported benefiting from a better academic understanding of the law

*understood how this application will affect this whole [family's] life you cannot truly believe yourself to be educated in that area of law.”<sup>98</sup>*

There was also an appreciation from these students that the academic law can be different to the practical law with one student stating:

*“[Although] it’s easy to get lost in the intricacies of implied terms and the construction of contracts, practical law is often very different to academic law. Therefore, for the enthusiast, exposure to real cases and the ability to assist and advise both collaboratively and autonomously is an excellent learning tool and will invariably help cement essential legal principles in the context of tangible problems.”<sup>99</sup>*

- *Satisfaction*

Personal and job satisfaction is often cited as a reason to undertake pro bono work. There is an inherent satisfaction in doing a good deed and doing a good job for someone. Dinovitzer and Garth report that engaging in some pro bono work provided a sense of satisfaction for respondents although more pro bono hours significantly decreased satisfaction.<sup>100</sup> This supports the notion that doing some altruistic work is beneficial but doing too much may have a negative impact on the individual. It is

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<sup>98</sup> Essay 10

<sup>99</sup> Essay 8

<sup>100</sup> Ronit Dinovitzer and Bryant G. Garth, ‘Pro Bono as an Elite Strategy in Early Lawyer Careers’ in *Private Lawyers and the Public Interest: The evolving role of pro bono in the legal profession* (Robert Granfield and Lynn Mather eds. 2009),



suggested that this negative impact may be as a result of too little paying work within the law firm or a 'lack of fit' between the pro bono and the business.<sup>101</sup>

Satisfaction was also cited and appeared to be a strong motivating factor by six of the students in their essays with one student saying:

*"Law students are rewarded and paid in the sense of job satisfaction. The payment is the feeling you get knowing that you have been able to help someone. Knowing that you are able to put what you have learnt in to practice. Knowing that if you can successfully handle a [pro bono] case, you can be successful when you graduate"*<sup>102</sup>

Further, one student reflects upon the often-perceived burden of pro bono work and the hardships faced by law students stating:

*"For those that live and love the law, pro bono does not burden the volunteer with having to work; it gifts them with getting to work. It allows the long hours spent in the library, the years of debt following extortionate professional qualification fees, and the mountain of extra-curricular obligations required to succeed as a lawyer to be mere afterthoughts for the student."*<sup>103</sup>

Whilst personal satisfaction may be a highly influential factor motivating students to undertake pro bono, the impact of the work must also be borne in mind. It must be remembered that students have other commitments, whether this be on their programme of study or outside of the university. Further, any pro bono programme

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<sup>101</sup> Ibid

<sup>102</sup> Essay 2

<sup>103</sup> Essay 8

to complement the students' studies and thus provide a fit and therefore maintain anticipated satisfaction.

- *Networking/Professional Relationships*

Pro bono programmes will often bring students into contact with other members of the legal profession. This contact can be categorised as a benefit to the student.<sup>104</sup> This may be due to collaboration between the university and an external law firm. Alternatively, students may liaise with opposing lawyers in relation to their case. Two students highlighted that pro bono work can result in the development of professional relationships although the perception was be of personal benefit to the student. Whilst not explicit in the comment below, it is likely to mean that the student can utilise the contact to enhance future employment prospects for example:

*"[L]inks can be established with important legal organisations. As a law student, it is important to establish as many contacts as possible and pro bono work provides a fantastic opportunity to create meaningful relationships which may prove useful in the future."*<sup>105</sup>

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<sup>104</sup> Harry S. Margolis, 'The Elder Law Clinic' in The ElderLaw Portfolio Series Release #43 (Harry S. Margolis, Christine J. Vincent. Esq, and Daniel Waltz eds 2013) 1B-13

<sup>105</sup> Essay 1

## **Discussion**

### *Limitations*

As with all studies, the conclusions of this study are subject to its limitations. In particular, this was a small-scale study considering the opinions of students based at a one university. It is likely that the students who participated in the study had a predisposition to pro bono and altruistic behaviour, thus were interested in the subject matter of the study. However, the incentive of a prize may have mitigated this factor and attracted the views of those individuals who are more extrinsically motivated. However, I suggest we can learn from the students and assist in the development of future pro bono programmes.

### *Student Motivations*

The students who participated in this study clearly demonstrated mixed motivations for undertaking pro bono work. Whilst many of the motivations were for personal benefit such as enhancing their skills, knowledge and employability, there was also recognition amongst all the students that pro bono work has wider social benefits including the promotion of access to justice and enhancing the community in which they live. One student expressed this as follows:

*“Pro Bono work operates to defend the vulnerable in society...[t]his alone means pro bono is well worth the time and effort for students, regardless of the useful personal skills and confidence they will also develop in the process.”<sup>106</sup>*

Whilst another student stated:

*“You may be able to do some good, and that will be of benefit to you as well as society: we all have to play in social responsibility”<sup>107</sup>*

There is a link between the students cited motivations for undertaking pro bono work and Adult Learning Theory. As such, there is a theoretical basis as to why the provision of pro bono opportunities in law schools will enhance student skills, legal knowledge and consequentially, employability. Pro bono work is therefore an educational experience for the students.

Firstly, it is necessary to engage the students in the culture of pro bono work, recognising that the motivation for each student will be different. As such, perhaps there we should not isolate individual motivators but instead recognise the holistic nature of motivation. The Andragogical Model assumes that adults, when undertaking to learn something on their own, will invest considerable time into investigating the benefits of the activity.<sup>108</sup> As educators, we can draw the student’s

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<sup>106</sup> Essay 6

<sup>107</sup> Essay 7

<sup>108</sup> Malcolm S. Knowles, Elwood F. Holton and Richard A. Swanson, ‘The Adult Learner: The Definitive Classic in Adult Education and Human Resource Development’ (2012) 7<sup>th</sup> Edn Routledge Oxon 63; see also Frank S. Bloch, ‘The Andragogical Basis of Clinical Legal Education’ (1982) 35:2 *Vanderbilt Law Review* 321 for discussion on application of Adult Learning Theory to clinical legal education

attention to an array of benefits that they can evaluate and align with their own objectives. Further, if a student opts to undertake pro bono work, they will feel a sense of autonomy thus aligning with the notion of 'self-concept'.<sup>109</sup> Knowles et al. state that '[t]he minute adults walk into an activity labelled "education," "training," or anything synonymous, they hark back to their conditioning in their previous school experience, put on their dunce hats of dependency, fold their arms, sit back, and say "teach me."<sup>110</sup> Through engagement in pro bono activity, students are engaged in self-directed learning and less likely to resent or resist the learning activity.

The pro bono experience in itself aligns with the Androgical Model as the emphasis 'is on experiential techniques – techniques that tap into the experience of the learners.'<sup>111</sup> Students also develop a 'readiness to learn'<sup>112</sup> because they are dealing with real life legal problems that require them to seek out and assimilate the relevant knowledge and skills.

Adults also have a life-centred orientation to learning and therefore learn 'new knowledge, understanding, skills, values and attitudes most effectively when they are presented in the context of application to real-life situations.'<sup>113</sup> Assisting a pro bono client with a real legal problem will therefore assist student in acquiring legal

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<sup>109</sup> Ibid

<sup>110</sup> Ibid, 64

<sup>111</sup> Ibid

<sup>112</sup> Ibid, 65

<sup>113</sup> Ibid, 66

knowledge and skill but also will influence their values and attitudes through exposure to new people and situations.<sup>114</sup>

Finally, the most important motivators for adult learning are ‘internal pressures’ such as a desire for increased job satisfaction and self-esteem.<sup>115</sup> We can see that the students are exhibiting such motivation.<sup>116</sup>

The question then becomes how we capitalise on these motivations to instil a culture of pro bono and volunteering within the law school whilst providing a rewarding educational experience for the students.

#### *Pro bono in law school*

As outlined above, Adult Learning Theory means there is an educational basis for incorporating pro bono programmes in law schools. However, it is important that such programmes are well designed to engage students and achieve the desired outcomes.

Extrinsic motivation means that students are likely to engage with the programmes. The students value the skills development, the experience that they will acquire and, as a consequence the enhanced employability. The supervision of the programme and the students are important to ensure that students achieve the learning outcomes, and

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<sup>114</sup> For example, Behre, n.50; Maresh, n.24; Schmedemann, n.24

<sup>115</sup> Knowles, n.108, 67

<sup>116</sup> See n.102 and n.103

do not become merely observers but are responsible within the role of a lawyer creating an environment of autonomy and self-directed learning.

It is also important that pro bono programmes expose students to new people from different backgrounds. Intrinsically, students often value meeting strangers and this has the potential to create the 'disorientating moment'. Again, through guidance from their supervisor, students can reflect upon the situation, challenging their own perceptions of the world. Through such self-examination, students can achieve 'integration' on the 'taxonomy of human motivation' and internalise thus an extrinsically motivated experience will hold intrinsic interest.

## **Conclusion**

We do not have the necessary evidence to draw any conclusions as to whether students will become intrinsically motivated to engage in public service after university as a longitudinal study would be required. However, on a theoretical basis, there is evidence to suggest that students can be extrinsically motivated to engage. Through mere experience, some students may experience the inherent satisfaction of pro bono activity and therefore wish to continue. Others however may 'identify' the personal importance of the activity through an appreciation of its application to their own life and career goals, thus beginning the process of internalisation. As educators we can guide our students through the reflective process, help them make sense of their experiences and integrate the pro bono experience with their sense of self. Whilst the students are still extrinsically motivated, the perceived locus of causality will

become more internalised thus, hopefully, instilling a continuing commitment to pro bono work in the future.

There are numerous reasons why students may wish to undertake pro bono work whilst at law school. Of these, experience is a highly influential factor as it not only provides a strong extrinsic motivation to participate in pro bono work initially, but the pro bono experience may also facilitate a deep intrinsic motivation to continue with the work into the future. Through experience, students can develop skills and improve their employability but they can also feel the inherent satisfaction of helping others and making a difference.

The development of pro bono initiatives in law schools benefits students personally and the students recognise this. Pro bono schemes will also benefit the community through the assistance offered by the students whilst engaging in the programme. As such, the University may also benefit from an enhanced reputation amongst the student body and the wider community.

As a consequence of providing pro bono programmes, students may reflect upon their experience and assess their own values and attitudes towards society, which may have a transformative impact upon their lives and their continuing participation in such as activity. However, to achieve this, the students must be provided with not only the experience but also the ability to reflect upon that experience.



## A SYSTEMATIC REVIEW OF THE LITERATURE IN EUROPE RELATING TO CLINICAL LEGAL EDUCATION

**Rachel Dunn, Northumbria University, UK<sup>1</sup>**

### Abstract

As my PhD research is European focused, looking at knowledge, skills and attributes development in live client clinics, I wanted to find all the European literature relating to clinical legal education. The aim of this research was to find all of the European literature surrounding clinical legal education available to me, to explore the kind of research published and to identify any gaps in knowledge. With an explosion of literature within the field, and more research undertaken every year, finding the literature which related to my research was challenging. To help aid this work I embarked on a systematic review, building on work by Tribe Mkwebu,<sup>2</sup> systematically searching for peer reviewed articles. This research was initially presented at the European Network of Clinical Legal Education's Spring Workshop, 2015, Northumbria University. This article highlights the journey through this literature. Firstly, it explains what a systematic review is and how it can be used within mixed methods research. It then goes on to outline the methodology used and the number of articles sourced, excluded and synthesised. The analysis shows the amount of papers published before 2015 and their basic content. Finally, I discuss my reflection on the systematic review, what I thought went well and what didn't, explaining how it was received at the Workshop.

### Keywords

Clinical legal education; Europe; systematic review; law clinics; legal education

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<sup>1</sup> Rachel is a third year full time PhD student at Northumbria University.

<sup>2</sup> Mkwebu T, 'A Systematic Review of Literature on Clinical Legal Education: A Tool for Researchers in Responding to an Explosion of Clinical Scholarship' (2015) 22 *International Journal of Clinical Legal Education* 238

## Introduction

Clinical legal education (CLE) is a vastly growing area for academic research worldwide. CLE, at its simplest 'is a method of training law students by putting them in situations where they must apply the legal theory, principles, and doctrines they have studied in the classroom setting.'<sup>3</sup> This method of teaching is extensively researched and published globally. Doing a basic search for materials online will bring you many articles from the US, UK, Australia and Canada. Other regions of the world, such as Africa and Asia, have begun to publish their research more over the last decade.<sup>4</sup> The same cannot be said of Europe, this continent seeming to produce less research on their clinics. Thus, it was vital for my PhD research to explore what research is already available and what can be further developed.

This paper highlights where the European clinical research has come from and the methodology of the systematic review used to find it. The preliminary findings of this systematic review were presented at the European Network of Clinical Legal Education (ENCLE) Spring Workshop, held at Northumbria University in April 2015.<sup>5</sup> I will refer to this workshop during this paper. It is appreciated that since this research was conducted there have been many more papers published in CLE within Europe. However, I wish for this

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<sup>3</sup> Bucker A and Woodruff A, 'The Bologna Process and German Legal Education: Developing Professional Competence through Clinical Experiences ' (2008) 9 German Law Journal, p. 578

<sup>4</sup> The fact that clinics have grown in Africa and Asia can be seen in Bloch FS, *The global clinical movement: educating lawyers for social justice* (Oxford University Press 2010). Furthermore, from my searches I was getting many results for these continents with has led me to draw the conclusion that they have started to publish more. CLE started in Africa in the 1960's and Asia in the last decade or so.

Also, see Mkwebu T, 'A Systematic Review of Literature on Clinical Legal Education: A Tool for Researchers in Responding to an Explosion of Clinical Scholarship' (2015) 22 International Journal of Clinical Legal Education 238

<sup>5</sup> <https://www.northumbria.ac.uk/media/4738635/call-for-interest-encle-osife-newcastle-15-16-april-2015.docx>

paper to be used more as a guide of conducting systematic reviews within our field and how it can be used to further our collective research agenda.

### What is a systematic review?

A systematic review, as Khan et al suggest, is, 'a research article that identifies relevant studies, appraises their quality and summarises their results using scientific methodology.'<sup>6</sup>

The amount of research conducted and published into CLE has increased greatly over the years and the possibility of reading it all is not likely, if not impossible. A systematic review can combine research questions and key words in order to perform a rigorous search for literature, narrowing search results.

There are key phases to a systematic review, formalised through the Cochrane Collaborative over 20 years ago, which were followed during this review. The key phases are:

- 1) 'Mapping the field through a scoping review
- 2) Comprehensive search
- 3) Quality assessment
- 4) Data extraction
- 5) Synthesis
- 6) Write up.'<sup>7</sup>

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<sup>6</sup> Kahn KS and others, 'Systematic Reviews to Support Evidence-Based Medicine: How to Review and Apply Findings of Healthcare Research.' (2003) The Royal Society of Medicine Press

<sup>7</sup> Jesson J, Matheson L and Lacey FM, *Doing your literature review: traditional and systematic techniques* (SAGE 2011) P. 108

The advantages of conducting a systematic review are quite strong, in a methodological sense. For example, it allows a comparison of research papers available in order to assess consistency of the research. Due to its robust nature and its methodological structure results are often more reliable or accurate.<sup>8</sup> This is due to its scientific nature. Its purpose is to aid a particular question or hypothesis and test it. With my particular question in mind a systematic review appeared a better fit. To attempt to find all of the peer-reviewed literature regarding CLE in Europe, the scientific methodological way of searching, using key words and wide searches, meant that I was more likely to answer my research question, as opposed to using a narrative literature review. As I had searched in such a comprehensive manner, searching all of the databases I did and following the Cochrane Collaborative model, reliability would naturally flow from my results. By looking at all of the articles I could find I reduced the bias, which may sometimes be present in a narrative review, and added strict criteria to the articles used to answer my research question. Having this research question in existence I could keep my searches in line with what I actually wanted to know, creating the rigour needed to not stray from my research area.

There are limitations to this methodology in order to locate relevant literature, which will be discussed in more detail below. It is a particularly time-consuming process, which can take weeks to complete. However, the rigour and comprehensive nature of this research methodology ensures that essentially all the articles in a certain area on the databases are

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<sup>8</sup> Greenhalgh T, 'How to read a paper: Papers that summarise other papers (systematic reviews and meta-analyses)' (*BMJ*, 1997) <<http://www.bmj.com/content/315/7109/672>> accessed 28.04.15

found. The comprehensive nature occurs because I am finding all of the relevant peer-reviewed articles published to answer my research question. When I say a systematic review is rigorous Piper suggests that:

‘When faced with any question, being able to conduct a robust systematic review of the literature is an important skill for any researcher to develop; allowing identification of the current literature, its limitations, quality and potential.’<sup>9</sup>

This rigour applies to appraising the research as well as finding it. Finding the research and following the set structure means that all literature identified should be in the research area. At the appraisal stage articles are excluded which are not deemed to eligible for inclusion and those left are submitted to a weight of evidence test. This test seeks to assess the quality of the research that has been found from the systematic review, but is important to note that papers are not necessarily excluded due to appraisal.<sup>10</sup> Rather, sufficient weight should be attached to them in light of the appraisal.

Thus, this systematic review is not only identifying the literature already available in Europe, but also its strength, reliability and relevance to the research question. This is why it was chosen for this particular research.

*Narrative or systematic literature reviews?*

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<sup>9</sup> Piper RJ, 'How to write a systematic literature review: a guide for medical students' (2013) NSAMR, University of Edinburgh, p. 2

<sup>10</sup> Jesson J, Matheson L and Lacey FM, *Doing your literature review: traditional and systematic techniques* (SAGE 2011) P. 108.p, 114.

A narrative literature review differs greatly from a systematic review, and is considered the more traditional approach. They can be more critical, assessing theories, putting the research into context and discussing the background of the research in more depth. Articles are selected by the author, based on his opinions. There are advantages to doing a traditional literature review. For example, they can go into a deeper discussion about the research and its theory, following a trail of different authors, their academic discussions and how their research has developed. It can be argued that this provides a richer literature review, discussing certain elements of research in great depth. Other articles and materials for the review can be found in footnotes and bibliographies, one piece of work providing for another.

However, narrative reviews have been criticised by academics. Garg, et al highlight an issue that, 'It is sometimes uncertain whether the author of a narrative review selectively cited reports that reinforced his or her preconceived ideas or promoted specific views of a topic.'<sup>11</sup> Thus, due to an author choosing what is included in their review, and having the freedom to exclude materials which may not reinforce their opinion or theory, we may not be getting the entire picture from a narrative review. This is the issue of bias. We only see what the reviewer would like us to see, potentially reducing the reliability of the review. Reviewers, after all, are experts in their field, with opinions about the publications which exist; it can be hard to separate that opinion from a literature review. I am not enforcing that every literature review must be systematic and narrative reviews are always unreliable, but a good, methodologically

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<sup>11</sup> Garg AX, Hackam D and Tonelli M, 'Systematic Review and Meta-analysis: When One Study Is Just not Enough' (2008) 3 Clinical Journal of the American Society of Nephrology, p. 253

sound, systematic review eliminates the temptation to exclude material which otherwise should be brought to the attention of the reader.

Using a systematic review was the most appropriate literature review for my research question. A narrative review would not have produced the same results and I would have missed many articles if I had used this alternative.

*Using qualitative studies in systematic reviews*

Systematic reviews, traditionally, contain only quantitative studies within the evaluations of their materials. This is due to their scientific nature, and quantitative studies viewed as supporting a hypothesis or research question more appropriately. However, due to the total amount of papers sourced in this systematic review being conceptual and qualitative in nature it is necessary to discuss the use of these kinds of papers. As Petticrew states, 'Qualitative research can identify the range and nature of impacts of interventions and can give sense of whether they are rare or common. It can identify unintended, unanticipated impacts.'<sup>12</sup> He notes that systematic reviews containing qualitative research are becoming more common, and the impact that they can have should not be ignored. Qualitative studies can help us to answer research questions which may not be answered through quantitative studies, and including them in a systematic review may create a more reliable result to the research question. Petticrew maintains his argument with Roberts, advancing that, 'There is clearly enormous scope for improving the means of accumulating the knowledge gained through qualitative

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<sup>12</sup> Petticrew M, "Time to rethink the systematic review catechism? Moving from 'what works' to what happens" (2015) 4 Systematic Reviews

studies.’<sup>13</sup> Thus, quantitative studies can help to improve the knowledge that is gain through qualitative research, providing more depth to the answer of a research question. The NHS Centre for Reviews and Dissemination now provide, in their guidance of undertaking systematic reviews<sup>14</sup>, the advantages that using qualitative data may provide. Some academics have warmly welcomed this, agreeing that using this kind of data can add a new perspective on systematic reviews, one that quantitative only studies may lack. However, there are still some issues with using this kind of data in a systematic review. Dixon-Woods and Fitzpatrick outline them as:

- 1) Rigour is important when searching for a systematic review. Searching for qualitative studies can be ‘frustrating’ or difficult
- 2) A suitable way to appraise qualitative studies has not yet been agreed. The models for quantitative studies are not appropriate
- 3) How do we synthesise and conduct secondary-summary with qualitative data?<sup>15</sup>

Whilst these are issues for a qualitative systematic review, they are not complete barriers to conducting one. I appreciate that appraising the studies does not have a set methodology, but I believe that if you are clear with your appraising methodology this should not be a huge issue.

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<sup>13</sup> Petticrew M and Roberts H, *Systematic Reviews in the Social Sciences A PRACTICAL GUIDE* (2006), p. 71

<sup>14</sup> NHS Centre for Reviews and Dissemination, *Undertaking systematic reviews of research on effectiveness: CRD’s guidance for those carrying out or commissioning reviews*, (2001, 2<sup>nd</sup> ed.)

<sup>15</sup> Dixon-Woods M and Fitzpatrick R, 'Qualitative research in systematic reviews' (2001) 323 BMJ

Accessed via: <http://www.bmj.com/content/323/7316/765> - Last cited 15/05/15



This systematic review contains only qualitative research, forcing me to exclude the meta-analysis stage of a traditional systematic review. Even though there is no quantitative data to extract and synthesise from the research, there is still a strong opportunity to analyse qualitative data using this method.

Petticrew and Roberts highlight that systematic reviews are a great method that ‘can be used to summarize, appraise, and communicate the results and implications of otherwise unmanageable quantities of research.’<sup>16</sup> However, they add to this by stating that systematic reviews can lack an actual substantive discussion of the literature, and the ‘communication’, element should be greater if systematic reviews are to be ‘really useful’.<sup>17</sup> This communication element is more prominent in a traditional literature review approach. I hope that the increasing use of qualitative studies in systematic reviews will result in greater communication of the information available for particular research questions.

As the Cochrane Collaborative follows the key phases, outlined above, I had to modify some phases slightly, particularly the synthesis stage, in order to fit my methodology and the sole use of qualitative research.

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<sup>16</sup> Petticrew M and Roberts H, *Systematic Reviews in the Social Sciences A PRACTICAL GUIDE* (2006), p. 10

<sup>17</sup> *Ibid*

### Aims of this systematic review

- To find all of the peer-reviewed and published research available regarding CLE in Europe
- Explore what research has been published in this area (area concerning both research and regional)
- Analyse the research, looking at whether it is theoretical or empirical, and the reliability attached to it
- To identify any gaps in knowledge or further research that can be conducted.

Looking at the aims of my systematic review, they were partially met. I did find all of the peer-reviewed and published research available regarding CLE in Europe. I did explore and analyse the research. However, I do not think I can state that I found all of the gaps in knowledge or can definitely say what further research needs to be conducted in this area. This will be discussed in more depth in the section discussing the limitations of this systematic review.

### Research question and how it was formulated

*What research has been published in Europe regarding clinical legal education and what is missing?*

Formulating my research question was not a particularly difficult task. As I wanted to know what research had already been done in Europe generally it was easy to express in a question. I was gathering any articles relating to CLE from the continent, and not narrowing it down to specific CLE issues. Thus, I wanted to gather articles that related to establishing a clinic, sustaining it, teaching methods, social justice aspects, assessment or any other research topics

available to CLE. Consequently, my research question became rather broad to capture all of those research areas.

### Mapping and scoping

The first phase of this review was to design a plan to conduct the systematic review. I already knew that there are more articles produced in the UK than there are from Continental Europe. However, I knew that some countries had published research and engaged with CLE more widely than others. Thus, there were some countries highlighted for specific searches with a general European search to catch anything that may be missed.

The key words were developed from the research question. 'Clinical legal education' was the main search term as this is the most relevant part of the research question. The remaining key words were the countries I had identified as more likely to have published in this area, and then a general Europe search.

The 'sweeping searches' used more general terms that were wider than the research question, to ensure I had captured all of the materials available to me. The results of these searches have not been included in the final Prisma diagram, as they did not form the main part of the search. They were used as a final check, and did not provide me with any further articles (see appendix 1).

I decided that I would not have a time limit, or a start date, to my searches. I wanted to find all of the articles available to me, regardless of when they were published. This worked quite well, as the modern wave of CLE started in the 60's, mainly in the US, Australia, Canada and

the UK.<sup>18</sup> As Continental Europe mostly did not begin engaging with CLE until later, I knew I wouldn't have to go too far back. Thus, having a start date for my searches did not really make too much of a difference to narrowing down my searches for Europe.

### Comprehensive search: how I searched for the materials

#### *Choosing Databases*

As this area covers law and education, I choose databases which I knew would provide either these areas, or predominately providing one of them.

- Heinonline is a database that covers both these disciplines, with many clinical focused journals subscribed to, rather than just educational. Consequently, most of the articles included in the full text analysis were from this database.
- Westlaw is a database that primarily archives legal articles. However, they do bring results up for the International Journal of Clinical Legal Education (IJCLE). Whilst they are not actually subscribed to on this database, it is an open access journal, with all of the archives available online. Thus, the results from these hits were recorded from this database and accessed via the IJCLE website.
- LexisNexis is another legal based database. It was included in the database selection to cover all of the main legal databases that are commonly used in legal research.
- Lawtel is another legal database, but one that does not commonly archive legal education articles. Again, it was to ensure that the main legal databases had been searched.

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<sup>18</sup> Bloch FS, *The global clinical movement: educating lawyers for social justice* (Oxford University Press 2010), p.3

- SAGE is a socio-legal database, and sometimes legal education is included within socio-legal studies. This database was used to search a much broader variety of articles, rather than strict legal databases.
- The Social Science Research Network, again, is a much more boarder database, that does archive some legal education articles. It was chosen in order to conduct another broader scoping look at the articles that are available.

### *Searching*

In order to find materials on the databases I used the Boolean operators, to narrow down my searches. Boolean operators use simple words, such as AND, NOT and OR, to narrow down results and link search words together. I used the operator AND consistently throughout my search. The knowledge that the majority of material published in this area originates from the US, Australia, Canada and the UK meant that I knew most of the results would originate from these countries. For continental Europe there is a lack of research, with some countries publishing slightly more and some not at all in research outlets. With this knowledge already in place it was vital to narrow down the searches to certain countries within Europe to avoid great volumes of articles from countries that were not relevant. I selected countries that I knew had many clinics or had published limited research on the clinics that had been established recently. Thus, in my search terms I used 'Clinical legal education AND [selected country]' to find articles relevant to that region. It is appreciated that not all European countries were included as a search term. From my initial searches I knew that many articles appeared in most searches for any country, even if not the specific country searched. Thus, I searched countries I knew had published on CLE already. Lastly, I would search for 'Clinical

legal education AND Europe’, as a final search to ensure that I hadn’t missed any articles from the continent. It was not practicable to search for every country in Europe separately, but finding countries not searched appear in the results for other multiple times was reassuring and they were added to the results.

I did attempt to use NOT as a search operator, but it did not provide desirable results for some databases. During my searches there would be many results relating to clinical medical education and clinic trials in health. They actually formed the majority of my search results for Heinonline and SAGE. When using ‘NOT medical’ or ‘NOT health’ after my usual search term to narrow down results it only brought up more articles rather than producing less. Thus, I stopped using NOT as a search operator and would sift through all of the articles produced for my initial search rather than narrowing them down any further. This was an issue and added time onto the systematic review, but there were not so many results that it became impossible to do in the timeframe allowed.

I did not use the search operator OR at all during my searches. There was no specific reason for this, just that I wasn’t searching for multiple research areas of CLE, just any materials from Europe. I could have used ‘Clinical legal education OR law clinics AND [selected country]’, but I felt it would have brought up the same results, which would be added to the duplicate list.

For LexisNexis and Westlaw I decided to do a ‘sweeping search’<sup>19</sup> using different terms to ensure that I had recorded all of the relevant articles from those databases. As Heinonline was my greatest source of articles I did not find this necessary use for these searches, as the majority of articles were produced on my initial searches. The ‘sweeping searches’ ensured that I had searched and recorded all the articles available to me. By using different search terms to ‘clinical legal education’ I was able allow for potential articles with a different description of this method to be found.

I stopped searching when the records recovered from the searches were displaying irrelevant articles, or the only relevant results were mainly duplicates. Once I started to record many duplicates it was realised that the material available to me was already recorded to be read in full text. I felt that the databases used and the search terms confirmed that I had collected all the material that I possibly could from my institution’s accessible databases.

Search terms and databases

**Databases Searched with Dates:**

Heinonline - 9/03/15 - 17-03-15  
Westlaw - 17/03/15  
LexisNexis - 9/03/15  
Lawtel - 17/03/15  
SAGE - 04/04/15 - 05/04/15  
Social Science Research Network (SSRN) - 06/04/15

**Search Terms:**

Clinical legal education AND Poland  
Clinical legal education AND Germany  
Clinical legal education AND Croatia  
Clinical legal education AND UK  
Clinical legal education AND Russia  
Clinical legal education AND Ireland  
Clinical legal education AND Czech  
Clinical legal education AND France  
Clinical legal education AND Northern Europe  
Clinical legal education AND Europe

**Additional ‘sweeping’ searches for LexisNexis and Westlaw:**

Law clinics AND Europe  
Legal Education AND Europe

**Search limitations**

Language (Any articles not in English)  
Databases not subscribed to by my institution  
Geographic (any research not produced or conducted within Europe)

### Inclusion/exclusion criteria

- **Title**

Many articles were included from their title. It was easy to see articles that were highly relevant to the search as they normally stated the country and kind of CLE it is discussing.

For example, it was easy to see from the title, '*The Next Step Forward: The Development of Clinical Legal Education in Poland through a Clinical Pilot Program in Bialystok*<sup>20</sup>' is obviously an article regarding CLE in a European country.

Most articles results could be excluded by title. They were excluded if it was clear that they didn't fit into the European criteria and were research produced from outside this continent. A total of 44,171 articles were excluded due to title.

Next, articles were excluded if it was clear they were to do with medical education and not legal education. For some databases the majority of articles produced were for medicine and not law. It was very easy to identify which articles were medical and would be excluded by title instantly.

- **Abstract**

Occasionally it was necessary to read an article's abstract in order to determine whether it should be included in the systematic review. Abstracts read had to illustrate that the article was research conducted within Europe and relating to CLE. This was normally fairly easy to identify. If it was not, then the contents page or introduction were read to determine inclusion. This did not, however, occur very often and it was not deemed necessary to make a record of how many articles were included from contents page, etc. They were included under the abstract criteria heading. Altogether 120 articles were excluded by abstract.

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<sup>20</sup> Skrodzka M, Chia J and Bruce-Jones E, 'The Next Step Forward - The Development of Clinical Legal Education in Poland Through a Clinical Pilot Program in Bialystok' (2008) 2 Columbia Journal of East European Law 56



The reasons for exclusion by abstract varied. The majority (approximately 100 articles) of abstracts excluded were due to the research not having been conducted in Europe. Often, searches would produce articles that mentioned a country in the footnotes or briefly within the main body. These articles obviously would not answer my research question and were not relevant to the systematic review.

Articles were also excluded if the abstract did not mention CLE at all, meaning that the research didn't concern this kind of education, but legal education more generally.

- **Articles that had to be excluded**

Some articles had to be excluded for various reasons. If the article's full text was not available or not subscribed to then it was excluded. If there was no possibility of gaining the full text then it could not be included in the later stages of the systematic review, the synthesis. A total of 29 articles were excluded for unavailability.

A small amount of articles were excluded as they were written in a language other than English. There was no means available to translate these articles at the time of the search. There were only 2 articles excluded due to language.

Lastly, there were articles excluded as duplicates. These were articles that had already been included to be read in full text and thus were not needed again. The articles excluded during a search were those that were relevant to the country searched. There were a great number of articles produced for medicine and health, and they were not recorded again as duplicates as they were not relevant to my search. Only those to be read in full text were excluded as a duplicate. A total of 34 articles were excluded as a duplicate.

- **Full text**

Only 3 articles were excluded after reading full text. These reasons were as follows:

- One article was not research in Spain. It was actually research from a US university that had the same name as a Spanish city. Once realised this was not European research it was excluded.
- One article was excluded from Germany. When reading this article it came to light that it was only about legal education in Germany and did not mention clinical legal education at all. As it did not mention any clinics, and other articles provided a comprehensive background to legal education in Germany, I felt it was not necessary to include this article in the final results.
- An article was excluded after it was realised that it did not really concern CLE, but rather developing an educational system for preparing students for international practice. This was not relevant to this systematic review and was excluded accordingly.

As can be seen, there were not many articles excluded during the full text stage of the review. I believe this is because my screening worked so well, and articles that would fit the criteria were chosen carefully.

### Recording the articles

Once I had identified articles I wanted to read in full text, I recorded them on a table in a word document. I recorded the author, date of publication, title, citation and which country the research concerned. Recording the articles in this way made it easier to find them again at a later date, and also to check any potential duplicates from my searches. An example of the final result looked like this:

Slyvester, C. And Hall, J. And Hall, E.	2004	Problem-Based Learning and Clinical Legal Education: What can Clinical Educators Learn from PBL	International Journal of Clinical Legal Education, Vol. 4, pp 39-63 Int'l J. Clinical Legal Educ. 39 (2004)	UK
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I found that this was the most efficient way of recording the articles. Once I had completed my tables I transferred them to Excel. This meant I could filter articles depending on date or country, for ease of analysis.

I only recorded the information of articles I chose to read in full text. Articles that were excluded prior to this were not recorded in more than a numerical figure, as it would have not served me any purpose.

### Findings

The records I identified before screening, for all searches conducted, are as follows:

- Heinonline: 23,147
- Lexisnexis: 71
- Lawtell: 3
- Westlaw: 1095
- SAGE: 20,083
- SSRN: 24

I would like to highlight some preliminary observations of the actual records produced rather than the content. As I was searching for certain countries which I knew had already

published research, I expected to find more articles than I actually did. This was especially for Poland, Croatia and Ireland. I was not surprised by the results for the UK, as I knew this country would lead the amount of research available to me. The results for Germany were surprising as this is a country which has taken longer than others to engage with CLE.<sup>21</sup>

However, I realised that some countries had not produced any research outlets themselves in my results, but rather it was mainly US academics writing about their experiences of CLE in these countries. This is especially the instance for Germany and Russia. Some countries were mixed and some produced all their own research, mixing it comparatively with other countries. This is shown in figures 3 and 4 below, which compares domestic to non domestic articles produced per year.

I think I was expecting to find more articles than I actually did in the final result. However, it can't be forgotten that there were many articles excluded as they weren't available to me. Had they been, the results would have been different, particularly for the UK.

Below is a Prisma flow diagram<sup>22</sup>, showing the different stages of my systematic review and the inclusion/exclusion numbers. I have already dissected above how many articles were excluded for various reasons and why, and it is not necessary to repeat them here.

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<sup>21</sup> Tomoszek M, 'The Growth of Legal Clinics in Europe - Faith and Hope, or Evidence and Hard Work?' (2014) 21 *International Journal of Clinical Legal Education* 93 – this paper highlights, particularly at p.99, how Germany has 'resisted' the CLE trend, favouring the more conventional approach to legal education.

<sup>22</sup> The findings included in this Prisma do not include the records for the additional 'sweeping searches'. There were no records used, as shown in the table in appendix 1.

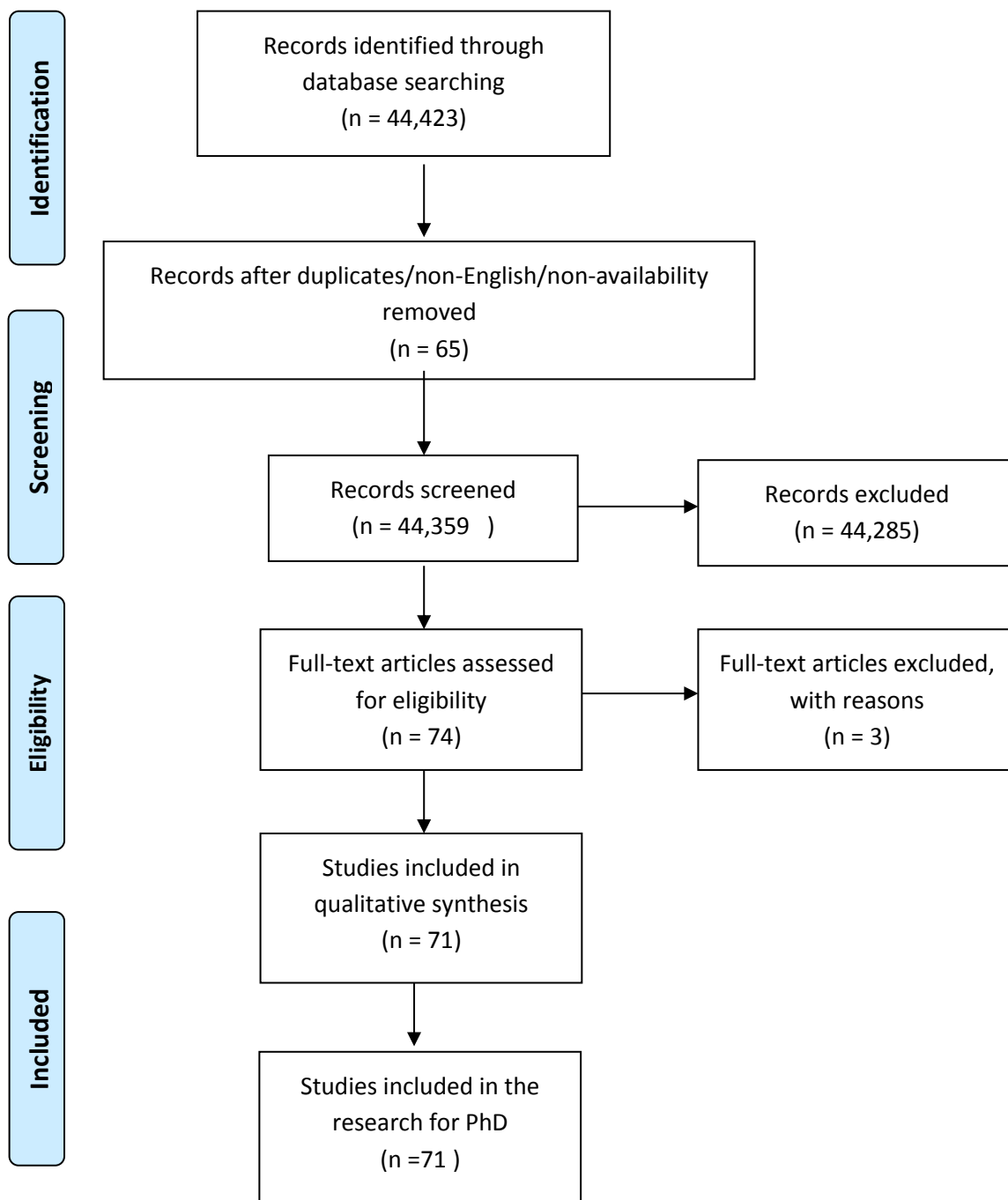


Figure 1 – PRISMA flow diagram showing the stages of the systematic review

Synthesising the quantitative elements of the literature

This table shows the search results for each country and the general Europe searches. The figures shown is the total amount of articles for each country across the six databases used.

Country searched	Articles produced	Articles excluded by title	Articles excluded by abstract	Articles that had to be excluded	Articles excluded from full text	Articles included in research paper for PhD
Croatia	453	445	4	2	0	2
Czech	719	700	11	3	0	5
France	5,906	5,894	10	1	0	1
Germany	6,459	6,442	11	0	1	5
Ireland	3,370	3,349	16	0	0	5
Poland	1,582	1,561	9	4	0	8
Russia	2,120	2,107	6	4	0	3
UK	11,500	11,387	36	43	0	34
Northern Europe	2,520	2,517	3	0	0	0
Europe Generally	9,794	9,769	14	7	1	3
Other articles found during searches, not relevant to country searched and did not appear in the general Europe search				1	2	5
					<b>TOTAL ARTICLES INCLUDED</b>	<b>71</b>

Figure 2 – Table displaying the search results per country or region

I then decided to put the amount of articles from each country on a map:

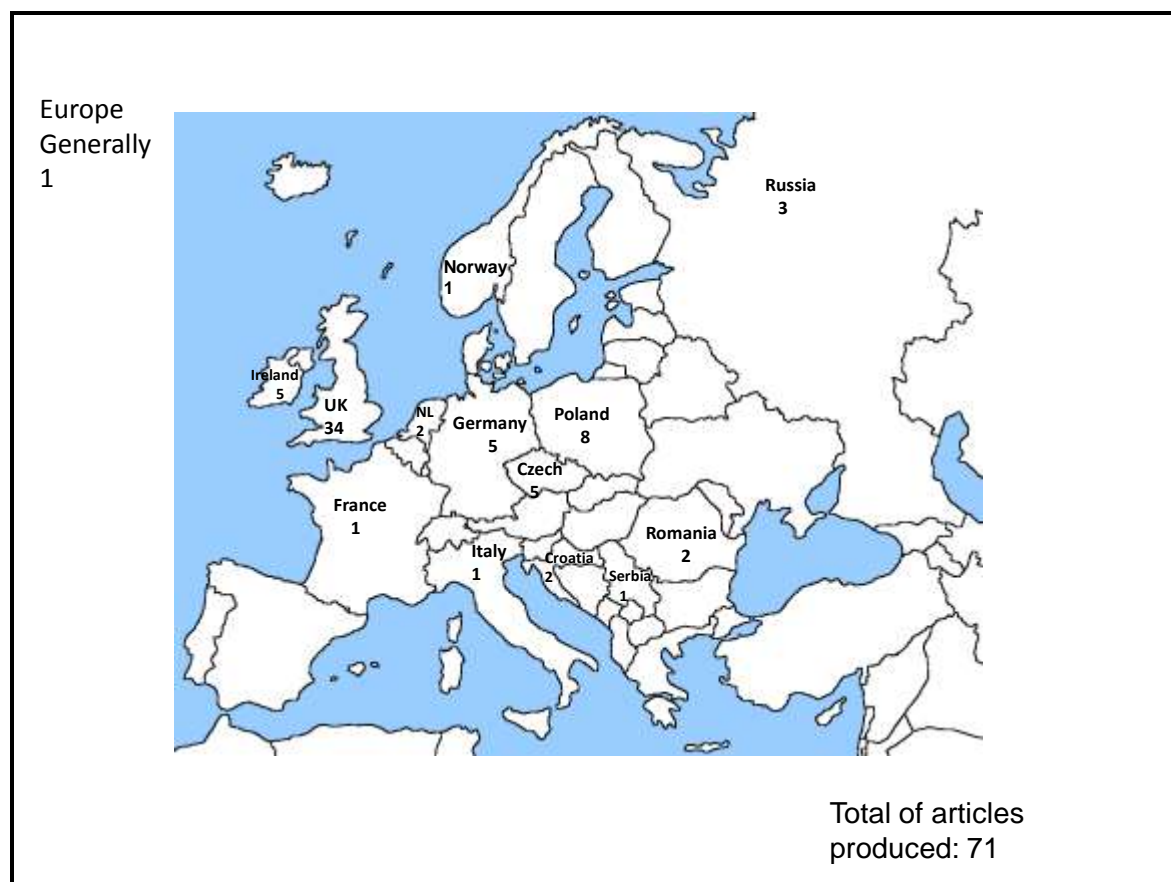


Figure 3 – Map showing how many articles sourced from each country

This helped me to locate where the research had been conducted and which countries had not produced any research from my searches. A systematic review, when completed, gives you a number of articles. It does not present the articles in a way which is easy to look at and dissect where they originate from. As I am not familiar with working with numbers, I felt it necessary to display my results in other ways.

A visual aid really helped me to locate which countries had been producing more research than others, if any. It also helped when I was presenting this work for attendees to the ENCLE

workshop to see the results in this format, rather than just looking at multiple tables. This map shows a geographical cluster of publication activity, which is not apparent when looking at the results in a table or list format. This map does not, however, show which countries have clinical activity. The fact that I did not find any peer-reviewed articles for certain countries does not mean that they are not engaging with CLE. I know that many European institutions do incorporate some form of CLE into their law programmes, but that is not apparent from this systematic review. It also does not mean that they are not conducting research. It only displays which countries have published peer-reviewed articles, and how many papers for each.

Furthermore, this map only shows which countries have produced research or had research conducted in them by domestic or non-domestic authors as a total. It does not distinguish between them.

Thus, I was also interested in how many articles had been produced by non-domestic academics compared to domestically produced articles. With my final amount of articles, this is how it looked:



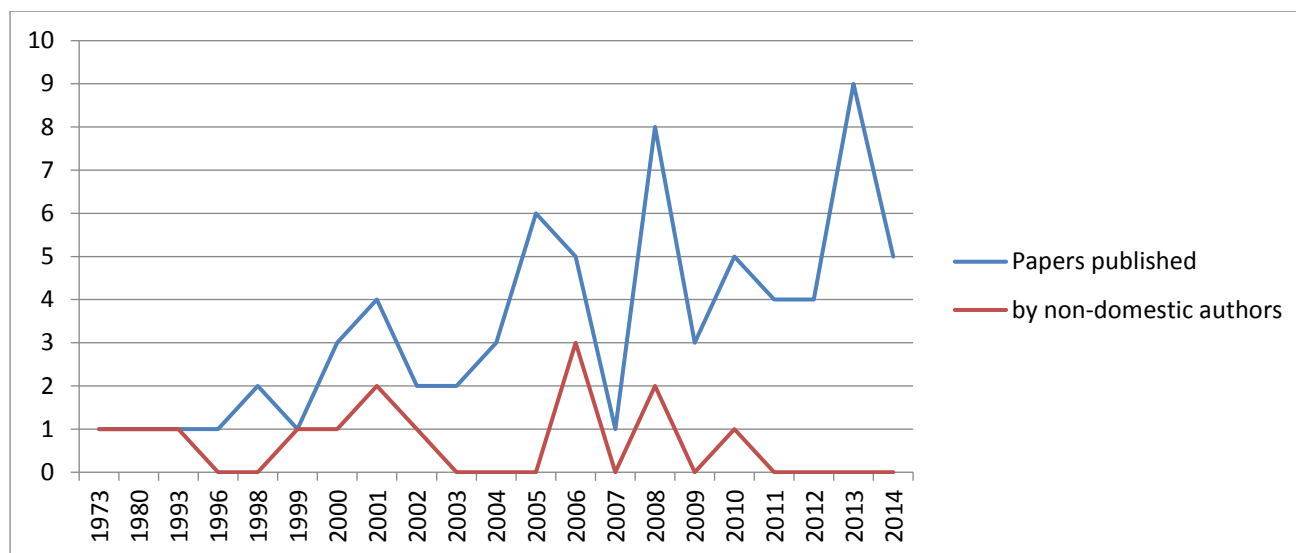


Figure 4 – Graph showing the amount of papers published by non-domestic authors

From this graph it can be seen that the earlier papers published, there is quite a small difference between the articles published and publications by non-domestic authors. As we get to more recent times, 2008 onwards, there seems to be a big difference between the papers published and publications by non-domestic authors.

These graphs, in a way, are in line with my hypothesis. I knew that there wasn't much peer-reviewed research published within Europe, which focused on CLE. This is for various reasons. The main reason is that CLE was not widely engaged with throughout Continental Europe until the 1990's.<sup>23</sup> This boom of CLE started when organisations, such as the ABA or CEELI<sup>24</sup>, worked with European universities to help them incorporate CLE into their legal education. As a result, it is not surprising to see on this graph that the first papers published on European CLE are from non-domestic authors. In some years, such as 1999, there were no

<sup>23</sup> Bloch FS, *The global clinical movement: educating lawyers for social justice* (Oxford University Press 2010), Chapter 4.

<sup>24</sup> American Bar Association (ABA) and Central and Eastern European Law Initiative (CEELI).

papers published by domestic academics in European clinics. Non-domestic authors, especially those from America, would write of their experience helping to set up clinics in Europe and the difficulties they faced. As these clinics become more established we begin to see a rise in the amount of papers published by domestic authors.

However, due to the limitations of my systematic review, discussed below, there does seem to be very valid reasons for domestic authors not publishing as much peer-reviewed CLE research, especially in the earlier years.

I think these results can also be represented on a graph, comparing papers published by domestic to non-domestic authors, rather than total papers published compared to non-domestic. Representing the results in this way appears like this:

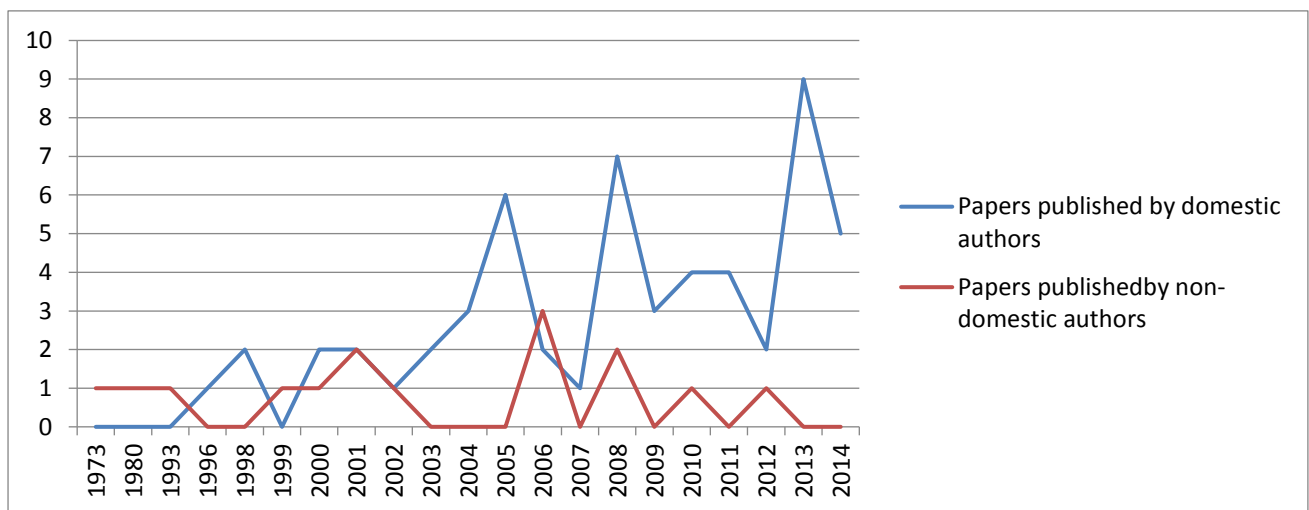


Figure 5 – Graph displaying the difference in numbers of papers published by domestic and non-domestic authors

Looking at this graph I can conclude that in some years, especially in the earlier years, there were more papers published by non-domestic authors than there were domestic. Whilst this graph is similar to the one above, and the same conclusions can be drawn, seeing it presented

visually different on this graph displays the occasional contrasts. I found these differences a particularly interesting aspect of the results, prompting me to draw conclusions as to why. This will be discussed further in the next section, whereby the analysis of the content of the papers can attempt to form a theory to explain this difference.

### Synthesising the quantitative elements of the literature

Synthesising the qualitative literature can be done in a variety of ways, and there have been as many as 12 approaches to qualitative synthesis.<sup>25</sup> I did not want to go into a large amount of depth of the papers sourced. I wanted to show more broadly what is being published by, and within, European institutions, highlighting areas which could benefit from further research. Thus, a kind of narrative approach was adopted, to ‘describe the scope of existing research.’<sup>26</sup>

There was not a great variety of papers sourced through this systematic review. The kinds of papers found are displayed in the table below:

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<sup>25</sup> Booth A, Papaioannou D and Sutton A, *Systematic Approaches to a Successful Literature Review* (SAGE 2012), p.127

<sup>26</sup> *Ibid.*, p. 147

Figure 6 – Table showing which kinds of papers were being published?

Kind of paper found	Number of papers	Countries of origin
Papers explaining the establishment and running of a clinic	28	Poland (5) Ireland (3) Croatia (2) Czech (2) Norway (1) Netherlands (1) Serbia (1) Romania (2) UK (11)
Papers explaining generally legal education and CLE	21	Poland (2) Germany (4) Ireland (2) Italy (1) Czech (2) Russia (3) Netherlands (1) France (1) EU (1) UK (4)
Papers discussing ethics, values and access to justice in CLE	6	UK (6)
Papers exploring skills and the benefits of CLE	5	Poland (1) Germany (1) Czech (1) UK (2)
Papers discussing the integration of CLE into the curriculum	3	UK (3)
Papers focusing on theory and practice	3	UK (3)
Papers focused on reflection	2	UK (2)
Papers focused on assessment	2	UK (2)
Papers focused around the clinician	1	UK (1)

By studying this table, we can see where the trends in publications are. It is very common for those working in clinics to write about establishing a clinic and how to run one. However, it was found that these papers were mostly not followed up afterwards, with no papers explaining the development of the clinic or the setbacks. Whilst these papers can be very useful and enlightening to others working in and wanting to establish a clinic, it is also important to discuss if a clinic has failed or any setbacks and difficulties that have been faced. By sharing this information we allow others to learn from our own experiences and to help build collaborations or forums for advice.

Clinical legal education, and legal education generally, was also found to be discussed widely in the literature. What are the downfalls of legal education, how can clinic help to fill this gap? These were questions widely addressed in these papers. These are very valuable questions, but ones which have been discussed to a great extent already. This is demonstrated more, the further down we move in the table. Papers discussing specific areas of CLE, such as assessment and integration, become more scarce. Furthermore, these papers mostly come from the UK. As highlighted above, it is necessary for us to be sharing experiences. It may have been that I could not find papers relating to these areas from other European countries, or they may have been in another language. However, I feel it important to emphasise, again, the necessity of us sharing research and experience. Perhaps it is time for us to move away from the general discussion of CLE and focusing on the specifics.

Limitations of my systematic review

From the ENCLE workshop I learnt that there were some gaps in my research and I had not gathered all of the research that was available within Europe. This was for many reasons. Research may have been published on databases which I did not have access to or which were not in English. Furthermore, I realised that my first attempt at a systematic review, whilst helping to develop my research skills, was not as sophisticated as my later attempts. The naivety which I held during the process highlights a need for reflection and to avoid others making the same mistakes.

When I presented my initial findings I faced much opposition, perhaps even hostility, to my results. Participants at the workshop made me aware that they were producing work, and just because I did not come across it in my review did not mean that some countries were not producing anything. There were participants who stated they did write about their clinics, but it was not published in peer-reviewed articles, but rather in blogs, on websites, in university brochures and other unconventional-publishing outlets. It is becoming increasingly popular in this new age of technology to write in places where one may not have traditionally done so. With this mass of grey literature out there I knew I had upset some participants, somewhat accusing them of not conducting research. I was rather taken aback by this. I had not intended to upset anyone or, essentially, call academics from certain countries lazy! I just wondered where their research was and if they were engaging with research at all.

They made me aware that there were reasons why they did not write in peer-reviewed journals. This could be because they did not get support from their institutions to write articles or to conduct research. Research can be a time-consuming process, and unless you are allocated time to do it, it is very hard to complete. Some participants did not know how to carry out research appropriate for peer-reviewing, and it was not an important role of their job or even during their university studies. If this presentation highlighted anything for ENCLE, it was that we need to provide support to clinicians in Europe to research and share it in conventional outlets, in order for us to move forward in our clinical movement. With Europe being slower than other regions on the development<sup>27</sup> of CLE, it is important that we can help facilitate any needs now, to ensure the movement continues to grow. When I say slower, I mean that, for example, the US widely engage with CLE, and it is incorporated in every law school.<sup>28</sup> Their research into CLE is immense, establishing the US as one of the leaders of CLE. Does this mean that the growth of CLE in developed at a higher rate in the US than it has within Europe? That is a question which will not be answered in this paper; one that needs further research. But from this systematic review results, it would seem that Europe is slower or behind in the incorporation of CLE to their legal programmes, or at least writing about it in peer-reviewed articles. Not only that, from looking at the graphs above (figures 4 and 5), it is important that countries are writing about their own clinical

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<sup>27</sup> The first clinical boom in Europe started in the 1990's, compared to places like the U.S. their boom starting in the 1960's - Bloch FS, *The global clinical movement: educating lawyers for social justice* (Oxford University Press 2010)

<sup>28</sup> <https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/study/student-law-office/clinical-legal-education/> - cited 02/07/15

experiences, instead of relying on non-domestic academics to be accurate and fully understand the complexities of another's legal and political systems.

Thus, this raises an issue: when do we expect institutions to produce research about their clinics? Does a clinic have to go through adolescence before we can research it? Or is it preferred to publish research regarding the earlier stages of the clinic? Again, these are not questions to be answered in this paper and go beyond the scope of this systematic review. However, it is a consideration when contemplating what and when to publish. A clinic can face many issues when developing a model and attempting to sustain it. The sustainability depends on many factors,<sup>29</sup> and some institution's clinics will fail due to these factors, or a lack thereof. At Northumbria, for example, our sustainability is strong. As CLE is such an integral part of our curriculum, it cannot fail. If the clinic were to fail, the whole degree programme would have to undergo a redesign. Other institutions do not have this security. Should we be sharing our failures more readily, in order to inform other institutions of the difficulties of sustaining clinics and how to avoid them? Or is our research more concerned with an established clinic and what makes it a success? These questions will be explored, to an extent, when looking at the papers produced from this systematic review.

Revisiting the research question, whilst I found all of the peer-reviewed articles available to me, the ENCLE workshop highlighted that I cannot boldly state that I found all of the

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<sup>29</sup> Mkwebu T, 'A Systematic Review of Literature on Clinical Legal Education: A Tool for Researchers in Responding to an Explosion of Clinical Scholarship' (2015) 22 *International Journal of Clinical Legal Education* 238



research from Europe, as I have not. I have found all of the research available to me through the databases I searched, in my native language. I was informed that there are publications from countries such as Belarus, which I did not find. With the knowledge now that there are publications I did not unearth, I would conclude that my research question has not been fully met. If my research question had been *'What peer-reviewed research has been published in Europe, available to me, regarding clinical legal education and what is missing?'* then my results would have been sufficient. It is becoming increasingly more common to include non-published research in a literature review, thus changing the function of a traditional systematic review slightly. Petticrew and Roberts state in their book that:

'While we also use the phrase systematic "literature" reviews, not all evidence which may be useful for a review will of course appear in the published "literature." Because of this, the term "research synthesis" (or "evidence synthesis") is becoming increasingly common.'<sup>30</sup>

It is now highlighted by academics that not only peer-reviewed and/or published research can be used in a systematic review. It is now common, and accepted, that other evidence useful to systematic review research questions can now be included, changing the procedure slightly. With this in mind, for this particular research question it may be more appropriate to move slightly away from a traditional systematic review and more towards a 'research synthesis' design. This can result in collecting a broader range of research to add reliability

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<sup>30</sup> Petticrew M and Roberts H, *Systematic Reviews in the Social Sciences A PRACTICAL GUIDE* (2006), p. xiv

to my results, whilst also ensuring the work that researchers produce in other forums is not forgotten or overlooked as valid research.

Even with the limitations I faced during my systematic review, I still believe it was the most appropriate methodology to use, as opposed to a narrative review. I mostly answered my research question, and more sufficiently than it would have been had I done a narrative review. Whilst I acknowledge the benefits of a narrative review, I can draw strong conclusions that it would not have benefited this research. The main benefit I would have gained from the traditional narrative review, compared to that of a systematic review, would have been a wider engagement with the grey literature. Grey literature is now used more widely in research, and a systematic review can overlook these useful sources of information. A disadvantage to the lack of use of the grey literature is that too much reliance is placed on peer-reviewed research, and that other sources of research do not have the same quality. Jesson et al challenge this, stating 'The downside of a peer review is that being judged by experts who have established perspectives and paradigms can act as a barrier to publishing new and unconventional ideas.'<sup>31</sup> This can create what they call a 'publication bias,' and using grey literature may help to reduce this bias. However, there is a challenge faced by those conducting systematic reviews, and how exactly they can adopt a method which will be successful to find grey literature. As most electronic databases do not pick up the grey

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<sup>31</sup> Jesson J, Matheson L and Lacey FM, *Doing your literature review: traditional and systematic techniques* (SAGE 2011) P. 20

literature, you could be excluding 'valuable information'<sup>32</sup> which may be of benefit to the research.

Now with the knowledge that there are other publications out there, and a mass of grey literature, I have the means to move forward with this systematic review and look at more unconventional research outlets. Since this work was undertaken I have completed a further systematic review, which forms part of my PhD thesis. I found that that systematic review was much more advanced than this. For example, the duplicates recorded in this systematic review were only duplicates which of the full text articles already selected to be read. In my PhD systematic review duplicates were recorded as any article which had already appeared in my search results. This way I could assess more easily when my searches were becoming saturated, and it gave a more realistic account articles appearing. I hope this work provides guidance for others wishing to undertake similar research and that any hindsight I may have had will inform others.

### Conclusions

Whilst there have been some limitations to this study, some conclusions may still be drawn from the methodological results, as well as the review of the literary content of the paper. From the results it can be seen that Continental Europe is producing more research now, than it previously did. It can also be concluded that there is now more domestic authors publishing research compared to non-domestic. Whilst the limitations discussed above may

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<sup>32</sup> Jesson J, Matheson L and Lacey FM, *Doing your literature review: traditional and systematic techniques* (SAGE 2011) P. 126

cause difficulties, I believe that this systematic review has drawn some successful findings as a foundation to help move CLE forward within Europe, highlighting the need for more research in accessible research outlets. Furthermore, whilst the Cochrane Collaborative provided a great foundation for this kind of literature review, the developments in recent studies are welcomed as a way of creating a more modernised form of systematic reviews. We must not forget the unconventional methods of publishing, nor how valuable qualitative data can be in this method.

Appendix 1

Results of the sweeping searches:

<b>SWEEPING SEARCHES</b> - 14/04/15	Database :					
<b>Search Term</b>	<b>Articles produced</b>	<b>Articles included</b>	<b>Articles excluded by title</b>	<b>Articles that had to be excluded, e.g. due to language.</b>	<b>Articles excluded by abstract</b>	<b>Articles excluded after reading full text</b>
Law clinics AND Europe	108	0	107	1(Duplicate)	0	0
Legal education AND Europe	48	0	47	0	1	0
						<b>Total articles used: 0</b>
<b>SWEEPING SEARCHES</b> - 14/04/15	Database :					
<b>Search Term</b>	<b>Articles produced</b>	<b>Articles included</b>	<b>Articles excluded by title</b>	<b>Articles that had to be excluded, e.g. due to language.</b>	<b>Articles excluded by abstract</b>	<b>Articles excluded after reading full text</b>
Law clinics AND Europe	11	0	11	0	0	0
Legal education AND Europe	363	0	362	0	1	0
						<b>Total articles used: 0</b>

FROM ZERO TO 60: BUILDING BELIEF, CAPACITY AND COMMUNITY  
IN STREET LAW INSTRUCTORS IN ONE WEEKEND

Seán Arthurs, Melinda Cooperman, Jessica Gallagher, Freda Grealy, John Lunney, Rob  
Marrs & Richard Roe<sup>1</sup>

Abstract

*Street Law, where law students or lawyers teach about the law in local school, correctional, and community settings, is the fastest growing and most popular type of experiential legal education in the world—and with good reason. The Street Law methodology helps make the law more relevant, more accessible, and more understandable to both participants in the program and lawyers and law students delivering the programming. Despite Street Law’s prevalence and popularity, there is scant guidance for how to best introduce and implement a program, little research support explaining why Street Law works, and even less empirical justification proving*

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*that the program works. This paper makes three significant and unique contributions to the emerging field of Street Law scholarship and research. First, we provide an in-depth explanation of the principles and learner-centered practices that make Street Law such a powerful tool for legal education. Second, we ground these principles and practices in a robust body of research, the first such effort in the field. Third, we offer an annotated step-by-step outline of a unique weekend orientation program developed and field-tested by the seminal Georgetown Street Law program and delivered in partnership with the Law Societies of Ireland and Scotland. It is our hope that this paper will offer practitioners both a series of best practices to draw upon and a reason to do so. A second paper, that will shortly follow this one, will share and discuss quantitative and qualitative data evidencing the powerful outcomes that this weekend orientation can effect in participants.<sup>2</sup>*

## **I. Introduction**

Street Law, where law students or lawyers teach about the law in local school, correctional and community settings, is the fastest growing and most popular type of legal clinic in the world.<sup>3</sup> The reasons behind this growth are myriad. On the one hand, Street Law is an accessible and low cost model that can be employed in almost any setting, with any population, and on any legal subject. Street Law does not require law student

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<sup>2</sup> This paper and the Orientation weekends that continue to inspire and train Irish and Scottish students and lawyers would not be possible without the valuable contributions of numerous dedicated individuals, generations of Street Law students and Fellows, and the committed staff and leadership at the Law Society of Ireland and the Law Society of Scotland. In particular, we would like to acknowledge and appreciate the significant efforts of Charisma Howell, Efrain Marimon, Lee McGoldrick, Heather McKendrick, Sarah Medway, Lyndsey Thomson, and Holly Wonneberger.

<sup>3</sup> Although Street Law began as a legal clinic at Georgetown in 1972, changes in the American Bar Association's definition of "legal clinic" led to its transformation into an experiential "practicum" at Georgetown starting in Fall 2016. The program operation and methodology described here has not changed. In many law schools around the world, it functions as clinical legal education. It is also conducted outside of law schools as an experiential or educational program.

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participants to follow local practice rules and does not threaten the income or livelihoods of local lawyers. In emphasizing legal education that is experiential in nature, the Street Law model appeals to law schools responding to the legal profession's demand for lawyers who can contribute quickly and learn on their feet. At the same time, Street Law helps satisfy the voracious desire of lay people to understand their rights and responsibilities in a world full of increasingly complex and obtuse legal systems. Moreover, Street Law uses people's inherent interest in the law and research-supported, best practices in civic education to teach high cognitive, expressive, academic, social and other skills that enhance people's effectiveness in legal matters. And Street Law satisfies that demand with a unique pedagogical approach that values the student, her voice, and her background.

As interest in the Street Law model has spread across the globe, there is an increased need for Street Law training that equips law students and new lawyers with the tools they need to successfully introduce and support the Street Law model in school, correctional, and community settings. These trainings must be meaningful and substantive for the law students, developed in a collaborative way that embeds skills and knowledge in Street Law practitioners and faculty, and be responsive to the local context where host institutions often face significant time and resource constraints. This paper will describe one training approach that has been repeatedly successful in developing law student instructors who *believe* in the potential of Street Law's unique learner-centered



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methodology, are *capable* of designing and executing lessons exemplifying this approach, and who are committed to building and valuing *community* in their classrooms.

Over the last four years, past and present staff from the Street Law Program at Georgetown University Law Center, in collaboration with their Irish and Scottish colleagues, have conducted seven in-person, weekend-long training workshops in Dublin with the Law Society of Ireland and in Edinburgh with the Law Society of Scotland. Although the context and audience differed, the weekend training programs remained essentially identical in both sites. Between Friday evening's introductions and Sunday afternoon's demonstration teaching sessions, the Street Law facilitators help build belief in the Street Law methodology, instructional capacity in the future Street Law teachers, and community among the young lawyers and law students who attend the training.

Our objective in writing this paper is to present and describe our training program in a manner that will enable practitioners around the globe to review our approach, understand why it works, and adopt any potentially helpful aspects. We first introduce readers to Street Law and the Street Law methodology. We next explain how the Street Law methodology and our weekend orientation program is grounded in a robust body of research and exemplifies best practices in teaching and learning at the intersection of civic education, learner-centered education, intensive teacher preparation and community building.

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We then move from the theory and evidence to the practical with sections that will be of especial value to aspiring practitioners, educators, and interested Law Societies and legal bodies. We describe the introduction and adoption of Street Law by the Law Societies of Ireland and Scotland and highlight how Street Law reinforces and furthers the core principles and goals of each Law Society. We provide practitioners with a step-by-step description of each of the weekend training activities and explain how these activities play out in practice. For each of these activities, we discuss how the activity fits into our broader learning trajectory and reinforces our core goals of building belief, capacity, and community.

We close with suggestions for further research, including a preview of our forthcoming companion paper that demonstrates the impact and efficacy of the Street Law Orientation program and positively answers the question “Does it work?” This second paper, with a narrower focus on the evaluation of quantitative and qualitative data, is presented separately to allow the reader to first focus on this paper’s presentation of the rationale and implementation components of our training model, to permit a more in-depth discussion of these results in the accompanying paper, and for practical considerations around length and scope.

## II. What is Street Law?

During the 1960s and 1970s, as movements for social change and legal equality for women, minorities, and other traditionally marginalized or economically dispossessed populations gained strength and spread across geographic and political borders, law students, professors, and practitioners became increasingly interested in how the law could be used as a tool for effecting social change.<sup>4</sup> One concrete outgrowth of these progressive reform pressures was the birth of the modern legal clinical and experiential learning movement.<sup>5</sup>

Legal clinics and experiential courses are law school programs designed to provide law students with the opportunity to apply and connect their classroom learning with real world practice under the close supervision of a law school faculty member.<sup>6</sup> Law students gain invaluable hands-on experience working with clients, forming and articulating legal arguments, and problem-solving in complex, real world settings. These programs typically serve populations who might not otherwise have access to the legal system or causes that lack the profile or financial resources to support litigation efforts.<sup>7</sup> Today,

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<sup>4</sup> Milstein, E.S. (2001). Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations. *Journal of Legal Education*, 51(3), 375-381.

<sup>5</sup> Milstein, E.S. (2001). Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations. *Journal of Legal Education*, 51(3), 375-381.

<sup>6</sup> Wizner, S. (2000). The Law School Clinic: Legal Education in the Interests of Justice. *Fordham Law Review*, 70, 1929-1937.

<sup>7</sup> Wizner, S. (2000). The Law School Clinic: Legal Education in the Interests of Justice. *Fordham Law Review*, 70, 1929-1937.

popular clinical and experiential learning offerings run the gamut from family and consumer law to criminal justice and defense, and from environmental advocacy to education law. Although the clinical legal movement first took root in the United States, both the concept and practice of involving law students in experiential learning opportunities has spread rapidly around the globe.<sup>8</sup>

The Street Law program that originated at Georgetown University Law Center in 1972 as a “course in practical law”<sup>9</sup> for high school students taught by law students for academic credit<sup>10</sup> has become far more than that today. Street Law programs now exist at more than 50 law schools in the United States, dozens of international law schools, and in a variety of community and non-profit partnerships.<sup>11</sup> From the outset, Street Law’s appeal has been derived just as much from its relevant law-related content—“the law useful in

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<sup>8</sup> Wilson, R.J. (2004). Training for Justice: The Global Reach of Clinical Legal Education. *Penn State International Law Review*, 22(3), 421-431.

<sup>9</sup> Newman, J., O’Brien, E.L., Arbetman, L.P., Cameron, L., McClymont, M., & McMahon, E. (1977). *Street Law: A Course in Practical Law*. St. Paul, MN: West Publishing Company.

<sup>10</sup> Roe, R. (2012). Law School-High School. In S.E. Redfield (Ed.), *The Education Pipeline to the Professions: Programs That Work to Increase Diversity* (pp. 135-144). Durham, NC: Carolina Academic Press.

<sup>11</sup> Robust international Street Law programs include those in South Africa ([www.streetlaw.org.za](http://www.streetlaw.org.za)), the Czech Republic (i.e., <http://streetlaw.eu>), the United Kingdom (i.e., <http://www.birmingham.ac.uk/schools/law/life/pro-bono/streetlaw.aspx>), Hong Kong (i.e., <https://disabilityrights.law.hku.hk/street-law/>), and Australia (i.e., [www.streetlaw.org.au](http://www.streetlaw.org.au)). Additionally, there are myriad examples of local bar associations, community organizations, state-related law organizations, regional global associations, private corporations, and even a dedicated non-profit, Street Law, Inc., providing community legal education around the world on a range of topics under the umbrella term, “street law,” or related terms such as community legal education, justice education, and democracy education. Street Law, Inc. offers one compilation of global programs through their website. Street Law, Inc. (n.d.). *Program Locations*. Retrieved from [http://www.streetlaw.org/en/program\\_map](http://www.streetlaw.org/en/program_map).

people’s daily lives, the legal processes, Constitutional principles and values on which these are based”<sup>12</sup>—as from the activity based, participatory teaching methodology it employs. Over forty plus years, Street Law programs have steadily improved this learner-centered, democratic model of teaching and learning and its interactive and experiential methodology to not only teach about the law but also to create an experience of justice in the classroom.

Street Law introduces learners to the law and legal systems while remaining grounded in the best practices in civic education that research shows help learners develop their cognitive, expressive, academic, and critical thinking abilities through the exploration of a variety of civic and law-related situations. Street Law programs are characterized by the diversity of teaching and learning methods. Specific methods include case studies, role plays, hypotheticals, problems, mock trials, hearings and legislative activities, negotiations, small group discussions, news articles, video clips, guest participants, field trips, projects, and simulations. The wide range of topics includes current events and issues, negotiations and dispute resolution, human rights, criminal law and procedure, family, housing, liability, and many others.

Over time, Street Law, regardless of program or country, has become known for its distinctive emphasis on learner-centeredness and corresponding de-emphasis on direct

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<sup>12</sup> Newman, J., O’Brien, E.L., Arbetman, L.P., Cameron, L., McClymont, M., & McMahan, E. (1977). *Street Law: A Course in Practical Law*. St. Paul, MN: West Publishing Company.

instruction. Today, learning with Street Law at both the law school and community levels is accomplished largely through non-directive instruction that emphasizes the cognitive, expressive, and reflective work of the learners themselves. Essentially, the teacher serves not as a lecturer but as the facilitator who guides students through the components of each lesson.<sup>13</sup> The students do the talking and thinking; and they do the primary cognitive expressive work to create substantive meaning and connections to the law and legal theories. Using rich, thoughtfully structured lessons, this methodology draws from both the hands-on model of clinical legal education as well as the best practices for effective teaching and learning, as discussed *infra*. This student-centered approach is well suited both for the new instructors<sup>14</sup> and for the learners they teach,<sup>15</sup> from elementary and high school students<sup>16</sup> to adults.

At the same time as the Street Law programs are providing an important public service for non-lawyers, they are also equipping lawyers with important skills for their legal practice. Lawyers and law students are offered the unusual opportunity to hone their lawyering skills in real life settings. The instructors gain substantive legal knowledge in

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<sup>13</sup> For more on this approach of guided participation, see, e.g., Mascolo, M. F. (2009). Beyond student-centered and teacher-centered pedagogy: Teaching and learning as guided participation. *Pedagogy and the Human Sciences*, 1(1), 3-27.

<sup>14</sup> Roe, R. (2012). Law School-High School. In S.E. Redfield (Ed.), *The Education Pipeline to the Professions: Programs That Work to Increase Diversity* (pp. 135-144). Durham, NC: Carolina Academic Press.

<sup>15</sup> American Bar Association. (2003). *Essentials of Law-Related Education*. Chicago, IL.

<sup>16</sup> Arthurs, S. (2015). Street Law: Creating Tomorrow's Citizens Today. *Lewis & Clark Law Review*, 19(4), 925-961.

a wide variety of areas by researching the topics and creating and conducting lessons for others. Preparation for classes, particularly for dynamic, learner-centered ones, teaches organization, efficiency, clarity of expression, responsiveness, and appreciation for different views, experiences and cultures. Classroom exchanges build legal analysis skills and the ability to think on one's feet.<sup>17</sup>

Other benefits correspond with Shultz and Zedeck's "lawyering effectiveness factors".<sup>18</sup>

Grouped into eight broad categories, these factors are: intellectual and cognitive; research and information gathering; communications; planning and organizing; conflict resolution; client and business relations/entrepreneurship, working with others; and character. In preparing their students for mock trials, law students develop advocacy and research skills, for example. Classroom management challenges require detailed attention to planning and organization as well as conflict resolution and client relations. Street Law audiences are often very diverse and the program draws upon established best practices in civic education to promote increased tolerance, respect, and understanding of others, an appreciation for the importance of democratic debate, and a

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<sup>17</sup> "The methodology that develops deep knowledge is ideally suited for the development of lawyering skills...." In Roe, R.L. (2016) Valuing Student Speech Revisited, *Klinika: Czasopismo Fundacji Uniwersyteckich Poradni Prawnych, Numer Specjalny, 21-24 at 24.*

<sup>18</sup> Schultz, M.M., & Zedeck, S. (2009). Predicting Lawyer Effectiveness: A New Assessment for Use in Law School Admission Decisions. CELS 2009 4th Annual Conference on Empirical Legal Studies Paper.

practical grounding in the complexities of implementing justice and human rights in real world settings.

This article describes the first step in the Street Law process—how to teach the law students, new lawyers, or trainees to be Street Law instructors,<sup>19</sup> with particular reference to the weekend workshop series conducted for the recently qualified lawyers and lawyers-in-training in the Law Societies of Ireland and Scotland in 2013, 2014 and 2015. Although we recognize that one of the most powerful qualities of an effective Street Law session is that everyone—including the teachers or facilitators—is learning and that the Street Law methodology can be applied in multiple different settings, including in different legal settings, this can lead to some confusion in terms. Thus, for the purpose of this paper we will refer to the experienced Street Law faculty/trainers from Georgetown and the host sites as facilitators. The facilitators are the ones who design and lead the weekend training sessions. We will refer to the main audience of this weekend training, whether lawyers, law students, or community leaders as trainees. These trainees are the people who will be going into the schools or communities to lead interactive lessons. We

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<sup>19</sup> The Street Law program model in law schools involves a combination of training in the methodology and content of the course as well as highly supportive supervision of the law student instructors. These instructors typically receive academic credit, attend a multi-day orientation and weekly seminars, are given regular, supportive supervision through observations, feedback and consultations with faculty, engage in reflection through journals, lesson planning analysis, and portfolio assessment, and receive substantial administrative support for their placements in the school, corrections and community settings.



will refer to the ultimate consumers of these Street Law lessons, typically secondary school students or community members seeking to know more about the law, as students.<sup>20</sup>

The Street Law Orientation program, first designed and implemented at Georgetown and then developed into an international module, was designed to meet a number of goals and challenges:

- 1) meeting the learning needs, abilities, and interests of a diverse and wide range of learners, from high to low levels of literacy and socialization to school and diverse life experiences;
- 2) creating a learning and teaching trajectory where students and trainees experience and build upon success;
- 3) developing both knowledge and skills, particularly cognitive and expressive skills;
- 4) developing respectful, democratic discourse essential for participatory learning, i.e., agreeing to disagree, and learning about self-government and self-regulation; and

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<sup>20</sup> In Ireland, the trainees are at the start of their Professional Practice Course I (PPCI) at the Law Society and for most of them this is the beginning of their 2 year traineeship. The students are in their fourth year of secondary school, which is referred to as transition year (TY). In Scotland, the trainees are generally undergraduate LLB students (although occasionally are postgraduate students undertaking the vocational Diploma in Professional Legal Practice). The students are pupils in secondary school typically aged between 14 years old and 16 years old.

A full explanation of the routes to qualification as a solicitor in both jurisdictions can be found in Section 7 of the Fair Access to the Legal Profession report. Marrs, R., & Meighan, D. (2014). Fair Access to the Legal Profession. The Law Society of Scotland. Retrieved from <https://www.lawscot.org.uk/media/295065/fair-access-for-publication-300114.pdf>.

- 5) expeditiously transforming typically novice trainees having little experience in this methodology<sup>21</sup> into learner-centered teachers who can adapt and execute Street Law lessons informed by their own cultural context and student population.

At the most fundamental level, the Orientation program seeks to instill in law student instructors belief in the learner-centered methodology, capacity to design and implement Street Law lessons, and confidence in the power of community. With the three goals of building belief, capacity and community as overarching aims, the training has evolved<sup>22</sup> to meet at least six objectives. The training aspires to:

- 1) set out a lesson trajectory from introductory to complex across cognitive, analytical and expressive domains,<sup>23</sup>

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<sup>21</sup> Law student instructors rarely have teaching experience or learner-centered learning experience. Rather, they generally have histories of exposure to conventional education and most recently to legal education.

<sup>22</sup> Georgetown Street Law orientations from the outset have included components of the objectives listed below, initially delivered through a combination of direct instruction and examples. While the orientations for the SL HS clinic over the years expanded to five days, to meet the demands of teaching a regular high school course for two semesters, the orientations for the less formal SL Corrections Clinic remained at 2 days. Hence, when the GULC SL clinic was invited to conduct international trainings for law schools in 2000 (the Czech Republic) and subsequently (in Istanbul in 2004), the trainings followed a two-day model. This model has largely been employed through the present, with significant and important modification and adaptations, in many other trainings and by other combinations of trainers around the globe.

<sup>23</sup> To convey in an experiential way the trajectory of a semester's or year's learning activities and the principles behind them. E.g., cognitive, from familiar to new, simple to complex, straightforward to nuanced, concrete to relative; analytical, from knowledge and opinions to well-reasoned; expressive, from spontaneous to practiced and performed, informal to formal, from terms to sentences to paragraphs to theses.

- 2) be conducted consistently with learner-centered principles,<sup>24</sup>
- 3) be immediately useful to the trainees<sup>25</sup>
- 4) encourage trainee autonomy, creativity, empathy, imagination and reflection;
- 5) promote principles of justice,<sup>26</sup> and
- 6) demonstrate Street Law's value for the trainees' professional development.<sup>27</sup>

### **III. Literature Review: Best Practices in Civic Education and Building Belief, Capacity, and Community**

The Street Law Orientation weekend is a unique form of civic education and teacher training. Over the course of one weekend, from Friday night through to Sunday afternoon, the facilitators and trainees will work together to develop a disparate group of forty individuals with some legal knowledge but little or no teaching experience into a confident and empowered community of novice teachers excited and capable of delivering interactive and engaging Street Law lessons to classrooms of secondary school students. Trainees exit the weekend believing in the potential of learner-centered

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<sup>24</sup> I.e., the delivery of the workshops should itself be largely learner-centered.

<sup>25</sup> I.e., to provide resources in the form of concrete lessons and methods that can be utilized immediately by the instructors in their first 2 weeks of teaching and also as examples across the entire teaching period. These should also include topics like lesson planning, assessment, specific techniques, classroom management, and administration.

<sup>26</sup> I.e., Don't merely talk about justice, but teach in accordance with justice. This means valuing students, attempting to see their points of view and understand the nature of their experiences, treating them fairly, and encouraging and supporting them and their ideas. Bettelheim, B. (1987). *A Good Enough Parent: A Book on Child-Rearing* (pp. 135-144). New York, N.Y.: Knopf Doubleday Publishing Group.

<sup>27</sup> The Street Law program makes valuable contributions to law students' legal education and professional development. See, e.g., Schultz, M.M., & Zedeck, S. (2011). Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions. *Law & Social Inquiry*, 36(3), 620-661.

education, capable of delivering learner-centered lessons, and part of a unique teaching and learning community. The Street Law Orientation weekend accomplishes this by drawing on best practices and proven research in the fields of civic education, learner-centered education, teacher preparation, and community building. We review these practices and the supporting research, and then discuss how they manifest in the Street Law Orientation weekend in the section that follows.

### **A) Civic Education**

At its core, Street Law is a type of civic education. The goal of the Street Law Orientation weekend is to educate and empower the trainees so that they can later educate and empower their secondary school students around their legal rights, responsibilities, and options. And though Street Law is distinct in approach and process from typical civic education programs, the Street Law model is grounded in the best practices of civic education and seeks to promote many of the same outcomes.

Effective civic education provides a host of pro-social outcomes at the individual, community, and societal level.<sup>28</sup> Students become better thinkers, writers, and speakers.<sup>29</sup>

They practice and acquire invaluable communication, collaboration, and leadership

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- <sup>28</sup> Niemi, R.G., & Junn, J. (1998). *Civic Education: What Makes Students Learn*. New Haven: Yale University Press; Campbell, D.E. (2008). Voice in the Classroom: How an Open Classroom Climate Fosters Political Engagement Among Adolescents. *Political Behavior*, 30(4), 437-454. <https://davidecampbell.files.wordpress.com/2015/08/7-voice.pdf>; Annenberg Public Policy Center. (2011). *Guardian of Democracy: The civic mission of schools*. Retrieved from <http://civicmission.s3.amazonaws.com/118/f0/5/171/1/Guardian-of-Democracy-report.pdf>; Kahne, J.E., & Sporte, S.E. (2008). Developing Citizens: The Impact of Civic Learning Opportunities on Students' Commitment to Civic Participation. *American Educational Research Journal*, 45(3), 738-766. [http://www.civicsurvey.org/sites/default/files/publications/Developing%20Citizens\\_Web\\_Version.pdf](http://www.civicsurvey.org/sites/default/files/publications/Developing%20Citizens_Web_Version.pdf); Cohen, A.K., & Chaffee, B. W. (2013). The Relationship Between Adolescents' Civic Knowledge, Civic Attitude, and Civic Behavior and their Self-Reported Future Likelihood of Voting. *Education, Citizenship and Social Justice*, 8(1), 43-57. doi:10.1177/1746197912456339; Andolina, M. W., Jenkins, K., Zukin, C., & Keeter, S. (2003). Habits from home, lessons from school: Influences on youth civic engagement. *Political Science and Politics*, 36(02), 275-280. <http://dx.doi.org/10.1017/S104909650300221X>; Torney-Purta, J. (2002). The School's Role in Developing Civic Engagement: A Study of Adolescents in Twenty-Eight Countries. *Applied Developmental Science*, 6(4), 203-212. doi:10.1207/S1532480XADS0604\_7; Richardson, W.K., & Torney-Purta, J. (2008). Connections Between Concepts of Democracy, Citizen Engagement, and Schooling for 14-Year-Olds Across Six Countries. In B.C. Rubin & J.M. Giarelli (Eds.), *Civic Education for Diverse Citizens in Global Times: Rethinking Theory and Practice* (79-104). New York: Lawrence Erlbaum; Verba, S., Schlozman, K.L., & Brady, H.E. (1995). *Voice and Equality: Civic Voluntarism in American Politics*. Cambridge: Harvard University Press.
- <sup>29</sup> Hess, D. (2009). *Controversy in the Classroom: The Democratic Power of Discussion*. New York: Routledge; Andolina, M. W., Jenkins, K., Zukin, C., & Keeter, S. (2003). Habits from home, lessons from school: Influences on youth civic engagement. *Political Science and Politics*, 36(02), 275-280. <http://dx.doi.org/10.1017/S104909650300221X>; Niemi, R.G., & Junn, J. (1998). *Civic Education: What Makes Students Learn*. New Haven: Yale University Press; McIntosh, H., Berman, S., & Youniss, J. (2010). A Five-Year Evaluation of a Comprehensive High School Civic Engagement Initiative. CIRCLE Working Paper# 70. *Center for Information and Research on Civic Learning and Engagement (CIRCLE)*. Retrieved from [http://civicyouth.org/PopUps/WorkingPapers/WP\\_70\\_McIntosh\\_Berman\\_Youniss.pdf](http://civicyouth.org/PopUps/WorkingPapers/WP_70_McIntosh_Berman_Youniss.pdf); Avery, P.G., Levy, S.A., & Simmons, A.M. (2013). Deliberating Controversial Public Issues as Part of Civic Education. *The Social Studies*, 104(3), 105-114. <http://dx.doi.org/10.1080/00377996.2012.691571>; McDevitt, M., & Kioussis, S. (2006). Deliberative Learning: An Evaluative Approach to Interactive Civic Education. *Communication Education*, 55(3), 247-264. <http://dx.doi.org/10.1080/03634520600748557>

skills.<sup>30</sup> Students develop a sense of self-efficacy and ability to effect change that translates into both how they see themselves as members of a society and their ability to improve that society.<sup>31</sup> Quality civic education helps students become more tolerant, more involved, and better able to resolve conflict.<sup>32</sup> Students learn to understand and

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<sup>30</sup> McIntosh, H., Berman, S., & Youniss, J. (2010). A Five-Year Evaluation of a Comprehensive High School Civic Engagement Initiative. CIRCLE Working Paper# 70. *Center for Information and Research on Civic Learning and Engagement (CIRCLE)*. Retrieved from [http://civicyouth.org/PopUps/WorkingPapers/WP\\_70\\_McIntosh\\_Berman\\_Youniss.pdf](http://civicyouth.org/PopUps/WorkingPapers/WP_70_McIntosh_Berman_Youniss.pdf); Johnson, D.W. & Johnson, R.T. (2007). *Creative Controversy: Intellectual Challenge in the Classroom* (4th ed.). Edina, MN: Interaction Book Company; Johnson, D.W. & Johnson, R.T. (2005). Democratic Decision Making, Political Discourse and Constructive Controversy. *The Cooperative Link*, 20(1). 3; Annenberg Public Policy Center. (2011). *Guardian of Democracy: The civic mission of schools*. Retrieved from <http://civicmission.s3.amazonaws.com/118/f0/5/171/1/Guardian-of-Democracy-report.pdf>.

<sup>31</sup> McIntosh, H., Berman, S., & Youniss, J. (2010). A Five-Year Evaluation of a Comprehensive High School Civic Engagement Initiative. CIRCLE Working Paper# 70. *Center for Information and Research on Civic Learning and Engagement (CIRCLE)*. Retrieved from [http://civicyouth.org/PopUps/WorkingPapers/WP\\_70\\_McIntosh\\_Berman\\_Youniss.pdf](http://civicyouth.org/PopUps/WorkingPapers/WP_70_McIntosh_Berman_Youniss.pdf); Feldman, L., Pasek, J., Romer, D., & Jamieson, K.H. (2007). Identifying Best Practices in Civic Education: Lessons from the Student Voices Program. *American Journal of Education*, 114(1), 75-100.

<http://dx.doi.org/10.1086/520692>; Sidhu, D.S. (2013). Civic Education as an Instrument of Social Mobility. *Denver University Law Review*, 90(4), 977-1002. Retrieved from [http://www.law.du.edu/documents/denver-university-law-review/v90-4\\_Issue4\\_Sidhu\\_FINAL\\_ToDarby\\_092213.pdf](http://www.law.du.edu/documents/denver-university-law-review/v90-4_Issue4_Sidhu_FINAL_ToDarby_092213.pdf); Chetty, R., Hendren, N., Kline, P. & Saez, E. (2014). Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States. Retrieved from [http://www.equality-of-opportunity.org/images/mobility\\_geo.pdf](http://www.equality-of-opportunity.org/images/mobility_geo.pdf)

<sup>32</sup> Carpini, M. X. D., & Keeter, S. (1997). *What Americans know about politics and why it matters*. New Haven, CT: Yale University Press; Nie, N. H., Junn, J., & Stehlik-Barry, K. (1996). *Education and Democratic Citizenship in America*. Chicago, IL: The University of Chicago Press; Avery, P. G., Levy, S. A., & Simmons, A. M. (2013). Deliberating Controversial Public Issues As Part of Civic Education 1. *The Social Studies*, 104(3), 105-114; McDevitt, M., & Kioussis, S. (2006). Deliberative learning: An Evaluative Approach to Interactive Civic Education. *Communication education*, 55(3), 247-264; Flanagan, C., Stoppa, T., Syvertsen, A.K., & Stout, M. (2010). Schools and Social Trust. In L. Sherrod, J. Torney-Purta, & C. Flanagan (Eds.), *Handbook of Research on Civic Engagement in Youth* (307-330). Hoboken, NJ: John Wiley & Sons, Inc.; Barr, D. (2010). Continuing a Tradition of Research on the Foundations of Democratic Education: The National Professional Development and Evaluation Project. *Facing History and Ourselves*. Brookline, MA: Facing History and Ourselves. Retrieved from

appreciate their own interests while also considering the interests and perspectives of those with different mindsets.<sup>33</sup> Students are less likely to be truant, more likely to graduate from secondary school, and show a marked increase in educational aspirations and motivation.<sup>34</sup>

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[https://www.facinghistory.org/sites/default/files/Continuing\\_a\\_Tradition\\_v93010\\_0.pdf](https://www.facinghistory.org/sites/default/files/Continuing_a_Tradition_v93010_0.pdf); Popkin, S.L., & Dimock, M.A. (2000). Knowledge, Trust, and International Reasoning. In A. Lupia & M.D. McCubbins (Eds.) *Elements of Reason: Cognition, Choice, and the Bounds of Rationality* (214-238). Cambridge, MA: Cambridge University Press; Annenberg Public Policy Center. (2011). *Guardian of Democracy: The civic mission of schools*. Retrieved from <http://civicmission.s3.amazonaws.com/118/f0/5/171/1/Guardian-of-Democracy-report.pdf>

<sup>33</sup> Carpini, M. X. D., & Keeter, S. (1997). *What Americans know about politics and why it matters*. New Haven, CT: Yale University Press; Hess, D. (2009). *Controversy in the Classroom: The Democratic Power of Discussion*. New York, NY: Routledge; Avery, P. G., Levy, S. A., & Simmons, A. M. (2013). Deliberating Controversial Public Issues As Part of Civic Education 1. *The Social Studies*, 104(3), 105-114; Galston, W. A. (2007). Civic knowledge, civic education, and civic engagement: A summary of recent research. *International Journal of Public Administration*, 30(6-7), 623-642.

<sup>34</sup> Annenberg Public Policy Center. (2011). *Guardian of Democracy: The civic mission of schools*. Retrieved from <http://civicmission.s3.amazonaws.com/118/f0/5/171/1/Guardian-of-Democracy-report.pdf>; Cohen, J., McCabe, L., Michelli, N. M., & Pickeral, T. (2009). School climate: Research, Policy, Practice, and Teacher Education. *Teachers College Record*, 111(1), 180-213; Starks, C. F. (2010). *Connecting civic education to civil right and responsibility: a strategy for reducing high school dropout among African American students* (Doctoral dissertation). Retrieved from <http://csus-dspace.calstate.edu/bitstream/handle/10211.9/512/Starks%20Thesis.pdf?sequence=1>; Sidhu, D.S. (2013). Civic Education as an Instrument of Social Mobility. *Denver University Law Review*, 90(4), 977-1002. Retrieved from [http://www.law.du.edu/documents/denver-university-law-review/v90-4\\_Issue4\\_Sidhu\\_FINAL\\_ToDarby\\_092213.pdf](http://www.law.du.edu/documents/denver-university-law-review/v90-4_Issue4_Sidhu_FINAL_ToDarby_092213.pdf); Chetty, R., Hendren, N., Kline, P. & Saez, E. (2014). Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States. Retrieved from [http://www.equality-of-opportunity.org/images/mobility\\_geo.pdf](http://www.equality-of-opportunity.org/images/mobility_geo.pdf); Chan, W. Y., Ou, S., & Reynolds, A. (2014). Adolescent Civic Engagement and Adult Outcomes: An Examination Among Urban Racial Minorities. *Journal of Youth and Adolescence* 43, 1829-1843; Dávila, A., & Mora, M. T. (2007). Civic engagement and high school academic progress: An analysis using NELS data, [Part I of An Assessment of Civic Engagement and High School Academic Progress]. CIRCLE Working Paper# 52. *Center for Information and Research on Civic Learning and Engagement (CIRCLE)*. Retrieved from <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=C67B8B374CE539217D8CAA08DBFABE6B?doi=10.1.1.188.9260&rep=rep1&type=pdf>

Unfortunately, the majority of civic education efforts do not realize the promise of these outcomes as civic education is too often synonymous with textbook-based learning and rote memorization.<sup>35</sup> The pedagogy and methods modeled and taught during the Street Law Orientation weekend offer an engaging and vibrant alternative that draws upon the best practices in civic education to provide students with a meaningful, interactive, and memorable learning experience. Every activity is discussion-based, team-oriented, and occurs in an open classroom climate. Trainees engage in multiple different democratic simulations and practice their civic skills over the course of the weekend. Additionally, following the Orientation weekend, the majority of the trainees will go on to teach in educational settings where high-quality civic instruction is most likely to have the greatest impact.

A strong body of research supports the use of discussion-based activities as one of the most potent strategies for promoting student learning and, in particular, the effectiveness

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<sup>35</sup> Kahne, J., Chi, B., & Middaugh, E. (2006). Building Social Capital for Civic and Political Engagement: The Potential of High-School Civics Courses. *Canadian Journal of Education*, 29 (2), 387-409; Torney-Purta, J. (2002). The School's Role in Developing Civic Engagement: A Study of Adolescents in Twenty-Eight Countries. *Applied Developmental Science*, 6 (4), 203-212; Larson, R., & Hansen, D. (2005). The Development of Strategic Thinking: Learning to Impact Human Systems in a Youth Activism Program. *Human Development*, 48, 327-349; Baldi, S., Perie, M., Skidmore, D., Greenberg, E., & Hahn, C. (2001). What democracy means to ninth graders: U.S. results from the International IEA civic education study. *National Center for Education Statistics*. Washington, D.C.: U.S. Department of Education; Saavedra, A.R. (2012). Dry to Dynamic Civic Education Curricula. In D. Campbell, M. Levinson, & F. Hess (Eds.), *Making Civics Count: Citizenship Education for a New Generation* (135-159). Cambridge, MA: Harvard Education Press; Jamieson, K. H. (2013). The Challenges Facing Civic Education in the 21st Century. *Daedalus*, 142(2), 65-83.



of classroom discussion in developing students' higher order thinking and reasoning skills.<sup>36</sup> Discussion and democratic interchange are core practices of the Street Law approach generally and a defining characteristic of the Orientation weekend in particular. Street Law's heavy reliance on discussion is an intentional, evidence-based approach to teaching and learning that is central to the trainee experience and the development of the three themes of belief, capacity, and community. As such, a brief review of discussion-based outcomes is warranted. Brookfield and Preskill's helpful enumeration of the 15 benefits of discussion provides an accessible overview of the skills and capacities that research shows students acquire through discussion:

- 1) [Discussion] helps students explore a diversity of perspectives.
- 2) It increases students' awareness of and tolerance for ambiguity or complexity.
- 3) It helps students recognize and investigate their assumptions.
- 4) It encourages attentive, respectful listening.
- 5) It develops new appreciation for continuing differences.
- 6) It increases intellectual agility.
- 7) It helps students become connected to a topic.
- 8) It shows respect for students' voices and experiences.

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<sup>36</sup> Brookfield, S.D. & Preskill, S. (2005). *Discussion as a Way of Teaching*. San Francisco, CA: Jossey-Bass; Larson, B. E. (2000). Classroom discussion: A method of instruction and a curriculum outcome. *Teaching and Teacher Education*, 16(5), 661-677; Andolina, M. W., Jenkins, K., Zukin, C., & Keeter, S. (2003). Habits from home, lessons from school: Influences on youth civic engagement. *Political Science and Politics*, 36(02), 275-280; McIntosh, H. & Muñoz, M. (2009). *Predicting Civic Engagement in Urban High School Students* 4–5, 9 CIRCLE Working Paper# 69. Center for Information and Research on Civic Learning and Engagement (CIRCLE).

- 9) It helps students learn the processes and habits of democratic discourse.
- 10) It affirms students as co-creators of knowledge.
- 11) It develops the capacity for the clear communication of ideas and meaning.
- 12) It develops habits of collaborative learning.
- 13) It increases breadth and makes students more empathetic.
- 14) It helps students develop skills of synthesis and integration.
- 15) It leads to transformation. (pp. 21-22).<sup>37</sup>

The importance of classroom discussions in civic education courses is especially pronounced because the set of skills and capacities students develop through discussion are the same skills and capacities required of active, informed, and educated citizens who can understand, think critically, communicate, and achieve consensus on civic issues. In addition to the development of students' higher order thinking, communication, and reasoning skills, there is a predictive connection between classroom discussions of controversial issues and the development of the skills and capacities students need to be effective citizens. This is why classroom discussion is one of the six proven practices of effective civic education.<sup>38</sup>

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<sup>37</sup> Brookfield, S.D. & Preskill, S. (2005). *Discussion as a Way of Teaching*. San Francisco, CA: Jossey-Bass.

<sup>38</sup> Annenberg Public Policy Center. (2011). *Guardian of Democracy: The civic mission of schools*. Retrieved from <http://civicmission.s3.amazonaws.com/118/f0/5/171/1/Guardian-of-Democracy-report.pdf>; Rubin, B. (2007). "There's Still Not Justice": Youth Civic Identity Development Amid Distinct School and Community Contexts. *Teachers College Record*, 109 (2), 449-481; Kahne, J. & Westheimer, J. (2006). The Limits of Political Efficacy: Educating Citizens for a Democratic Society. *PS: Political Science & Politics*, 39(2), 289-296; Guilfoile, L. & Delander, B. (2014). Guidebook: Six Proven Practices for Effective Civic Learning. Retrieved from: <http://www.ecs.org/clearinghouse/01/10/48/>

Of course, as with any teaching practice, classroom discussions must be intentionally structured and implemented to realize these positive student outcomes and longer term pro-social behaviors.<sup>39</sup> An open classroom climate, where all students feel comfortable expressing and sharing their views on controversial issues, adopting different viewpoints, probing the reasoning and evidence supporting opposing views, and respectfully disagreeing with each other and with the teacher is a critical requirement of authentic and meaningful discussions.<sup>40</sup> Discussions that occur in an open classroom climate are empowering, inclusive, and powerful drivers of collective and individual learning.<sup>41</sup>

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<sup>39</sup> Soter, A. O., Wilkinson, I. A., Murphy, P. K., Rudge, L., Reninger, K., & Edwards, M. (2008). What the discourse tells us: Talk and indicators of high-level comprehension. *International Journal of Educational Research*, 47(6), 372-391; Hess, D. (2009). *Controversy in the Classroom: The Democratic Power of Discussion*. New York: Routledge.

<sup>40</sup> Campbell, D. (2008). Voice in the Classroom: How an Open Classroom Climate Fosters Political Engagement Among Adolescents, *Political Behavior*, 30 (4), 437-454; Soter, A. O., Wilkinson, I. A., Murphy, P. K., Rudge, L., Reninger, K., & Edwards, M. (2008). What the discourse tells us: Talk and indicators of high-level comprehension. *International Journal of Educational Research*, 47(6), 372-391; Saavedra, A.R. (2012). Dry to Dynamic Civic Education Curricula. In D. Campbell, M. Levinson, & F. Hess (Eds.), *Making Civics Count: Citizenship Education for a New Generation* (135-159). Massachusetts: Harvard Education Press; Torney-Purta, J. (2002). The School's Role in Developing Civic Engagement: A Study of Adolescents in Twenty-Eight Countries. *Applied Developmental Science*, 6 (4), 203-212; Nystrand, M. (2006). Research on the role of classroom discourse as it affects reading comprehension. *Research in the Teaching of English*, 392-412; Kahne, J. & Middaugh, E. (2008). High Quality Civic Education: What Is It and Who Gets It? *Social Education*, 72(1), 34-39; Hess, D. (2002). How Students Experience and Learn from the Discussion of Controversial Public Issues in Secondary Social Studies. *Journal of Curriculum and Supervision* 17(4), 283-314.

<sup>41</sup> Levinson, M. (2012). *No Citizen Left Behind*. Cambridge, MA: Harvard University Press; Saavedra, A.R. (2012). Dry to Dynamic Civic Education Curricula. In D. Campbell, M. Levinson, & F. Hess (Eds.), *Making Civics Count: Citizenship Education for a New Generation* (135-159). Massachusetts: Harvard Education Press;

## *EXTENDED PRACTICE – TEACHING AND LEARNING IN CLINIC*

Structured discussions that occur in an open classroom climate are hallmarks of the Street Law Orientation. As set forth in more detail below, from the opening ‘Who Gets the Heart?’ activity through to ‘Aliens,’ ‘Should it be a Crime?’ and the Innocence Project lessons, trainees work in small groups to deliberate and discuss the merits of multiple different possible courses of action. Trainees are provided with interesting opening hypotheticals and a concrete question that needs resolution but that has many possible answers (selecting the one individual who will receive the one heart available for transplant, for example). Trainees are given blocks of time to reach a group decision and then are prompted to adopt different positions or role play in order to consider and evaluate possible answers from multiple different perspectives. Facilitators actively solicit trainee opinions to begin discussions, ask open-ended questions, and model question uptake strategies as trainees are asked by both their peers and the facilitators to explain the reasoning and evidence in support of their claims. Over the course of the weekend, trainees will rotate through several different groups and reporting out responsibilities are randomly assigned. As the Orientation weekend progresses, trainees become more comfortable with the discussion and deliberation expectations, as

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Annenberg Public Policy Center. (2011). *Guardian of Democracy: The civic mission of schools*. Retrieved from <http://civicmission.s3.amazonaws.com/118/f0/5/171/1/Guardian-of-Democracy-report.pdf>; Cohen, J., McCabe, L., Michelli, N. M., & Pickeral, T. (2009). School climate: Research, Policy, Practice, and Teacher Education. *Teachers College Record*, 111(1), 180-213

evidenced both by more efficient processes of reaching consensus and an increase in the sharing of minority viewpoints.

A second best practice in civic education woven into the Street Law Orientation centers on the use of democratic simulations and experiential learning such as group decision-making activities, Mock Trials, and criminal investigations.<sup>42</sup> A robust body of research connects the potency of these classroom or school-based activities with improved student learning outcomes and both immediate and long-term participation in civic life.<sup>43</sup> In practicing the skills and behaviors that individuals need to be engaged, informed, and active citizens, trainees are learning the skills and behaviors of citizenship. This occurs at multiple levels during the Orientation. First, the trainees engage in multiple different rounds of group discussion and interaction. Trainees are practicing their discussion and

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<sup>42</sup> Annenberg Public Policy Center. (2011). *Guardian of Democracy: The civic mission of schools*. Retrieved from <http://civicmission.s3.amazonaws.com/118/f0/5/171/1/Guardian-of-Democracy-report.pdf>; Saavedra, A.R. (2012). Dry to Dynamic Civic Education Curricula. In D. Campbell, M. Levinson, & F. Hess (Eds.), *Making Civics Count: Citizenship Education for a New Generation* (135-159). Massachusetts: Harvard Education Press; Levinson, M. (2012). *No Citizen Left Behind*. Cambridge, MA: Harvard University Press.

<sup>43</sup> Annenberg Public Policy Center. (2011). *Guardian of Democracy: The civic mission of schools*. Retrieved from <http://civicmission.s3.amazonaws.com/118/f0/5/171/1/Guardian-of-Democracy-report.pdf>; Levinson, M. (2012). *No Citizen Left Behind*. Cambridge, MA: Harvard University Press; Saavedra, A.R. (2012). Dry to Dynamic Civic Education Curricula. In D. Campbell, M. Levinson, & F. Hess (Eds.), *Making Civics Count: Citizenship Education for a New Generation* (135-159). Massachusetts: Harvard Education Press; Larson, B. E. (2000). Classroom discussion: A method of instruction and a curriculum outcome. *Teaching and Teacher Education*, 16(5), 661-677; Feldman, L., Pasek, J., Romer, D., & Jamieson, K. H. (2007). Identifying best practices in civic education: Lessons from the student voices program. *American Journal of Education*, 114(1), 75-100; Torney-Purta, J. (2002). The School's Role in Developing Civic Engagement: A Study of Adolescents in Twenty-Eight Countries. *Applied Developmental Science*, 6 (4), 203-212; Kahne, J., Chi, B., & Middaugh, E. (2006). Building Social Capital for Civic and Political Engagement: The Potential of High-School Civics Courses. *Canadian Journal of Education*, 29 (2), 387-409.

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deliberation skills, engaging in negotiations and consensus building, and considering different viewpoints, perspectives and arguments.

Second, trainees participate in a simulated criminal investigation during the Saturday afternoon Innocence Project lessons. In those sessions, trainees assume different roles as police investigators, members of the media, and members of a jury as they work to evaluate and review reproductions of actual evidence and information used during two different murder investigations. Trainees work in groups to decide whether criminal charges should be brought against a murder suspect and how that decision should be communicated to the public. Trainees learn about criminal law standards, criminal law processes and procedures, and the relationship between investigations, the public, and the court system. Trainees are then able to compare their own group decisions to the ones made during the actual investigation and consider whether, and to what extent, reforms may be necessary in the criminal justice system.

Finally, on Sunday morning, trainees will engage in a trial simulation and will adopt the roles of judges, prosecutors, and defense attorneys as they work in small groups to try a case. This Mock Trial experience provides an experiential introduction to the legal system as trainees formulate and deliver legal arguments, probe and interrogate the strengths and weaknesses of their assigned positions, and learn about how the importance of integrating evidence and legal reasoning into a cohesive narrative. The Mock Trial introduces students to the democratic process for conflict resolution through the court

system and the different roles played by the variety of actors within this system. As with every Street Law activity, there is no pre-determined correct answer and the ultimate resolution of the hypothetical depends entirely on how the trainees understand, frame, and present their arguments.

In addition to the best practices employed during the Street Law Orientation weekend, the work of the trainees after the weekend is intentionally focused on making a difference in schools and with students most in need of effective civic education and most likely to benefit from effective civic education. Research shows that students in low socioeconomic schools are much less likely to receive effective civic education instruction and practice.<sup>44</sup> Providing effective civic education in these schools is a high leverage opportunity and the best use of limited resources as research also demonstrates that the positive effects of civic education in promoting student gains in civic knowledge, skills, and dispositions is relatively greater in these schools than in better-resourced schools.<sup>45</sup> In both Ireland and

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<sup>44</sup> Levinson, M. (2012). *No Citizen Left Behind*. Cambridge, MA: Harvard University Press; Jamieson, K. H. (2013). The Challenges Facing Civic Education in the 21st Century. *Daedalus*, 142(2), 65-83; Center for Information & Research on Civic Learning and Engagement (CIRCLE). (2013). *All Together Now: Collaboration and Innovation for Youth Engagement: The Report of the Commission on Youth Voting and Civic Knowledge*. Medford, MA: Center for Information & Research on Civic Learning and Engagement. Retrieved from <http://civicyouth.org/wp-content/uploads/2013/09/CIRCLE-youthvoting-individualPages.pdf>; Galston, W. A. (2007). Civic knowledge, civic education, and civic engagement: A summary of recent research. *International Journal of Public Administration*, 30(6-7), 623-642; Kahne, J., & Middaugh, E. (2008). Democracy for Some: The Civic Opportunity Gap in High School. Circle Working Paper 59. *Center for Information and Research on Civic Learning and Engagement (CIRCLE)*.

<sup>45</sup> McIntosh, H., Berman, S., & Youniss, J. (2010). A Five-Year Evaluation of a Comprehensive High School Civic Engagement Initiative. CIRCLE Working Paper# 70. *Center for Information and Research on Civic*

Scotland, the majority of trainees will go on to teach in low socioeconomic schools, thus maximizing the potential effect the Street Law program will have in each setting.<sup>46</sup>

## **B) Building Belief: Learner-Centered Education**

Developing trainees' belief in the power and potency of learner-centered education is one of the three key goals of the Street Law Orientation weekend. Learner-centered education rests on the premise that students need to be actively involved in their own learning and that students construct knowledge, develop deeper conceptual understanding, and are better able to transfer their learning to new situations when they are authentically

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*Learning and Engagement (CIRCLE)*; Atkins, R., & Hart, D. (2003). Neighborhoods, adults, and the development of civic identity in urban youth. *Applied Developmental Science*, 7(3), 156-164.; Balsano, A. B. (2005). Youth civic engagement in the United States: Understanding and addressing the impact of social impediments on positive youth and community development. *Applied Developmental Science*, 9(4), 188-201; Rogers, J., Mediratta, K., & Shah, S. (2012). Building Power, Learning Democracy Youth Organizing as a Site of Civic Development. *Review of Research in Education*, 36(1), 43-66; Flanagan, C., & Levine, P. (2010). Civic engagement and the transition to adulthood. *The future of children*, 20(1), 159-179.

<sup>46</sup> In Ireland, the Law Society of Ireland places Street Law trainees in fourteen different schools. Thirteen of these fourteen schools were categorized as Delivering Equality of Opportunity (DEIS) schools, a designation assigned to educationally disadvantaged schools in Ireland. For more on the DEIS designation, see: <http://www.education.ie/en/Schools-Colleges/Services/DEIS-Delivering-Equality-of-Opportunity-in-Schools/>. In Scotland, the Law Society of Scotland places Street Law trainees in XX schools. YY of these XX schools are identified under the Scottish Index of Multiple Deprivation (SIMD) as SIMD20 or SIMD40 schools, meaning that these schools are in the bottom two quintiles of schools as measured by the SIMD resource tool. For more on the SIMD designation, see: <http://www.gov.scot/Topics/Statistics/SIMD>.



involved in the learning process.<sup>47</sup> Learner-centered education is often contrasted with the more traditional top-down, teacher-centered approach known as instructionism that views students as empty vessels to be filled and teachers as the imparters and transmitters of everything students need to know.<sup>48</sup> With learner-centered education, students' prior knowledge is valued and the teacher's role is to help students build bridges between their current understandings and the new subject matter.<sup>49</sup>

Students in learner-centered environments are in control of the learning process and become creators of meaning.<sup>50</sup> As students actively integrate new information, experiences, relationships and perspectives into their preexisting structures and values, students develop new cognitive structures and build more complex understandings of both the present academic task and the different ways they can engage with challenging

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<sup>47</sup> Sawyer, R. K. (Ed.). (2005). *The Cambridge handbook of the learning sciences*. Cambridge University Press; Prince, M. (2004). Does active learning work? A review of the research. *Journal of engineering education*, 93(3), 223-231; Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press.

<sup>48</sup> Sawyer, R. K. (Ed.). (2005). *The Cambridge handbook of the learning sciences*. Cambridge University Press; Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press.

<sup>49</sup> Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press; Toshalis, E., & Nakkula, M. J. (2012). Motivation, engagement, and student voice. *The Education Digest*, 78(1), 29.

<sup>50</sup> Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press; Toshalis, E., & Nakkula, M. J. (2012). Motivation, engagement, and student voice. *The Education Digest*, 78(1), 29; Mostrom, A. M., & Blumberg, P. (2012). Does learning-centered teaching promote grade improvement? *Innovative Higher Education*, 37(5), 397-405.

and unfamiliar topics.<sup>51</sup> This process of wrestling with new ideas and engaging in cognitive conflict, accompanied by student demonstrations of their learning and reflection on the learning process helps students become better critical thinkers and develop enhanced analytical and higher order thinking skills.<sup>52</sup>

The benefits of learner-centered education are not limited to thinking skills, however. A robust body of research around learner-centered education and its essential components, interactive activities, collaborative processes, and student participation, evidence a host of positive academic, social, and emotional outcomes. Students in learner-centered classrooms are more engaged and motivated.<sup>53</sup> These students perform and behave better

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<sup>51</sup> Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press; Cheang, K. I. (2009). Effect of Learner-Centered Teaching on Motivation and Learning Strategies in a Third-Year Pharmacotherapy course. *American journal of pharmaceutical education*, 73(3), 42; Crumly, C. (2014). *Pedagogies for Student-Centered Learning: Online and On-Ground*. Augsburg Fortress Publishers.

<sup>52</sup> Prince, M. (2004). Does active learning work? A review of the research. *Journal of engineering education*, 93(3), 223-231; Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press; Mezirow, J. (1997). Transformative learning: Theory to practice. *New directions for adult and continuing education*, 1997(74), 5-12; Toshalis, E., & Nakkula, M. J. (2012). Motivation, engagement, and student voice. *The Education Digest*, 78(1), 29; Magnussen, L., Ishida, D., & Itano, J. (2000, November). The Impact of the Use of Inquiry-Based Learning as a Teaching Methodology on the Development of Critical Thinking. *Journal of Nursing Education*, 39(8), 360-364.

<sup>53</sup> Toshalis, E., & Nakkula, M. J. (2012). Motivation, engagement, and student voice. *The Education Digest*, 78(1), 29; Mitra, D. L. (2004). The Significance of Students: Can Increasing “Student Voice” in Schools Lead to Gains in Youth Development? *Teachers College Record*, 106(4), 651-688. doi:10.1111/j.1467-9620.2004.00354.x; Prince, M. (2004). Does active learning work? A review of the research. *Journal of engineering education*, 93(3), 223-231; Webb, E., Jones, A, Barker, P., & van Schaik, P. (2004). Using e-learning dialogues in higher education. *Innovations in Teaching International*, 41(1), 93-103.

in school and feel more connected to their peers and their schools.<sup>54</sup> Learner-centered education improves student attendance, school completion rates, and student enjoyment of school.<sup>55</sup> Students learn and retain more through learner-centered experiences and are better able to transfer their knowledge and learning to novel situations.<sup>56</sup>

Of course, to realize the benefits of learner-centered education requires an intentionality around the nature and processes of classroom activities, the academic tasks presented, and the student-teacher dynamic. Learner-centered classrooms are characterized by classroom activities that value student voice and participation.<sup>57</sup> Students are encouraged

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<sup>54</sup> Goodenow, C. (1993). Classroom Belonging among Early Adolescent Students: Relationships to Motivation and Achievement. *Journal of Early Adolescence*, 13(1), 21-43; Daniels, E. & Arapostathis, M. (2005). What Do They Really Want? Student Voices and Motivation Research. *Urban Education*, 40(1), 34-59; Prince, M. (2004). Does active learning work? A review of the research. *Journal of engineering education*, 93(3), 223-231; Mitra, D. L. (2004). The Significance of Students: Can Increasing “Student Voice” in Schools Lead to Gains in Youth Development? *Teachers College Record*, 106(4), 651-688. doi:10.1111/j.1467-9620.2004.00354.x.

<sup>55</sup> Ekstrom, R.B., Goertz, M.E., Pollack, J.M., & Rock, D.A. (1986). Who Drops Out of High School and Why? Findings from a National Study. *Teachers College Record* 87(3), 356-373; Fielding, M. (2006). Leadership, Radical Student Engagement and the Necessity of Person-centred Education. *International Journal of Leadership in Education* 9(4), 299-313; Mitra, D. L. (2004). The Significance of Students: Can Increasing “Student Voice” in Schools Lead to Gains in Youth Development? *Teachers College Record*, 106(4), 651-688. doi:10.1111/j.1467-9620.2004.00354.x; Prince, M. (2004). Does active learning work? A review of the research. *Journal of engineering education*, 93(3), 223-231.

<sup>56</sup> Lowenstein, G. (1994). The Psychology of Curiosity; A Review and Reinterpretation *Psychological Bulletin*, 116(1):75 – 98; Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press; Prince, M. (2004). Does active learning work? A review of the research. *Journal of engineering education*, 93(3), 223-231.

<sup>57</sup> Mostrom, A. M., & Blumberg, P. (2012). Does learning-centered teaching promote grade improvement? *Innovative Higher Education*, 37(5), 397-405; Mezirow, J. (1997). Transformative learning: Theory to practice. *New directions for adult and continuing education*, 1997(74), 5-12; Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press.

to use their reasoning skills, creativity, and strategic thinking abilities to approach and resolve problems that both have more than one right answer and more than one pathway to a final conclusion.<sup>58</sup> Group deliberation and group problem solving are hallmarks of effective learner-centered education as students learn from their peers and from the interaction between their own ideas and the ideas of their classmates.<sup>59</sup> The teacher is positioned as a co-constructor of knowledge and a facilitator of student learning rather than a gatekeeper of information.<sup>60</sup> Through this process of independent discovery, discourse, dialogue, and reflection, students become meaning-makers and gain a sense of agency over their own learning.<sup>61</sup>

The Street Law Orientation weekend is heavily learner-centered. The goal is to introduce trainees to the practice and benefits of learner-centered education in a highly learner-centered way; rather than list the benefits or rely on research around the effectiveness of

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<sup>58</sup> Mezirow, J. (1997). Transformative learning: Theory to practice. *New directions for adult and continuing education*, 1997(74), 5-12; Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press.

<sup>59</sup> Mezirow, J. (1997). Transformative learning: Theory to practice. *New directions for adult and continuing education*, 1997(74), 5-12; Prince, M. (2004). Does active learning work? A review of the research. *Journal of engineering education*, 93(3), 223-231.

<sup>60</sup> Crumly, C. (2014). *Pedagogies for Student-Centered Learning: Online and On-Ground*. Augsburg Fortress Publishers; Cheang, K. I. (2009). Effect of learner-centered teaching on motivation and learning strategies in a third-year pharmacotherapy course. *American journal of pharmaceutical education*, 73(3), 42.

<sup>61</sup> Toshalis, E., & Nakkula, M. J. (2012). Motivation, engagement, and student voice. *The Education Digest*, 78(1), 29; Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press; Mitra, D. L. (2004). The Significance of Students: Can Increasing “Student Voice” in Schools Lead to Gains in Youth Development? *Teachers College Record*, 106(4), 651-688. doi:10.1111/j.1467-9620.2004.00354.x.

learner-centered pedagogy and methodology, trainees experience learner-centered education as participants. Through the process of firsthand engagement followed by debrief, reflection, and critique, trainees come to appreciate the powerful transformative power of learner-centered education and can then draw on their own experience to inform their understandings around the efficacy of this approach in promoting student engagement, motivation, and learning. This experiential approach enables trainees to develop their own belief in the potential of learner-centered education.

From the opening activity, ‘Who Gets the Heart?’ through to the final Quaker-style reflection, trainees are presented with a series of interactive activities that require them to draw upon their existing knowledge and values, engage in discussion and debate with their peers, and negotiate and achieve group accord around a proposed solution. There are no predetermined answers to any activity and students quickly learn that their voices, opinions, and reasoning skills are valued and honored throughout the process. Over the course of the weekend, trainees are introduced to a variety of novel and creative scenarios and hypotheticals of increasing complexity, each requiring them to work collaboratively and construct meaning in a new learning framework. The diversity of interactive activities and the fun nature of these activities is intentional as research indicates that the “more unusual the learning action, the better it is remembered.”<sup>62</sup> In addition to the

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<sup>62</sup> Lowenstein, G. (1994) The Psychology of Curiosity; A Review and Reinterpretation *Psychological Bulletin* 116(1):75 – 98.

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novelty and fun component of these activities, the emphasis on trainee voice, choice, and challenge leads to consistently high levels of engagement and motivation throughout the weekend.

In 'Who Gets the Heart?', for example, trainees work in small groups to select one of five deserving and needy candidates for the sole available heart transplant. Each candidate profile contains factors that trainees can interpret differently as counseling in favor (or against) each candidate's application. As trainees weigh and evaluate the merits of each candidate in their small groups, the different values and importance each trainee assigns to these factors becomes evident. Trainees share their opinions, present arguments in support of different candidates and must eventually reconcile their divergent priorities and perspectives and decide on a final candidate. As with each of the weekend's activities, trainees are authentically in charge of the decision-making process (including determining how they will reach a final decision, whether through voting or required consensus, for example) and are prompted to share their group's reasoning and arguments with the broader group.

With 'Aliens', trainee groups are presented with a list of fundamental rights and asked to collectively rank these rights in order of importance as the aliens slowly whittle away at the rights each group can retain. The trainees are eventually called upon to present a final list of three fundamental rights that the large group agrees are most critical, a conclusion reached only after the entire group assents. As with 'Who Gets the Heart?',

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the cognitive conflict that inheres to this process of actively assimilating new and diverse opinions into present knowledge structures in order to achieve group consensus requires trainees to examine and reflect on their own belief systems and values. A group decision requires compromise, consideration of peer perspectives, and an opportunity to present and defend one's opinions while accommodating the opinions of others. Through this process, trainees develop an awareness around competing belief and value systems as well as a heightened sense of their own agency and the power of their individual voices in impacting a final decision.

The learner-centered trajectory of the Street Law Orientation weekend culminates in two activities that exemplify the best of learner-centered pedagogy, albeit in very different ways. Trainees first are given the opportunity to work in pairs to design their own practice teaching lesson that they might later use in their secondary school placements. And while the facilitators are available as resources, the trainees select their own topics and construct their own lesson with objectives, activities, and evaluation of their own choosing. The trainees are encouraged to draw upon any of the successful pedagogical practices or teaching moves they experienced during the weekend but are prompted to generate a novel lesson that they must then execute in front of small groups of their peers. This process of building and delivering their own lesson requires the trainees to assimilate, reflect, and apply their learning from the weekend and is a concrete demonstration of their new knowledge and cognitive structures around the teaching

process and belief in learner-centered pedagogy. The weekend then closes with a Quaker-style reflection (I used to think . . . now I think . . .) during which each trainee shares an observation about how their thinking and approach to teaching has evolved over the course of the weekend. These observations invariably include a newfound appreciation for interactive activities, the value of student voice, and the importance of involving students in their own learning.

### **C) Building Capacity: Teacher Preparation**

In addition to developing trainees' beliefs in the merits of learner-centered education, the Street Law Orientation weekend also seeks to develop in trainees the capacity to design and deliver learner-centered lessons. And while we recognize that a comprehensive teacher preparation program involves years of study and practice, the challenge of preparing the trainees to be successful teachers in just one weekend is made much more manageable by several critical factors. First, the trainees will benefit from the in-class support of veteran teachers and will not be responsible for classroom management or any administrative responsibilities. Second, the trainees will be working in pairs to implement and execute each lesson. Third, the trainees will be delivering a limited number of lessons (typically between 6-10 classes) and many of these lessons will be the proven Street Law lessons that trainees have already experienced and reflected upon as participants during the Street Law Orientation weekend (all materials and lesson plans



are shared with trainees after the weekend). These mitigating factors and the Street Law Orientation weekend's focus on four core best practices in teacher preparation position the trainees to succeed in their field placements.

First, the Street Law facilitators model the methods, practices, and activities that trainees will later employ with their own students. Research on teacher preparation and development demonstrates that teachers first learn about effective teaching by observing how effective teachers teach.<sup>63</sup> Through observation of successful learner-centered techniques and pedagogical practices, new teachers gain an appreciation for what is possible and are more likely to replicate these techniques and practices in their own classrooms.<sup>64</sup> Additionally, through participation in lessons and activities as learners, novice teachers gain an understanding for how these lessons play out in practice and what to expect as their own students experience similar lessons.<sup>65</sup> Consistent modeling of

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<sup>63</sup> Korthagen, F., Loughran, J., & Russell, T. (2006). Developing fundamental principles for teacher education programs and practices. *Teaching and teacher education*, 22(8), 1020-1041; Stigler, J. W., & Hiebert, J. (1999). *The teaching gap: Best ideas from the world's teachers for improving education in the classroom*. New York, NY: Free Press; Darling-Hammond, L., & McLaughlin, M. W. (2011). Policies that support professional development in an era of reform. *Phi delta kappan*, 92(6), 81-92; Grossman, P. (2011). Framework for teaching practice: A brief history of an idea. *Teachers College Record*, 113(12), 2836-2843.

<sup>64</sup> Darling-Hammond, L., & McLaughlin, M. W. (2011). Policies that support professional development in an era of reform. *Phi delta kappan*, 92(6), 81-92; Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). *How people learn*. Washington, DC: National Academy Press; Hiebert, J., & Morris, A. K. (2012). Teaching, rather than teachers, as a path toward improving classroom instruction. *Journal of Teacher Education*, 63(2), 92-102.

<sup>65</sup> Grossman, P. (2011). Framework for teaching practice: A brief history of an idea. *Teachers College Record*, 113(12), 2836-2843; Hiebert, J., & Morris, A. K. (2012). Teaching, rather than teachers, as a path

learner-centered teaching techniques combined with firsthand involvement in learner-centered activities helps create in students both the desire and capacity to utilize these approaches in their own classrooms.<sup>66</sup>

But observation and participation alone are not enough. It is essential that new teachers reflect and process what they have seen and experienced in order to develop the capacity to integrate successful teaching techniques and methods into their own practices.<sup>67</sup> The best teachers often make teaching seem effortless and it is only through reflection and deliberate inquiry that the intentionality of their efforts and the connection between their teaching moves and the resultant student learning can be made visible.<sup>68</sup> This process of reflecting upon a learning experience from both the perspective of a teacher and a learner

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toward improving classroom instruction. *Journal of Teacher Education*, 63(2), 92-102; Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press.

<sup>66</sup> Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press; Tabak, I., & Radinsky, J. (2015). Educators' coaches, peers, and practices: Revisiting how teachers learn. *Journal of the Learning Sciences*, 24(3), 343-346; Hiebert, J., & Morris, A. K. (2012). Teaching, rather than teachers, as a path toward improving classroom instruction. *Journal of Teacher Education*, 63(2), 92-102.

<sup>67</sup> Ball, D. L., & Cohen, D. K. (1999). Developing practice, developing practitioners: Toward a practice-based theory of professional education. *Teaching as the learning profession: Handbook of policy and practice*, 3-22; Hiebert, J., & Morris, A. K. (2012). Teaching, rather than teachers, as a path toward improving classroom instruction. *Journal of Teacher Education*, 63(2), 92-102; Lieberman, Ann. (1995). Practices that support teacher development. *Phi delta kappan* 76(8), 591.

<sup>68</sup> Hiebert, J., & Morris, A. K. (2012). Teaching, rather than teachers, as a path toward improving classroom instruction. *Journal of Teacher Education*, 63(2), 92-102; Garet, M. S., Porter, A. C., Desimone, L., Birman, B. F., & Yoon, K. S. (2001). What makes professional development effective? Results from a national sample of teachers. *American Educational Research Journal*, 38(4), 915-945; Zeichner, K. (2012). The turn once again toward practice-based teacher education. *Journal of Teacher Education*, 63(5), 376-382.

requires four discrete steps, often referred to as lesson study.<sup>69</sup> First, the individual instructional routine, teaching move, or pedagogical method must be isolated, identified, and defined.<sup>70</sup> Once defined, the particulars of precisely how the method was executed in the classroom should be called forth.<sup>71</sup> Third, the rationale for the teacher's use of this method and the connection between the move and desired outcome should be examined.<sup>72</sup> Finally, aspiring teachers should consider how—and whether—each particular move might be adapted or transferred into their own settings or practice.<sup>73</sup> This process of surfacing and reflecting pedagogical intent and execution helps new teachers develop the capacity and awareness to later incorporate similar (or better) methods into their own teaching.<sup>74</sup>

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<sup>69</sup> Hiebert, J., & Morris, A. K. (2012). Teaching, rather than teachers, as a path toward improving classroom instruction. *Journal of Teacher Education*, 63(2), 92-102.

<sup>70</sup> Zeichner, K. (2012). The turn once again toward practice-based teacher education. *Journal of Teacher Education*, 63(5), 376-382; Hiebert, J., & Morris, A. K. (2012). Teaching, rather than teachers, as a path toward improving classroom instruction. *Journal of Teacher Education*, 63(2), 92-102.

<sup>71</sup> Zeichner, K. (2012). The turn once again toward practice-based teacher education. *Journal of Teacher Education*, 63(5), 376-382; Hiebert, J., & Morris, A. K. (2012). Teaching, rather than teachers, as a path toward improving classroom instruction. *Journal of Teacher Education*, 63(2), 92-102.

<sup>72</sup> Garet, M. S., Porter, A. C., Desimone, L., Birman, B. F., & Yoon, K. S. (2001). What makes professional development effective? Results from a national sample of teachers. *American Educational Research Journal*, 38(4), 915-945; Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press.

<sup>73</sup> Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press; Garet, M. S., Porter, A. C., Desimone, L., Birman, B. F., & Yoon, K. S. (2001). What makes professional development effective? Results from a national sample of teachers. *American Educational Research Journal*, 38(4), 915-945.

<sup>74</sup> Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press; Tabak, I., & Radinsky, J. (2015). Educators' coaches, peers, and practices: Revisiting how

A third best practice of teacher preparation centers on the collaborative nature of teacher learning and development.<sup>75</sup> The benefits of sharing a learning experience around new methods, pedagogy, or content-specific instruction and then collectively discussing and reflecting on that experience are multiple and significant. This collaborative process generates a diversity of ideas, observations, and perspectives that helps new teachers understand both the theoretical rationale and practical implications from multiple angles.<sup>76</sup> The group approach to lesson study and the development of new skills and knowledge also creates communities of practice where the art and science of teaching is valued as both challenging and a continual improvement process.<sup>77</sup> Working in teams to engage with problems of practice and skill development is safer and more welcoming as critique and critical analysis are depersonalized and each member participates in order

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teachers learn. *Journal of the Learning Sciences*, 24(3), 343–346; Hiebert, J., & Morris, A. K. (2012). Teaching, rather than teachers, as a path toward improving classroom instruction. *Journal of Teacher Education*, 63(2), 92-102.

<sup>75</sup> Easton, Lois Brown. (2008). From professional development to professional learning. *Phi delta kappan* 89(10), 755-761; Bush, Robert N. (1977). We know how to train teachers: Why not do so! *Journal of Teacher Education* 28(6), 5-9; Grossman, P., Compton, C., Igra, D., Ronfeldt, M., Shahan, E., & Williamson, P. (2009). Teaching practice: A cross-professional perspective. *Teachers College Record*, 111(9), 2055-2100; Papay, J. P., Taylor, E. S., Tyler, J. H., & Laski, M. (2016). *Learning job skills from colleagues at work: Evidence from a field experiment using teacher performance data* (No. w21986). National Bureau of Economic Research.

<sup>76</sup> Darling-Hammond, L., & McLaughlin, M. W. (2011). Policies that support professional development in an era of reform. *Phi delta kappan*, 92(6), 81-92; Easton, Lois Brown. (2008). From professional development to professional learning. *Phi delta kappan* 89(10), 755-761.

<sup>77</sup> Papay, J. P., Taylor, E. S., Tyler, J. H., & Laski, M. (2016). *Learning job skills from colleagues at work: Evidence from a field experiment using teacher performance data* (No. w21986). National Bureau of Economic Research; Darling-Hammond, L., & McLaughlin, M. W. (2011). Policies that support professional development in an era of reform. *Phi delta kappan*, 92(6), 81-92; Bush, Robert N. (1977). We know how to train teachers: Why not do so! *Journal of Teacher Education* 28(6), 5-9.

to elevate the collective learning.<sup>78</sup> Finally, the experience of contributing to collective improvement and problem solving in groups helps aspiring teachers realize the advantages of group work and understand how to structure effective groups within their own classrooms.<sup>79</sup>

Without question, the single most important component of teacher training is providing teachers with the opportunity to practice their teaching by designing and implementing their own lessons.<sup>80</sup> Teachers, like students, learn through doing.<sup>81</sup> When teachers move

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<sup>78</sup> Bush, Robert N. (1977). We know how to train teachers: Why not do so! *Journal of Teacher Education* 28(6), 5-9; Easton, Lois Brown. (2008). From professional development to professional learning. *Phi delta kappan* 89(10), 755-761; Grossman, P., Compton, C., Igra, D., Ronfeldt, M., Shahan, E., & Williamson, P. (2009). Teaching practice: A cross-professional perspective. *Teachers College Record*, 111(9), 2055-2100.

<sup>79</sup> Berry, B., Daughtrey, A., & Wieder, A. (2010). Preparing to Lead an Effective Classroom: The Role of Teacher Training and Professional Development Programs. *Center For Teaching Quality*; Garet, M. S., Porter, A. C., Desimone, L., Birman, B. F., & Yoon, K. S. (2001). What makes professional development effective? Results from a national sample of teachers. *American Educational Research Journal*, 38(4), 915-945.

<sup>80</sup> Garet, M. S., Porter, A. C., Desimone, L., Birman, B. F., & Yoon, K. S. (2001). What makes professional development effective? Results from a national sample of teachers. *American Educational Research Journal*, 38(4), 915-945; Grossman, P., & McDonald, M. (2008). Back to the future: Directions for research in teaching and teacher education. *American Educational Research Journal*, 45(1), 184-205; Grossman, P. (2011). Framework for teaching practice: A brief history of an idea. *Teachers College Record*, 113(12), 2836-2843; Ball, D. L., & Cohen, D. K. (1999). Developing practice, developing practitioners: Toward a practice-based theory of professional education. *Teaching as the learning profession: Handbook of policy and practice*, 1, 3-22; Zeichner, K. (2012). The turn once again toward practice-based teacher education. *Journal of Teacher Education*, 63(5), 376-382.

<sup>81</sup> Bransford, J. D., Brown, A. L., & Cocking, R. R. (1999). How people learn. Washington, DC: National Academy Press; Korthagen, F., Loughran, J., & Russell, T. (2006). Developing fundamental principles for teacher education programs and practices. *Teaching and teacher education*, 22(8), 1020-1041; Mascolo, M. F. (2009). Beyond student-centered and teacher-centered pedagogy: Teaching and learning as guided participation. *Pedagogy and the Human Sciences*, 1(1), 3-27.

from merely thinking about teaching or learning about theory into the process of preparing and delivering a lesson, they are challenged to think about how an idea would work in practice and the myriad different skills, techniques, and pedagogical moves required to execute that idea in a classroom.<sup>82</sup> Actually implementing and delivering that lesson then allows teachers to rehearse and apply those skills and provides immediate feedback and accountability on both what went well and what can be improved for the next iteration.<sup>83</sup>

Through this practice-based approach, teachers construct their own new knowledge frames and develop an informed vision and understanding of what teaching entails that is both grounded in authentic work and adapted to fit their own teaching style and context.<sup>84</sup> Ideally, this practice teaching occurs in a safe, collaborative learning space where teachers feel comfortable both experimenting with new ideas and receiving

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<sup>82</sup> Garet, M. S., Porter, A. C., Desimone, L., Birman, B. F., & Yoon, K. S. (2001). What makes professional development effective? Results from a national sample of teachers. *American Educational Research Journal*, 38(4), 915-945; Zeichner, K. (2012). The turn once again toward practice-based teacher education. *Journal of Teacher Education*, 63(5), 376-382; Easton, Lois Brown. (2008). From professional development to professional learning. *Phi delta kappan* 89(10), 755-761.

<sup>83</sup> Easton, Lois Brown. (2008). From professional development to professional learning. *Phi delta kappan* 89(10), 755-761; Grossman, P. (2011). Framework for teaching practice: A brief history of an idea. *Teachers College Record*, 113(12), 2836-2843.

<sup>84</sup> Hiebert, J., & Morris, A. K. (2012). Teaching, rather than teachers, as a path toward improving classroom instruction. *Journal of Teacher Education*, 63(2), 92-102; Zeichner, K. (2012). The turn once again toward practice-based teacher education. *Journal of Teacher Education*, 63(5), 376-382; Korthagen, F. A., & Kessels, J. P. (1999). Linking theory and practice: Changing the pedagogy of teacher education. *Educational researcher*, 28(4), 4-17.

feedback on how to modify or change their practice to be more effective.<sup>85</sup> After all, “if you’re learning to paddle, you wouldn’t practice kayaking down rapids. You would paddle on a smooth lake to learn your strokes.”<sup>86</sup>

During the course of the Street Law Orientation weekend, the trainees see best practices modeled, reflect on those practices, work collaboratively, and apply their new learning in practice teaching sessions. The Street Law facilitators know that teachers, especially novice teachers, will teach as they were taught and the facilitators model a wide array of techniques and routines designed to promote and encourage learner-centered education. Every activity is interactive and involves collaborative decision making. Trainee opinions and reasoning are critical components of each activity and the facilitators adopt open-minded inquiry stances in following up to student suggestions and thinking. Concrete teaching skills such as how to divide students into groups, centering techniques, and the power of positive feedback are modeled throughout the weekend.

After each activity, the trainees are asked to identify the different teaching moves and reflect on both the practicalities and rationale of each through a pedagogical device we call ‘chart groups.’ In chart groups, the trainees work collaboratively to list the what, the

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<sup>85</sup> Grossman, P., Compton, C., Igra, D., Ronfeldt, M., Shahan, E., & Williamson, P. (2009). Teaching practice: A cross-professional perspective. *Teachers College Record*, 111(9), 2055-2100; Easton, Lois Brown. (2008). From professional development to professional learning. *Phi delta kappan* 89(10), 755-761

<sup>86</sup> Grossman, P., Compton, C., Igra, D., Ronfeldt, M., Shahan, E., & Williamson, P. (2009). Teaching practice: A cross-professional perspective. *Teachers College Record*, 111(9), 2055-2100, 2076.

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how, and the why of each teaching move. The trainees work in these chart groups throughout the weekend and present their own “Top 10 Teaching Tips” on the last day. The trainees are then encouraged to incorporate their tips into their own practice lessons. These lessons are designed and implemented by trainees working in pairs with small groups of their peers as the student audience. The trainees find the experience of delivering their own lessons to be transformative in both understanding the practical demands of teaching and in their own confidence in their ability to develop and execute a lesson. After each practice lesson, the trainees are asked to first reflect on their own lesson and then their peers have an opportunity to provide constructive feedback.

Especially given the compressed nature of their teacher training during Orientation weekend, building trainee comfort with their newfound skills is a central objective and both facilitators and peers focus primarily on the positive aspects of each practice lesson. This process of seeing effective learner-centered education modeled, collectively reflecting on the different teaching moves, and then working collaboratively to both execute and discuss a practice lesson equips the trainees with the capacity to effectuate successful learner-centered lessons and the enthusiasm to match.



## D) Building Community

The final theme of the Street Law Orientation weekend focuses on the importance of building community in the classroom, between facilitators and trainees, and within the trainee group. Sometimes reduced to the adage “students don’t care how much you know until they know how much you care,” the connection between community building and effective teaching and learning cannot be overstated. Building this community is a central objective of the Orientation weekend and the Street Law approach is grounded in a well-documented body of research around best practices in teaching and learning broadly and in teacher training specifically. We define what we mean by community, discuss the benefits of community, and explain how community is created before turning to the specifics of the Street Law approach.

Within the education space, a community can be defined as a collection of individual learners with shared practices, beliefs, and understandings who collectively participate in the pursuit of a common goal.<sup>87</sup> A welcoming community, or positive learning environment, is characterized by mutual interdependence, meaningful caring and supportive relationships, and the creation of a safe space where individuals feel valued

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<sup>87</sup> Battistich, V., Solomon, D., Watson, M., & Schaps, E. (1997). Caring school communities. *Educational psychologist*, 32(3), 137-151; Barab, S. A., & Duffy, T. (2000). From practice fields to communities of practice. *Theoretical foundations of learning environments*, 1(1), 25-55.

and heard.<sup>88</sup> Members of this group, classroom, or school community understand both why the community exists and the purpose of this community.<sup>89</sup> Community formation occurs when individuals share an experience that creates and reinforces a group identity and provides feelings of connectedness and belonging to members of this learning community.<sup>90</sup>

Establishing and supporting a positive learning community or climate leads to significant and interconnected pro-social academic, behavioral, and social outcomes. Students who experience positive learning environments perform better academically, are more open to learning, and are more likely to trust the knowledge and information shared by the teacher.<sup>91</sup> Students who feel cared for and emotionally supported in their learning

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<sup>88</sup> Battistich, V., Solomon, D., Watson, M., & Schaps, E. (1997). Caring school communities. *Educational psychologist*, 32(3), 137-151; Flanagan, C., Stoppa, T., Syvertsen, A.K., & Stout, M. (2010). Schools and Social Trust. In L. Sherrod, J. Torney-Purta, & C. Flanagan (Eds.), *Handbook of Research on Civic Engagement in Youth* (307-330). Hoboken, NJ: John Wiley & Sons, Inc.

<sup>89</sup> Lave, J., and Wenger, E. (1991). *Situated learning: Legitimate peripheral participation*. New York: Cambridge University Press; Barab, S. A., MaKinster, J., & Scheckler, R. (2004). Characterizing system dualities: Building online community. *Designing for virtual communities in the service of learning*, 53-90.

<sup>90</sup> Barab, S. A., & Duffy, T. (2000). From practice fields to communities of practice. *Theoretical foundations of learning environments*, 1(1), 25-55; Flanagan, C., Stoppa, T., Syvertsen, A.K., & Stout, M. (2010). Schools and Social Trust. In L. Sherrod, J. Torney-Purta, & C. Flanagan (Eds.), *Handbook of Research on Civic Engagement in Youth* (307-330). Hoboken, NJ: John Wiley & Sons, Inc.

<sup>91</sup> Berkowitz, R., Moore, H., Astor, R. A., & Benbenishty, R. (2016). A Research Synthesis of the Associations Between Socioeconomic Background, Inequality, School Climate, and Academic Achievement. *Review of Educational Research*, 0034654316669821; Furrer, C., & Skinner, E. (2003). Sense of relatedness as a factor in children's academic engagement and performance. *Journal of educational psychology*, 95(1), 148; Bryk, A., & Schneider, B. (2002). *Trust in schools: A core resource for improvement*. New York, NY: Russell Sage Foundation; Raider-Roth, M. (2005). *Trusting What You Know: The High Stakes*

communities are more motivated, engaged, and enthusiastic.<sup>92</sup> These students put forth more effort, participate more frequently, and attend and persist in the learning process to a greater degree than students who don't share a sense of community.<sup>93</sup> The relationships and peer and teacher support that characterize supportive and safe learning communities create a sense of belonging that leads to less intragroup competitiveness, heightened cooperation, increased willingness to take risks, and a more positive attitude towards school and learning.<sup>94</sup>

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*of Classroom Relationships*. Indianapolis, IN: Jossey-Bass; Olson, Kirke (2014). *The Invisible Classroom: Relationships, Neuroscience, & Mindfulness in School*. New York, NY: W.W. Norton & Company, Ltd.

<sup>92</sup> Tschannen-Moran, M. (2014). The interconnectivity of trust in schools. In Van Maele, D., Van Houtte, M., & Forsyth, P.B. (Eds.) *Trust and school life* (pp. 57-83). New York, NY: Springer; Urdan, T., & Schoenfelder, E. (2006). Classroom effects on student motivation: Goal structures, social relationships, and competence beliefs. *Journal of school psychology, 44*(5), 331- 349.

<sup>93</sup> Ruzek, E. A., Hafen, C. A., Allen, J. P., Gregory, A., Mikami, A. Y., & Pianta, R. C. (2016). How teacher emotional support motivates students: The mediating roles of perceived peer relatedness, autonomy support, and competence. *Learning and Instruction, 42*, 95-103; Furrer, C., & Skinner, E. (2003). Sense of relatedness as a factor in children's academic engagement and performance. *Journal of educational psychology, 95*(1), 148; Urdan, T., & Schoenfelder, E. (2006). Classroom effects on student motivation: Goal structures, social relationships, and competence beliefs. *Journal of school psychology, 44*(5), 331- 349; Klem, A. M., & Connell, J. P. (2004). Relationships matter: Linking teacher support to student engagement and achievement. *Journal of school health, 74*(7), 262-273.

<sup>94</sup> Gillen-O'Neel, C., & Fuligni, A. (2013). A longitudinal study of school belonging and academic motivation across high school. *Child development, 84*(2), 678-692; Furrer, C., & Skinner, E. (2003). Sense of relatedness as a factor in children's academic engagement and performance. *Journal of educational psychology, 95*(1), 148; Klem, A. M., & Connell, J. P. (2004). Relationships matter: Linking teacher support to student engagement and achievement. *Journal of school health, 74*(7), 262-273; Tschannen-Moran, M. (2014). The interconnectivity of trust in schools. In Van Maele, D., Van Houtte, M., & Forsyth, P.B. (Eds.) *Trust and school life* (pp. 57-83). New York, NY: Springer; Wentzel, K. R. (1997). Student motivation in middle school: The role of perceived pedagogical caring. *Journal of educational psychology, 89*(3), 411.

The value and importance of creating a positive and safe learning community also applies to the process of educating the individuals who bear primary responsibility for shaping this climate-teachers. Teachers who participate in positive learning communities during their teacher training also exhibit the impactful academic, behavioral, and social outcomes outlined above.<sup>95</sup> Additionally, teacher training models that intentionally create communities, or cohorts, of novice teachers produce more confident and effective teachers who are more likely to seek and share resources, more likely to feel a sense of collective responsibility, and more likely to continue to grow and develop as teachers even beyond the initial shared experience.<sup>96</sup> Significantly, the benefits of a teacher training model that encourages and promotes community don't end with the teacher training process. Teachers who learn in communities gain an appreciation for both the importance of learning communities and the steps needed to create these communities, a mindset

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<sup>95</sup> Beck, C., & Kosnik, C. (2001). From cohort to community in a preservice teacher education program. *Teaching and Teacher Education, 17*(8), 925-948; Wenger, E., & Lave, J. (1991). *Situated learning: Legitimate peripheral participation*. Cambridge: Cambridge University Press.

<sup>96</sup> Wenger, E., & Lave, J. (1991). *Situated learning: Legitimate peripheral participation*. Cambridge: Cambridge University Press; Beck, C., & Kosnik, C. (2001). From cohort to community in a preservice teacher education program. *Teaching and Teacher Education, 17*(8), 925-948; Hadar, L., & Brody, D. (2010). From isolation to symphonic harmony: Building a professional development community among teacher educators. *Teaching and Teacher Education, 26*(8), 1641-1651; Berry, B., Daughtrey, A., & Wieder, A. (2010). Preparing to Lead an Effective Classroom: The Role of Teacher Training and Professional Development Programs. *Center For Teaching Quality*.

and skillset that later translate into their own practices and the communities they will build in their own classrooms.<sup>97</sup>

Community does not happen by accident. Building a positive learning community involves an intentionality around structure, relationships, and pedagogy. To form a community, there must first be a shared experience and a common purpose that give rise to a group identity.<sup>98</sup> Within schools and learning environments, these structural underpinnings typically exist when a group such as class of students—or cohort of teachers in training—comes together in one place to learn about a subject or to practice and acquire a set of skills with an established learning objective. Supportive and caring relationships are formed by respecting individual differences, demonstrating and practicing genuine care for the wellbeing of others, and allowing for the sharing of individual opinions and experiences.<sup>99</sup> Giving students the opportunity to get to know

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<sup>97</sup> Catalano, R. F., Oesterle, S., Fleming, C. B., & Hawkins, J. D. (2004). The importance of bonding to school for healthy development: Findings from the Social Development Research Group. *Journal of School Health, 74*(7), 252-261; Beck, C., & Kosnik, C. (2001). From cohort to community in a preservice teacher education program. *Teaching and Teacher Education, 17*(8), 925-948.

<sup>98</sup> Barab, S. A., & Duffy, T. (2000). From practice fields to communities of practice. *Theoretical foundations of learning environments, 1*(1), 25-55.

<sup>99</sup> Flanagan, C., Stoppa, T., Syvertsen, A.K., & Stout, M. (2010). Schools and Social Trust. In L. Sherrod, J. Torney-Purta, & C. Flanagan (Eds.), *Handbook of Research on Civic Engagement in Youth* (307-330). Hoboken, NJ: John Wiley & Sons, Inc.; Arbaugh, J. B., & Garrison, D. R. (2007). Researching the community of inquiry framework: Review, issues and future directions. *The Internet and Higher Education, 10*, 157-172; Paloff, R., & Pratt, K. (2001). *Building learning communities in cyberspace: Effective strategies for the online classroom*. San Francisco: Jossey-Bass; Klem, A. M., & Connell, J. P. (2004). Relationships matter: Linking teacher support to student engagement and achievement. *Journal of school health, 74*(7), 262-273; Wentzel,

one another, to share about their own backgrounds, and to listen to the views and viewpoints of others are techniques that help build the trust and safe space elements of community.<sup>100</sup> Specific pedagogical practices that help build community include giving students autonomy and decision-making authority, structured problem-solving tasks that require cooperative and small group work, and providing multiple opportunities for interaction, discussion, and sharing.<sup>101</sup>

Over the course of the Street Law Orientation weekend, the trainees move from a collection of individuals loosely familiar with each other and the concept of Street Law to a cohesive and supportive community marked by a sense of cooperation and connectedness. The shared experience, coming together to spend a long weekend talking, learning, and interacting around a common purpose, forges a group identity and sense

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K. R. (1997). Student motivation in middle school: The role of perceived pedagogical caring. *Journal of educational psychology*, 89(3), 411

<sup>100</sup> Klem, A. M., & Connell, J. P. (2004). Relationships matter: Linking teacher support to student engagement and achievement. *Journal of school health*, 74(7), 262-273; Hadar, L., & Brody, D. (2010). From isolation to symphonic harmony: Building a professional development community among teacher educators. *Teaching and Teacher Education*, 26(8), 1641-1651; Allen, J., Gregory, A., Mikami, A., Lun, J., Hamre, B., & Pianta, R. (2013). Observations of effective teacher-student interactions in secondary school classrooms: Predicting student achievement with the classroom assessment scoring system-secondary. *School Psychology Review*, 42(1), 76.

<sup>101</sup> Catalano, R. F., Oesterle, S., Fleming, C. B., & Hawkins, J. D. (2004). The importance of bonding to school for healthy development: Findings from the Social Development Research Group. *Journal of School Health*, 74(7), 252-261; Goodenow, C. (1993). Classroom belonging among early adolescent students' relationships to motivation and achievement. *The Journal of Early Adolescence*, 13(1), 21-43; Ruzek, E. A., Hafen, C. A., Allen, J. P., Gregory, A., Mikami, A. Y., & Pianta, R. C. (2016). How teacher emotional support motivates students: The mediating roles of perceived peer relatedness, autonomy support, and competence. *Learning and Instruction*, 42, 95-103

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of belonging as Street Law teachers. Relationships are intentionally cultivated from the outset as trainees learn each other's names and rotate through three different small groups on the first night alone. In Saturday morning's opening session, facilitators use personal pictures to share their individual stories of self and then ask trainees to do likewise by choosing a picture from their phones and sharing how this picture represents home or family with members of their small group. The presentation and sharing of these pictures—and the accompanying laughter, vulnerability, and emotion—helps quickly build relationships between both the facilitators and trainees and among the trainees. What might have been a quiet and reserved group on Friday night quickly evolves into a talkative and collaborative collection by the close of this Saturday morning session.

As trainees move through their different groups over the course of the weekend, each interactive activity is designed to give trainees the chance to discuss and make decisions and the opportunity to explain their views, both within their small groups and within the larger group. Trainees problem solve in teams and divergent views are encouraged and supported. A slideshow of pictures showing trainees talking, laughing, and interacting during the day's activities are shown at the beginning of the following day. Trainees work in pairs to design their practice teaching lesson and the feedback and support trainees receive during the ensuing peer debrief are intentionally structured to build confidence and highlight the positive elements of each practice lesson. The closing Quaker reflection is the biggest testament to the community built during the Street Law Orientation

weekend, however. Many trainees explicitly commented on the sense of trust, belonging, and connectedness they now feel as part of this group and in both Ireland and Scotland, at least one trainee mentioned how they didn't think it was possible to build such a tight community in such a short time . . . but were proven wrong.

#### **IV. Introducing Street Law in Ireland and Scotland**

Despite the rapid spread of Street Law within the United States, global adoption of the Street Law model has been sporadic and generally proceeded at a significantly slower pace. The reasons for this difference are multiple and include the relatively late emergence of a global clinical movement for diffusion and dissemination of best practices, the absence of a strong body of research supporting the model, and a perceived incompatibility between legal systems and priorities in the United States and those across the globe. In fact, it was only through a combination of serendipitous timing and visionary entrepreneurship that Street Law was introduced to the Law Societies of Ireland and Scotland. We hope that through the presentation of the research base, *supra*, and the capacity of Street Law to promote and advance universal legal education goals and principles, *infra*, to change this trend.

##### **A) Introduction of Street Law at the Law Society of Ireland**



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Freda Grealy, Head of the Diploma Center at the Law Society of Ireland, first encountered Street Law when she met Professor Richard Roe at an international conference and was inspired by his stories around the transformative power of Street Law. Roe has been Director of the Street Law Clinic at Georgetown University Law Center since 1983 and is one of Street Law's most experienced and renowned practitioners. Grealy subsequently observed the work of Roe and his clinical teaching fellows as they led training sessions with Georgetown law students and then supported those students as they implemented the Street Law Program at different high schools throughout Washington, D.C. It was unlike any law teaching that Grealy had seen before; there was energy and passion by both the instructors and the students around formidable legal issues. As the instructors challenged their students' notions of law and justice and encouraged their students to reflect on the significance of the law, the instructors also prompted students to engage with the question of why they were interested in law and possible future careers as lawyers.

For a number of reasons, it appeared that the Street Law methodology would be a good fit for trainees at the Law Society of Ireland and would resonate with the core objectives of the Law Society. The Law Society of Ireland, established in 1773, is the educational, representative and regulatory body of the solicitors' profession in Ireland, and currently the exclusive provider of training programs for solicitors. There are two main elements comprising the solicitor professional training regime in Ireland: one is the vocational

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and professional legal educational element, conducted at the Law Society of Ireland; the other is the in-firm training period conducted in the training firm. During this two-year period when trainees are preparing to be solicitors, trainees rotate between the Law Society, where they take academic and skills-based courses as part of their Professional Practice Courses, and their law firm or legal organization placements.

While at the Law Society, in addition to the goal of teaching trainees the needed legal skills, the Law Society seeks to instill in trainees a commitment to increasing access to legal education and the legal profession, develop and awareness and exposure around the importance of pro bono legal services, and foster an ethos of public service within the legal profession. Street Law offers a meaningful way to accomplish these goals while both building community among the trainee cohort and providing the trainees with meaningful experiential learning. Additionally, because Street Law does not compete with solicitors for clients or business while helping trainees develop their professional identities and presentation and planning skills, the program has been warmly embraced by legal professionals and future employers. The Street Law program also helps build relationships between the Law Society and local universities and college access programs, thus strengthening the reach of the Law Society and the appeal of the legal profession.

With the support of the Director of Education, the Law Society piloted the program with selected volunteers teaching a six-week “Street Law” course to secondary school students

in 2013. The Law Society partnered with 13 secondary schools who are designated disadvantaged DEIS (Delivering Equality of Opportunity in Schools) schools in Dublin.<sup>102</sup> Now in its fourth year, Street Law continues to grow in popularity. In 2016, 41 Professional Practice Course I trainees (PPC I) were chosen to participate in the program from more than 75 applicants. The program has a structured framework where trainees are paired up before the Orientation weekend, with each pair knowing they will lead eight teaching sessions across the Street Law semester at one of the designated secondary schools. For many schools, the culminating program event is a Mock Trial hearing, sponsored by the Law Society and sometimes presided over by a real judge in the Criminal Courts of Justice. From an assessment point of view, the trainees are obliged to complete various tasks that they post on the online course platform including sharing a lesson plan, posting regular reflections on their teaching experiences and a final assignment. On completion, trainee graduates of the Street Law program are awarded Certificates which are presented at a formal conferring ceremony attended by all partners and collaborators and presided over by a High Court Judge.

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<sup>102</sup> The Law Society of Ireland focuses on secondary school students in their Transition Year. The Transition Year is a bridge year between junior and senior cycles in secondary school “Mission - To promote the personal, social, educational and vocational development of pupils and to prepare them for their role as autonomous, participative, and responsible members of society.” Department of Education and Science (1995). Transition Year- Guidelines for Schools. Retrieved from [https://www.education.ie/en/Schools-Colleges/Information/Curriculum-and-Syllabus/Transition-Year-/ty\\_transition\\_year\\_school\\_guidelines.pdf](https://www.education.ie/en/Schools-Colleges/Information/Curriculum-and-Syllabus/Transition-Year-/ty_transition_year_school_guidelines.pdf)

The Street Law Program has enjoyed tremendous popularity and a marked growth in interest in Ireland for several reasons. First, the methodology works. Secondary school students enjoy discussing and debating, forming and sharing their opinion, and learning from their peers as well as their law student instructors. Second, Street Law develops a host of critical skills in the students.<sup>103</sup> Street Law focuses on areas of the law that are of interest and relevance to students and aims to develop their advocacy and public speaking skills and provide them with a foundation in the principles of democracy. Third, Street Law makes the law seem much more accessible and less impersonal. The connections that occur outside of the pure teaching between trainee and student are powerful; these work to socialize and encourage students from disadvantaged groups to think that they too can be lawyers and show them the positive side to the law. The Law Society goes on to invite the students to the Law Society campus and demonstrates to the students that they too have the potential to go and study law if they wish.

Fourth, Street Law is consistent with the Law Society's mission of public outreach, developing legal skills and a service orientation in young lawyers, and promoting a positive image of solicitors in the general community. A testament to the success of Street Law in this regard was the recent focus on Street Law during an episode of "Nationwide," a popular national program on Irish television station RTE. During this segment, camera

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<sup>103</sup> Arthurs, S. (2015). Street Law: Creating Tomorrow's Citizens Today. *Lewis & Clark Law Review*, 19(4), 925-961.

crews followed trainees into a local school and highlighted the work of the Street Law trainees and students as they demonstrated learner-centered lessons and the culminating Mock Trial.

Finally, Street Law has the potential to bring many disparate groups of students and trainers together. In addition to teaching in secondary school, each year the Law Society has identified new synergies, from collaborating with organizations such as Solas<sup>104</sup> and working with detainees in Wheatfield Prison, to working with community service organizations such as Public Interest Law Alliance (PILA) and Future Voices<sup>105</sup> to assist a group of youths in making a submission to the Law Reform Commission on proposed cyber-bullying legislation. In addition, a number of Street Law trainees have worked with the Irish Rule of Law International (IRLI)<sup>106</sup> and NGOs such as Bridges Across Borders South East Asia Community Legal Education (BABSEACLE)<sup>107</sup> to partner in Street Law community teaching initiatives in Myanmar. The Street Law Orientation weekend is the launching pad for all of these projects as trainees who undergo the Orientation are exposed to how clinical legal education intersects with social justice, resulting in an increased interest and participation from trainees in volunteering further.

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<sup>104</sup> Solas HomePage. (n.d.). Retrieved March 16, 2016, from <http://www1.solas.ie/>

<sup>105</sup> Vision. (n.d.). Retrieved March 16, 2016, from <http://www.futurevoicesireland.org/>

<sup>106</sup> Irish Rule of Law International. (n.d.). Retrieved March 16, 2016, from <http://irishruleoflaw.ie/>

<sup>107</sup> BABSEA-CLE - Home. (n.d.). Retrieved March 16, 2016, from <https://www.babseacle.org/>

The Orientation weekend is a powerful catalyst for the learning and growth that happens over the course of the program. For Street Law trainees, the Orientation weekend and the months that follow provide many opportunities for personal and professional development. The Orientation weekend occurs during a pivotal time in the development of the young lawyers, with fantastic potential to harness the enthusiasm of neophyte trainees and their motivation to put their legal knowledge to good use. In addition to the more obvious impact on skills and knowledge of trainees, Street law educates them about the contribution and impact they can make to the community as solicitors by volunteering their time, sharing their knowledge, and modeling civic professionalism. This realization can assist them in developing and aligning with a more positive professional identity as lawyers, a valuable lesson which can support them at times when the challenges of their training period may cause them to doubt their professional worth or the contribution they can make.

## **B) Introduction of Street Law at the Law Society of Scotland**

Rob Marrs, Head of Education at the Law Society of Scotland (LSS), first became interested in the Street Law program when a staff member attended a training at the Georgetown University Law Center, and suggested that Street Law might reinforce and promote core objectives of the Law Society of Scotland. Serendipitously, the Law Society of Ireland (LSI) was hosting its initial training in Dublin a short time later and two LSS

staffers attended. Both were extremely impressed with the program and realized that Street Law would help meet some of LSS's statutory and internal objectives.

The Law Society of Scotland was established in 1949 as the professional body for Scottish solicitors. The core objectives of the Law Society are to represent the solicitor profession in Scotland and to represent the public in relation to this profession. The Legal Services (Scotland) Act of 2010 supplemented these broad goals with an explicit objective to promote and ensure equal opportunities within the legal profession for all people, regardless of background. A LSS research project, *Fair Access to the Legal Profession*,<sup>108</sup> identified the single greatest barrier to an individual from a low-income background becoming a solicitor was gaining access to an accredited legal education program. The Society realized that outreach and promotion of legal education in schools in low-income communities would be a powerful tool in encouraging students from these communities to study law. Additionally, the Law Society had long sought to improve its public legal education program and Street Law offered the unique opportunity to accomplish both goals. Additionally, the chance to promote public service while giving law students practical training and enhanced legal knowledge and presentation skills appealed to Law Society leadership and members.

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<sup>108</sup> Marrs, R., & Meighan, D. (2014) *Fair Access to the Legal Profession*. The Law Society of Scotland. Retrieved from <https://www.lawscot.org.uk/media/295065/fair-access-for-publication-300114.pdf>.

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The year after the LSS staffers attended the Dublin training, LSS liaised closely with colleagues from Georgetown and from LSI to launch the first Scottish program. Facilitators and two trainees from the Law Society of Ireland supported remotely by two Georgetown Street facilitators, delivered the first training weekend to twenty law school trainees. These students were then paired up and delivered a six lesson program to Scottish state schools. The students themselves designed and delivered the lessons as part of the curriculum.

The main focus throughout has always been on the secondary school pupils. The program operates in state schools and focuses primarily on schools that have not traditionally sent many pupils to university. During the 2014 academic year, the program started with 34 classes in 25 schools. These were based in and around the three largest cities in Scotland (Edinburgh, Glasgow and Aberdeen). The next year, the Law Society worked with more than 50 classes in over 30 schools. As well as returning to the overwhelming majority of schools from the previous year, the LSS is working with new schools in each of those cities and has since expanded into Dundee, Paisley and Stirling.

The Street Law program in Scotland has also experienced a marked increase in popularity at the Law Society, heightened student interest, and new demand from local schools for several reasons. First, the methodology resonates strongly with the themes in *Curriculum*



*for Excellence*,<sup>109</sup> particularly as part of the *Crime and the Law* module within the Modern Studies course. Second, the pupils enjoy the methodology which places them at the center of legal discussion and debates. Third, Street Law's focus on areas of law that are of interest to the pupils (often because of discussion between Street Lawyers, teachers and pupils) makes the lessons hyper-relevant to all in the class. Fourth, Street Law inculcates a number of critical skills such as advocacy, negotiation, public speaking and critical thinking. Fifth, Street Law brings the law to life and more obviously relevant to young people in Scotland. Sixth, it shows the positive side of the law and introduces the idea of social activism (i.e. what the law ought to be as well as what the law is). Seventh, Street Law helps develop the skills of new lawyers who – in turn – connect with school pupils. Eighth, there has been a considerable upsurge in interest in the law in Scotland—particularly in constitutional and public administrative law—since the referendum on Scottish independence in September 2014 and the 2016 referendum on the United Kingdom's continued membership in the European Union.

The success of the Street Law program in Scotland has not gone unnoticed. On February 24<sup>th</sup> 2017, the Law Society of Scotland's Street Law program won the European

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<sup>109</sup> Curriculum for Excellence is the national curriculum for Scottish schools for learners from age 3 to 18. Curriculum for Excellence identified the four key purposes of education; those that enable young people to become '*successful learners, confident individuals, responsible citizens, and effective contributors*'.

More information can be found here:

<http://www.educationscotland.gov.uk/learningandteaching/thecurriculum/>

Association Excellence Award for Best Training Initiative. The awards recognize excellence in various categories by trade associations and professional bodies across Europe. The Street Law program was selected from more than 60 finalists to receive the prestigious award and the Law Society expects that this award will only increase demand and interest in the program.

## **V. Orientation weekend**

The sections that follow will describe the recent trainings hosted by the Law Societies of Ireland and Scotland, with particular focus on the 2015 workshops and their evaluations. The trainings consist of a series of interactive activities designed to build both law-related/civic content and skills as well as best practices of learner-centered teaching. These activities are arranged in parallel trajectories that unfold with increasing levels of complexity. Through engaging in the activities and then experiencing and reflecting on the law-related and methodological value of each successive activity, trainees gain the invaluable opportunity to synthesize for themselves the principles of effective learning and teaching based on their own experiences, through the “inside view.”

The following sections will first discuss the activities’ content and methods of each activity. We then reflect on how each activity connects to the broader themes of building belief, capacity, and community. Throughout the trajectory, we aspire to demonstrate the

principles and practices the Law Society of Ireland captured in the slogan on the T-shirts awarded to trainees: “Talk Less; Teach More.”

**A) Stages in the Trajectory (*Spoiler Alert: We would never spell this out in a training*)**

1) Foundation: Valuing Student Ideas. After the sparsest of introductions, we plunge into an entirely open-ended negotiation based only on participants’ opinions in which there is no correct answer, ‘Who Gets the Heart?’. The idea is to give participants the experience that we welcome their ideas and that it will be the participants’ expression of their insights into the activities, not the instructors, that will drive the training. As in all subsequent stages, the participants will examine and discuss both the content to be learned and methods employed.

2) Building Student Voices. The second activity, ‘Aliens’, builds on the first by adding a level of complexity by generating a debate on prioritizing basic human rights. We do not define these rights; rather, the participants draw upon their prior knowledge or understanding of the rights. Nor do we prescribe how to go about prioritizing them. The real lesson of the activity is not the ranking of the rights but the variety of the processes and discourse skills the participants use in coming to agreement. Participants discover the value of acting as a discourse community.

3) Sharing Stories and Values: In this session, facilitators and trainees share parts of their stories and values pertaining to their involvement in the training.

4) Adding Analytical Reasoning: In the third activity, ‘Should It Be a Crime?’, also based entirely on participants’ opinions and having no correct answers, participants decide whether or not their hypothetical law reform commission will treat a number of carefully chosen and provocative situations as criminal or not. As participants employ analytical reasoning in their discourse communities, they not only learn fundamental principles of criminal law but also uncover a methodological framework for developing learning objectives.

5) Inviting Student Questions: The fourth stage in the trajectory adds an essential but often underutilized dimension to teaching – building a lesson on student questions, where student imagination and questions drive the activity. In this training, the facilitators offered three alternative activities, subdividing the participants into three subgroups. Each of these activities, two case studies and a skill building activity, essentially draw on participant questions to determine guilt or innocence or solve a problem. Participants review both the skills and the methodology of questions.

6) Integrating Facts and Law through Advocacy: The fifth stage increases the levels of complexity and interactivity still further by having the participants play the roles of plaintiffs, defendants or judges in mini mock trials. The fact pattern is engaging, short yet complex, including brief stipulated facts and witness statements, evidence, and law. The activity can be accomplished through participants’ present ability and knowledge;

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no training in forms of questions or procedures is necessary. Afterwards in the group as a whole, participants examine outcomes, strategies, skills and methodologies.

7) *Culminating Activity: Planning and Teaching Practice Lessons.* Now, participants are rearranged into subgroups, then paired and asked to design and then teach to the others in the subgroup short lessons of their own that draw on the methodologies and experiences of the previous two days. Facilitators debrief these lessons with a focus on the positive attributes of the lesson plans and methods employed, not on the individual performances.

8) *Summary, Review and Evaluation:* The training concludes with activities that generate participants' summaries, reviews and assessments of the training and their accomplishments.

*Supplementary Pedagogical Substantive Sessions:* Between several of the activities comprising the cognitive and expressive trajectory, the participants review and synthesize the learning principles of each stage, and facilitators provide at various points will introduce additional learning strategies, discussions of learning theory and practice, lesson design, personal experiences, and practical tips. In longer trainings, facilitators may also provide some instruction on lesson design assessment, classroom management, and guide participants through their own first experiences with this process.

Pictures from the 2015 orientation workshops showing participants engaged in each of these activities are freely available at <https://www.flickr.com/photos/141482972@N07/>. These pictures will hopefully provide practitioners seeking to replicate or modify these activities with examples of how students at different institutions interacted during our sessions.<sup>110</sup>

## **B) Themes: Belief, Capacity and Community**

As introduced above, woven throughout the Orientation activities and lessons are the core themes of Belief, Capacity, and Community. Our goal is that by the end of the weekend our trainees will develop (1) *Belief* in the learner centered educational methodology, (2) the *Capacity* to design engaging and stimulating lesson plans that tie concretely to legal substance, and (3) an understanding of the importance of *Community*—both amongst the trainees themselves and the high school students in their classrooms.<sup>111</sup>

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<sup>110</sup> For example, the annual orientation for law students at Georgetown Law Center has grown to five days and includes team building and other activities. In past years, the fall Georgetown Street Law orientation has sometimes included a longer mock trial to build the awareness of our law students of what the program builds to in the culminating experience of the spring semester of the program.

<sup>111</sup> We have found these themes to be useful as an overall structure for the training. However, our training could be described by other themes, such as “experiencing, reflecting, and creating.” The key is for the facilitators to organize the training around core themes aligned with the objectives of the training and best teaching practices.

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Developing *Belief* in the learner centered teaching methodology is one of our primary goals over the Orientation weekend because the concept at the heart of Street Law is to provide an opportunity for students and trainees to think critically about the law, the societal context that gave rise to our legal system, and their own role within this legal system. In order to build and deliver the lessons that will help students accomplish these tasks, trainees must first experience for themselves the effectiveness of the methodology.

As facilitators we are constantly modeling what we expect the trainees will adopt and bring to their own classrooms. Just as facilitators create the opportunity to think critically about the law through lessons that pull trainees into discussion, debate, analysis, comparison, and evaluation, we want trainees to do the same with their students. We do this by intentionally designing lesson plans that have us “talking less and teaching more.” We are facilitators of student interaction and, ideally, take a moderator’s role as students dissect the laws upon which our society is built. Strong lessons, that truly inspire and engage students, take time to write. They require substantive and methodological skill and personal investment and are more complex to plan for than a traditional lecture-based lesson. Our goal is that trainees leave Orientation believing in the Street Law teaching methodology so that they will dedicate the time necessary to design innovative, engaging lesson plans for their high school students.

Our second core theme is *Capacity*, because belief alone is not enough. Trainees must have the ability to design lessons on their own that stimulate high cognitive critical thinking

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skills, in order to carry the heart of Street Law into their classrooms. Developing and implementing engaging lesson plans is a skillset that is developed throughout the semester as trainees flex their muscles to create innovative lessons and the ability to reflect on and improve those first iterations. Conventional training typically provides lesson plan templates and list of possible strategies and desired outcomes, but Street Law training does more-by first experiencing the weekend Orientation as learners themselves, the trainees come to understand the theory and pedagogy in order to then design and conduct their own high quality lessons.

Valuing *Community* is our final core theme for the weekend. Community is important both within the cohort of trainees and within each individual secondary school classroom. Relationships amongst the trainees provide for an environment where individuals feel comfortable sharing lesson plans and resources—which will help trainees to mutually support one another and share the extra weight of planning for class. Within each secondary school classroom, a strong sense of community, acceptance, and respect contributes to creating the space needed for students to challenge laws and voice their true opinions, especially when those opinions go against the grain of what is traditionally accepted. Students are more ready, able, and willing to learn in classroom environments where they feel valued and comfortable. Creating these welcoming classroom communities is particularly important when so much of the Street Law methodology relies on participatory activities and peer learning.



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We develop *Belief* in the Street Law methodology and *Capacity* in our future trainees through the guided debrief conversations and reflective exercises we build into the activities throughout the Orientation weekend to foster critical reflection. The activities are samples of exemplary Street Law activities in a trajectory of increasing legal, cognitive and expressive complexity. We debrief them first substantively, modeling as we would do in a regular classroom, then methodologically, from the point of view of teaching and learning practice, generating principles of good teaching. These principles are synthesized from the trainees' experiences and observations. We refrain from stating them ourselves. For many of the orientation activities we ask our trainees to analyze *what* we did during the lesson, *why* we executed it that way, and *how* we facilitated it. We develop *Community* by modeling techniques that initiate meaningful, natural, human interaction. From the first minutes of the training through the closing sessions, trainees are consistently invited to share their thoughts and opinions to help deepen everyone's experience. The goal is to construct spaces where natural connections can be forged and relationships can begin to flourish.

### **VI. Nuts and Bolts**

#### **A) Friday Evening**

- 1) Foundation: Valuing Student Ideas: Who Gets the Heart?

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The first evening of the training sets the tone of learner-centeredness by immediately engaging in an activity that generates lively discourse among the trainees. Rather than beginning with an outline of the training, a lecture about methodology, or a description of Street Law, we begin as a new Street Law class begins: by doing. The facilitators model the “do first, unpack later” framework espoused by Street Law in order to first generate interest and excitement around a law-related activity and then to backwards map the learning and the processes that facilitated that learning.

After brief introductions of the facilitators, one facilitator groups the trainees into small groups of 4-5 to begin the ‘Who Gets the Heart?’ simulation. Once in groups, the facilitator informs the groups that each group is a transplant committee that must quickly determine who among the listed candidates should receive the one available heart. See Appendix I. Trainees are informed that the whole group must agree on the decision.

After making the decision, the facilitator asks each group to share out their chosen patient and the reasons for their decisions. Then the facilitator distributes additional facts to some members of the groups or asks different group members to role-play as one of the candidates seeking a heart. These modifications speak to the “character” of the trainees and are meant to create tensions or difficulties in the decision-making process, as well as helping the participants develop multiple perspective skills. See Appendix II.

Again, allowing for further student discussion the facilitator asks the groups to share out their decisions, the reasons why they made their selections, and the criteria and process they used in coming to their decision. Trainees may choose whether to share their additional facts and how they influenced (or did not influence) this second round of decision-making. The facilitator typically brings out the diversity of the approaches, ranging from votes to lotteries.

At this point, the facilitator calls “timeout” on the simulation and debriefs the session from a teacher’s point of view, on the methodology. As will become pattern over the course of the weekend, this debrief is structured around the following three prompts:

- 1) WHAT did we do?
- 2) HOW did we do it?
- 3) WHY did we do it?

The *What* question gets at the substance, topic, or objective of the activity. The *How* question illuminates the techniques, or “teaching moves” we used to help the trainees discover the substance. The *Why* gets to the root of the methodology and the intentionality behind each component of the activity. The methodology and learning principles developed are discussed in greater detail below.

## 2) Building Student Voices: Aliens

The second activity begins with a traditional lecture, something the trainees are too inexperienced to recognize as counter to Street Law’s core values. Fortunately, this

charade continues for only a few moments until the facilitator is interrupted by a ringing phone. The facilitator informs the group in a dramatic fashion that she has received information that the planet has been invaded by aliens (either in present day or at some point in the future). She tells everyone that while the aliens are friendly enough, they *have* decided that we have too many rights. In light of the aliens' overwhelming firepower and our desire to live in peace, we decide to accommodate the aliens' request that we pare down our rights.

The facilitator splits the trainees into groups of four to five. Each group is given 15 slips of paper, one for each of 15 rights provided for under the host country's constitution. See Appendix III. The trainees are then asked to choose, as a group, four rights they are willing to give up to the aliens. The facilitator physically collects the four rights each group has decided to surrender. Without discussion, the trainees are then informed that the aliens are still unsatisfied and that the aliens want each group to give up four more rights from their remaining eleven. The facilitator supports the activity with a creative narrative for human compliance with the alien demands-and severe consequences for non-compliance. This process is repeated until each group has only three rights remaining. The facilitator then asks a representative from each group to come forward and record their group's three remaining rights on a chart.

Each representative is given 60-90 seconds each to tell the entire group which rights they have chosen and why they have chosen them. The facilitator then recognizes the

disagreements between each group and instructs the representatives that they must come to a new, shared agreement under which the entire group chooses to preserve the same three rights. No instructions are given as to how the representatives must make this decision. Group members who are not directly involved in the process are prompted to watch the proceedings and make observations around group, gender, and personality dynamics.

When the representatives eventually do wade through the bounded anarchy, occasional shouting, and different decision-making efforts to reach an agreement (or fail to reach an agreement in the allotted time, as is sometimes the case), the agreement and the underlying reasons are shared publicly. The facilitator then leads a debrief of the entire exercise from both the participants' and teacher's point of view. Trainees are asked how they decided on which rights to preserve and, separately, on how they decided to resolve different opinions within their small group. Trainees are encouraged to share their reasoning around both decision making processes and to connect this reasoning with their broader understanding of the law and the role it plays in society. Key themes we seek to bring out from this exercise are foundational principles of democratic decision-making such as negotiation, listening, persuasion and compromise, and the recognition and valuing of individual voice within group processes.

The Street Law training begins building belief, capacity, and community at its outset through modeling. Actually engaging in the activities, as opposed to being told how to

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teach them, leads trainees to believe in the methodology, gives them a greater capacity to employ the methodology, and begins to create a sense of community among the trainees. The Friday evening activities are intentionally introductory in nature-we hope that students will leave the evening enthusiastic with their interest piqued and that they will be primed for the more in-depth exploration of methodology and pedagogy that comes on Saturday.

The first modeled activity of the training, 'Who Gets the Heart?', begins to build community by randomly placing trainees in groups with other trainees they do not know well, a process that will be repeated several times over the course of the weekend. The trainees complete their negotiation based solely on their own opinions and value sets. Trainees are not required to have any knowledge beyond what they already possess, legal and otherwise, nor do they need to know one another. Since the activity requires them to interact and share their opinions, the trainees inherently begin to learn about one another through the simulation, building community within their small groups.

Sharing out responses to the entire group also grows the sense of community among the trainees. The facilitator creates a space where each group's response is acknowledged and valued by the other groups. Posting the responses in a visible, central location signals to the groups that their responses are important and that the space is safe for sharing those responses. The trainees learn more about the group as a whole and begin to understand their peers' opinions and values.

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Belief and capacity begin to form in the metacognitive debrief of the ‘Who Gets the Heart?’ exercise. The *What* question allows trainees to see that complex legal concepts can be integrated into a highly engaging and interactive framework, building belief in the methodology. Belief is also built by demonstrating to the trainees that they did not just play a game, but they actually began to explore several complicated legal concepts in a rigorous manner. This understanding allows the trainees to begin to trust the methodology and encourages the trainees to deploy that methodology in their own classrooms.

Another dimension in the *What* category has to do with the observations and analysis of the trainees’ own experience. Trainees typically observe that participating in small groups creates safe space and multiplies the opportunities for participation and comments. They also observe that the trainees, not the facilitators, do the talking and thinking, drawing on their own knowledge, experiences and values. Moreover, trainees see the value of starting the training with an invitation to play an active role in the training, which is both novel and invigorating. This helps them see that this activity is a foundation of the trajectory of the training, setting the theme (not yet fully formed) of learner-centeredness. It also helps establish the pattern of the training of doing, describing, analyzing, and reflecting on both substantive and methodological aspects of the activities.

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Finally, without realizing it and without directions from the facilitators, the trainees establish rules of civic discourse to achieve the goals of the lesson, i.e., listening, talking in turns, responding, respecting others' views, being flexible, compromising or standing firm, backing up opinions with reasons, etc. Although not necessary for trainees accustomed to high level academic and civic discourse, this step is essential in classrooms where students are more used to being told how to act and what to think, to give them the experience of "self-government" by governing their own behavior without being told. An additional essential component of the debrief for the trainees is a discussion of how the various skills exercised in the activity may be useful in developing lawyering abilities. Since the Street Law model not only provides public service to the ultimate student constituencies in schools, correctional, or community settings but also develops lawyering skills, the inclusion of this step in the debriefs throughout the training is valuable to building both capacity and belief among the trainees. It also provides a significant justification for Street Law's role in the training of lawyers.

The *How* question of the debrief builds the trainees' capacities for completing the exercise in their own classrooms. The process of deconstructing each exercise and identifying each of the individual parts of the exercise is a critical first step in building the trainees' confidence in their ability to complete the same exercise in their own classrooms. Through the process of deconstructing the debrief conversation itself, trainees learn how to



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facilitate substantive reflective conversation which tie surface level actions to concrete legal principles.

Lastly, the trainees discuss *Why* the exercise was done in the way it was done. The *Why* question builds capacity in the trainees. After only one simulation, the trainees begin to understand intentionality in lesson design, helping to build their capacities as classroom instructors. All of the techniques of the lesson are attached to a learning goal, thus helping the trainees to understand that the outcome was not just happenstance. The trainees' capacity crystallizes much more quickly when they are allowed to experience the simulation as a student would, rather than simply being told that the simulation will accomplish particular goals.

An example of a *What, How, Why* that might develop from the 'Who Gets the Heart?' simulation is as follows:

Q: What did we do?

A: Reviewed a pool of candidates who needed a heart transplant and ranked them according to who we believed should get the one heart available for transplant. We each gave our own opinions on which candidate should get the heart and then came to a consensus as a group as to which patient should ultimately be saved.

Q: How did we do it?

A: Divided us into groups; provided us with different facts about each candidate and required us to reach a unanimous decision

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Q: Why did we do it that way? (Or, stated differently, why didn't we do it in a traditional, teacher-centered way?)

A: Just telling us about this activity would be much less interesting; we got to meet new people and share our own opinions; role-playing gave me a better understanding of how a person's feelings or motivations might influence the way she approached a problem; I might not have had the same deep understanding of that concept if I'd just been told about it.

With 'Aliens', the opening and atmosphere is intended to build the trainee community and, in turn, allow the trainees to build that same community with high school students. The facilitator sets the stage with the entertaining alien invasion narrative. The levity of the hypothetical creates a space in which the trainees can discuss and evaluate fundamental rights without feeling as if they must be "right" – or bound to advocate for a certain right because of their own political and cultural persuasions. They may express opinions and test theories freely within the alien invasion simulation.

'Aliens' is more complex than 'Who Gets the Heart?' in both its subject matter and procedure. This increased complexity builds both belief and capacity. The trainees' belief in the methodology's effectiveness is built by their ability to access more complex concepts. The trainees build on the skills they gained in the prior simulation. Moreover, the way in which the activity is conducted builds the trainees' toolboxes of methods for teaching increasingly complex legal concepts to their own students. Trainees experience new methods for grouping, sharing out responses, and unpacking the meaning of an

activity. On the surface, the lesson is about rights, but equally or more important is the subtext of the lesson, “to engage the participants in democratic decision-making or deliberation without predetermined rules . . . to practice and then reflect on the deliberative process and the skills involved.”<sup>112</sup> Aliens advances the evolution of the trainees as teachers (and their future students in turn as learners) and the development of their skills in civil discourse and self-government introduced in the ‘Who Gets the Heart?’ activity.

The debrief should not only bring out the positive qualities of the trainees’ deliberations but also congratulate and praise them for these qualities. In this way, the activities develop another essential component of the learner-centered approach, learning through positive feedback as compared to so-called “constructive criticism” or being marked wrong. The facilitators look for opportunities to complement trainee responses with statements such as “thank you for your point,” and actually build on or refer to student comments in ensuing discussions.

Finally, although we do not discuss them in depth here, the value of ice-breaker and team-building activities cannot be underemphasized. Over the course of the weekend, we insert a variety of these shorter activities, from Friday evening through to Sunday afternoon. These activities are critical in building community and encouraging students

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<sup>112</sup> Roe, R.L. (2016) Valuing Student Speech Revisited, *Klinika: Czasopismo Fundacji Uniwersyteckich Poradni Prawnych, Numer Specjalny, 21-24 at 22.*

to engage with one another. They also serve to sustain motivation, allow students to take “brain breaks,” provide for much-needed interludes in an intense learning context, provide significant entertainment value, and allow us to build community within the training room. That we do not discuss them here in detail is not a reflection on our view of their worth but instead a recognition that these activities are often very situation-specific, facilitator-specific, and space-specific.<sup>113</sup>

## **B) Saturday Morning**

### 1) Sharing Stories and Values: Story of Self

The first session on Saturday morning is an opportunity to set the stage for the weekend ahead. After plunging into the experiential learning on Friday evening, we now pause to introduce ourselves, set forth our objectives for the weekend, and continue to build community in the room. The facilitators each share their beliefs and passion for Street Law by telling a “story of self.” Each facilitator shares personal photographs about their

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<sup>113</sup> Examples of these activities can be found in a variety of civic education curricula, including Mikva Challenge’s *Issues to Action* Curriculum, teaching activity guides such as the Morningside Center’s *Getting to Know You Classroom Activities* program, and team building activity books, such as *Teamwork and Teamplay*. Mikva Challenge. (2012). For more on the value of using icebreakers and brain breaks, see, e.g., Romm, C. (2016). Icebreakers Are Terrible. They Also, Unfortunately, Work Really Well. *NyMag.com*. Retrieved from <http://nymag.com/scienceofus/2016/09/back-to-school-icebreakers-are-awkward-but-they-work.html>. *Issues to Action Curriculum*. Chicago, IL: Mikva Challenge; Morningside Center for Teaching Social Responsibility. (2008). *Getting to Know You: Classroom Activities for Starting Off the School Year*. New York, NY: Morningside Center. Retrieved from: <http://www.morningsidecenter.org/teachable-moment/lessons/getting-know-you-classroom-activities-starting-school-year>; Thiagarajan, S. & Parker, G. (1999). *Teamwork and Teamplay*. San Francisco, CA: Jossey-Bass.

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own background and explains why Street Law is personally important. One facilitator shared what she called her ‘light bulb moment’ when she understood what it meant to her to do Street Law and to be able to use her legal education to help others gain access to justice. Following the facilitator sharing, the trainees, who are grouped at tables of four to five, are asked to share a photograph from their phone which signifies “home.” The trainees are then asked to use their photos to share their own short “story of self” with their table groups.

As the facilitators explore how Street Law’s methods and approach to learning differ from traditional teacher-driven instruction, we ask that the trainees maintain an open mind and we invite them to consider the pros and cons of this approach over the course of the weekend. The facilitators then outline the trajectory of the weekend and are explicit about the final project: each pair of trainees will design and lead a short lesson on Sunday afternoon. We assure the trainees that we will provide them with the structure and framing while helping them to uncover their own teaching creativity before Sunday afternoon. Foregrounding the ultimate deliverable and being clear about the public and peer nature of this deliverable can cause a ripple of nervous excitement but we believe this serves to heighten trainee interest and commitment from the outset.

The last portion of the belief and sharing opening is when we introduce “Chart Groups.” Trainees will work in these groups over the course of the weekend to reflect on and process their learning. In groups of five, the trainees are assigned to one of the blank

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pieces of chart paper located around the room. On each piece of paper, the trainees will create a chart with three columns and the headings “What,” “How,” and “Why.” Following each substantive activity, the members of each chart group will convene by their chart and populate their chart with descriptions of the activity we just did, the methodology behind the activity, and the rationale behind the activity. This reflection technique was modeled for the groups on Friday night and they are tasked with completing their charts for the morning’s activity before the first break.

Trainees will return to their same chart groups repeatedly throughout the weekend, including for a cumulative listing of their “Top 10 teaching tips,” a group-specific collection of tips and observations that the groups’ members have acquired over the course of the training. Each group will also post their chart sheets on the wall and subsequently share out these tips to the whole group through a spokesperson.

The honest and open approach modeled in the ‘Belief and Sharing’ session by facilitators works effectively to officially welcome the trainees and to begin the process of trainees introducing themselves to one another. This activity begins the process of building trust and community within the trainee group and between the trainees and facilitators. The facilitators’ sharing of their own journeys and belief in the methodology sets the stage for trainees’ formation of belief and creates a common sense of purpose.

The early sharing helps encourage an early sense of community and sets the tone for the workshop while also laying the groundwork for the entire program. For example, as

Irish and Scottish trainees (and their future students) can often be more guarded and slower to share their personal beliefs and emotions, especially in new group settings, the lead from the US facilitators can help inject new Street Law cultural norms into the weekend and the training process. The importance of this exercise and the motivational, inspiring lead of the US facilitators cannot be underestimated, especially as a tool to overcome any initial cynicism or defensiveness about the methodology. This opening exercise gives the Irish and Scottish trainees permission to ‘disarm’ themselves and embrace the positivity and optimism that will be critical in establishing community for the weekend and beyond.

## 2) Adding Analytical Reasoning: Should it be a Crime?

The facilitator arranges the trainees in groups of four and provides the groups a sheet with the following instructions “You are the leading committee of a new country. You have been tasked with creating the criminal law of the country. Read each situation and decide whether each item *should* be a crime.” There are 12 situations to be decided upon, including, ‘Robert pushes crack cocaine and uses the proceeds to support his mother, who is on social welfare’ and ‘Melissa refuses to wear a helmet while riding a motorcycle.’ See Appendix IV.

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After the trainees decide which acts should be considered a crime (**not** what *is* a crime), the trainees rank the crimes in order of gravity. Throughout the activity, the trainees are discussing, explaining and analyzing what factors make an act into a crime, whether different justifications excuse acts, how the costs to society and/or the harm to different individuals might impact the severity of the act, and their own personal views on issues such as marijuana legalization and prostitution. Thereafter, the facilitator draws a chart on the board and records the responses and ranking of the various groups. The facilitator then leads a discussion around different trainee responses and the direction of conflict. Trainee responses are organized into a T chart of factors that are “criminal” or “not criminal,” making efforts to record the trainee comments as faithfully as possible and with the facilitators serving only to organize and record trainee responses. The closing activity asks trainees to draft their own one sentence definition of what should be a crime, following the prompt “A crime is . . .” and then, applying their own definition, to look back at the descriptions of the acts to determine whether their definition would include all of the acts the group considered crimes, while excluding those which the group did not consider crimes.

‘Should it be a crime?’ is a valuable component of the Street Law trajectory because of how it shapes the way young people think about the law. Many young people experience the law only as something that happens *to* them. This activity prompts them to think about the law not as something that controls them, but as something they can



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have control over. Through the discussion and debate process, the trainees gain firsthand experience with how different people can examine the same fact pattern and have drastically different opinions depending on their own moral, political, and socioeconomic orientations and evaluation of different factors. The facilitators' role in inviting and respecting student comments and opinions during this process, often by writing them on the board, is absolutely critical in the formation of a group culture where participants feel valued and feel comfortable sharing their thoughts.

The use of nuanced hypotheticals forces the trainees to consider their own feelings around the myriad different factors that influence whether something should be a crime and what the corresponding punishment should be. Trainees examine complicated criminal law concepts such as motive, mitigating circumstances, justification, intent, and nature of harm, all while vigorously discussing entertaining hypotheticals. When the trainees draft their own version of what should be a crime, they shift into the role of legislators and are asked to consider what is best for society and the general good. This sense of agency and relevance that Street Law helps create is central to building belief in the power of Street Law to impact young people's interactions with the law. Applying the law reinforces this agency by taking the trainees' new definitions seriously and applying them to new situations.

An example of how trainees' prior knowledge and different interpretations of these hypotheticals bears on their thinking and reasoning skills emerges during their

consideration of the statement “Lily approaches a man for purposes of prostitution.”

Trainees differ in whether they believe the act of selling sex ought to be a crime, the role of consent, and to what extent people have freedom to make decisions around their bodily integrity. But the variations don’t stop there—trainees can also explore whether the statement is intended to cast Lily or the man as the prostitute. This can evolve into a discussion around gender dynamics and the importance of which actor initiated the potentially illegal exchange.

In this exercise, as in others throughout the weekend, trainees progress from a fundamental understanding of the activity and concepts into the application of more complex, higher-order thinking skills such as analysis, evaluation and creation. This structure is intentional as Street Law activities seek to be both accessible and also prompts for the practice and development of higher-order thinking skills. Educational theorists typically present this connection between the cognitive complexity and specificity required to accomplish a learning objective through the use of a taxonomy, the most popular of which remains Bloom’s Taxonomy.<sup>114</sup> In the next session, trainees will develop their own taxonomy and be introduced to Bloom’s model.

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<sup>114</sup> Bloom’s Taxonomy refers to a hierarchical framework for organizing student learning objectives into different levels of complexity and specificity, moving from a base of knowledge and memorization through to higher-order thinking skills such as evaluation and creation. The concept was first set forth in a 1956 volume edited by Benjamin Bloom, *Taxonomy of Educational Objectives*, and while the model has since benefitted from new research into educational theory and psychology, Bloom’s Taxonomy remains

3) Pedagogy: Lesson Design, Lesson Planning and Lesson Execution

The goal of this session is to help students understand some of the sound educational theory that should inform their lessons as well as the structure for writing a lesson plan. The facilitators begin by asking student groups to draft a list of the different verbs a teacher can ask her students to perform in the process of thinking and learning. Trainees can generate a list of 50-60 words with little prompting, running the gamut from 'grok' through to 'ruminate' and everything in between. During the subsequent comparison of student lists, the facilitator prompts the students to identify differences among the verbs. Trainees are then asked to draw a pyramid of verbs, with the simplest and least cognitively demanding verbs at the base of the pyramid and the more complex verbs at the top. Only at the end of this session does the facilitator introduce the concept of Bloom's Taxonomy and suggest the importance of intentionally differentiating objectives and means of attaining them while aiming to maximize higher level thinking assignments. An appreciation of Bloom's Taxonomy is an important building block for the lesson planning and creation activities that follow later on.

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a core instructional tool for designing and executing lessons that promote higher order thinking skills. Engelhart, M., Hill, W., Furst, E., & Krathwohl, D. (1956). *Taxonomy of Educational Objectives, Handbook I: Cognitive Domain*. B.S. Bloom (Ed.). New York, NY: Longmans, Green and Co. For more on the evolution of Bloom's Taxonomy, see Marzano, R., & Kendall, J. (2007). *The New Taxonomy of Educational Objectives*. Thousand Oaks, CA: Corwin Press.

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Facilitators next place the trainees in a hypothetical ‘education emergency’- your co-teacher just called in sick and you need to teach his lesson; what information do you need to know? Trainees quickly realize that in addition to the logistical details around the school and number of students, the replacement teacher needs to know the objective for the day’s lesson, the materials needed, the procedure and activities, and a method of assessment to determine whether and what the students learned during the day’s lesson. As the facilitator records trainees’ answers on the chart paper, the trainees quickly grasp that they have constructed their own lesson plan template. Before they can break for lunch, trainees are required to work in groups and write the lesson plan for the ‘Should it be a Crime?’ activity that they just completed. While trainees are later provided with access to the original lesson plan (and all other materials used throughout the training), the process of drafting their own lesson plans usually makes the original ones unnecessary.

The lesson planning exercise builds capacity in the trainees by drawing on education theory and reinforcing how the activities are not only fun, but grounded in solid educational theory. Street Law encourages the trainees to think as educators, to design learner-centered lessons, and to ‘think about what you want your students to take out of this.’ The lesson planning session helps build concrete skills that will increase trainee competence in the classroom including-instructional moves such as the use of “chunking” a lesson into 10 to 15 minutes sections, moving up and down Bloom’s

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Taxonomy while striving towards the higher level thinking, and the foresight required to prepare all materials and student groups while also thinking about assessment and evaluation instruments. Trainees learn, for example, about the important predictive connection between the task assigned to their students and the performance their students will deliver. A good lesson should ensure that the students first have a strong grounding in the relevant knowledge and theories and then a task that requires the students to apply this knowledge in a way that requires higher-order thinking skills such as synthesis and evaluation. The trainees' assessment of what their students learned during the lesson, whether demonstrated through a written artifact or oral presentation, should then focus not merely on whether the students memorized certain facts but on the skills the students used in applying that knowledge to new situations or fact patterns.

By providing trainees with the fundamental skills and the tools to plan an effective lesson, the facilitators are also equipping the trainees with the template that helps them sequence their engaging and interactive activities in a logical fashion to support effective classroom management, often one of the trickiest hurdles for young teachers.

The style of facilitation is energetic and dynamic, helping to grow community and modeling ways to maximize instructional capacity. This "quick fire" style using a strong voice and moving around the room keeps the pace up, engages participants, and is an effective way of modeling the Street Law approach. By using a continuous loop of reinforcing the learning, considering different hypotheticals, asking trainees questions,

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and being responsive to trainees' comments and questions, the facilitators help the trainees review earlier sessions, process the ongoing activity, and locate the present learning in the broader Street Law trajectory. The use of chart groups and collective reflection helps build community and also ensures that the trainees are internalizing and memorializing their learning and key takeaways. The training is modeling the "I do, we do, now you do" approach to learning through cycles of doing, observing, and reflecting.

Throughout the weekend, the trainees work in a number of different groups and in several different configurations, from whole group to small group and even individual reflection. Trainees begin the weekend sitting at pre-arranged tables based simply on how they filter into the room and where they choose to sit. We intentionally let trainees stay in the comfort zones of these groups for the first activity—but the first one only. The only group that remains constant throughout the weekend is the chart group, discussed above as the primary way trainees reflect and externalize their learning after each session. At other times, usually during large group sessions with quick snippets of collaborative work, we employ simple techniques such as the "pair and share" or "elbow partner" for trainees to turn and share with one person located very close to them.

When we are dividing the trainees into larger groups for activities such as 'Aliens' or Mock Trial, we make the group selection entertaining and varied. For example, we might ask trainees to silently order themselves by birthday (month and day only!) and then to then count off by four or we might provide them each with sticky notes in different

categories and have them find a group of people “like” them. These groups can include Irish folk heroines, Scottish rugby players, Irish crisp flavors, Scottish poets, US States, American football teams, and more. Mixing up the groups is a useful method to constantly refresh group dynamics, to ensure that all trainees get a chance to contribute, and to help make the important personal connections that will build a sense of community.

### **C) Saturday Afternoon**

#### 1) Inviting Student Questions: Morton, Syed, and Mock Trial

After lunch, the trainees divide into three groups, each group participating in a different stream to facilitate the modeling of distinct ninety minute lessons. Based on student interest and a desire to offer trainees proven high quality lessons and support for the culminating Mock Trial activity, we offered three streams: 1) The Michael Morton story; 2) Adnan Syed and the Serial Podcast; and 3) How to teach mock trial and advocacy skills. Morton and Syed are inquiry-based lessons based on factual murder cases which have proved an effective method of inspiring curiosity and engagement in the classroom.

#### **Morton**

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The Morton lesson begins by asking trainees to help solve a murder by providing trainees access to the same evidence investigators used in the original murder investigation.<sup>115</sup> The “twist” – that the case relates to a man who was falsely accused is only revealed towards the conclusion of the lesson. Prior to this, students assume the role of investigators and work in small groups attempting to establish if Michael (the murder victim’s husband) is the perpetrator.

Trainees use a graphic organizer to help evaluate the evidence gathered by the investigators. For each of the approximately 20 pieces of evidence, trainees discuss its significance and then assign each piece of evidence to one of three columns indicating whether the evidence points to a) Michael b) someone else or c) is irrelevant. In a fourth column they briefly explain “why.” Trainees then work in pairs as members of the police department’s public relations team and communicate their conclusion about whether Michael should be arrested via a tweet.

Ultimately, the story of Michael Morton’s incarceration and subsequent exoneration is revealed as the facilitator uses a slide presentation to lead a discussion around the crucial pieces of evidence reviewed by the group but not shared with the defense lawyers at the time of the investigation. This challenges students to reconsider their previous conclusions and facilitates further discussions on prosecutorial misconduct and other

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<sup>115</sup> Arthurs, S. Dead Bodies and Live Minds: How Investigating a Real Murder Can Inspire Curiosity in the High School Classroom. *Social Education* 79(5), 250-255.



common errors in wrongful convictions, the innocence project movement, the death penalty, and what flawed justice means for the victims in this case and crimes generally.

## **Syed**

Similarly the Syed lesson uses a variety of interactive teaching strategies including student role playing in taking a critical look at the investigation of the real murder case that was the subject of the popular podcast *Serial*.<sup>116</sup> The trainees are initially told that they have been accused of a crime and then asked to account for their whereabouts during three different time periods. They are then paired with another trainee and the trainees take turns interrogating one another about their alibis or lack thereof. As the interrogation is completed, trainees make observations about the other's perceived truthfulness. Trainees share out what words they think indicate truthfulness or lying. Trainees then listen to Syed's account of where he was during the murder in question. Trainees similarly analyze Syed's language in order to determine whether they believe his alibi story.

Trainees are then asked to continue the investigation of the murder through another alibi witness and a police photo of the victim's car. The trainees have access to source documents and actual evidence from the case in order to draw their conclusions.

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<sup>116</sup> *Serial: Season One*. (n.d.). Retrieved April 01, 2016, from <https://serialpodcast.org/>. Undisclosed Podcast. (n.d.). Retrieved April 01, 2016, from <http://undisclosed-podcast.com/>.

The demonstration lesson is a stand-alone lesson, but the trainees are given access to an entire unit based upon the *Serial* podcast. That unit includes a complete investigation and evaluation of the case against Syed and Syed's attorney's performance. The unit culminates in an oral argument regarding Syed's access to effective counsel in his original trial.

### **How to Teach Mock Trials**

Mock trials are an essential component of the Street Law curriculum and approach. The spring semester of the Georgetown Street Law program is devoted primarily to preparing high school students for participation in the annual mock trial tournament using a complex mock trial problem.<sup>117</sup> Irish Street Law classes often culminate in an abbreviated mock trial problem. The Mock Trial stream gives trainees a framework for teaching a mock trial module within their own classes. This stream is different than the informal mini-mock trial that is built into the weekend training; the focus here is not on completing a trial itself, but understanding the topics that one would need to cover when teaching

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<sup>117</sup> Pinder, K. (1998) Street Law: Twenty-Five Years and Counting. *Journal of Legal Education*, 27(211-233). A description of the mock trial process and a typical problem is found on pp. 220-225. An example of the 2016 Georgetown mock trial problem can be found at [http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/DC-Street-Law-Program/Education\\_Materials.cfm](http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/DC-Street-Law-Program/Education_Materials.cfm).

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trial advocacy skills. We showcase a number of different learner-centered techniques that trainees can use over the course of their module.

We start by identifying the key players in a trial—plaintiff (or prosecution), respondent (or defendant), attorneys, jurors, judges, and bailiff—and the major components of a trial.

This includes the opening and closing statements, direct and cross examinations, and any motions that will be made. Students then learn the basics of direct examination through a hands-on lesson where two students (Student 1 and Student 2) sit at separate tables facing away from one another. Each table has an identical set of colored wooden blocks of different shapes. Student 1 is told to build some type of structure, which student 2 cannot see, using all the blocks. A third student (Student 3) stands between the two tables. Student 3 must be able to see the structure that Student 1 built and the blocks in front of Student 2.

When Student 1 finishes her structure, Student 3 asks Student 1 to describe their structure using only open ended questions. Examples include: *“What block is on the bottom?”* *“What is the shape of the next block?”* Student 3 is able to influence Student 2’s construction through Student 3’s clarifying questions to Student 1. Eventually, Student 2 will create a structure based on the answers Student 1 gives in response to Student 3’s questions. After Student 2 completes his structure, we will debrief the activity by discussing the types of questions Student 3 asked Student 1 in order for Student 2 to be able to replicate Student 1’s structure and the strategy the students used. The observing students may also suggest

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questions they would have asked or alternative strategies. The goal is to build trainees' skills for direct examination. The focus of the discussion is how Student 3's questions allow Student 1 to tell a story of his structure.

Next, we introduce the three theories or approaches about how to prepare for a mock trial—Cyclone, Couch Potato, and Mock Trial Madness. For this section of the training, we use a highly simplified and abridged mock trial problem that can be examined and understood in the time allotted. The 'Cyclone' method of teaching mock trial is an approach where students move through a trial packet in a sequential fashion, beginning with the stipulated statement of facts and then progressing through witness statements. The teacher discusses each new witness statement in light of the seminal statement of facts and asks trainees to compare and contrast each witness's statement as the class progresses. Trainees also experience how the teacher will strategically select trial practice skills to build into the lessons to assist the trainees in learning the facts, while at the same time, teaching the trainees the skills they need to conduct the trial. Trainees are shown how the 'cyclone' grows each week as trainees move through an educational rotation that includes new facts, skills, and practice. By the time trainees complete their review of the mock trial packet, they have access to all the facts and skills they will need to conduct the mock trial.

The 'Couch Potato' approach to mock trial focuses on specific moments or incidents from the mock trial problem. Trainees first read the stipulated facts and create a chronological

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timeline of all relevant events. Trainees next identify the specific moment or event they want to focus on and then examine each witness statement for information and perspectives on what happened during this moment. After looking at and analyzing a single episode through the perspective of all witnesses, trainees will move to the evidence, case law, and statutes to see what materials are relevant to the specific episode. Moving through each piece of evidence, case law, and statutes, the trainees will then be able to access all accounts and information relevant to this particular episode and consider the interplay between this episode and the broader claims. Through this ‘couch potato’ approach, the trainees learn how to prepare their students through major episodes that integrates all relevant components of the trial as they move down the timeline in chronological order. When they reach the end of the timeline, the trainees will have reviewed all aspects of the trial packet, giving their students a complete view of all issues and how they fit together.

‘Couch Potato’ teaches the skills trainees need to engage with the mock trial problem by incorporating trial skills into each step of the learning process. During every episode studied, the teacher will incorporate different trial skills into the exploration of the facts, evidence, case law, and statutes. As the trainees move through the timeline, their trial skills will build on each other so that at the end of the time line the trainees will not only have a complete understanding of the facts, relevant pieces of evidence, and substantive issues in the trial, but also a full range of trial skills.

The 'Mock Madness' approach prioritizes developing trainees' general mock trial skills before digging into the particular problem and facts of the formal case. Trainees are presented with a number of increasingly complex mini-mock trials to help build their mock trial skills before engaging with the actual mock trial packet the trainee plans to use for the mock trial module. Before moving from one mini-mock trial to the next, more complex trial, trainees work in small groups to demonstrate their comprehension and competency of the skills learned in the shorter trial. An example of the scaffolding approach of 'Mock Madness' would ask trainees to rotate through the roles of prosecutors/plaintiffs in an early mini-mock trial, as both prosecutors and witnesses in a second mini-mock trial, and then as prosecutors, witnesses, and defense attorneys in a third mini-mock trial. Trainees discuss how learners move through each mini-mock trial, the fact patterns, evidence, and legal issues become more complex. Once trainees have demonstrated their mastery of the critical mock trial skills through in-class role plays and discussion, the actual mock trial packet is introduced and trainees have the tools to learn, analyze, and develop their roles within the unique facts and case law of that trial.

During this session, trainees are first provided with an overview of each of these three approaches to teaching about mock trial, similar to the explanation above. Trainees then work in small groups with each group assigned one of the three different mock trial teaching approaches and supporting materials. The session concludes with a large group

debrief session around the merits and limitations of each approach and how trainees might adapt or incorporate these approaches into their own classrooms.

## 2) Pedagogy: How We Learn

Returning to the whole group, the facilitator presents a short slideshow entitled ‘How We Learn.’ These slides reference “3 shapes and 2 graphs to know,” with each of these shapes and graphs introducing a key concept of constructivist learning methodology. This presentation shares the theory behind the Street Law teaching model and reinforces the strong pedagogical and methodological underpinnings of this approach. Evidence of solid education research is offered as proof that these techniques work and have meaningful effects on retention levels, as well as to emphasize the importance of teacher impact, the need to appropriately challenge students, and the importance of connecting with your students to promote classroom engagement.<sup>118</sup>

A chart group session that follows “How we learn” asks groups to list their specific collection of tips and observations acquired over the course of the training group’s members. Shared out cumulatively, the repetition of key teaching skills by all groups equips trainees with a set of simple techniques to focus on for their first class (and usually a fair amount of laughter as trainees translate pedagogy into their own terms; one group

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<sup>118</sup> See, e.g., The Higher Education Academy. (2010). *Student Engagement Literature Review*. York: Vicki Trowler.

summarized the need to vary and group classroom activities as “Chunk it up,” for example). The trainees also continue to learn the useful techniques modeled by the facilitators which can be mirrored in the future. This provides the trainees with a collective confidence and reassurance ahead of the commencement of their teaching placement.

### 3) Pedagogy: Street Law in Ireland and Scotland

The Street Law programs in Ireland and Scotland seek to move the trainees from participants in lessons and activities created by the facilitation team to designers and executors of lessons that will work best in Irish and Scottish schools. These sessions begin with the importance of connecting with your students and their interests through an appealing topic. The host country facilitators select a current issue of legal debate and local interest (in 2015, for example, we selected the Syrian refugee crisis) in advance of the Orientation weekend. The facilitators then prepare a number of resources that could be used as prompts or hooks into that lesson. Our examples included a video from YouTube, several photographs, an editorial cartoon, and a newspaper report.

Trainees are placed in groups of five and given fifteen minutes to design an engaging law-related lesson around the resource that was distributed to them. Each group then shares their idea with the larger group. This activity brings the local expertise and perspective of the trainees to bear on one topic and demonstrates how, within the space



of thirty minutes, a focused group can create multiple different engaging and interactive lessons about the same topic.

4) Pedagogy: Trainee Panel

A benefit to operating the training workshops for multiple years in the same location is the ability to draw on previous trainees who have now spent time teaching in classrooms. Thus, a key component of the training weekend (after the first one) was the return of four volunteers from the previous year's program for the Street Law veteran panel. These students briefly described their own experience of the program and then opened the floor to questions from the trainees. If not asked, the facilitators supplement questions from the floor with questions focused on the most effective way to build community in the classroom or the piece of advice the veterans wish they had know beforehand.

The trainee panels, and the growing cohort of Street Law trainee alumni, help foster community far beyond the Orientation weekend. In both Ireland and Scotland, many of the trainees continue to support Street Law even as they embark on their professional careers. This can include returning to the Law Society for Street Law celebrations, mentoring the newer trainees, and even successfully advocating to have Street Law programs formally recognized as part of their law firm's internship programs. Several

trainees have written blogs discussing their experience during the Street Law program and encouraging other trainees to partake.<sup>119</sup>

#### 5) Culminating Activity: Practice Teaching Preparation

The trainees know that they will be leading a brief lesson on Sunday afternoon. In this concluding session on Saturday, the facilitator explains the format of the practice teaching session. Trainees will work in pairs and all teaching pairs are required to teach a unique twenty minute lesson to a small group of their peers. Trainees are encouraged to use any of the interactive methods modeled or discussed during the training weekend but they are also free to come up with their own interactive methods. The day concludes with trainees working informally with their teaching partners to develop their lesson plans. Facilitators (and sometimes even the veteran trainees) circulate among the trainees and help them design their lesson plan and activities.

Community is at the heart of Street Law. The use of group work in the afternoon's activities helps build community in the trainees, much as it will later build community among the high school students. Community develops in the trainees much as it would in the high school students through the discussion and interaction that group work facilitates. This first-hand experience of the positive outcomes promoted through the use

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<sup>119</sup> See, e.g., <https://pashanky.wordpress.com/2017/01/16/the-next-stage-of-street-law/>;  
<http://www.lawscot.org.uk/education-and-careers/schools/street-law/street-law-trainers/>; and  
<http://www.lawscot.org.uk/news/2016/09/street-law-opening-doors-that-should-not-be-closed/>.

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of different modalities completes a change in our trainees. Their original skepticism regarding the value of group work is replaced with a commitment and competency to use these techniques in their practice.

In a demonstration of inter-cohort community and belief in the Street Law approach, the veteran trainees voluntarily remained to assist trainee groups in the design process. Despite their inexperience in the classroom, trainees recognize the power of a well-designed lesson that can ignite the interest of students. Further reassurance and belief is drawn from the positive experiences communicated by their peers from last year's cohort. Teaching capacity is developed in each session. In the modeled lessons the trainees pick up the strategies use which they are encouraged to mirror. Teaching techniques are reinforced in the chart group session through the repetition of key teaching tips by all the chart groups. The use of three different learning streams provides an additional opportunity to boost the objectives of building belief, community and capacity post orientation. It encourages post-weekend peer-to-peer sharing wherein each trainee can share the lesson they experienced with their peers.

Trainees acknowledge their inexperience but understand that a well-designed lesson plan drafted in the principle of "talk less, teach more" can help create important connections in the classroom. The trainees' belief and capacity in their teaching competence is reinforced by their exposure to ideas and a series of potential lessons that they can use. Importantly, the original lessons designed by each trainee group are then

added to a lesson plan bank available to all trainees. In valuing the trainees' competence and ability to design unique lessons at this early stage, trainees' confidence that they can teach effectively grows and is reinforced by the veteran trainee panel sharing their successful experiences.

### **E) Sunday Morning**

#### 1) Integrating Facts and Law through Advocacy: Mini Mock Trial

The mini-mock trial is one of the two capstone elements of the Orientation weekend. In 90 minutes we give trainees a tour of the trial process, and model for them how to use the jigsaw grouping technique to divide the trainees into groups and to prepare and conduct simultaneous mock trials. These mini mock trials are based on the informal "small claims court" structure in many jurisdictions where plaintiffs can bring claims for small monetary amounts using informal legal procedures and without a lawyer. In the mini mock trials, trainees gain experience as either plaintiffs, defendants, or judges on how to present, defend, or judge a simple case with common legal claims.

The facilitator begins the session with a brief introduction of the topic of the mock trial or, if the students have no previous exposure to trial advocacy, a short introduction to the process of a trial. We ask students questions to activate their prior general knowledge on the subject, like "*What is a trial? Who are the key players in a trial?*" and "*What happens in a trial?*" in order to piece together the procedural components of a trial.

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The facilitator then introduces the substantive topic of the mini-mock trial through an immersion activity that invites students to consider a key piece of evidence in the trial. Past trials have centered around a key piece of visual evidence such as a tattoo or YouTube video or around a piece of audio evidence such as a hip hop song. Trainees work through a “See, Think, Wonder” handout as they consider this initial evidence prompt. See Appendix V. This handout asks trainees to write down “*What they see*” when they look at the piece of evidence, to elaborate on these observations through the “*What they think*” section, and then to use these insights to complete the “*What they wonder*” portion. We use this analysis as a spring board to prime trainee curiosity, highlight key issues that may arise in the case, and generate key questions that students would like answers to about the facts of the case.

Trainees then each receive a common mock trial packet.<sup>120</sup> The packet contains a one page summary of the trial with guided questions, witness statements, case summaries, evidence, case analysis sheets, and a verdict sheet. Students are given ten minutes to individually read through the one page summary and answer the questions while considering the perspectives of both the plaintiff and defendant. The facilitators then initiate a conversation about the key issues in the case by asking students what facts they

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<sup>120</sup> These trials are typically simplified versions of the complex mock trial problems developed by Georgetown’s program each year for its mock trial tournament and freely available on the Street Law Clinic’s website.

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learned from the one page summary and how those facts resolved questions from their See/Think/Wonder handouts. Trainees share their opinions around what they think the main issue in the case is, what key facts could resolve this issue, and what legal arguments will be most relevant.

Trainees are next split into groups to prepare for the mini-mock trial itself. The key idea is to divide the group in three, with one third of the whole assigned to be plaintiffs, one third as defendants, and one third as judges. These subgroups then read and prepare the problem from the perspective of their given role. Then they are again subdivided into triads of one judge, one plaintiff and one defendant to simultaneously argue the cases in groups of three around the room(s). The jigsaw technique we suggest requires two different groupings within the same activity, one based on the role each trainee will play during trial and one based on which trial triad the trainee will join. To accomplish the first group division, the packets are printed in three different colors to assist with dividing the students into their roles as plaintiff, defendant, or judge. For example, if you have thirty students, we would print out ten blue packets, ten green packets, and ten red packets. The students who receive the blue packets would be the plaintiffs, those who receive the green packets would represent the defendants, and those who receive the red packets would be judges. In addition, each set of colored packets should be labeled on the front with a number from one to ten.

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Trainees are given twenty to twenty-five minutes to prepare for the mock trial in their role groups. Thus, the blue packets (plaintiffs) would gather in one room while the green packets (defendants) and red packets (judges) would gather in separate rooms. With their group members, the trainees work their way through the case analysis sheets which help scaffold their trial preparation with prompts around the witness statements, case law, and evidence. Judges are asked to analyze the components of the case from the perspective of a neutral party and prepare questions for the representatives of each side based on the issues in the case and the case law.

After trainees have completed their preparation in the role groups, they regroup based on the number written on the front of their packet. This regrouping should result in ten groups of three that each include one representative for the plaintiff, one representative for the defendant, and one judge. The students are now given fifteen to twenty minutes to conduct their trial. The “Judges” are instructed to run the trials and give each representative three minutes to present their side of the case. The representatives will give a short “opening statement” and then introduce evidence and make arguments to support their client using the case law. The judge will ask each representative questions and finally determine the verdict.

When the trials conclude, twenty minutes are dedicated to a substantive and procedural debrief of the activity. Ten minutes are spent analyzing and discussing the actual activity—we ask the judges what their verdicts were and why some representatives were

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more persuasive than others based on the arguments that representatives came up with and how they chose to support their arguments. We ask the students how they would change their arguments based on feedback from the judges to better advocate for their clients.

The second half of the debrief asks trainees to take a step back from the activity and analyze it from a methodological perspective: what were the teaching and learning methods they experienced, how these were accomplished, why we organized the activity the way we did, and how the different parts of the activity connect to our core themes of *Belief*, *Capacity*, and *Community*.

*Belief* in the methodology is interwoven throughout this debrief conversation because it is during this conversation when students will make the connection between the active portions of the mini-mock trial and the deeper lessons about trial process and advocacy we were teaching them. How can students connect what they learned during the introduction, preparation, and actual trial to the trial process? Why do we choose to teach about trials this way as opposed to walking students through the components of a trial through a lecture? We build *Capacity* through this conversation as well by connecting the underlying lesson objectives to concrete portions of the mini-mock trial activity. Finally, we help to build and strengthen our *Community* through the natural interaction afforded through the two different group work configurations that we use during the activity. Additional methodological points that can be surfaced include the virtues of the “See,



Think, Wonder” approach, the value of the opportunity to plan before performance, and the benefits of independent, non-teacher directed experience.

## **F) Sunday Afternoon**

### 1) Culminating Activity: Planning and Teaching Practice Lessons

The culmination of the Orientation weekend is the practice teaching session. The goals of the practice teaching sessions for the trainees are to apply their knowledge of learning principles to create and conduct lessons, to build their repertoire of methods, and to “get their feet wet” in the actual teaching of lessons in a supportive environment. The trainees are given complete autonomy to select their topic and are encouraged to select topics that will be relevant and interesting to their future students as well as valuable for the students’ practical knowledge of the law.<sup>121</sup> Working in smaller groups of teaching pairs, each pair will teach a twenty-minute lesson to their peers. The trainees in each audience are asked to take on the role of high school students for the purpose of the practice teaching. We also provide all trainees with a rubric to help guide their evaluation of their peers’ practice lessons. The rubric asks participants to evaluate the lesson by identifying

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<sup>121</sup> One way to simultaneously scaffold and differentiate the lessons is to assign each pair to a different method not fully developed in the training, e.g., using a document, opinion poll, chart or graph, cartoon, or newspaper article. That way, the groups share additional tools and approaches. Often, these short demo lessons can become foundations for fuller lessons of outstanding quality and put in a shared lesson bank.

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how the lesson was learner centered, what legal principles were clearly communicated, and how the teachers helped build community among the group.<sup>122</sup>

We split the trainee group into smaller groups of six to ten trainees with one experienced Street Law facilitator assigned to each group of trainees. The smaller groups sizes allows the exercise to be completed in a reasonable time and helps alleviate any potential stress while also allowing enough time for substantial feedback. The demonstration lessons must occupy twenty minutes of “live teaching time” (meaning, if the trainees’ lessons end before twenty minutes is up, they must think on their feet and fill the time like teachers are required to do in the classroom) and are based on the unique lesson plan prepared the previous day and that morning.

A ten-minute debrief follows each twenty minute lesson, totaling around thirty minutes for the combined lesson and debrief of each teaching pair. Logistically, this means that a group of eight demonstration teachers will need 2-2 ½ hours to complete the exercise. For thirty two trainees, four facilitators are needed. The teaching pairs of the lesson initiate the review recounting their experience, outlining what they thought went well, what surprised them, and areas they can improve. The rest of the group is all invited to contribute, with comments roughly pegged to the practice teaching rubric.

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<sup>122</sup> An alternative to providing the rubric is to use the debriefs of the demonstration teaching lessons to develop rubrics, which later can be compared to the facilitators’ exemplary rubric.

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This peer feedback is kept constructive and positive, furthering the idea that there is a group support network in place. We typically focus comments not on the individuals teaching the lesson so much as on the methods of the lesson itself. That is, the focus is not on whether the practice teachers are good or bad or right or wrong, but what were the useful and positive dimensions of the practice lesson, and having done it or seen it, how might the lesson be modified.

Notably, the facilitator should ideally be doing very little talking during the debrief – the hope is that the trainees will identify and speak to effective teaching practices after their weekend immersion. The practice teaching is a capstone experience that both integrates the learning from the training and prepares the trainees for their actual classroom assignments. It is important to note that after the training, the staff of the Law Societies will continue to support the development of the trainees in their teaching sites through additional follow up instruction, observations, lesson banks of exemplary lessons, journals, consultations and other means.

Trainees derive great satisfaction from the practice teaching activity. Significantly, they now have taken a lesson from concept through to planning and execution. They gain experience teaching. Having achieved this with less than two days of preparation, it boosts confidence in their ability to present legal issues in an interesting way. This is also supported by exposure to the lesson plan ideas taught by others in their group. Listening to the thoughtful feedback of others in the group and commencing a process of self-

reflection on how they teach further equipped them with the capacity to become better teachers.

2) Summary, Review and Evaluation: Closing Reflection

The weekend concludes with a return to a whole group setting and a Quaker style closing reflection. The group is seated in circular formation and the facilitator explains that people are asked to individually reflect on the weekend and share their thoughts with the group by completing the statement “*I used to think . . . now I think . . .*” Nobody is called upon to speak nor compelled to speak but only speak when ready (in our experience upwards of 80% of the participants will eventually comment).

The closing reflection is a powerful and emotive conclusion to the weekend; the sense of community is further reaffirmed in the group through the honesty of responses and the willingness of people to share voluntarily. The comments also consolidate much of the learning over the weekend as many of the observations made by trainees praise the Street Law methodologies, reflect on the sense of community, and express excitement about their coming teaching placements. In demonstrating the power of being able to change perceptions of the law through education, this final activity acts as a powerful launch-pad into the school placements.

## **VII. Further Research**

This paper seeks to introduce the reader to the concept of Street Law and its unique legal education methodology, share the research supporting this methodology, and provide practitioners with a step-by-step guide on how to implement a weekend orientation program. These contributions, while valuable, are missing one critical component – proof that our model works. Since the initial Street Law Orientation weekends in both Ireland and Scotland, trainee interest and applications to participate in the Street Law programmed have more than doubled, with a selection process that now accepts only the most promising candidates. At each Law Society, the Orientation weekends have become staples of the fall offerings and the number of schools seeking to participate has also grown. Demand has been so great in Scotland that the Law Society of Scotland now offers two training sessions—one in fall and one in winter. In Ireland, a number of the Street Law trainees have sought to continue their volunteering efforts during the later stages of their terms studying at the Law Society. These markers of success and the positive trainee, teacher, and student feedback have been accompanied by public recognition, including television and newspaper reporting.

We recognize, however, that more formal assessment and evaluation are essential aspects of measuring program success and critical to determining whether our program achieves its stated objectives, and gathering feedback on how future efforts can be improved. Accordingly, and with the goal of moving beyond anecdotal evidence and trainee

enthusiasm, we designed and administered the first quantitative evaluation of the Street Law Orientation weekend during the 2015 trainings in Dublin and Edinburgh. We implemented a pre- and post-test model that all trainees completed before the Orientation weekend and immediately upon completion of the weekend. The results of this evaluation indicate that the Orientation weekend was markedly successful in changing trainee attitudes around their belief in learner-centered education, their capacity to deliver these lessons, and the value of community in the classroom. For reasons of scope, focus, practical considerations around paper length, and to permit a more in-depth consideration and discussion of this evaluation, and the accompanying qualitative and quantitative data and analysis, we present the results in a separate, companion paper to follow shortly.

The presentation of these positive results evidencing the change in trainee attitudes and beliefs resulting from the Orientation weekend only captures one piece of the puzzle, however. We propose several areas for further research to continue exploring the efficacy and impact of the Street Law Orientation weekend. First, trainee attitudes should be assessed and evaluated at a later time, with sufficient distance and remove from the Orientation weekend. This assessment could use the same pre- and post-test instrument and would ask trainees to evaluate the success of the Orientation weekend after having delivered Street Law lessons on their own in secondary school classrooms. Additional areas of study might explore whether and to what extent the Street Law experience

helped develop trainees' legal skills, professional identities, and commitments to public service.

Another area for future research would examine the impact of the trainees as teachers in their secondary school placements. Evidence of how well the Street Law methods promote increased student academic achievement, social and emotional wellbeing, and school attachment within the Street Law classes would be a powerful testimonial to the benefits of Street Law. Quality civic education programs have been shown to develop a host of pro-social outcomes, including students' critical thinking skills, sense of agency, and educational aspirations.<sup>123</sup> Determining to what extent Street Law also impacts these outcomes could drive demand for increased Street Law programming.

A final, broader area of study would examine how Street Law programs advance and complement the goals of Law Societies and public legal bodies. Making the law more accessible and understandable through legal education are common goals of national and regional bodies and a primary objective of Street Law programming. Increasing access to the legal profession and encouraging diversity within the law student and legal professional ranks are additional important goals and potential byproducts of Street Law's intentional focus on underserved communities. Street Law also has the potential to affect the general public's view of the Law Society, understanding of the work the Law

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<sup>123</sup> Arthurs, S. (2015). Street Law: Creating Tomorrow's Citizens Today. *Lewis & Clark Law Review*, 19(4), 925-961.

Society undertakes, and perception of the positive contributions lawyers can make within a society.

### **VIII. Conclusion**

The rapid proliferation of Street Law programs across the globe offers tremendous promise to both members of the legal community and to the ordinary citizens who interact and experience the law in their daily lives. Law students and young lawyers delivering Street Law programs acquire invaluable practical skills and perspective on the law and their role in the legal profession and as members of the broader community. Law societies, law schools, and bodies committed to legal education can use Street Law as an accessible vehicle for promoting understanding of the law, encouraging interest and appreciation for the legal profession, and reshaping and crafting a new narrative around the role of lawyers and law students in promoting access to justice. Students and community members who experience Street Law trainings develop their critical thinking, expressive, and cognitive skills, become familiar with the concepts and theories behind practical legal subjects, and gain new insights into their rights and responsibilities as citizens.

Of course, a critical precursor to the development of a successful Street Law program is the training of the young lawyers or law students who will deliver the Street Law programming to secondary school students and community members. Until now, there



has been no comprehensive guide for how to build and execute a successful Street Law training. Interested legal education practitioners now have a seminal resource to assist with this process. Similarly, there have been no previous efforts to ground the principles and practice of the Street Law method in established research. This paper accomplishes both of these goals for the first time and offers an invaluable resource to aspiring and committed legal education practitioners, Law Societies, and universities throughout the world seeking to launch a Street Law program.

In this paper, we first explain the Street Law methodology and approach. We then discuss how this approach is grounded in the best practices and research around civic engagement, learner-centered education, intensive teacher preparation, and community building. We next provide a detailed step-by-step guide for how to design and implement a successful Street Law orientation program-whether in one weekend or over a longer period of time.<sup>124</sup> By explaining our activities, identifying how each one fits into the

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<sup>124</sup> We believe it is fundamental to incorporate the various stages of the trajectory into training for all new Street Law instructors, either through the weekend format or through an orientation of longer duration, followed by additional seminars throughout the course of the program. This weekend structure is by no means the only recipe for a successful Street Law training, however. In order for Street Law trainings to be substantive and meaningful across cultures, each practitioner should adapt the training in a way that is responsive to the local cultural and host institution. The stages in the Street Law trajectory—valuing student ideas, building student voices, sharing stories and values, adding analytical reasoning, inviting student questions, integrating facts and law through advocacy, and a culminating activity—can be developed through a variety of lessons and activities and over different periods of time. We encourage practitioners to come up with new, culturally appropriate activities that aim to achieve the same goals of laying the groundwork for high level cognitive and expressive learning that we set forth at each stage.

broader Street Law trajectory and reinforces our core outcomes of building belief, capacity, and community, it is our hope that practitioners take from our work an understanding of *What* we do during our trainings, *How* we run each activity, and *Why* we chose and sequenced the activities the way we did.

One of the most encouraging and reinforcing hallmarks of the Street Law community, from practitioners to participants, is the universal spirit of collaboration and cooperation this experience generates. As facilitators and Street Law educators, we all believe deeply in the transformative power of Street Law to make the law more relevant, more accessible, and more understandable. We want to share this approach with as many people as possible and hope that this paper provides a strong grounding in both how to do so and why to do so.

A second paper, written to review the quantitative and qualitative data we collected during the trainings in Ireland and Scotland, will serve as a corollary to this paper. As readers of this second paper will soon see, the data we have collected strongly suggest that our workshop model can be a powerful tool to facilitate the broader dissemination and adoption of Street Law across the globe.

## Appendix I: Who Gets the Heart?

### Hearts and Minds

You are a member of a committee advising the heart specialists at St. Joseph's Hospital on whom to accept as recipients of hearts for transplants. A heart has just become available and there are several candidates to receive it. Below is a list, in order from the first to request a heart to last, of the candidates. You must decide by the end of this class, otherwise the chances for the operation's success will not be great. All candidates are terminally ill and may not survive if they do not receive a new heart soon.

1. Maria, a cancer researcher, 55, who other researchers believe may be close to finding a cure for cancer. While the researcher works with a team, she employs 50 people in DC. Without her leadership, the research company would fail and all 50 employees would lose their jobs.
2. Darryl is a 17-year-old honors student who is the captain of his high school's mock trial team and one of the best players on his high school basketball team. He used to live in a homeless shelter until he earned a full academic scholarship to Georgetown University, where he plans on studying medicine.
3. Jose, a minister, 35, is known for inspirational work and public service for the poor. He has close relations with the hospital and agreed to donate \$2 million to the hospital if he gets the heart.
4. Steve is a 20-year-old model who has been in advertisements for Gap, Aldo, and H & M. He is active in the community and spends his spare time volunteering at a charity that raises money thousands of dollars for education and medical care for poor children.
5. Hillary, an attorney, 28, recently graduated from law school, and is a promising civil rights attorney. She currently works for non-profit organizations that represent indigent (needy) clients that have been wrongfully convicted of a crime. She has heart disease and diabetes and has been told that she needs to eat better and start exercising.

## Appendix II: Who Gets the Heart? Additional Facts

### Scenarios

- Darryl was your best friend growing up. No one on the committee knows that you know Darryl. Not only did he live in a homeless shelter growing up, he is a cancer survivor.
- You suspect that someone in the group knows one of the members on this list and may not have shared this with the group.
- You aspire to rise to the top of the hospital leadership team. You learned that Jessica is the daughter of the CEO for the hospital. The CEO asked you to help ensure that she gets the heart.
- Although you are a doctor, you're real passion is research. You spoke to Maria last week and she guaranteed you a position as vice president of her research company if she gets the heart.
- John is your brother. **No one on the committee know that you are related.** You are very close to him and cannot image your life with him. Similarly, your kids—ages 2 and 5—love Uncle John because he takes care of them on the weekend when you're at work. You are aware that John is a podiatrist (foot doctor) and believe that some people on the committee believe that John is a heart surgeon.
- Steve is your ex-husband. **No one on the committee knows that you know Steve.** Steve left you alone with two children to pursue his modeling career. He is not paying child support and blowing his paycheck on partying, expensive cars, etc. You know that he has a life insurance policy in your name, and if he dies, you inherent everything.
- Committee Chair:
  - Congratulations! You are the committee chair for the group. As the committee chair you are responsible for managing the committee and delivering a final decision for the committee. You are free to run the decision-making process however you feel fit. However, you—not your colleagues—will be submitting the name of the candidate.

## Appendix III: Aliens

### Aliens Lesson Plan

1. Divide students into small groups of 4-6. Give one envelope to each group. Each envelope should contain 15 strips of paper, each with a separate right printed on it (see below for the rights).
2. Intro: Tell students that aliens have taken over our country. Thankfully, they're friendly aliens who want to let us live our lives without interruption. However, they think we have way too many rights. They've asked you to meet as a group to eliminate 4 of your rights – the rights that are least important to you. You must come to a decision, and you must be unanimous in that decision.
  - a. Allow as much time as there is fruitful discussion – usually 5-10 minutes.
  - b. Give the students a 1 minute warning to come to their decision.
  - c. At the end of the time, collect the discarded rights.
3. Tell the students that the aliens are very happy with your work, but they still think you have too many rights. Have them eliminate 4 more rights and remind them to come to a unanimous decision.
  - a. Again, allow 5-10 minutes for students to decide. Give 1 minute warning.
  - b. Collect discarded rights.
4. Tell the students that, once again, the aliens are happy with their work. In fact, the aliens let the students live with their 7 remaining rights for a full year. Then, they decided that 7 rights were still too many. They want you to eliminate 4 more rights (again, unanimously), leaving you with your 3 most important rights.
  - a. Allow 5 minutes.
  - b. Collect discarded rights.
5. Ask each group to report their decision. Write results on the board.
6. Group discussion:
  - a. Note which rights were most/least commonly picked.
  - b. What strategies did the groups use to come to their conclusions?
  - c. What were the challenges they faced?
  - d. Why did they preserve certain rights and eliminate others? What makes a right “important” to them?

Freedom of Speech  
Freedom of the Press  
Freedom of Religion  
Right to Privacy  
Freedom from Unreasonable Searches and Seizures  
Equal Protection under the Law  
Right to a Lawyer  
Right to Assemble Peaceably  
Right to Bear Arms  
Right to Vote  
Right to Work  
Right to Marriage and Family  
Right to Education  
Right to Travel  
Right to Life, Liberty and Due Process of Law



Appendix V: See, Think, Wonder

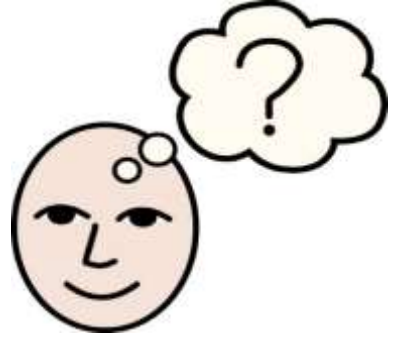
See



Think



Wonder







## ANOTHER CLINICAL STORY TO TELL

**Veronika Tomoszková and Maxim Tomoszek**

**Centre for Clinical Legal Education, Palacký University in Olomouc, School of Law,  
Czech Republic**

When Stefan H. Krieger presented his keynote speech “Stories Clinicians Tell” in 2012 at Law School of the Palacký University in Olomouc (Palacký Law School), it was the culmination of the Complex Law Teaching conference and very emotional moment for the whole clinical team of Palacký Law School, but we believe also for Professor Krieger himself. His efforts leading to establishing the first live-client clinic in Central Europe at the Palacký Law School in 1996 will always be the cornerstone of the Palacký clinical programme, which was re-started ten years later, in 2006. What is more, the impact of Stefan H. Krieger together with Richard K. Neumann from the Hofstra Law School upon the Palacký Law School’s curriculum went beyond the original live-client clinic. Their book *Essential Lawyering Skills*<sup>1</sup> which we received in 2005 as a free copy by a chance at a conference on teaching practical skills organized by the CEELI<sup>2</sup> in Prague served as one of the sources for the introduction of the compulsory Legal Skills Course. Skills courses together with the clinical programme, street-law programme

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<sup>1</sup> Now in its 5th Edition: Krieger, S.H. (2015) *Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis*. Aspen Coursebook Series, Wolters Kluwer.

<sup>2</sup> Central and East European Law Initiative Institute

and moot courts are melded into a unique practice-oriented component of the Palacký Law School's curriculum.

The stories told by Stefan H. Krieger are extremely important for understanding the pitfalls and challenges of development of legal clinics in Central Europe, and maybe to some extent also Western Europe. The story of an unsuccessful attempt to transplant some elements of U.S. clinical legal education bears much edification for anyone designing a new clinic anywhere in the world. This also confirms Professor Krieger's claim not to "shy away from identifying our failures, problems, and doubts" and sharing the ways how we coped with them. The much desired re-publication of Stefan H. Krieger's article in the *International Journal of Clinical Legal Education* is an opportunity for us to provide a third story, depicting the narrative of Palacký clinical programme from yet another perspective, and perhaps making the picture more plastic and complex.

The story of re-development of clinical programme at Palacký Law School shows the importance of institutional memory and perseverance. The Palacký Law School was re-established in 1991 as the first law school in Czechoslovakia based on ideals of democracy and rule of law instead of the Communist ideology which influenced the legal education at the law schools operating at that time. Palacký Law School was supposed to be different, modern and legal clinics were part of this idea from the beginning. But every idea no matter how noble it is including clinical legal education

needs the right conditions to thrive. And that is exactly the story of Palacký Law School and its failures and successes in clinical legal education.

Professor Krieger's article concludes that the story of Palacký clinical programme well demonstrates the "need for slow, grassroots development of clinics rather than close direction by experts from abroad." We would like not only to confirm that this approach was crucial for sustainability of our clinical programme, but also to add some other important elements. The Palacký Law School needed to develop its own internal human resources, who, by going abroad and gathering experience, would constitute a team capable of adapting foreign models of legal clinics to the specific Czech social, historical and legal context. Even twenty years later the Czech students still do not represent their clients in court, but this by no means precludes operating successful legal clinic and providing high quality legal aid to the local community.

The most important part of Stefan H. Krieger's article is the analysis of how clinicians themselves portray clinical legal education and that they are often prone to making the same mistake that they try to eliminate in students – presenting unsubstantiated beliefs as solid facts. The need for deep, serious inquiry into the outcomes of clinical legal education is certainly one of the worldwide trends in clinical legal education, which experienced clinicians like Professor Krieger helped to establish.

Acknowledging the importance of progress in mapping and collecting data about acquired competences, we would like to add one more line of inquiry, focusing on our students: who they are, what are their needs and how they learn. The current

generation of students is significantly different from who we were as students or from students we had ten years ago. A question arises, whether the design of legal education has adapted to reflect those changes. At the same time, especially in Central Europe, it is very easy to forget that the students are not the only beneficiaries of clinical legal education – the idea of service learning and providing essential legal aid for the local community allows the university to fulfil its third role and contribute to transformation of students towards socially responsible professionals with teachers as their role models.

THE STORIES CLINICIANS TELL

Stefan H. Krieger<sup>1</sup>

Hofstra University, USA

Introduction

Unbelievably, it has been more than 15 years since I last visited Palacký during the inaugural year of its Clinic. So, in preparation for today's talk, I thought I should go back to my files to refresh my memory of events a decade-and-a-half ago. As I reviewed those documents, it struck me how the events of that time were much more complicated than I initially remembered. In fact, I saw how my retelling of the events reflected in those papers could be constructed – with appropriate spin -- into different stories -- some of which could be dramatically divergent from others.

When we teach our students legal storytelling, we show them how lawyers can filter out certain details in their cases and focus on others to craft a compelling narrative for one party or the other. Using this approach in describing my Palacký Clinic file, I could tinker with the evidence in it and craft multiple narratives.

So to begin my presentation at this conference, I thought that instead of addressing complex law teaching in the abstract, I would start more concretely -- to tackle the subject by sharing with you two very divergent tales that can be woven about the

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<sup>1</sup>\*Professor of Law and Director Emeritus of Clinical Programs, Maurice A. Deane School of Law at Hofstra University. I wish to thank Theo Liebmann, Serge Martinez, and Rick Wilson for their guidance and assistance. I especially express my appreciation to Maxim Tomoszek and Palacký University for their invitation to speak at their conference, *Complex Law Teaching: Knowledge, Skills and Values*.

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establishment of the Palacký Clinic. Perhaps consideration of these stories will help to give us some insights on the problems faced in addressing the difficult issues raised by complex law teaching.

So let us begin this morning's story hour with my first narrative: I entitle it, *Clinical Education Comes to Central Europe: Hofstra's and Palacký's Partnership in Training Law Students in the Practice of Public Interest Law*. Our narrative begins after the 1989 Velvet Revolution when Palacký's rector Josef Jarab sought to establish a law school at the University to train a new generation of lawyers for practice in a democratic legal system dedicated to the rule of law. Soon thereafter, Rector Jarab fortuitously met Hofstra Professor Richard Neumann at a conference in New York, and a fruitful relationship was created between Hofstra School of Law and Palacký.

Five years later, the two schools began to explore the development of a clinical program at Palacký. Seeking funding for the new project, the schools jointly applied for a Ford Foundation grant to establish a live-client Housing Rights Clinic, patterned after my own Clinic at Hofstra. In the United States in the 1960s, Ford had been instrumental in spearheading efforts to integrate clinical education into mainstream law school curricula. Now, thirty years later, it was hoped that Ford would assist the development of clinical education in law schools in the newly democratized Eastern Bloc.

With the overall goal of helping democracy succeed in the Czech Republic, the grant application listed four goals: i) to demonstrate to citizens on the ground in the Czech Republic that concrete actions using the legal mechanisms of a democratic state could

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lead to the rule of law; ii) to train students in the importance and skills of practicing law in the public interest; iii) to create a model law school clinic, which other law schools in the region could emulate to expand the training of public interest lawyers; and iv) to heighten the legal consciousness of government officials, present and future. Ford approved this application, and in early 1996, this ambitious project began. Pursuant to the grant, Palacký hired an experienced Olomouc commercial law attorney as a clinical teacher to establish the Clinic. Early in 1996, she visited my Clinic to learn methods of clinical teaching and observe my students in action handling cases -- in the law office and courts. Returning to Olomouc, this clinician established a Clinic in fall, 1996.

Palacký created a law office with its own computer with Internet access. Ten students enrolled in the Clinic and enthusiastically began to work on a variety of cases -- an eviction case by a landlord who wanted to have his daughter live in the flat; a marital dispute over the right to a flat; a town's attempts to evict a tenant. For these cases, students interviewed clients, drafted memos, and wrote letters to clients and adversaries. Based on her experiences at Hofstra, the clinician developed creative seminar classes focused on ethical issues and client relationships. In these seminars, students also had the opportunity to engage in simulated arguments of court cases.

In fall, 1996 and then spring, 1997, I visited the Clinic. I was deeply impressed with the students' commitment to their clients and their command of the cases. The clinician was a natural teacher and had a warm relationship with her students. I had some good meetings with the Dean and other law school administrators, imbibed



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slivovitz (your wonderful plum brandy) with them, and shared my thoughts about the program.

While Ford decided not to refund the program, the work of that year laid the foundation for the vibrant clinical program now existing at Palacký under the wonderful leadership of Maxim Tomoszek.

Now let me tell you my second yarn: *The Bumpy Road: Unrealistic Expectations Confront a Newly Democratic Legal System*. This story begins much the same as our first tale -- the development of the relationship between Hofstra and Palacký; the application to Ford and its approval; and Palacký's hiring of a clinician. At this point, however, the two narratives diverge quite dramatically.

The grant was approved, and in early 1996, the Palacký clinician visited my Clinic at Hofstra. She enjoyed the seminar component of the class and supervisory sessions with the students. But she was very frustrated with the court appearances. My students' cases were in several courts -- lower state trial courts and federal court. But every time, after the students prepared for a hearing, when we appeared in court, after hours of waiting, the cases were adjourned to another date. As her stay in the United States concluded, she stopped going to court hearings questioning the benefit of all this student preparation with the only payoff being delay.

In fall, 1996, the clinician started the Palacký clinic with ten students and eventually each two-student team had one client to represent. When I visited Olomouc in December, 1996, I was very impressed with the students' commitment to their clients and the clinician's talents as a teacher. I did, however, express two concerns: (1) the

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law school had made no attempt to obtain approval for student practice in the courts; and (2) no referral network had been created for developing a stream of low-income clients for the Clinic. As to the first issue, the law school responded that the Czech Bar and Courts were strongly resistant to any student practice. In regard to the second issue, the clinician said she was attempting to get more cases referred. All in all, though, as I returned home, I felt fairly positive about the prospects for the Clinic.

But when I returned in May, 1997, I got a different feeling. Very few new cases had been taken. In all my meetings with students, they were still enthusiastic about the first opportunity in the words of one student, "to feel like a lawyer," but they were very frustrated with the fact that the Clinic had so few cases and that they could not argue in court. Many of the students and the clinician emphatically told me they wanted to be able to accept cases from any possible client, not just poor people.

While my meetings with the administration five months earlier had been upbeat, this time around, the mood was cordial but cool. While I continued to applaud the clinician's teaching methods and seminar classes, I expressed dismay at the lack of movement on the issues of student practice and the development of referral resources for needy clients. The administration was adamant that both the Czech Bar and judiciary were dead set against student practice and that the limitation on the types of clients which could be accepted by the Clinic only stood in the way of the development of a vibrant clinical program.

I kept referring to my experiences in America. And the response could be encapsulated by the comment of one of the participants at the meeting, "In the Czech

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Republic, things must be gradual.”

I reported to Ford, and the foundation decided to terminate the grant.

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I am not relating these two stories to you because I believe one is more truthful than the other. Each of them is based on facts reflected in my notes from 15 years ago. And certainly, as a guest of your wonderful law school, my intent in telling these two tales is not to cast aspersions on Palacký nor its administration or faculty, nor for that matter Hofstra, Ford, or myself.

All of the participants acted in good faith, with the best of intentions, and with great passion. There is no doubt that in that one year, the students, faculty, and administration of Palacký took great strides in starting the process of the development of experiential education in the Czech Republic and that those efforts sowed the seeds for the strong clinical program that now exists fifteen years later.

But, at least in my opinion, primarily retelling the first story and disregarding the second has profound consequences. Quite honestly, I love to tell people the first tale. It emotionally makes me feel quite successful about my work with your law school. But, if we want to be honest about what actually happened, we cannot ignore the second tale. In fact, that story has some significant takeaways from which we can learn a great deal: about the tensions, for example, between the cultural perspectives of American legal educators and their Czech counterparts; about both the benefits and limitations of outside influence in the development of law schools in newly-democratized countries; and the different roles of skills training and social justice in

experiential education.

As heartwarming as it may be to sit over a couple of drinks and share the first story with you, nuance is lost. It is only through the messy details of the second tale that we are able to gain some insights into how we can improve complex legal education.

#### Use of Persuasion and Inquiring Modes

Unfortunately, too much of the current literature on experiential legal education has the attributes of my first tale – moving essays which are not necessarily grounded in a critical examination of the messy details.

A good example of this storytelling approach to issues in experiential legal education is the treatment of an empirical study I conducted a few years ago on the effectiveness of clinical legal education.<sup>2</sup> In that study, I compared the legal reasoning strategies used in solving a legal problem by different groups of students at the University of Chicago Law School: second-year students who had not enrolled in a clinic; third-year students who had not taken a clinic; and third-year students who had been enrolled in a clinical program. When it came to the issue of the effectiveness of clinical training, my findings were mixed. I found that – at least in terms of these particular groups -- those subjects who had enrolled in a clinic outpaced their nonclinical counterparts in identifying client interests and the next steps to take in the case. But I also discovered that participation in a clinic may not lead to better proficiency in fact

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<sup>2</sup> Stefan H. Krieger, *The Effect of Clinical Education on Law Student Reasoning: An Empirical Study*, 35 WM. MITCHELL L. REV. 359 (2008).

analysis or identification of relevant rules.

Surprisingly, despite these mixed findings, several of the subsequent articles which cite this study disregard or downplay the findings that are negative about clinical education and suggest that my study shows overall benefits of clinical experience.

One article, for example, argues, “The benefits of moving from the traditional passivity of the Socratic dialogue to adding experience to doctrinal courses via simulation exercises are myriad. In fact, this hypothesis has been tested empirically.”<sup>3</sup>

The authors then cite my article with a parenthetical stating that the study “conclude[s] that students who participated in experiential education activities in law school were better able to identify some relevant facts in a legal fact pattern, identify legal rules relevant to a client's problem, identify client interests, and consider next steps in a client representation.” Apparently, because it would undercut their overall argument, the authors say nothing whatsoever about the more negative findings. In another article touting the benefits of experiential legal education, the authors cite the study to recite the same list of the purported superior performances by clinical subjects but then hide the mixed results in a footnote.<sup>4</sup>

Another example in this storytelling genre about experiential legal education, is a significant – and much heralded – recent report on American legal education by a

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<sup>3</sup> Lisa T. McElroy & Christine N. Coughlin, *Failure is Not an Option: An Essay on What Legal Educators Can Learn from NASA's Signature Pedagogies to Improve Student Outcome*, 75 J. AIR L. & COM. 503, 509 n.25 (2010).

<sup>4</sup> Christine N. Coughlin et al., *See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum*, 26 GA. ST. U.L. REV. 361, 397-98 (2010).

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major clinical educators association, *Best Practices for Legal Education*.<sup>5</sup> In it, the authors review one-sided polemics in support of experiential education. And then conclude the tale with the bald assertion:

*We encourage law schools to follow the lead of other professional schools and transform their programs of instruction so that the entire educational experience is focused on providing opportunities to practice solving problems under supervision in an academic environment. This is the most effective and efficient way to develop professional competence.*

The authors of this report apparently saw no need to consider research contrary to their preconceived conclusion or even to tone down the language to recognize that a valid counter-narrative might exist.

The type of storytelling reflected in these articles and *Best Practices*, by its very nature, falls into the category of what Robert Condlin calls the use of persuasion mode. Condlin posits that two types of reasoning are at the core of an attorney's work: persuasion mode and learning mode. In persuasion mode, the lawyer tries to manipulate a situation to achieve a particular goal. A lawyer in persuasion mode tends to act more or less based on strategic motives. She minimizes any self analysis, tentativeness, doubt, or perplexity over the unknowable and gray areas of her cases. In learning – or what I will call inquiring mode – the lawyer's reasoning is open ended. She follows her curiosity and interest in exploring things regardless of consequences.

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<sup>5</sup> Roy Stuckey et al, *Best Practices For Legal Education: A Vision and a Roadmap* (2007).

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A lawyer in inquiring mode is not trying to accomplish anything except to learn more about a subject.<sup>6</sup>

Obviously, effective attorneys need to use and function well with both modes of reasoning. In interviewing, counseling, and mediation, for example, use of the inquiring mode may be crucial to understanding the complete picture of what has occurred in a dispute or what a party seeks to obtain in a particular transaction. But in other arenas – such as trial work or adversarial negotiation -- persuasion mode is usually the most effective means of attaining a client's goals.

Applying Condlin's model to our own work on complex legal education, it is clear that storytelling in the persuasion mode can be very beneficial to those of us who are committed to experiential legal education. Our field is a relatively new movement. From its inception, some traditional legal academics have been quite hostile to the notion that practice-based learning should have had any role in law schools. In America – and elsewhere in the world – many clinical and skills teachers have been deprived of comparable compensation with other law professors, have been denied full participation in governance of their institutions, and remain in second-class status. Given this context, it is quite natural that teachers in the field of experiential legal education have been prone to use persuasion mode. We have a strategic goal: to persuade our colleagues and institutions of the value of our pedagogy and to become

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<sup>6</sup> See generally Robert Condlin, *The Moral Failure of Clinical Education in LAWYERS' ROLES AND LAWYERS' ETHICS* 318 (D. Luban ed., 1983); Robert Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223 (1981).

full-fledged members of the legal academic community. And to achieve that goal, we sometimes filter out damaging facts and gloss over doubts and perplexities in regard to the unknowable and gray areas of the case we are making.

But I believe that for a movement that is now half a century old, it is high time that we start to refocus our energies from persuasion to inquiring mode. Obviously, we should not sell ourselves short, especially in situations in which others in the legal academy want to shut the door on our status and pedagogy. But, at least in my opinion, we need to step back from our storytelling. In inquiring mode, we need to critically examine our teaching methods, the relative roles of experiential and other forms of legal instruction, and the impact of our teaching on our graduates years into practice.

We should explore these issues regardless of the consequences – even if, for example, we find that other types of pedagogy are beneficial throughout legal training or that some of our methods and approaches are simply counterproductive. I believe it is time for us to abandon our shibboleths and familiar narratives. We need to engage in the type of rigorous inquiry that will help us to improve not only our contributions to context-based learning but also to legal education as a whole.

Four hundred years ago, the influential reformer Jan Amos Komensky traveled these parts challenging prevailing educational theories and advocating the use of new teaching methods. In Komensky's spirit, I hope that we can also challenge prevailing theories in our field in order to develop more effective methods for educating our students.



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So, for the remainder of this presentation, I would like to give a critique of some of the trendy stories in experiential legal education these days and raise some questions about their validity. Before I begin, however, I want to make clear; I am not calling for a total rejection of these narratives. Just as there is some truth to my first story today about the Palacký Clinic, there is some validity in the stories I will be discussing. They have some important points to make. My point, however, is that the evidence supporting these narratives is not as clear-cut as some of those storytellers would like to believe. I submit that we should be willing and eager to explore all the evidence – both pro and con – in regard to the tales now being told in our field.

### Tale 1: The Practical Apprenticeship Model: the Vehicle for 21<sup>st</sup> Century Legal Education

The first story I would like to address can be entitled, The Practical Apprenticeship Model: the Vehicle for 21<sup>st</sup> Century Legal Education.<sup>7</sup>

This story has been at the forefront of recent efforts for changes in legal education by many in the American experiential legal education community. The source of this narrative was the 2007 Carnegie Report on Legal Education – *Educating Lawyers: Preparation for the Profession of Law*.<sup>8</sup> It has generated numerous favorable articles; an array of conferences on how best to implement its recommendations; and the creation

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<sup>7</sup> For a full discussion of the issues raised in this section, see Stefan H. Krieger & Serge Martinez, *Performance Isn't Everything: The Importance of Conceptual Competence in Outcome Assessment of Experiential Learning*, 19 CLINICAL L. REV. 251 (2012).

<sup>8</sup> WILLIAM M. SULLIVAN et al., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

of law school committees throughout the United States on Carnegie reform. Unfortunately, however, very few scholars have sat back and given the Report the critical analysis it requires.

One of the primary recommendations of the Report is increased emphasis on what it calls the “practical apprenticeship.” Attempting to adapt the traditional legal apprenticeship model to present-day legal education, the Report calls for studying the performance of experts to distill and simplify their techniques. These are the expert’s toolkit. Then based on those techniques, we should teach students “scaffolds” for practice: “the rules, protocols, and organizing metaphors for approaching situations or problems.”

A scaffold could be, for example, a particular interviewing procedure, a protocol for problem solving, a technique for negotiating a deal, or a method for drafting a contract. In the Carnegie model, increased competence comes as a student gradually accumulates a “toolkit of well-founded procedures” in different areas of legal practice. Within this performance framework, “the prime learning task of the novice in law is to achieve a basic acquaintance with the common techniques of the lawyer’s craft.”

According to Carnegie, then, the primary focus of experiential education should be on performance: repeated experiences in which students use expert techniques. In this approach, student reasoning takes a backseat to learning these techniques. In fact, Carnegie argues that reasoning and attention to context by novice learners is unhelpful; instead, it posits that students should be taught to “recognize certain well-

defined elements of the situation and apply precise and formal rules to these elements, regardless of what else is happening.”

Carnegie’s story may at first glance seem very enticing to those of us who are committed to context-based learning. In fact, it has been wildly acclaimed by many in the American clinical community. The crucial problem underlying Carnegie’s focus on performance, however, is that it does not rest on a sound theoretical or empirical foundation.

*Carnegie’s Reliance on the Dreyfus Theory*

Carnegie’s theory of expert training is based entirely on the work of two brothers, Hubert and Stuart Dreyfus, educated respectively as a philosopher and an engineer. The Dreyfus brothers posit that expertise is simply a matter of pattern recognition.

They argue, for example, that we are able to ride bikes because of prior experiences operating them, not because we are engaging in some kind of cognitive process. As they observe, “No detached choice or deliberation occurs. It just happens, apparently because the proficient performer has experienced similar situations in the past and memories of them trigger plans similar to those that worked in the past and anticipation of events similar to those that occurred.”<sup>9</sup> They argue, “Normally, experts do not solve problems and do not make decisions; they do what normally works.”

With this theoretical outlook, the Dreyfuses assert that acquisition of this kind of

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<sup>9</sup> Hubert L. Dreyfus & Stuart E. Dreyfus, *Mind Over Machine: The Power of Human Intuition and Expertise in the Era of the Computer* 28 (1986).

expert intuition requires the novice to learn protocols and strategies for identifying the facts and features of a particular situation and performing in response to these facts. They assert that novices progress through different stages of accumulated experience. These stages of development, the Dreyfuses claim, reflect an evolution from the abstract toward the concrete, “*from ... following abstract rules, to involved skilled behavior based on accumulation of concrete experiences and the unconscious recognition of new situations similar to whole remembered ones.*” In the Dreyfuses’ own words, as students become experts, they act “*arationally.*” In other words, expert performance is essentially mindless. Accordingly, under the Dreyfus approach, expertise is not reflected as much in cognitive competencies as in mindless performances responding to perceived situations.

Consistent with Dreyfus, Carnegie envisions that students should first learn rules, strategies, methods, and protocols to enable them to recognize patterns and perform in particular situations. Following Dreyfus, the Report contends that after numerous experiences, students progress through stages and acquire expertise. As they develop expertise, they stop relying on abstract rules and instead respond unconsciously to new situations by perceiving similarities to whole, remembered past experiences. From this perspective, a student’s action, rather than her reasoning process, has paramount importance.

1. *Cognitive science critique of Dreyfus*

Cognitive science research challenges the Dreyfus expertise theory and suggests a much different approach to training for expertise. Most cognitive scientists do

recognize the role that pattern recognition plays in expert performance. Nonetheless, they reject the notion that intuitive pattern recognition alone is determinative of expert performance.

In fact, the Dreyfus theory conflicts with a number of empirical findings on expert decision making. First, contrary to the Dreyfus theory, studies show that in many domains requiring complex problem solving, expertise does not produce a decrease in abstract thought and a concurrent increase in concrete thinking. Indeed, in these domains, experts have been found to analyze problems at a deeper, more abstract level than nonexperts.<sup>10</sup>

Second, the existence of progressive stages in expert development is not supported by the evidence. The Dreyfus theory suggests that the more experience individuals have in a particular area, the more intuition they acquire, and the more expertise they gain. Studies have shown, however, that those individuals with extensive experience in a field do not necessarily perform better than people with less training. In fact, the number of years of experience in a field is a poor predictor of attained performance.<sup>11</sup>

Many of us know lawyers who have practiced for decades who simply have not developed expertise in a field.

Finally, neuroscience evidence does not support the notion of similarity recognition in complex problem solving. This research demonstrates that complex

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<sup>10</sup> See Krieger, *supra* note 6, at 265.

<sup>11</sup> *Id.*

decision making entails a rich connection of different neural subsystems (explicit and implicit) and an interplay between them.<sup>12</sup>

In contrast to the Dreyfus pattern recognition theory, cognitive scientists contend that, in fact, experts do use particular cognitive processes in their decision making. These processes are not always conscious and deliberate. Rather, they reflect the interaction between implicit and explicit knowledge. Complex decision making entails both unconscious abstract representations that experts have acquired through experience and explicit representations -- their knowledge of the domain -- which are conscious and can be verbalized. Especially in domains like law and medicine, in which complex knowledge systems and symbolic representations play an integral role, more is involved in making decisions than mere pattern recognition of previous similar situations.<sup>13</sup>

For example, although a physician may not be aware of all the cognitive processes involved, when she evaluates a patient, she is conscious of the patient's characterization of his symptoms, her own diagnosis of the problem, and her requests for tests. By overlooking the complex and rich interaction between implicit and explicit knowledge, the Dreyfus model fails to explain skills that are not just routines but instead involve complex tasks, such as finding solutions to problems.

Unlike driving a car or riding a bike, handling a legal problem in practice requires

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<sup>12</sup> *Id.* at 266.

<sup>13</sup> *Id.*

more than intuition based on pattern recognition. Lawyers must juggle, for example, the substantive legal doctrine, the procedural context, the particular facts of the situation, the client's needs, and the cultural and social context. The Dreyfus theory simply does not address the kinds of complex decision making required in most lawyering. Lawyers make decisions at a much more complex conceptual level than just recognizing patterns, and real expertise is associated with this higher level.

Several researchers in the field of medical education have concluded that the Dreyfus model is just too simple to account for the complex pattern of phenomena linked to expert medical intuition.<sup>14</sup> So too should we reach the same conclusion in regard to the practice of law. These insights from cognitive science suggest that expert lawyers need more than a toolkit of simple rules, protocols, and strategies to facilitate pattern recognition. They need to acquire cognitive processes that help them organize and juggle the abundance of information pertinent to a case.

For client interviewing, for example, students need to learn more than general scaffolds for developing rapport, gathering information, and probing memory. They need to develop the abilities to identify basic doctrinal issues raised by a client's problem; to consider the interplay between different procedural, substantive, and ethical issues raised in the interview; and to understand the difference between routine issues in a particular area and more difficult ones that require consultation with more experienced practitioners.

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<sup>14</sup> *Id.*, at 267.

Yet the Carnegie story largely ignores these and other essential cognitive processes. As a result, experiential education based on that narrative may not provide students with the rich experiences necessary to develop as true experts in practice.

**Tale 2: *The Enchanted Standardized Client***

The second story which has gained quite a following in experiential education circles is what I call *The Enchanted Standardized Client*. According to this narrative, experiential educators should use standardized client simulations to evaluate lawyer performance.<sup>15</sup>

The American *Best Practices for Legal Education* report, for example, glowingly tells the story of an experiment using standardized clients at Glasgow Graduate School of Law in 2006 to assess student communication skills in interviewing. In this experiment, instructors used eight explicit criteria to evaluate student proficiency in interviewing:

- i. Were the greeting and introduction appropriate?
- ii. Did the lawyer listen to the client?
- iii. Did the lawyer use a helpful approach to questioning?
- iv. Did the lawyer accurately summarize the client's situation?
- v. Did the client understand what the lawyer was saying?
- vi. Did the client feel comfortable with the lawyer?
- vii. Would the client feel comfortable having the lawyer deal with her

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<sup>15</sup> For a full discussion of the issues raised in this section, see Krieger, *supra* note 6.



situation?

- viii. Would the client come back to this lawyer if she had a new legal problem?

For each of these eight elements, proficiency was assessed on a highly specific scale and given a score between 1 and 5. Although such an approach is touted as a straight-forward method for assessing student learning, the standardized client story, like the Carnegie tale, has very little empirical basis. Advocates for this approach point to the use of standardized patients in medical education, but ignore the fact that very little study of that method has been conducted in the health sciences field.

One major study in the medical field, however, suggests that in assessing clinical ability, reasoning ability may be at least as important, if not more important, as performance.<sup>16</sup> In this study, researchers examined the relationship between patient complaints to medical regulatory authorities about the nature of their physician's care and the physician's previous performance on the Canadian medical licensing exam. The research sample included all physicians – over 3,000 doctors -- who took the licensing exam between 1993 and 1996 and were licensed to practice in Ontario and/or Quebec.

Researchers then compiled data on all complaints filed with provincial regulatory authorities between 1993 and 2005 which were investigated and found to

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<sup>16</sup> Robyn Tamblyn, Physician Scores on a National Clinical Skills Examination as Predictors of Complaints to Medical Regulatory Authorities, 298 J. AM. MED. ASS'N 993 (2007).

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be valid. For each physician, they determined complaint rates, derived by dividing the number of valid complaints by years of practice time for two different types of complaints: those concerning communication issues and those concerning quality of care. Finally, the researchers compared the two different complaint rates with each physician's performance on the various components of the licensing exam.

One part of the licensing exam assessed medical knowledge using approximately 450 multiple-choice questions about different areas of medicine. A second component assessed clinical decision-making skills using write-in or menu-selection response formats on 36 to 40 clinical problems concerning critical aspects of diagnosis or management. Grades on these problems were not based on a single correct answer but on the relative quality of the responses regarding critical decisions in situations in which errors could affect the patient outcome. The final part was a performance-based standardized patient examination which asked candidates to interact with simulated patients for five to ten minutes. Trained physician-observers assessed candidates in a number of areas, including data collection (e.g. medical history and physical examination) and communication skills (e.g., whether the test-taker used condescending, offensive, or judgmental behaviors or ignored patient responses).

After examining the data, researchers found that the best predictor of quality-of-care complaints was the licensing exam's clinical decision-making component, which focused on the cognitive ability of candidates to solve problems. The better the test-taker's score on that part of the exam, the lower the complaint rate for that

physician. Although high scores on the communications component of the performance exam were not as good a predictor of low quality-of-care complaint rates, researchers also found a statistically significant inverse correlation between that measure and such rates. In regard to communication complaints, researchers found that scores on both the communication part of the performance exam and on the clinical decision-making exam served at nearly the same level, as predictors of communication complaint rates.

Finally, researchers surprisingly found a statistically significant inverse relationship between overall complaint rates and scores on the multiple-choice test.

Now, I certainly am not describing this study to you so that you can return to your law schools and report that the introductory speaker at a conference on complex legal education called for increased use of multiple-choice tests. In fact, the study seems to suggest that we should be focusing on teaching students how to problem solve and make decisions in practice more than regurgitate information.

The primary reason I have discussed this research is to raise questions about the effectiveness of the use of standardized-clients to assess student development. The appeal to teachers of a checklist approach to assessment is not insignificant. This kind of method is relatively straightforward and unambiguous in its application, with clear goals and criteria for evaluation. Students are also likely to embrace performance-based assessment. They will be graded favorably if they simply select and apply the proper tool from their toolkit of lawyering techniques.

But in its straightforwardness, the standardized-client approach may detract us

from focusing on more significant competencies for long-term practice, such as clinical reasoning. This medical study, then, raises significant questions about faddish narratives such as the use of standardized client assessment which are enticing in their simplicity, but which have little empirical support.

As Geoff Norman, a researcher on medical education observes, “I fear that in a few years the outcomes movement too will emerge as one more educational fad, whose major impact was on committee hours reported by academics. This would be unfortunate. The goal of achieving some kind of uniformity is laudable, but the means to the end appear[] too simplistic to be successful.”<sup>17</sup>

### **Tale 3: The Gospel of Teaching to Learning Styles**

The final narrative that pervades some quarters of experiential education is *The Gospel of Teaching to Learning Styles*. For many years now, skills instructors in the States – especially clinicians and legal writing teachers – have enthusiastically preached this gospel.

According to the tale, there are at least five learning styles: (1) verbal; (2) visual; (3) oral; (4) aural; and (5) tactile. Different learners process information most efficiently through different methods: verbal learners -- through writing and reading written texts; visual learners – through pictures, diagrams, and other visual formats; oral – through verbal discourse; aural – through listening; and tactile – through doing.

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<sup>17</sup> Geoff Norman, Editorial – Outcomes, Objectives, and the Seductive Appeal of Simple Solutions, 11 ADVANCES IN HEALTH SCI. EDUC. 217, 219 (2006).

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The preachers of this gospel acknowledge right up front that students generally rely to a greater or lesser degree on most, if not all five, methods. But they go one step farther: according to their story, instruction -- to some extent -- should be tailored to a student's learning style. Individual learning styles should be assessed, and instruction should be focused on that style.

*The Best Practices Report* recommends, for example, that law schools create faculty-supervised learning centers to provide academic support for students. These centers, the *Report* contends, would assist all learners as individuals to make demonstrable progress at their own pace taking their learning styles into account without stigma. And the literature is replete with exhortations such as this one from a clinical teacher at a prominent clinical program, “[R]eaching a learner through his or her preferred learning mode can have a substantial positive effect on learning efficiency and outcomes for that student. When designing an effective learning-friendly classroom community, professors can draw upon these understandings of preferred learning modes.”<sup>18</sup>

Unfortunately, however, the preachers of the *Learning Style Gospel* have not taken a hard look at the recent empirical evidence about tailoring instruction to learning styles. In fact, that evidence, calls into question the accuracy of this story. A recent article in the journal *Medical Education* reviewed the extensive literature on learning

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<sup>18</sup> Kate E. Bloch, *Cognition and Star Trek: Learning and Legal Education*, 42 J. MARSHALL L. REV. 959, 968 (2009).

styles and concluded, “[A] thoughtful review of the data provides no support for style-based instruction.”<sup>19</sup> Research has shown that people, when asked, will volunteer preferences about their preferred mode of taking in new information and studying. Such preferences, however, do not demonstrate that assessing a student’s learning style would be helpful in assessing the most effective mode of instruction for that student.

The authors of that *Medical Education* article observe that the only research design that would support style-based teaching would require the evaluation of the outcomes from different instruction using different modes of instruction. Specifically, an appropriately-designed study would require that subjects be divided into two different groups (for example, visual and verbal) based on a learning styles test; the subjects would be randomly assigned to instruction in the different modes so that one-half of each group would receive the right mode of instruction and half would receive the wrong mode; and all the subjects would then be given a test for assessment. These researchers found that only a relatively few studies used this methodology, and most of them that did showed no correlation between the subject’s performance on the assessment test and a subject’s instruction in her preferred learning mode. The authors conclude, “[T]here presently is no empirical justification for tailoring instruction to students’ supposedly different learning styles. Educators should instead focus on the most effective and coherent ways to present particular bodies of content.”

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<sup>19</sup> Doug Rohrer & Harold Pashler, *Learning Styles: Where’s the Evidence*, 46 MED. EDUC. 630 (2012).

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So here with the *Gospel of Learning Styles* we have another popular story in the experiential education library that – under close inspection – is not quite as significant as its narrators try to make it.

Again, I want to be clear that I am not contending that there is no such thing as different learning styles or that, when possible, a teacher should try to use different modes of instruction. In fact, the researchers who have conducted these critical reviews of learning style literature uniformly suggest that different modes can be helpful if the content taught can effectively be taught with that approach. My only point is that before we get on the tailored-learning-style bandwagon, we need to seriously consider the validity of the research underlying that narrative. Before law schools expend substantial funds on learning centers focused on individual learning styles or instructors use their limited course time to testing of individual learning style, we need some critical inquiry of the subject.

### **Where do we go from here?**

These stories -- *The Practical Apprenticeship Model: the Vehicle for 21<sup>st</sup> Century Legal Education*, *the Enchanted Standardized Client*, and *Learning Style Gospel* are just three of the popular narratives that dominate many discussions in the field of experiential education.

Unfortunately, there are other similar stories. In classic persuasion mode, these tales are used to validate our pedagogy and approaches to legal education. But, for the most part, they are not the subject to critical inquiry or discussion. These narratives may have some validity, but most scholars in the field have shied away

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from approaching them with the lenses of inquiring mode.

So how do we do that? I would like to spend the remainder of my presentation describing some proposals on how we can use inquiring mode to approach Complex Legal Education – Knowledge, Skills, and Values.

First, I suggest that we need to subject our pedagogy and teaching models to evidence-based scrutiny. Unlike researchers in other fields such as medical education, scholars in legal education have substituted empirical examination of their work with arguments and theories based on the authors' own experience in the classroom. Perhaps, it is in our DNA. As lawyers, most of us would rather argue positions rather than openly explore issues. We do not have the scientific bent of physicians.

Most scholarship on complex legal education has been no different. In large part, it is based solely on anecdotal experiences in the classroom or clinic or on informal surveys of students in skills courses. Nice stories; but too little critical inquiry. The purportedly momentous Carnegie Report on American legal education, for instance, based most of its assertions about the role of clinical education in law schools on an informal survey of clinical programs at several different law schools. In selecting these schools and analyzing the data, the authors of the report used no methodological controls. Accordingly, they have provided us with no basis for assessing the validity of their findings.

Skills teachers, myself included, are quite gratified by the positive feedback we receive from our students who consistently repeat the mantra, "Your course is one of the only classes in law school where I did something practical!" But such



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acknowledgements or student satisfaction surveys, such as the American Law School Survey of Student Engagement (“LSSSE”), are not substitutes for a hard look at teaching methods. They simply do not tell us whether our pedagogy – in the long run – will transfer into effective representation of clients in practice.

What I believe we need to do is approach our research in an inquiring mode with an open mind, not to “prove” a particular theory or validate a pet method for training students. Rather, we should attempt to learn as much as possible about the subject to develop inferences and explanations about it.

A whole array of subjects in the area of complex legal education are out there that are ripe for empirical study: a) the relative effectiveness of different instruction models -- live-client clinics; simulation courses; and externships -- in training students in particular skills; b) the impact of different modes of instruction -- large-group lectures, seminars, role plays -- on development of specific skills; c) the effectiveness of computer-based learning in complex legal instruction; d) the efficacy of early lawyering skills courses in laying a foundation for later skills training; e) the effectiveness of different methods of outcome assessment for evaluating student performance; and f) the long-term impact of clinic courses on attorneys in practice. And there are many other issues I am sure you can identify. I suggest that throughout this conference, we consider issues which we can empirically test.

Now I can read the thought bubbles over your heads responding to this proposal: “It’s impossible to test with any accuracy most, if not all, of the issues you’ve identified. Complex legal education is simply too complex to subject to empirical

scrutiny.” While this concern is quite legitimate, I do not think that it undermines -- in any significant way – the benefits of such inquiry. No, we are not going to be able to run the kinds of large subject quantitative studies used in some medical research. But we can use the rigorous methods developed for small sample size qualitative research that can start to give us some insights into the questions we wish to study.

We can design such valid research by: i) the crafting of concrete and narrow hypotheses; ii) the development – even with small sample sizes -- of selection criteria for subjects which attempt to eliminate bias; iii) the use of a methodology, such as video recording or document capturing software, which assures the collection of the full array of data; and iv) the development of valid and reliable rules – explicit coding protocols- - for measurement of the data collected.

Moreover, the validity of this type of research can be enhanced by replication and sharing of data. The methods of qualitative empirical study require transparency in the research process. Researchers disclose all the steps of their studies: hypothesis generation; subject selection criteria; methodology; and measurement protocols. And after they publish their studies, they post their data on websites accessible to other researchers. In this way, other scholars have the ability to review and critique the research methods and to conduct their own analysis of the data. They also have the ability to tweak the methodology and attempt to replicate the study. Research, then, becomes a social enterprise, in which multiple researchers are not just telling their discrete stories about a subject but building on the work of others.

Second, I propose that we collaborate much more extensively with colleagues in

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other disciplines who are exploring similar complex educational issues. Researchers, especially in the area of health sciences, have been studying issues of professional education for decades. We are far behind them, and we can learn a lot from them. I could not have done my own empirical and theoretical research on student legal reasoning without the significant assistance of faculty members at Columbia Medical School's Department of Biomedical Informatics.

A few years ago, after I published a piece on the role of domain knowledge in teaching legal problem solving, a law professor at another school was highly critical of my conclusions. I suggested that we develop a study together to test our divergent hypotheses. He declined my offer candidly telling me that empirical research is simply just too time-consuming. While such research may be very labor intensive, at least in my opinion, that factor is not an adequate excuse for rejecting empirical scrutiny of our work.

By working with researchers in other fields, some of the labor intensive aspects of empirical research can be alleviated. They can help us frame hypotheses and develop research methodologies. Many of the issues we are now tackling have been the subject of research in other fields. These studies can be used to frame our own research. For example, medical educators have conducted numerous studies of the issue of the use of simulated versus actual patients in clinical instruction. And the issue of learning transfer – using a concept learned in one context to solve a problem in a different context – is now a very hot topic for research in a number of areas of educational psychology. With necessary revisions, we can attempt to replicate this research.

Researchers in other disciplines can also train us in the methodology of qualitative empirical research. The Columbia faculty, for example, have helped train my own research assistants in the use of the think-aloud protocol for interviewing law school subjects in my studies on legal reasoning. And in a study which I am currently conducting with a colleague on the different reasoning strategies of students using print versus electronic media, a colleague in Hofstra's Sociology Department is assisting us in using advanced statistical software to analyze the data.<sup>20</sup>

Additionally, colleagues in other fields can give us a deeper understanding of the theories and approaches in other disciplines than we can gather from reading one or two articles. I am the first to admit that empirical research is not the be-all-and-end-all of critical inquiry of our field.

Serious study of the relevant theoretical literature in other fields can also be quite productive. Far too often, however, legal scholars will discover a particular social, psychological, or educational theory and latch onto it, without a full grasp of the place of that theory in the discipline or critiques of its validity, and present it as accepted dogma. Apparently, that is what happened with the Carnegie Report in which the authors focused solely on the Dreyfus theory of expertise without considering the contradictory evidence and theories in the cognitive science literature. Researchers in other disciplines can provide us a more nuanced grasp of the present state of thinking

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<sup>20</sup> Subsequent to this conference, this study was published. See Stefan H. Krieger & Katrina Fischer Kuh, *Accessing the Law: An Empirical Study Exploring the Influence of Legal Research Medium*, 16 VAND. J. ENT. & TECH. L. 757 (2014).

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in those fields and introduce us to all the important literature on a subject.

In a similar vein, colleagues in other fields can help us to tamp down our tendency to slide into persuasion mode. Several times in reviewing drafts of my articles describing my empirical studies, my colleagues at Columbia have cautioned that my data do not fully support some of my extravagant conclusions. They have helped me to understand that any one study is only one piece of the puzzle, and that other research – by me and others – will over time provide a fuller picture.

Finally, I propose that we reach out to other colleagues in our law schools – especially those who are critical or skeptical of experiential education – to collaborate on studies of effective pedagogy. Even after all the decades in which clinical and skills teaching have been part of the curriculum, there is still a divide between “them” and “us.” In my own experience, I have seen that phenomenon even in schools that have a strong tradition of skills education. And it is not just the nonclinical teachers who have this superiority complex that their teaching is deeper and more significant. Often clinicians will confide among themselves that students are getting their only *real* training in clinics.

At least in my opinion, if legal education is going to improve significantly, our studies of teaching methods and pedagogy should not be limited to assessing experiential education. We need to explore the entire enterprise of legal education. As the Canadian study of performance in practice suggests, there are benefits in complex professional education from both traditional doctrinal study and clinical fieldwork. And it may not be as simple as the Carnegie Report suggests, as having a first year

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devoted to study of basic legal reasoning and final years devoted primarily to skills training.

We need to persuade our colleagues to work with us to develop studies to test the relative effectiveness of different teaching methods and approaches. Both groups need to recognize that arguments in persuasion mode about the relative benefits of different teaching methods are not going to resolve the matter. And both need to approach this research with open minds willing to accept results that are counter to their present positions.

### Conclusion

After all this criticism of the scholarship on complex legal education, some of you may be wondering whether I am going to conclude this presentation questioning the merits of my more than three decades as a clinical teacher.

But that is far from the case.

While I might not have substantial empirical support for my beliefs, I do feel that clinical education has had significant benefits for my students and thousands of others over the past half a century. I acknowledge that much of this feeling is based primarily on stories, but when I talk to graduates twenty or thirty years out of law school and hear tales of the value of clinics on them even today, I know we had some real effect. But, at the same time, I am worried that we will complacently continue – much like our nonclinical colleagues – to rely on stories to support our work rather than critical inquiry.

I certainly understand the risks of our questioning the effectiveness of our teaching

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methods. While experiential legal educators have come a long way, at a vast majority of schools, our status is still less secure than doctrinal faculty. If we follow the path I suggest, we may be giving our critics ammunition to use against us.

But if our goal is to improve our teaching, better train our students, and provide quality representation for clients, I, for one, believe the risk is worth it. We need to show our critics that we are confident enough in our pedagogy that we will not shy away from rigorously assessing it.

When I look at the alternative stories of the establishment of the Palacký Clinic, I have to say I like the second one much better. It is not a heroic tale. It highlights the limitations of both the faculties at Hofstra and Palacký. But in so doing, it helps us -- so much better than the first narrative -- to explore what we can learn about the establishment of clinical education in newly-developed democracies and the nature of experiential education. In fact, given the present success of the Palacký Clinic, that story may be a good lesson for us about the need for slow, grassroot development of clinics rather than close direction by experts from abroad.

I hope that throughout this conference, we do share our stories of our successes in our field. But I also hope that we do not shy away from identifying our failures, problems, and doubts.

Most importantly, I hope we can consider ways of collaborating in the future to reflect critically on the important issues now facing complex legal education.

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ISBN: 978 1 78536 778 6 Price: £150 (Web £135)

Whilst undoubtedly rooted legal scholarship, human rights, as a field, continues to undergo significant diversification in terms of the methodological techniques used to generate research. *Research Methods in Human Rights: a Handbook* provides researchers with insight into the various approaches that have emerged, along with the relative benefits and drawbacks of each. Edited by Bård A. Andreassen, Hans-Otto Sano and Siobhán McInerney-Lankford, the volume is available from Edward Elgar Publishing.

The editors have compiled an interesting and diverse set of contributions, drawing from the growing body of human rights research. When considered as a publication, the handbook serves to advocate for more a critical approach within the field, as well as serving to guide the researcher through the various methodological tools that have proliferated into human rights research. In light of the many challenges characterising the global environment, the requirement for interdisciplinary collaboration within the field of human rights should be increasingly clear; the publication is effective in providing the researcher with a critical discussion of the various approaches available, and accordingly its utility will be clear to researchers from both legal and social science backgrounds.

Several of chapters themselves provide the reader with clear and comprehensive instructions as to how to go about utilising various methodological techniques, as well



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as suggesting areas where they may be best applied. PhD and Masters Students may find the book to be particularly useful in developing effective methods for analysing human rights problems.

The book itself is divided into 2 major sections, with chapters 2 to 7 covering research methods that may be procured from within existing disciplines, and chapters 8 to 18 covering interdisciplinary methods. The first chapter represents an introduction, doing an effective job of outlining the historical developments in the field, in addition to outlining the reasons behind the lack of methodological development within human rights. The chapter goes on to clarify the conceptual blind spots and shortcomings that have characterised the field in the past as well as briefly summarising the contents of the book.

The second chapter by Martin Scheinin outlines the central importance of interpretation within human rights law, whilst concurrently acknowledging the difficulties that exist in developing a sufficiently rigorous methodology. Whilst ultimately advocating for a more scientific approach to international legal scholarship, the chapter does not shy away from acknowledging the difficulties in accomplishing effective interpretation of human rights law. The chapter refers to treaties as well as customary law, discussing how interpretation relates to each. Considerations include the means of interpretation, the sources of international law, and the various barriers to a scientific method of interpretation.

Chapter 3, authored by McInerney-Lankford provides a frank assessment of the methodological weaknesses prevailing in the otherwise solid body of human rights research. Much of the chapter approaches the lack of a critical approach inherent in much human rights scholarship, and the failure for researchers to be sufficiently critical of the norms foundational to human rights law. The chapter also consider the lack of emphasis on impact. The chapter suggests legal scholars approaching human rights should proceed with fewer assumptions and more readily consider the use of supplemental information and methods in order to better understand the impact and uptake of the norms they approach.

Chapter 4 introduces hermeneutics as a methodological approach to human rights, considering the interpretation of both legal text as well as human rights treaties The chapter provides a compelling description of how the approach of hermeneutics can provide a sufficiently critical means to engage with human rights problems.

Chapters 5 to 7 explore the relevance of a range of other disciplines and research methods to human rights. Chapter 5 for instance documents and discusses the exchange between economics and human rights scholarship. The chapter explains that there exists a solid basis for meaningful collaboration between the approaches, observing a convergence in terms of methods in recent published works; Anderson also notes how many methodological tools that are used in economics can be readily adapted to the analysis of human rights. In the same vein, Chapters 6 and 7 go on to

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discuss the relevance of historical and ethnographic techniques to the study of human rights respectively.

Part 2 deals with cross-disciplinary issues applicable to human rights research, including discussion of research ethics, the use of comparative methodologies and a range of issues surrounding conducting quantitative and qualitative research. In addition to identifying these key issues, part 2 provides a wealth of practical advice as to how to address methodological problems. The reviewer found Georges Ulrich's perspective on research ethics to represent a particularly salient contribution, perhaps being of interest to researchers conducting studies of an empirical or sensitive nature. Whilst many of the problems explored in the second part of this book may have long histories outside of human rights research, discussion of their relevance to this expanding area of scholarship represents a key contribution.

In summary, the volume sets out to "advance methodological awareness, competence and rigour, and therefore contribute to a greater understanding of the role of human rights in context". When considered in accordance with these aims, the book certainly achieves its goal, and will serve to not only inform new researchers, but also open up new areas for more established scholars. Whilst the price of the book is certainly a factor to consider, this book would represent an effective investment for researchers and institutions considering new approaches to human rights research.

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