ISSN 1467-1069

INTERNATIONAL JOURNAL OF

Clinical Legal Education

Articles

NORTHUMBRIA LAW • PRESS

December 2007 pages 79–130

Contents

Page

Foreword

Introduction

Welcome to the Winter 2007 edition of the International Journal of Clinical Legal Education and my apologies for the slightly late publication of the Journal, which comes out just as we gear up for the 2008 Cork IJCLE conference. The response to the Call for Papers for this conference has been overwhelming, with papers from almost all the major clinical jurisdictions, including a series of papers from Central and Eastern Europe. I am obviously delighted to see the IJCLE conference developing in its role as the major annual conference for clinicians to share experiences across jurisdictions and for us as clinical teachers of Law to share best practice and to develop in our roles as we draw on the widest range of models of clinical practice and reflection.

This edition:

This edition brings together three papers from very different jurisdictions. Myrta Morales Cruz uses her experience – and the experience of her clinical students – in fighting expropriation of land in Puerto Rico through legislative change as a springboard for a wider reflection on the lawyering process, and the lessons for clinics. It is always good to see Paulo Friere revisited. The principles of empowerment must, it seems to me, always underpin our work as clinicians – after all, clinic is itself a model of empowerment of students, and thus an ideal opportunity for young lawyers to reflect on the nature of professionalism and the social (and political) expectations intrinsic in the role that they are growing into.

One of the justifications for an international journal of clinical education is that it serves to analyse not only the contexts which are unique to each jurisdiction – and sometimes to each law school – but also to identify what is common in the experiences of clinicians. Like Morales Cruz's article, Willem de Klerk's article similarly considers the different educational imperatives inherent in clinical education – and uses his own experiences to consider the wider role of clinic within the South African context. There is much in the article that will strike a chord with clinicians in every country – the ambiguous status of clinic, the difficulty of explaining who and what we are and what we do – but it is also an article that is rooted in the unique South African experience. One telling footnote makes the point about the difficult of addressing problems in a context where there may – in practice – be little effective implementation of purely legal solutions.

In the last of the pieces Liz Curran also considers clinical education and client empowerment, here in the context of her clinical programme at La Trobe in Australia – and looking at the potential for law reform work in the Australian context. Curran argues that by giving the (otherwise) marginalised in society a voice, law reform which is grounded in casework has a sense of reality which often sways hard-line decision-makers. Curran also, however reflects on the risks that may arise from such case-work based law reform projects and argues that clinics provide one route by which universities can play their role in the wider public life of the community, as well as educating students in the nature of professional roles.

Other matters:

This is my final edition of the Journal as Editor. I am moving on within Northumbria University to become Dean of the Law School – a role that I am delighted to assume since it allows me to continue to ensure that our clinical programmes remain central to everything that we do within the School. I am equally delighted to be able to leave the Journal in the very capable hands of my colleague, Kevin Kerrigan. Kevin is a Reader in Law at the Law School, and has been a key player within our clinical programmes for many years, developing a successful and well-regarded criminal appeals clinic. He has also been involved in helping to organise our IJCLE conferences – as well as publishing in the Journal – and he will be known to many of you already.

I wish Kevin every luck with the Journal. It has been a pleasure to serve as Editor – and to build on all the work done by my predecessor, Cath Sylvester. I have been assisted to a huge extent by my eminent – and ever helpful – Editorial Board, and by all of those who have submitted articles – and (equally critically) have kindly agreed to serve as referees.

Thank you to everyone who has helped to make the Journal such a success and I look forward to reading future editions of the Journal – and to continuing to attend the conferences, from which I always learn so much.

Philip Plowden

May 2008

"No me des el pescado, enséñame a pescar"
"Do not hand me fish, teach me how to fish"[1]

Community Lawyering in Puerto Rico: Promoting empowerment and self-help

Myrta Morales-Cruz[2]

Introduction

Law 232 of August 27, 2004 has a special meaning to the people residing in some of Puerto Rico's poorest communities. It was the result of the hard work, during a period of a year and a half, of leaders from some of these communities and my students, the students of the community development section of the Legal Aid Clinic of the University of Puerto Rico's School of Law. The story of Law 232 can provide insight into what the role of a lawyer can be in the battle against poverty. To understand the story of this Puerto Rican law, one has to go back to August of 2002. During that month the University of Puerto Rico's School of Law Legal Aid Clinic inaugurated its community development section.

The community of Juan Domingo in the Municipality of Guaynabo had approached the Clinic before the community development section had started operating. Juan Domingo had been formed more than eighty years ago by squatters (or "land rescuers" as they prefer to be called). It was facing a removal process since the Municipality of Guaynabo, which has the highest per capita income in Puerto Rico, had decided to use the power of eminent domain against the community.

At the beginning of August, 2002, the director of the Legal Aid Clinic took me to a meeting in

1 Popular saying frequently used by Jorge Luis Oyola, leader of the Los Filtros community, located in Guaynabo, Puerto Rico. I want to thank Carmen Correa Matos, Hiram Meléndez Juarbe, Efrén Rivera Ramos, Dan Squires, William Vázquez Irizarry and Lucie White for their help with this paper. I dedicate this paper to the memory of my mother, Myrta Cruz Pérez.

2 Associate Professor of Law, University of Puerto Rico School of Law. B.A., Georgetown University; J.D., University of Puerto Rico School of Law; LL.M., Harvard Law School; M.Jur., Oxford University. This is an expanded version of a paper that was originally presented at SELA (Seminar in Latin America of Constitutional and Political Theory) in June, 2005. The paper was subsequently published in Spanish by the University of Palermo (Argentina).

Juan Domingo with the purpose of announcing to the community the opening of the community development section. At the time we did not know that the Juan Domingo community was holding a meeting to which it had invited other Guaynabo communities that were facing a similar problem.

Several days after the meeting in Juan Domingo, I received a phone call from Jorge Oyola, president of the neighborhood committee of the Los Filtros community, also located in Guaynabo, who had attended the Juan Domingo meeting. Mr. Oyola requested legal assistance for his community. On a Sunday night in September of 2002, I attended a meeting with my group of students and professor Carmen Correa, who at that time was also in charge of the community development section of the Clinic. We met with a group of thirteen people who comprise the Los Filtros neighborhood committee. That night they explained to us that they had knowledge of a plan by the Municipality of Guaynabo to use the power of eminent domain (initiate an expropriation process) against the community and they told us the story of their community.[3]

The Los Filtros community was founded over ninety years ago. At that time it was far away from the urban area, located in a rural area of Guaynabo. However, due to urban sprawl, the community is currently located in the middle of urban Guaynabo and it is surrounded by several of the richest neighborhoods in Guaynabo and in all of Puerto Rico. The cost of the roughly twelve acres of land, where the community is set and more than one hundred and twenty families live, is extremely high at the present time.[4]

During our first meeting in the community we were informed that the neighborhood committee had organized three months ago with the purpose of blocking the expropriation of the land which they owned. The committee had been successful in having the Urban Development and Housing Commission of the House of Representatives start an investigation about the proposed use of the power of eminent domain by the Municipality of Guaynabo against the Los Filtros community. Also, the committee had asked the state government to declare it a "special community".

The concept of a "special community" was coined by Sila María Calderón, former governor of Puerto Rico (2000–2004), while she was mayor of San Juan during the years 1996 to 2000. During her term as mayor, more than fifty low income communities in San Juan were designated "special communities". The main goals of this program were improving the infrastructure conditions in these communities and stimulating community empowerment.[5] When Calderón became governor of Puerto Rico in 2001, the first law of her administration was the Law of Special Communities which extended the special communities program to the entire island.

When we first met with members of the Los Filtros community they explained to us that they had applied for admission to the special communities program since the mayor of Guaynabo had not submitted the community for inclusion. They told us that they wanted the protection that the Law

3 The power of eminent domain is the power of the State to take private property for public use upon payment of just compensation. *Constitution of Puerto Rico,* Article II, section 9.

4 There is a water treatment or water filtering plant next to Los Filtros, hence the name. The community was originally formed by the workers who came to build the water treatment plant and to work in a nearby dairy farm. They settled in the area with their families. In 1979 residents of the community were given title to the land by the State government.

5 The following criteria are taken into account in deciding whether a community is going to be declared a "special community": high percentage of illiteracy, high percentage of people living under the poverty threshold, high unemployment rate, families financially supported by only one member and a long history of environmental problems and of neglect in the provision of basic services. *Law for the Development of Special Communities in Puerto Rico*, Law 1 of March 1st, 2001, article 8, 21 L.P.R.A. sec. 967 (2004).

of Special Communities offered to low income communities and that they wanted to be in charge of the development of their community.

One of our first tasks as legal advisors to the community was helping the committee to prepare for the public hearings that were going to be held at the House of Representatives in November, 2002, as part of the investigation of the expropriation process. The group of students analyzed the Law of Special Communities, the Law of Expropriation and the Law of Autonomous Municipalities.

The Law of Autonomous Municipalities granted the power of eminent domain (also known as expropriation or condemnation power) to municipalities in 1991.[6] This power was granted subject to the requirements set by the Law of Expropriation.[7] The Law of Expropriation, in accordance with the Puerto Rico Constitution, requires that the State have a "public use" in order to be able to exercise the power of eminent domain.[8] However, the Supreme Court of Puerto Rico has interpreted the term "public use" in such a broad manner that it is practically impossible to be successful in questioning the "public use" alleged by the government. Even making an area look more attractive has been recognized as a valid "public use".[9] On the other hand, a study of the Law of Special Communities revealed that the Office of Special Communities had no power over autonomous municipalities; it only required that the Office coordinate with autonomous municipalities projects in special communities.[10]

The Municipality of Guaynabo claimed that in the case of expropriation against Los Filtros its "public use" was the construction of "social interest" housing. However, the community had not been informed about the plans of the municipality. It was of great concern that the requirements in order to qualify for "social interest" housing that the Municipality of Guaynabo had established in a manual which the community had managed to obtain were strict, disqualifying many members of the community from such housing projects. For example, only people with "moderate income" qualified for these social interest housing projects. Neither people less than sixty two years old who lived alone, nor people who were not citizens of the United States qualified.[11] The manual also stated that if a person did not accept the property value set by the Municipality of Guaynabo, she would not be eligible for social interest housing.[12]

Additionally, the members of the neighborhood committee had heard that the proposed housing

6 *Puerto Rico's Law of Autonomous Municipalities*, 21 L.P.R.A. secs. 4051 (c) and 4453 (2004).

7 *Law of Expropriation*, 32 L.P.R.A. sec. 2901 *et seq*. (2004).

8 "Private property may not be taken except for public use and upon payment of just compensation as provided by law" (translated from Spanish), *Constitution of Puerto Rico*, Article II, section 9.

9 *ELA v. 317.813 cuerdas de terreno*, 84 D.P.R. 1 (1961).

10 *Law for the Development of Special Communities in Puerto Rico*, Law 1 of March 1st, 2001, article 4, 21 L.P.R.A. sec. 963 (2004).

11 Puerto Ricans are citizens of the United States. Legal Permanent Residents of the United States, mostly Dominican citizens in the case of the Guaynabo communities, are excluded from these social interest housing projects.

12 This is particularly problematic since the social interest apartments that have already been developed by the Municipality of Guaynabo are subject to a mortgage for the amount of money that is owed after substracting the value of the condemned property from the much higher value that has been set for the new apartments. Another concern regarding the new apartment complexes are the maintenance fees that have to be paid for the communal areas.

project was a small apartment complex.[13] They feared, according to their own words, being caged "or "locked up in boxes". People were afraid of losing their sense of a close knit communal life. This life is very tied to the land, which they use to raise animals and harvest fruits and vegetables. They also feared losing the vegetation (plants and trees) of the community, which is one of the few green spaces left in urban Guaynabo.

After analyzing the applicable law, we explained to the Los Filtros neighborhood committee that it was practically impossible to block the expropriation process in court. If they wanted to block the expropriation their only option would be to seek a change in the statutes. The Law of Special Communities did not grant protection as the neighborhood committee had initially thought. We discussed, then, the possibility of seeking an amendment of this statute.

After studying the Law of Autonomous Municipalities we realized that municipalities had one particular limit on their use of the power of eminent domain: when they intended to use this power in relation to land currently owned by the State government or land that had been owned by the State government in the past 10 years. In such cases, the municipality had to obtain a Joint Resolution from the Legislative Assembly of Puerto Rico authorizing the expropriation.[14] We decided that we could try to submit a similar amendment in the case of expropriation of land located in special communities. This would provide a public forum for the community and would give it an opportunity to present its position to the Legislative Assembly who would then have (together with the governor, who must sign Joint Resolutions for them to be valid), for all practical purposes, the final decision whether to authorize or not an expropriation process.

After much discussion we decided that ideally we would seek an amendment to the Law of Special Communities exclusively and that we would not seek to amend the Law of Autonomous Municipalities since the issue of the so called "municipal autonomy" was a very difficult political issue. Since 1991, when the statute was enacted, mayors from the two political parties that have alternated power in Puerto Rico have traditionally united to block all efforts that in any way would affect municipal autonomy. Also, the neighborhood committee wanted, in the words of their president, to "give more force" to the Law of Special Communities because they approved its public policy of favoring community empowerment.

Los Filtros is not the only community in Puerto Rico facing an expropriation process from an autonomous municipality. In addition to Juan Domingo and Los Filtros, the community of Mainé in Guaynabo approached the legal clinic in search of legal assistance. They are all part of a group of low income communities for which the Municipality of Guaynabo has expropriation plans. The Barriada Morales community in the Autonomous Municipality of Caguas also approached the legal clinic looking for help, after watching a television report about Juan Domingo

13 These types of small apartment complexes are known in Puerto Rico as "walk up apartments". The buildings are two to four stories high . Each floor usually has two apartments. The complexes have stairs, walkways, a small garden and a parking area which are all communal spaces. Currently people in Los Filtros live in wooden or concrete houses that they have built, surrounded by plants and trees. From the highest points of the community there is a beautiful view of the entire Bay of San Juan.

14 *Puerto Rico's Law of Autonomous Municipalities*, 21 L.P.R.A. sec. 4453 (2004).

and showing up in the community to learn about what was happening.[15] The community of Villa Caridad, located in the Autonomous Municipality of Carolina, was facing the same problem and sought legal assistance from the legal aid Clinic.[16]

In February of 2003, during a visit that the President of the Puerto Rico House of Representatives made to the community as part of the investigation process that the House had initiated, the students of the community development section of the Clinic discussed with him the proposed amendment to the Law of Special Communities. The president thought that the amendment was a good proposal, but warned the students that the mayors would pressure the district legislators to oppose the amendment.[17] However, he remarked that he would be willing to submit a bill with the amendment since he strongly supported the public policy behind the Law of Special Communities.

The students drafted the bill and together with the Coalition of Communities United against Expropriations and Abuse, known as CCUCA, a coalition that was formed by the Los Filtros, Juan Domingo and Mainé communities in Guaynabo, the Barriada Morales community in Caguas and the Protectors of the Guaynabo River, started a lobbying process in the Puerto Rico House of Representatives. During the lobbying process we visited the offices of all fifty two representatives. Students and community residents explained the purpose of the bill and advocated that it be made into law.

It was of vital importance to CCUCA, the coalition, that the bill be embraced by leaders from the three main political parties in Puerto Rico. This was accomplished when the two minority leaders decided that they wanted to be co-authors of the bill, together with the President of the House.

The bill was assigned to the Urban Development and Housing Commission, which held public

15 Puerto Rico's *Caribbean Business Magazine* (October 23, 2003) published an article about autonomous municipalities in the island which highlights some of the reasons for the gentrification process (displacement of the poor by the rich in urban areas) that our clients are trying to avoid. The mayor of Guaynabo commented: "Municipalities work on a local level, with local investors...They come to me, I sit down with them and we do everything to make it happen. We provoke development...The sheer size of the central government doesn't allow it to have such close interaction with the investors, or even with the communities." According to this article the strategic plan for the Municipality of Guaynabo is based on the development of housing projects in order to increase its property tax base. The mayor continues explaining: "That way, you help the central government, the local government, and the municipal finances through the collection of property taxes. A resident can move out of Guaynabo, but the property will always pay property taxes, whereas a factory can close and take away your revenue." The mayor of Caguas commented: "I have to keep this business running and make the city more attractive each day so that more people come to shop, work, invest, enjoy shows, eat at our restaurants..." The same article concludes about the Municipality of Carolina that it "...is also aggressively pursuing its portion of property taxes collected by CRIM" (Center for Collection of Municipal Taxes). Guaynabo, Carolina and Caguas are all municipalities that surround the municipality of San Juan, Puerto Rico's capital. Urban sprawl has turned what were once rural areas into centrally located land that is being aggressively sought by private developers.

16 This problem is not exclusive to Puerto Rico. The Institute for Justice, a non governmental organization in the United States, published a study documenting the use of the power of eminent domain (by filing a case in court or threatening to file a case) with the purpose of benefiting private developers in more that 10,000 properties between 1998 and 2002. Dana Berliner, *Public Power, Private Gain* (2003) (available at *www.ij.org or www.castlecoalition.org*). Recently a case questioning the broad interpretation given to the term "public use" in eminent domain cases was brought before the United States Supreme Court. The Court validated "economic development" as a public purpose under the federal Constitution. *Kelo v. City of New London, Connecticut*, 545 U.S. 469 (2005).

17 The Puerto Rico Legislative Assembly has a group of legislators that win by accumulation of votes who do not respond to any particular voting district. These legislators are not as readily influenced by the mayors.

hearings in July, 2003. The Clinic and CCUCA presented separate statements during the hearings. During the process of lobbying the Los Filtros community and CCUCA held numerous activities to further their cause, such as holding press conferences, appearing in radio and television programs and organizing protest marches and rallies, in which we participated and offered our help.[18] The Clinic helped the Los Filtros community to connect with the Community Design Workshop of the University of Puerto Rico's School of Architecture. The community and the architecture students designed a development project for Los Filtros taking into account the needs and desires of the residents.

It was during the preparation for the public hearings that we had one of our most important and difficult discussions. The CCUCA had approached other community coalitions to inform them about the bill and obtain their support. It was suggested that the bill be amended to give greater protection to the communities. Instead of limiting itself to providing community involvement through the Joint Resolution mechanism, a referendum in which seventy-five percent of the community voted in authorization of the expropriation process was proposed as another community participation mechanism to be included in the bill.

This proposal was the subject of great debate among the members of the CCUCA, the San Juan Coalition of Community Leaders, my students and me. Our main concern was that adding the community referendum mechanism would make the approval of the bill more difficult, since that mechanism gave even more power to special communities facing an expropriation process by a municipality. We feared that advocating this mechanism would have the effect of not obtaining any mechanism at all, that proposing it would, so to speak, kill the bill.

After much discussion, we decided to simply mention at the end of the Clinic's statement during the public hearings that some communities had suggested a way of making the bill even more democratic by adding that in order for the Legislative Assembly to authorize by a Joint Resolution an expropriation process by a municipality in a special community, the community itself had to authorize the expropriation process by means of a referendum. We decided to observe closely the reaction of the representatives to this new proposal so that we then could decide what to do about it. The proposal was very well received by both the President of the House and the president of the commission that was holding the hearings. The bill was amended to include the community referendum, with the seventy-five percent requirement.

Statements were presented at the public hearings by CCUCA and the Clinic, as already mentioned, by the Office of Special Communities, which also supported the bill and by the Federation of Mayors and the Association of Mayors, organizations which group together the mayors from the two main political parties in Puerto Rico. Both the Federation and the Association strongly opposed the bill for its alleged interference with municipal autonomy. These two associations exert great influence over district legislators in Puerto Rico.

The State Office of the Commissioner for Municipal Matters also opposed the bill. The Justice Department favored the inclusion of a mechanism in order to protect special communities from unwarranted expropriations but it argued that the Office of Special Communities should have the final decision. This suggestion was openly discarded by the legal advisor of the Office of Special Communities during the public hearings.

18 The community development section of the Legal Aid Clinic helps and supports its clients in activities with the press and in political activities, but we limit our participation in order to promote client empowerment.

The bill was approved unanimously by the House of Representatives in November, 2003. It was then sent to the Senate, where it was assigned to the Commission for Municipal Governments, Public Corporations and Urban Development. The group of students of the second year of the community development section of the Clinic and CCUCA were in charge of the lobbying process in the Senate. Once again, all the senators were lobbied and both the Clinic and CCUCA participated in the public hearings.

The bill was approved by the Senate on the last day of the legislative session, in June, 2004. The Senate decided to amend not only the Law of Special Communities, but also the Law of Autonomous Municipalities to include both mechanisms: the community referendum followed by the Joint Resolution in the case of expropriation in land located within special communities. The bill was sent to the Governor for her signature. After several visits to the Governor's mansion to continue our lobbying process, this time at the executive level, the Governor signed the bill, which became Law 232 of August 27, 2004.

Since January of 2005 Puerto Rico has a new government: a governor from the same political party as the former governor (who created the special communities program) and a legislative assembly controlled by a different political party. The two associations of mayors quickly lobbied the Governor's Mansion and the Legislative Assembly in order to repeal Law 232. Two bills were introduced to modify the law: one which repealed it in its entirety and another one (presented by the governor) which repealed the Joint Resolution mechanism. We have been able to prevent any tampering with Law 232 by attending public hearings, marching in front of the legislative building and aggressive lobbying. But, the struggle continues…

In May 4 of 2005, we won the first court cases in which Law 232 was raised as a defense. The Municipality of Guaynabo started filing expropriation cases against properties located in the Los Filtros community in December of 2004. My students asked for dismissal of the cases because of non compliance with Law 232. As I already mentioned, all cases were finally dismissed. If it had not been for Law 232 our only practical option would have been to request more compensation, but it would have been virtually impossible to question the "public use" alleged by the Municipality of Guaynabo because of the broad interpretation that the Supreme Court of Puerto Rico has made of the term.

The leader of the Los Filtros community has formed, together with leaders from other special communities, the Puerto Rico Alliance of Community Leaders. They have started organizing special communities all around the island.[19] The Alliance is using Law 232 as an example of what poor people can achieve if they work hard together.

In our story neither the law nor the lawyers have provided a final solution to the displacement of poor people in Puerto Rico. Law 232 could be repealed at any moment. But we have used law as a tool for our clients to become more empowered, to gain more power for themselves and for their communities. We have made it clear to the communities that the true power to prevent their displacement lies in them.

I based the advocacy model of the community development section of the University of Puerto Rico's School of Law Legal Aid Clinic on the model developed by Professors Lucie White, of

19 There are close to seven hundred special communities in Puerto Rico.

Harvard Law School, and Gerald López, of New York University's School of Law. It is an advocacy model that centers around process instead of results. López has referred to this model as one where the focus is on "process oriented client empowerment".[20] Traditionally poverty lawyers have concentrated on developing legal strategies in order to obtain results: "result oriented legal strategies".[21] López argues for a model more focused on the process, one that will allow the poor or low income client to take control of his or her situation and that will promote self-help and empowerment.[22]

Professor Lucie White has written extensively about this type of advocacy model, which has been called by some commentators "law and organizing".[23] Pedagogical work, based on a dialogue with the community, is crucial. The theory and methodology of popular education developed by the Brazilian educator and lawyer, Paulo Freire, are extremely useful in this type of work.[24] Freire critiques traditional education by labeling it "banking education" since it presupposes that there is an "empty brain", that of the person to be educated, where the educator "deposits" information. For education to be truly transformative it should start from the experience of the participants and be based on dialogue and action; it must be a participatory experience, generating a process of "consciousness raising".[25]

As early as 1970, Steven Wexler, in an article published in the Yale Law School Law Review, had remarked that since the problems of the poor are fundamentally problems of a social nature, not individual problems, poor people had to organize and act for themselves. To support this process, poverty lawyers had to radically depart from the traditional lawyering role and do work similar to that of a teacher, turning each moment into an occasion for poor clients to practice skills and establish networks that would allow them to make change.[26]

Lucie White has described three visions of how the "public interest" or "progressive" lawyer promotes change.[27] The first image of lawyering is the contest of litigation. In this image the lawyer's role is to design and win lawsuits that will further the substantive interest of the client. The lawyer "translates" grievances into legal claims.[28] In this image of lawyering the lawyer does not question the structure of the law itself, by asking whether it sometimes prevents him or her from translating the client's grievances into good legal claims. White adds: "Nor is it his role to question the judicial system, asking whether it sometimes prevents him from securing remedies that really work."[29] The lawyer uses the courts as a direct mechanism for redressing injuries and redistributing power to subordinated groups. In this image of lawyering the client is "in the background".[30]

As White remarks, public interest litigation has brought about substantive change. However, in some circumstances "courts have difficulty fashioning adequate remedies."[31] This can happen when the structure of a bureaucracy or its routine discretionary functioning is questioned and "courts find it difficult to craft and implement effective relief".[32] Another example is where the

20 Gerald López, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* (1991).

21 *Id*.

22 *Id*.

23 See, for example, Lucie White, *To Learn and to Teach: Lessons from Driefontein on Lawyering and Power*, 1988 Wis.L. Rev. 699.

24 Paulo Freire, *Pedagogy of the Opressed* (1970).

25 *Id*.

26 Steven Wexler, *Practicing Law for Poor People*, 79 Yale L.J. 1049 (1970), as cited by White, *supra* note 23.

27 See Lucie White, *supra* note 23.

28 *Id*. at 755.

29 *Id*.

30 *Id*. at 756.

31 *Id*.

32 *Id*.

courts have limited jurisdiction to redress an inadequate appropriation of public funds, which can be the root of many problems.[33]

The most serious limitation of this image of lawyering is that in order to get into court, clients must present their claims as similar to precedent claims that courts have already accepted. Litigants must propose remedies that are "coextensive with these confined claims and that can be feasibly administered by the courts".[34] This can result in co-opting social mobilization. As White concludes: "Through the process of voicing grievances in terms to which courts can respond, social groups risk stunting their own aspiration. Eventually they may find themselves pleading for permission to conform to the status quo."[35]

The second image of lawyering presented by White is "law as a public conversation". In this image the lawyer recognizes that litigation can sometimes work to change the distribution of social power, but these effects are secondary to "law's deeper function in stimulating progressive change".[36] Litigation can coerce change but it "is also public action with political significance."[37] The law and its practice constitute a discourse about social justice; it has a cultural meaning.[38]

In the second image of lawyering success is not measured by a whether a case is won. It is rather measured by such factors as "whether the case widens the public imagination about right and wrong, mobilizes political action behind new social arrangements, or pressures those in power to make concessions".[39] A limitation of this image of lawyering is that it cannot respond to subordinated clients who do not perceive their grievances clearly, the ones that have a more realistic assessment of the their options, the ones that distrust the "system". These clients never get the attention of the lawyer.[40] White suggests that the lawyer work with these groups of subordinated people in a joint project of "translating felt experience into understandings and actions that increase their power".[41] This is the third image of lawyering: "lawyering together toward change".

The third image of lawyering has two main components: pedagogy based on dialogue and strategic work. Paulo Freire's popular education theory and the feminist methodology of "consciousness raising" can be very useful in this type of lawyering:

> Freire's work shows how an active, critical consciousness can re-emerge among oppressed groups as they reflect together about concrete injustices in their immediate world and act to challenge them. He views this liberation of consciousness as fundamentally a pedagogic process. It is an unconventional, non-hierarchical learning practice in which small groups reflect together upon the immediate conditions of their lives.[42]

According to White, in this pedagogic model, no one monopolizes the role of the teacher. Humility is crucial for the lawyer who wants to venture into this type of work. There can be no real dialogue if the lawyer believes that he or she has privileged knowledge about reality or politics. The lawyer has to recognize his or her position as an outsider and earn the clients' trust.[43]

33 *Id.*
34 *Id.* at 757.
35 *Id.*
36 *Id.* at 758.
37 *Id.*
38 *Id.*
39 *Id.* at 758–759.
40 *Id.* at 760.
41 *Id.*
42 *Id.* at 761.
43 *Id.* at 762.

Lawyering in the third image also involves strategic work. The lawyer must help the clients to plan concrete actions "that challenge the patterns of domination that they identify".[44] This is a learning process where the clients learn to view their relationship with those in power not as a static condition, but rather as "an ongoing drama".

The lawyer has to help the group "learn how to interpret moments of domination as opportunities for resistance"[46]:

> The lawyer cannot simply dictate to the group what actions they must take. Neither the lawyer nor any single individual is positioned to know what actions the group should take at a particular moment. Sound decisions will come only as those who know the landscape and will suffer the risks deliberate together. The role of the lawyer is to help the group learn a method of deliberation that will lead to effective and responsible strategic action.[47]

White asks why this work should be thought of as lawyering at all. She answers that fluency in the law, defined as "a deep practical understanding of law as a discourse for articulating norms of justice and an array of rituals for resolving social conflict"[48] will improve a person's effectiveness and flexibility in this type of work:

> An understanding of law as discourse on norms will help [the lawyer] work with the clients to deepen their own consciousness of their injuries and their needs. Knowledge of the law's procedural rituals will give the group access to a central arena for public resistance and challenge. It is also possible, however, that professional identification as a lawyer can narrow one's strategic imagination. Perhaps the best arrangement is for lawyers-outsiders to work side by side with outsiders trained in other fields.[49]

The community development section of the Clinic's advocacy model can be compared to the second and third images of lawyering discussed by White. We are using law to widen the public's imagination about right and wrong, to mobilize political action behind new social arrangements and to pressure those in power to make concessions. Our work has exposed the injustice of using the power of eminent domain for gentrification purposes. We have mobilized political action to protect the poor from displacement and to support the development of housing projects by the communities themselves; and we have pressured the executive and legislative branches of government into supporting our clients.

But we are, most importantly, focusing on pedagogy based on dialogue and strategic work to promote client empowerment, and engaging in multidisciplinary work. Our work is a mutual learning process: we learn from the communities and the communities learn from us.[50] For example, our clients have learned more about the law. Statutes, judicial opinions and law in its broadest sense have been demystified for them. We have learned much about the reality of poor people, about their day to day struggle, and about politics, among other things. Our strategies are

44 *Id*. at 763.

45 *Id*.

46 *Id*.

47 *Id*. at 763–764.

48 *Id*. at 765.

49 *Id*.

50 Defining who the client is can sometimes be difficult in community lawyering. We have chosen to address this issue by focusing on working with neighborhood committees democratically elected by a community.

devised together. This process of mutual collaboration and learning has made our work together more effective. Finally, engaging in multidisciplinary work with other professionals, such as architects and community social workers and psychologists, has helped us to better address the problems of the community as a whole.

Our advocacy model can also be compared to business or corporate lawyering.[51] Our clients, like corporate clients, are "clients for life".[52] We counsel them without limiting our strategies to litigation, or to purely legal approaches, and we help them to design and implement long term strategies so that they can gain more power in our society.

During our work, we have noticed that lobbying has been a very successful tool for corporate lawyers in Puerto Rico. The largest law firms in Puerto Rico incorporate legislative and executive lobbying as part of their work or have lobbying divisions.[53]

We have found lobbying to be a good strategy for promoting empowerment among our clients. In the court, we, the lawyers, are in control of the process. Lobbying makes it easier for us to work side by side with our clients. They gain power as they speak and argue about their situation, about the law, about how the law should be… Their voice is independent from our voice as lawyers. Focusing on the legislative branch also makes it easier for our clients to gain access to the press and to make alliances with other community groups, which helps to create more public discussion about the issues. The public hearings have been crucial in the empowerment process. Finally, the fact that a statute, once approved, has a direct impact on more people that an average court decision, helps to bring more people into the process and furthers collective empowerment.[54]

51 See *Lawyering for Poor Communities in the Twenty-First Century, the Seventh Annual Stein Center Symposium on Contemporary Urban Challenges*, articles published in 25 Fordham Urban Law Journal (1998).

52 Susan D. Bennett, *On Long-Haul Lawyering*, 25 Fordham Urban Law Journal 771 (1998).

53 Since the 1980s attorneys working for institutions funded by the Legal Services Corporation, which is the case of most of the organizations providing free legal services in civil cases in the United States and Puerto Rico, cannot engage in lobbying, organizing or class action lawsuits. *Id*. at 775 (quoting United States federal statutes that prohibit such activities). Lawrence Friedman has suggested that the access to justice problem in the United States is not that the poor have no counsel, but rather a problem with what the poor would demand if they had adequate counsel. Lawrence Friedman, *Access to Justice: Some Comments*, 73 Fordham Law Review 927 (2004).

54 I want to clarify that I am not suggesting that the legislative process is fairer than the judicial process. The rich can make their voices heard more easily in the legislative branch, just as they can in the courts. My perception so far has been that engaging in the legislative process creates more opportunities for the voices of the poor to be heard and for collective empowerment. Much could be written about the difficulties of lobbying such as, for example, that it is extremely time consuming, but that could be the subject of another paper.

Our work is trying to open spaces of what Boaventura De Sousa Santos calls "direct participatory or base democracy". De Sousa Santos advocates radicalizing democracy by creating more spaces of participatory democracy. He believes that the postmodern project of participatory democracy will prevent the destruction of the modern project of representative democracy, and that the struggle for extra economic or post materialist goods, such as the environment or peace, a postmodern struggle, will be conditioned by the modern struggle for the redistribution of economic goods.[55]

The story of Law 232 shows how representative democracy can be used to open spaces for direct participatory democracy. If we had adopted a more traditional litigation approach as lawyers, our clients would have already been displaced from their communities. But more importantly, the opportunities for empowerment would have been lost. Our work together has been a process of mutual learning. The communities with which we have worked have gained access to the political process and have formed an alliance with communities all over Puerto Rico. They have organized, protested, marched, held press conferences, prepared their own development projects… Their voice is being heard. The primary power to radicalize our democracy by continuing to create true spaces of participation resides in them.

55 Boaventura De Sousa Santos, *The Postmodern Transition: Law and Politics* (1991) [from *Lloyd's Introduction to Jurisprudence* (sixth edition 1994). De Sousa Santos explains his progressive political postmodern theory (at 1208–1209):"The proliferation of political interpretive communities represents the postmodern way and, indeed, the only reasonable way of defending the accomplishments of modernity. I mentioned earlier, among such accomplishments, a fairer distribution of economic resources and a significant democratization of the political system in the conventional sense. As with all processes of transition, the postmodern transition also has a dark side and a bright side. The dark side is that, as the reification of class and the state are further exposed, the modern tools used until now to fulfill and consolidate those promises, that is, class politics and the welfare state, become less reliable and efficient. The proliferation of political interpretive communities will broaden the political agenda in two convergent directions. On the one hand, it will emphasize the social value of extraeconomic goods or postmaterialist goods such as ecology and peace: on the other hand, it will expand the concept and the practice of democracy in order to incorporate direct participatory (or base) democracy. The success of the struggle for extraeconomic goods will be conditioned by the success of the struggle for economic goods and for a fairer distribution of economic resources. The struggle for participatory democracy will prevent the emasculation of representative democracy. It is in this sense that the promises of modernity can only be defended, from now on, in postmodern terms."

Unity in Adversity: Reflections on the Clinical Movement in South Africa[1]

Willem de Klerk[2]

Introduction

Not long after I joined the Wits Law Clinic in January of 1997, I was seconded by our Director to attend a workshop hosted by Rhodes University Law Clinic in Grahamstown. The workshop was to be presented by the Association of University Legal Aid Institutions, or AULAI as it is commonly known.[3] As a new recruit to our law clinic I barely knew of the existence of other university law clinics in South Africa, let alone a national association of law clinics. No-one at our clinic bothered to inform me what the workshop was all about, and I, being only concerned really with the adventure of travelling to a beautiful part of the Eastern Cape, never bothered to ask. So, I set off to Grahamstown in blissful ignorance of the events that were to follow, events that, as it turned out, shaped my involvement with law clinics in South Africa.

During those few days in Grahamstown I met with lawyers working at law clinics from all corners of South Africa, many of them from universities I had not even known existed. There were people from universities outside of South Africa, including Lesotho, Swaziland and Namibia, who were either intending to set up clinics or in the process of doing so. There were lawyers who had been in practice for twenty years, and those who were busy completing their articles of clerkship. Some had their roots in academia and others had a long history of private practice behind them. It was a diverse group of people, all with one thing in common: They were all part of what has become known amongst clinicians in South Africa as the clinical movement. For me, it was a revelation.

At that particular workshop there was a huge dispute, concerning, as is often the case, money. The details of the dispute are not important, but what was interesting was the way in which this dispute

1 Paper delivered at the 5th International Journal for Clinical Legal Education Conference held at Johannesburg on 9–10 July 2007.

2 Adjunct Professor, University of the Witwatersrand Law Clinic, Willem.deklerk@wits.ac.za

3 On the history of Aulai and the impact it has had on the clinical movement, see Danny Wimpey and Shaheda Mahomed "The Practice of Freedom – The South African Experience", paper delivered at the Fourth International Journal of Clinical Legal Education and Eighth Australian Clinical Legal Education Conference held at London, July 2006 (copy in author's possession).

played itself out. After a session of unrestrained confrontation, tempers were calmed and by day two, everyone seemed to be the best of pals. As an outsider at that stage, I was most impressed at this apparent ability to overcome conflict and move on. In fact, it reminded me a bit of arguments amongst siblings, where peaceful coexistence must inevitably prevail for the simple reason that one is stuck with one's siblings. Over my years in the clinical movement I have witnessed on many occasions how law clinicians in South Africa, irrespective of their diverse backgrounds, behave as members of the same family.

One explanation for this cohesion amongst clinicians may have something to do with us as people. During that same Grahamstown workshop, the organisers saw it fit to subject all of us to the Myers-Briggs Type Indicator[4], a type of personality test that groups people according to certain personality preferences[5]. The results were quite interesting. It showed what seemed to be a trend amongst the clinical lawyers present to lean towards being the "feeling types" as opposed to the "thinking types", meaning that when making decisions, we generally tend to first look at people and special circumstances, rather than at logic and consistency. The facilitators compared our results with that obtained from lawyers at a large commercial law firm and the results seemed to show that our group was indeed quite different from the typical commercial lawyer, who generally tends to be more of the "thinking type". More recently, I was very interested to read a paper delivered by Dr. Colin James at the Clinical Legal Education conference held in Melbourne during July of 2005[6], where the learned author refers to research done on American law students. The research showed that, on the same Myers-Briggs Type Indicator, the vast majority of law students are the "thinking types" as opposed to the "feeling types". It also showed that those who were more inclined to "feeling" were more likely to drop out of law school.[7] So, maybe one of the reasons why clinicians seem to get on so well with each other is because it is a miracle any of us made it through law school!

But I suspect that the reason why clinicians are inclined to bond, has a lot to do with external factors. In all the years that I have been practicing in the clinic, I have yet to find a simple answer to the question: "So, what is it that you do?" I have tried the "I am a lawyer" response, but invariably one is then confronted with the question "So, what type of lawyer are you?" Somehow I don't think it's a good idea to answer "the feeling type", so I normally say something like "I'm a public interest lawyer" or "I do work for the poor". The usual response then, is "So then you're a legal aid lawyer?" which is not right either as legal aid lawyers work in an entirely different environment. Saying that I'm a law teacher or academic is dicey too, because the typical question then would be, "So what subject do you teach?" There is no clear answer to this question either, as clinical legal education is not a subject but a teaching methodology and besides, it's usually not a good idea to delve into these issues with people whom you have just met.

I suspect that this simple inability to describe what clinicians really do, in terms that are easily

4 For more information, see www.myersbriggs.org/my-mbti-personality-type/mbti-basics (last visited April 2007).

5 These are: Extraversion versus Introversion; Sensing versus Intuition; Thinking versus Feeling; and Judging versus Perceiving. See *ibid*.

6 Colin James "Seeing Things as We Are – Emotional Intelligence and Clinical Legal Education" paper delivered at the Third International Journal of Clinical Legal Education and Eighth Australian Clinical Legal Education Conference held in Melbourne, Australia in July 2005. A copy of the paper is in the author's possession. [Editor's note: A version of this paper can be found in [2005] *International Journal of Clinical Legal Education* 123–149].

7 At page 5, footnotes 21 and 22.

understood by most people, has a lot to do with the unity amongst them. Law clinicians are fringe actors. They are largely institutional misfits, both in legal education as well as legal practice.

Law clinicians are not regular lawyers. Regular lawyers have nice offices with comfortable chairs and offer their clients tea and coffee while they wait. Regular lawyers have clients who arrive for consultations in motor vehicles, who live in proper houses and who have access to internet. They charge for what they do and generally will not do much unless they are paid for it. Regular lawyers conduct a business. They have fee targets, overhead expenses and need to worry about things like marketing and competition. Regular lawyers, generally, have little time to reflect on issues like social justice or access to legal services for the poor.

Law clinicians, while mercifully free from much of the day to day stresses that characterise the life of a regular lawyer, have other dynamics to cope with. Being released from having to reach a monthly fee target is a welcome respite only until you are burdened with the huge demand for free legal services and the difficulties that come with public interest lawyering. Clients at law clinics are generally poor, uneducated and marginalised from mainstream society. They tend to present to the clinic lawyer a rather large package of problems, half of which have nothing to do with the law and the other half so intertwined with poverty that their actual legal problems are often very hard to extract. Formulating the mandate is only half the battle won, as the enforcement of clients' rights pose particular difficulties, especially in South Africa where many of our clients live in communities where the rule of law commands little respect.[8]

The cost of private legal services makes for an important distinction too. Litigation is generally very expensive. This forces clients to carefully consider the parameters of the mandate given to the lawyer. With free legal services the temptation is too great to see, and treat, the lawyer as a general therapist or a debt counsellor or marriage counsellor. In clinical practice, clients often tend to give the lawyer the nearly unbearable mandate of simply 'putting right what is wrong', irrespective of legal complexities or the duration it might take. The challenge presented to the clinic lawyer is to fashion effective relief for clients whose lives and legal problems are so saturated with poverty, illiteracy and general disadvantage, that the law as a tool to fight injustice is often not very effective.

Another difference between regular lawyers and clinic lawyers is the instruments used to measure success. Lawyers in private practice typically measure their success against the amount of fees they write during any particular period. Clinic lawyers do not have any one clear and simple tool to measure of their success. Some say we should look at the number of matters completed during any particular period, in other words, how many files you close per month. This is the favourite measure used by state funded legal aid lawyers and has resulted in many questions about the quality of their work. The problem of this measure is, of course, that is has no bearing on the complexity or quality of the work done. Other say we should look at our success rate, meaning the

8 One example of the breakdown of legal process could be found in issues around registration of ownership of immovable property, particularly in many of South Africa's former black townships. Often, the deeds registry system is not applied, with the result that *de facto* ownership bears little resemblance to legally registered ownership. This is particularly problematic when it comes to intestate deceased estates, where the estate was never wound up and the lawful heirs have never received transfer of the property into their names. The property in the estate is often regarded by the heirs as a 'family home' and rights of occupation are determined arbitrarily by the stronger heirs. For one heir to exercise any rights to the property, a complex and time consuming set of legal procedures need first to be followed. Even if these procedures are implemented successfully, the enforcement of occupancy rights is often sabotaged by the inability of the person to effectively take control of the property in communities where respect for the rule of law is absent.

percentage of cases you conclude successfully. The problem with this approach is that it is very hard to define what should be considered a 'success' and what not.[9] So clinic lawyers are often left to their own devices when it comes to judging their success, a rather subjective and unrewarding exercise. Practicing law in a busy clinic environment without an effective method to judge success could easily lead to what we have seen and described as 'burnout'. Part of the challenge in being a clinical lawyer is to develop a sensible approach to your lawyering work and what it is you would like to achieve.

But the most fundamental difference between regular lawyers and clinic lawyers is the fact that clinic lawyers use the practice of law as a vehicle to educate students. Practicing law as a teacher is very different from practicing law as a purely commercial pursuit. The financial interest that a lawyer in commercial practice has in his or her legal matters is absent in a clinical setting, but is replaced by the educational interests of students. Students pay good money to complete clinical courses and have legitimate expectations of the benefits they should receive in return. The teaching that takes place in a clinic should therefore never be incidental or secondary to the practice of law. Teaching students remains the core business of law clinics. A good clinical lawyer must, for example, be aware of different approaches to lawyering[10] but also his or her own approach, whether consciously or unconsciously adopted. A good clinical lawyer should communicate to students[11] the different approaches and make them reflect on the relative merits or demerits of each. A good clinical lawyer should be an example to students on how to practice law professionally and ethically[12]. One purpose of clinical experience remains "to set a standard for the practise of law" and it is said that "even if in practice the standard cannot always be met, the student should now what the standard is."[13]

A good clinical lawyer should be conscious of the educational significance of working with the poor. Many law students come from advantaged backgrounds and have no first hand exposure to the needs of the poor. From university they may proceed to join a corporate law firm and build their careers in total ignorance of what is really happening at grass-roots level. The clinical experience forces students to assess the role of lawyers in society. This learning curve is particularly important in South Africa, where there are vast disparities between rich and poor and where the majority of lawyers occupying senior positions in the legal profession today had been schooled at a time when the law was used predominantly as an instrument of suppression. In our new found democracy lawyers have a very important role to play. This role has been described by Judge Mahomed Navsa[14] as a "sacred duty to contribute towards the preservation and

9 Rarely is the outcome of any particular case clearly definable as a 'success' or not. At the University of the Witwatersrand Law Clinic, we have devised a range of possible outcomes when a file is eventually closed, including "partial success"; "abandoned"; and "no merit", all of which are equally vague.

10 For example the 'adversarial lawyer'; the 'merchant lawyer' and the 'responsible lawyer'. See Curran, Dickson and Noone "Pushing the boundaries or preserving the status quo?" (2005) draft paper delivered at the 3rd International Journal of Clinical Legal Education Conference held at Melbourne, Australia during July 2005 fn 29 to 34 (copy in author's possession). [Editor's note: Paper published at: [2005] *International Journal of Clinical Legal Education*, 104–122.]

11 *Ibid* at fn 28–9.

12 *Ibid*

13 See Franklin "The clinical movement in American legal education" (1986) 1 *Natal University Law and Society Review* 55 at 66.

14 Judge of the Supreme Court of Appeal of South Africa.

strengthening of the rule of law in South Africa".[15] Judge Navsa warned that, unless the Constitution "has meaning in the lives of all our citizens, it is not inconceivable that it will wither and die"[16]. Reflecting on these issues during university study is very important, and the clinic is the ideal place to do so[17], for it is only once confronted with an actual client with an actual problem that the importance of concepts such as "justice " and "equity" becomes real. A good clinical lawyer should therefore practice law in a manner that is conducive to reflection on the values and obligations of legal practitioners in society.

Law clinicians are not regular law teachers either, or, more specifically, they are not generally regarded by regular law teachers as regular law teachers. Regular law school academics teach what is perceived to be regular law courses, such as the law of property, the law of delict (tort) or criminal procedure. Regular law school academics are not, as a rule, concerned with the dynamics governing the practical application of what they teach[18]. Regular law school academics enjoy permanent appointments as members of the academic staff with clear promotion tracks.

Most clinicians in South Africa are appointed as non-academic staff members on externally funded contract positions and have no clear promotion track.[19] Moreover, clinical legal education is still seen by many law school academics as controversial and generally inappropriate in the law degree. To my mind, this approach defies all logic and I have yet to come across a coherent argument in defence of this approach. But as I understand it, the main reason why clinical programmes are deemed inappropriate at university level, is because they are perceived to be

15 The statement was made during a series of lectures presented to final year law students at various universities around South Africa during 2005. An edited version of this talk is contained as the introductory chapter in De Klerk (ed) *Clinical Law in South Africa* 2nd ed (2006) 1.

16 *Ibid* at 2

17 Roy Stuckey for example formulates one of the educational objectives of clinical courses to be the "Understanding the meaning of justice and the responsibility of all lawyers to strive to do justice". See "Ensuring Basic Quality in Clinical Courses" (2000) *International Journal of Clinical Legal Education* 47 at 51.

18 It has been said that "…the priorities of academic training for the (legal) profession are seen to be the imparting to students of a specialized body of knowledge as well as principles of theory organized systematically and the application of knowledge and theory to problem solving." Joan Church "Reflections on legal education" (1988) 1 *Tydskrif vir die Hedendaagse Romeins-Hollandse Reg* 153 at 158. The lack of practical training during law school study is a topic of seemingly endless debate. For South African literature, see Chaskalson "Responsibility for practical legal training" (March 1985) *De Rebus* 116; Maharaj "The role of the law school in practical legal training" (1994) *South African Law Journal* 328; O'Regan "Producing competent graduates: The primary social responsibility of law schools" (2002) *South African Law Journal* 242 and Woolman *et al* "'Toto, I've a feeling we're not in Kansas anymore'" A Reply to Professor Motala and Others on the transformation of legal education in South Africa" (1997) *South African Law Journal* 30 at 50–54. The issue has also been raised in other jurisdictions. See Barry *et al* "Clinical Education for this Millennium: The Third Wave" (2000) *Clinical Law Review* at fn 141 where it is stated that "In the typical law school classroom, the world of practice is often regarded suspicion and sometimes even distain."

19 Peggy Maisels tabled a detailed report in this regard at the South African Law Teacher's Conference held in 2000. In 2006 the UWC Law Clinic tabled a discussion report with its law faculty, detailing the employment conditions of clinicians are various clinics in South Africa (copy of report with author).

courses or subjects that deal in practical legal training, and practical legal training is traditionally seen to be the responsibility of the profession and not universities.[20]

The problem with this view is that it is premised on two incorrect basic assumptions. Firstly, clinical legal education is not a course or a subject, as it is typically 'packaged' in the law degree, but is in fact a teaching methodology[21]. It is a process whereby knowledge, skills and values are combined in a live interaction with an actual client. Academic legal education on the other hand uses the traditional classroom method of instruction as its predominant teaching methodology[22], whereby law is taught in a systematically organised manner. It can be said that if academic legal education does business at wholesale, then clinical legal education does it at retail.[23] The neatly packaged law as taught using the academic methodology is deconstructed using the clinical methodology, to expose students to the unstructured nature of law-in-action. Clinical legal education is a methodology that transcends the artificial boundaries imposed by academic training. It is essential in demonstrating to students the difficulties in applying theory to practice. Although these two methodologies are vastly different from each other, the ultimate goal of both is very much the same, namely to produce well-rounded and competent law graduates[24].

The second assumption, namely that clinical legal education is solely about practical legal training, is just plainly wrong. Elsabe Steenhuisen, formerly head of the University of Johannesburg Law Clinic, in her research identified seven goals of clinical legal education, only one of which relates

20 This is particularly so in commonwealth jurisdictions where admission to the profession is subject to the completion of a period of internship post university study. Joan Church (*op cit* note 16 at 157) for example states that education for the legal profession is seen to encompass three main components, being "academic" instruction at university; "practical/professional" training during internship; and "continuing legal education" for post-admission training. See also A Chaskalson "Responsibility for practical legal training" *op cit* note 16 at 116–7 where the weaknesses of this system are exposed. The institutionalized prejudice against engaging with the practical at law school is however also prevalent in other jurisdictions. For example, the primary educational goals of law schools in the United States is said to "teach legal doctrine and analysis" with the case method of instruction still being the primary method of instruction and that "very few U.S. law schools have made a serious effort to integrate the teaching of knowledge, skills, and values…" See Roy Stuckey "The Evolution of Legal Education in the United States and in the United Kingdom: How one system became more faculty-oriented while the other became more consumer-oriented" (2004) *International Journal of Clinical Legal Education* 101 at 135. The most pervasive reason for this, seemingly illogical, state of affairs has nothing to do with the desirability or need for practical programmes at law school, but basically boils down to law schools seeking to preserve the benefits of the *status quo*. See Kate O'Regan op cit note 16 at 248 (the author uses the terms "institutional resistance to change"); Hugh Brayne "A case for getting law students engaged in the real thing – The challenge to the saber-toothed curriculum" (2000) 34 *The Law* Teacher 17 at 20. See also Jeff Giddings "Unselfish acts: Sustainability in clinical legal education", paper delivered at the Third International Journal of Clinical Legal Education conference held at Melbourne during July 2005 (copy with author) at fn 193-4.

21 See Roy T Stuckey "Ensuring Basic Quality in Clinical Courses" (2000) *International Journal of Clinical Legal Education* 47 at 49.

22 See Woolman *et al* (*op cit* note 16 at 37 and further) where the results of a survey amongst law schools in South Africa, dealing with teaching methods, are set out.

23 I have adapted the analogy used by Jerome Frank "A Plea for Lawyer-Schools" 1947 (8) *The Yale Law Journal* 1303 at 1310, where the learned author states that "Never forget that courts do business at retail, not wholesale".

24 Producing competent graduates has been said to be the ultimate aim of university law schools. See Kate O'Regan *op cit* n16. See also Osman "Meeting quality requirements: A qualitative review of the clinical law module at the Howard College Campus" (2006) 2 *De Jure* 252 at 265–6 where the author endorses a view by Fox that "law schools exist to produce and deliver legal education in order to satisfy societal needs and demands for legal services".

to applied practice skills.[25] Roy Stuckey of the University of South Carolina School of Law, in formulating his five most important educational goals of clinical programmes, does not even mention practical lawering skills.[26] Practical legal skills naturally do form part of what is taught during clinical programmes, but these skills are merely the tools used by the profession. Applying these tools appropriately requires a thorough understanding of what law is all about. The problem with viewing clinical programmes as merely engaging in practical skills training, is that it amounts to a reduction of the educational goals of such programmes to being a purely unreflective activity, not worthy of a place in tertiary education. So it has been suggested, by some respected academics, that legal practice (and by implication, clinical legal education) is mostly about "form-filling, form-filing and, sometimes, form-construction".[27] If this is indeed what the practice of law is about, it begs the question why we need law schools at all.

The different goals of academic methodology versus clinical methodology may be illustrated with the aid of following example:

During academic study, the law of contract is typically taught (1) with a view to systematically teach students the body of law applicable to contract (knowledge of substantive law); (2) the manner in which the courts have applied specific aspects thereof (analytical skills and legal reasoning); (3) some reflection on how constitutional values may impact on the law of contract (reflection on values and justice) and (4) be required to write an exam or essay to demonstrate knowledge (writing skills).

In the law clinic a student dealing with a dispute founded on contract will be taught: (1) how to recognise the relevant facts and applicable law (applied research skills and analytical skills); (2) the content of the specific legal rules applicable (knowledge of substantive law); (3) the ability to formulate a legal strategy in order to advance the client's case based on the applicable law (problem solving skills); (4) the ability to gather relevant information and evidence to support the client's case (factual investigative skills); (5) the ability to initiate appropriate legal procedure in order to advance the case (knowledge of procedural law); (6) the ability to draft the required documents (drafting skills); (7) the ability to quantify the client's claim (numeracy skills); (8) the ability to counsel the client throughout the process (client counselling skills); (9) the ability to act in a professional and ethical manner in completing the process (knowledge of professional rules and values); (10) the ability to engage in this process in the context of a law practice, working with partners, supervisors and secretaries (learning and working in groups); (11) the ability to see and experience the needs of the poor and use of law to facilitate social justice (values and the role of lawyers in society) and finally (12) the ability to look back on the entire process in order to understand what happened and why, to evaluate choices made, to form connections and to gain insight into their own performance and the process (reflection).

25 The seven goals of clinical legal education are said to be: (1) professional responsibility; (2) judgment and analytical ability; (3) knowledge of substantive law; (4) applied practice skills; (5) provision of legal services; (6) working in groups; and (7) integration of the goals. See Elsabe Steenhuisen "The goals of clinical legal education" in De Klerk (ed) *Clinical Law in South Africa* 2nd ed (2006) 263 at 266 and further.

26 *Op cit* note 19 at 50–1. Stuckey's five educational goals are: (1) Developing problem-solving skills; (2) Becoming more reflective about legal culture and lawyering roles; (3) Learning how to behave as well as how to think as a lawyer; (4) Understanding the meaning of justice and the responsibility of all lawyers to strive to do justice; and (5) Discovering the human effects of the law.

27 Woolman et al *op cit* note 16 at fn 53.

Clinical programmes are not the same as articles of clerkship or pupilage at the Bar.[28] At the Wits Law Clinic, as at many other clinics around South Africa, we do both. Quite often, we engage as article clerks the same students who completed the clinical programme the year before. There is a vast difference in the training of article clerks and the teaching of students in the clinical programme. It is incorrect to say that clinical programmes are superfluous or expendable at university level, because it is something that will in any event be taught during articles. Students in a clinical programme are subjected to close supervision with structures in place to prevent harm to clients. Every act by the student is, or should be, subject to scrutiny. Students cannot be held professionally accountable for what they do. Post graduate professional training, on the other hand, takes place with very little structured supervision. It takes place in an uncontrolled environment dominated by commercial and other considerations and much of it entails a general socialisation into practice. Articled clerks or interns are registered with the law society; they are subject to professional rules and can be held accountable for what they do. Not only are post graduate training and clinical programmes different in practice, they have entirely different goals. Upon completion of articles, a candidate attorney would have passed a national admission exam, be admitted to membership of a professional society and be allowed to render professional services to the public. Clinical programmes aim at achieving none of these results. What clinic does aim to do, in conjunction with academic legal education, is to produce a law graduate that is competent to engage in professional training with a view to admission, or to choose another career whilst having a firm grasp of law and its application in practice. Academic legal education alone, cannot achieve this goal.

Clinical legal education and academic legal education are two sides to the same coin. Without the one the other cannot profess to achieve the stated outcomes of the LLB degree. It is like those old vinyl records, seven inch singles they were called, which contained the artist's popular hit song on one side and a lesser known, maybe more experimental, song on the flip side. The flipside song showed what the same artist is capable of. It took the listener out of the comfort zone of keeping the beat to a hit song. Not everyone liked the flipside song but it did serve to develop the listener's taste in music and perhaps even stimulated the listener to experiment with other tunes. Clinical education is the flipside of academic education. Without it, there is nothing to compare academic education to and nothing to contextualise the theory of law. When these graduates enter practice, an entirely new record is put on the turntable with tunes so strange and different from those played at university, that they are utterly bewildered. Such a one-sided and insulated education could surely not profess to be adequate.

Clinical legal education is not a novelty and neither is the institutional prejudice against it. Ninety years ago William Rowe had already formulated the need for and value of clinical education in the law degree.[29] In 1947 Jerome Frank observed that law schools in the United States continue to shun anything to do with the practice of law "as if courts and lawyers would infect students with intellectual bubonic plague."[30] Frank equated the (then current) teaching methods in US law

28 In the traditions of the split bar legal profession adopted from the English practice, articles of clerkship for the attorneys profession and pupilage for the advocates profession is required for entry to the respective professions.

29 See the discussion of an article by William V Rowe entitled "Legal Clinics and Better Trained Lawyers – A Necessity" (1917) Ill. L.R. 591, by Phillip Plowden "No new thing under the sun?", paper delivered at the Fourth International Journal of Clinical Legal Education Conference held at London during July of 2006 (copy with author).

30 Jerome Frank "A Plea for Lawyer-Schools" (1947) *The Yale Law Journal* 1303 at 1313.

schools to "future horticulturalists who restrict their studies to cut flowers" and to "prospective dog breeders who never see anything but stuffed dogs."[31] Things are not much different today.[32] I submit that the only thing *controversial* about clinical education is its continued relegation to the backbenches of legal education and its almost unique absence when compared to the university education in other professions[33].

There is another reason why clinicians are not regarded as regular academics. A large part of the work of academics, entails research and publication which, besides teaching, is the life blood of academia. From the early seventies when clinics first made their appearance in South Africa, until the end of the nineties, very little in the way of publications emanated from local clinics. During this time, there were only a handful of local journal articles dealing with clinical legal education, all written by only two or maybe three authors.[34] One may be forgiven for thinking that these authors verbalised the views of all clinicians in South Africa. In reality, the clinical movement was developed by many full-time clinicians who were hard at work, doing everything except publish. It is therefore most encouraging to see the amount of journal articles published during the past few years by practicing clinicians around South Africa.[35]

31 *Ibid*

32 The underlying prejudice against educating students for practice was illustrated during a discussion at a law school staff meeting at the University of the Witwatersrand during 2007. The background to this discussion was continued criticism of law schools by the organized profession for failing to teach students certain skills identified as lacking amongst young practitioners, and in particular numeracy skills. The discussion during the staff meeting was prompted by a survey which law schools were asked to complete, detailing the numeracy training offered in the law degree. There appeared to be immediate resistance to the idea that law schools should be held accountable in this regard. Comments included statements to the effect that it is not the law schools fault that numeracy skills are lacking; that it not the law schools responsibility to address this problem, that there is no time in the four-year degree to engage in skills at this level; that it has not been shown that law students at Wits really need such training and that it is not the purpose of the law degree to educate students for practice.

33 The criticism that law has lagged behind other professions has been raised by many, including William Rowe (*op cit* note 26 at fn 5–6); Church (op cit note 16 at 164) and Chaskalson (op cit note 16 at 116) to name but a few.

34 By far the most prolific writer on clinical legal education in South Africa, is professor David McQuoid-Mason from the University of KwaZulu Natal. See for example "Clinical Legal Education: Its future in SA" (1977) 40 *Tydskrif vir die Hedendaagse Romeins-Hollanse Reg* 343; *An outline of legal aid in South Africa* (1982) Juta & Co; "The organisation, administration and funding of legal aid clinics in South Africa" (1986) 1 *Natal University Law and Society Review* 189; "Teaching social justice to law students through community service: The South African experience" in P.F. Iya et al (eds) *Transforming South African Universities* (1999) at 89. Other South African authors on clinical education during this period include Philip F. Iya and Joan Church.

35 During the past few years many active clinical teachers have had their research published in accredited law journals in South Africa. The published research covers areas such as clinical methodology (see for example Y Vawda "Learning from Experience: The Art and Science of Clinical Law" (2004) *Journal for Juridical Science* 116 and "Lost in Translation: Language and diversity issues in clinical law teaching" (2006) *De Jure* 295); the role of clinical teaching in the law degree (see for example W. de Klerk "University law clinics in South Africa" (2005) *South African Law Journal* 929 and "Integrating Clinical Education in the Law Degree: Some thoughts on an alternative Model" (2006) *De Jure* 244); quality review and assessment methods (see M. Osman "Meeting quality requirements: A qualitative review of the clinical law module at the Howard College Campus" (2006) *De Jure* 252); substantive law dealt with at clinics (see for example R du Plessis "A Consumer Clinic as a Specialised Unit" (2006) De Jure 284 and case note by P. Jordi *De Jure* 455) and many others.

Through research into areas such as clinical methodology, the structure of clinical courses, the educational outcomes and quality control measures, clinical programmes can only improve. Through research into areas of applied substantive law, the specialised practices of clinics will become even deeper and the students will benefit from working with lawyers who are experts in their field of practice. In order for clinicians to up their publication output, law schools must however be accommodating. The average contact time of clinical teachers at Wits Law School is at least double that of academic teachers[36] on top of which client files must be maintained during university vacations. The realities of clinical practice must be borne in mind by law schools when setting research targets for clinical teachers.

In conclusion, it must be said that in South Africa there has been significant progress in the acceptance of law clinics by the legal profession and academia over the past 35 years, since clinics first made their appearance.[37] Every law school in South Africa offers a clinical programme and at more than half, the completion of the programme is compulsory for degree purposes.[38] Some clinics are more fortunate than others and enjoy remarkable support from their law schools. Yet, the tolerance of clinics at South African law schools, I suspect, has a lot to do with the legal services they provide and not their educational value. The disparate conditions under which most clinicians are employed, is evidence to this effect. Much of the strength of law clinics in South Africa is drawn from their role in providing access to justice to the poor. Access to justice is indeed a pressing issue in South Africa where clinics have played, and continue to play, a very important role. But university law clinics are often still referred to as "legal aid clinics"[39] and even the association of law clinics in South Africa, AULAI, still bears this label. Many of the early writers on clinical legal education in South Africa likewise preferred to use the term 'legal aid clinics' in reference to university law clinics. This preoccupation with law clinics as 'legal aid institutions' has resulted in a concrete ceiling being imposed on their educational activities.

As the clinical movement in South Africa approaches the end of its fourth decade of existence, one could only hope that the irrational prejudice against clinical legal education will come to an end and that clinical educators will be afforded equal partnership in the law school alongside their academic counterparts. Perhaps then law schools could produce graduates that are truly prepared for entry to the legal profession.

36 I am told that the average contact hours of law school academics at the University of the Witwatersrand Law School is eight hours per week. The average contact hours of clinical teachers during 2007 is 23 hours per week, in addition to which candidate attorneys must be supervised and client files must be dealt with throughout the year.

37 For a discussion of the development of law clinics in South Africa see Willem de Klerk "University Law Clinics in South Africa" (2005) 122 *South African Law Journal* 929 at 930–2.

38 Association of University Legal Aid Institutions (AULAI) Annual Report (2003) (copy on file with author).

39 The law clinic at the University of the Western Cape, for example, was known until very recently as the "UWC Legal Aid Clinic".

"University Law Clinics and their value in undertaking client-centred law reform to provide a voice for clients' experiences"

Liz Curran[1]

Introduction

This article examines how a clinical program can enlarge on the benefits of case work experience of enabling students by adding a course component which engages the students in identifying systemic issues in their case work which can be used to inform work on law reform issues as part of assessment in the clinical programs. The clinical program discussed in this article, demonstrates that assessment can be broadened to enable students to critique the contexts within which client issues emerge. The added component to student case work requires students to develop and use further skills in research, analysis and the evaluation of issues emerging from case work and suggest considered solutions to improve the operation of the legal system. My experience of such an approach is that it deepens students understanding not just of the law and how it is applied to their case work but also the mechanics of the law, how laws are made and how they are influenced. Student lawyers also see the important role of lawyers as members of a profession in ensuring the legal system retains public confidence. A side effect of this extension of the clinical work beyond only client work, is that students become motivated and are more employable (as they leave the course not only with skills in interviewing, communicating, letter writing, applying the law and preparing court cases) with skills in policy development and submission writing.

One approach to ameliorating risks created by using client experience in the law reform process is

1 Lecturer in Law, La Trobe University and Clinical Supervisor, West Heidelberg Community Legal Service

to train clinical students in a 'client-centred' approach. This article explains how the clinical program I supervise in West Heidelberg operates uses a 'client centred approach' to enable client respect and control over their own case but also how such an approach can also inform students about the role and operation of the legal system in their clients' lives. Not only can the clinic play the important role in assisting clients on an individual level with their personal problems but it can also provide a fertile ground for students to undertake assessable work flowing from this case work by facilitating their examination, critique and suggestions of improvements to the legal system. The article then examines a case study of law reform work undertaken by law students and examines the impact and advantages of case-work informed law reform in generating change. The article explores the risks and obstacles in such work and how careful course design and careful supervisor facilitation can obviate these risks with increased space for structured feedback and seminar debriefs. The article then highlights some of the many benefits to the education of students and the benefits to society more broadly of such an approach and explores the role of universities in such work.

There are very few academic articles in the Australian context analysing and critiquing the general role or impact of law reform work undertaken by community legal centres[2], the private profession, legal aid commissions or other legal services in Australia, let alone by students in a clinical legal education context.[3] There is significant material on specific topics where law reform submissions, changes or examinations are being undertaken, and there is some writing on institutional law reform of statutory bodies[4] but not on the phenomenon of law reform itself nor the law reform undertaken by non- government agencies.

The law reform aspect of the students' clinical placement at the clinical program of La Trobe University based at West Heidelberg is very much a work in progress. At the clinic students undertake 'real client' casework both in criminal and civil law. The law reform work complements the client casework that the students undertake and like the placement is assessable. The clinical program and how it works will be discussed in more detail later in this article. One reason for undertaking the projects initially was an expression by the students themselves that in cases where they saw an injustice been done they felt powerless to do something about it. These comments coincided with the lament of the Committee of Management of the legal service about the need for more law reform activity in view of the pressing and often repetitive nature of the problems that clients were encountering.[5] This article examines the client-centred approach taken to law reform that has developed. A client-centred approach to lawyering acknowledges that the client

2 J Giddings, 'Casework, Bloody Casework', (1992) Volume 17 No. 6 *Alternative Law Journal*, 261–265 and L Curran *Making the Legal System More Responsive to Community: A report on the impact of Victorian community legal centre law reform initiatives*, West Heidelberg Community Legal Centre and La Trobe University(2007).

3 L Curran, 'Responsive Law Reform Initiatives by Students on Clinical Placement at La Trobe Law' (2004) Volume 7 Issue 2 *The Flinders Journal of Law Reform*, 287; L Curran, 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change', (December 2004) *International Journal of Clinical Legal Education*, 162; L Curran, J Dickson and M Noone, 'Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice', (December 2005) *International Journal of Clinical Legal Education*.

4 M Neave, 'Institutional Law Reform in Australia: The Past and Future', (2005) Volume 23 *Windsor Year Book, Access to Justice*, 343.

5 L Curran, 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change', (December 2004) *International Journal of Clinical Legal Education*, 162.

owns the problem and its solution. In it the client and lawyer need to develop a case theory jointly and ensure the client is the primary decision-maker in their case.[6] This article explores and forewarns other clinical programs of some of the pitfalls, experiences and significant benefits that have flowed from having a student clinical program which seeks to connect client experience to law reform activity as well as seeing students develop lawyering skills in an ethical and legally professional manner.[7]

At the IJCLE conference in 2003, where I originally spoke about some of these activities, one of the conference participants challenged me by arguing that my proposal created too much extra work. As I stated at the time, it all depends on your teaching philosophy. By teaching philosophy I mean whether, as a teacher, you see education as merely teaching a set of skills or as extending students' experience of lawyering by deepening their understanding of the legal system's operation in practice, with the acquisition of skills being a part of that process.

In an article examining the link between strategic planning and quality assessment in clinical law offices that are community based, O'Leary argues that:

> In a law clinic, (in addition to providing legal services often to the poor or access to justice for a general or a specific population within a geographic region)[8] there is an added agenda of determining how best to teach students skills they will need as lawyers. The clinical community has engaged energetically on the question of skills development. While there is some critical discussion about the types of work we choose in clinics, there is a paucity of dialogue about evaluating the types of work we choose or the quality of legal work performed in law clinics.[9]

O'Leary notes that the question of whether a law clinic should engage in significant service to the community as an explicit goal is not answered the same way by all clinical law programs. Some argue that service would be a minor concern, and that the teaching is of more value – neutral skills is a preferred model.[10] However, many clinics developed historically as part of an explicit social justice agenda and the student practice rules generally reflected a prevailing model for students to represent poor clients in clinics that have an explicit social justice agenda (such as ours in West Heidelberg),[11]

My experience is that the interaction between the students' casework and their law reform involvement 'lifts the students' game' and improves the general performance with the client narrative and engages the student directly in the operations of the legal system and their role as a professional in working for the public good. Students become more interested in their student

6 D F Haynes, 'Client-centred Human Rights Advocacy' (2006) Volume 13 *Clinical Law Review*, 379.

7 L Curran, J Dickson and M Noone, 'Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice', (December 2005) *International Journal of Clinical Legal Education*.

8 O'Leary outlines this earlier in her article on page 336. K O'Leary, Clinical Law Offices and Local Social Justice Strategies: Case Selection and Quality Assessment as an Integral Part of the Social Justice Agenda of Clinics, (2005) Volume 11 No.2 *Clinical Law Review*, 335

9 K O'Leary, Clinical Law Offices and Local Social Justice Strategies: Case Selection and Quality Assessment as an Integral Part of the Social Justice Agenda of Clinics, (2005) Volume 11 No.2 *Clinical Law Review*, 335, 337.

10 P T Hoffman, Clinical Scholarship and Skills Training, (1994) 1 *Clinical Law Review*.

11 Back inserted by the author of this article.

projects not just because they are assessable but because they can see that their work may have a positive impact in generating change. The reason for this is because if the students work when assessed is of a high enough standard, that is at an 'A' Grade level, then it will be sent to key decision-makers identified by the student. This will be discussed in more detail later in this article. Having identified a problem, investigated whether it is widespread, undertaken research, analysed the information and evaluated this material, the students see that they can link what happens in the case work to their capacity as professionals to make changes by using that experience and their skills to improve the legal system. This may involve extra work for a clinical supervisor but the enthusiasm and inspiration that the students gain from the model rubs off not only on the clinical supervisor but also on the other workers on the site of the clinical placement. The work of the students has received recognition, not only by decision-makers but also within the university itself. The university now undertakes to publish the students work in a booklet of papers and distributes these widely. This reflects the recognition by the university itself of the role of clinical legal education in underlining the university's role in community engagement. Furthermore, the feedback and encouragement that the students and myself receive from my academic colleagues who are not involved in clinical legal education has been immense.

A. HOW THE CLINIC WORKS

a. Background to the Clinic: its location and operation

This section will explain the approach taken in my clinic to client interviewing and advice and how the 'client –centred' approach adopted in the clinic informs the law reform projects. It will outline how the La Trobe Law clinic at the West Heidelberg Community Legal Centre (WHCLS) operates and the approach taken. This approach is integral to ensuring that our law reform activities are 'client centred'. If, as I will argue, the students select topics law reform topics based on the casework, it is my view that an approach that is taken to client interviewing should be 'client centred'. By this I mean that it fosters within the students a deep sense of the importance of listening to and hearing the client, of ethical responsibility, and often a strong sense of conviction about assisting the client in navigating the often complex, convoluted, difficult and costly processes that the justice system entails. It is easy to cut across the clients' narrative with the narrow technical legal approach which distils the client's story into legal pigeonholes prematurely and does not acknowledge the context within which the legal issues of the client sits. If students take a client-centred approach to clients not only is there an atmosphere which is non-hierarchical and respectful but also it means that when students report on the problem or issues in their law reform project they are more likely to contain an authentic response to client situations. Sensitivity to the balance between student and the client needs must be considered at every decision-making juncture in this process of delivering legal services and undertaking law reform based on client experiences.

The clinical legal education program at the WHCLS enlists students in their final years of law. It is what has been described as a 'live client clinic', i.e. the students work on 'real client cases' under the supervision of a lecturer who is a qualified solicitor. The clients of the legal service are not seen in the context of a person with a technical legal problem that needs a legal solution but rather as a

person with a range of issues some of which may need a legal response and other which may need a non legal solution or a referral to another professional from another discipline.[12]

In terms of the academic context, the clinic operates as an optional subject that is worth double the credit points of a non-compulsory subject. This is because of the time and work commitments expected from the students. Since 1977, La Trobe University in Australia has run the clinic in partnership with the West Heidelberg Community Legal Service which is co-located with the Banyule Community Health Service.[13] This relationship between the three partners enables, what I would best describe as, a holistic approach to the delivery of legal services as the clients can be referred from and to the health service which houses doctors, psychologists, occupational therapists, drug and alcohol counsellors, financial counsellors, social workers and other allied health and social welfare services. In addition, the health service can refer clients to the legal service who they identify as having legal problems.[14] The legal service operates as an entity in its own right but within this, houses the student law clinic. The legal service employs a Principal Solicitor, a Secretary and a Coordinator. It is funded by the State and Federal government. West Heidelberg is one of the most disadvantaged postcodes in Victoria Australia. In recent research into social disadvantage in Australia conducted in 2006, West Heidelberg was included as the highest 40 ranking postcodes (out of a total of 726) of disadvantage. It ranked number twentieth in this list. This research looked at 24 indicators. The major ones included low income families, post school qualifications, disability/sickness support, early school leavers, low work skills, care and protection concerns involving children, dependency ratios and criminal convictions.[15] The location and clientele of the clinic gives rise to many opportunities for students to observe how theory of the law and its operation and the practice of law intersect. It gives rise to fertile ground for students to select law reform topics as students directly witness the realities for clients of a legal system struggling to cope with disadvantage, cultural diversity and the impecunious.

For the first two weeks of the clinical program, the students undergo an intensive training day and in later weeks class seminars cover an interview and communication skills program which is orientated towards the students conducting client interviews. In later weeks the course component covers issues for vulnerable and marginalized clients and human rights. As semester progresses the focus moves from skills acquisition and client contexts to a consideration of their client work in the broader contexts of how theory and practice interact. This discussion and analysis is facilitated because the clinical placement students have a two hour class seminar at the university. Later in the semester, the focus of class and seminars each day at the site of the clinical placement is much broader. At this point the course is designed not only to enable students to discuss case matters but also to actively encourage students, by focussed supervisor questioning, to reflect on ethical issues emerging from case work and to consider what their clients' legal problems signify in terms of the policy implications and the operation of the legal system. Time and space are structured into each day to allow for a seminar/debrief. In the morning students have a 'crash course' in an area of law, see clients and then in the afternoon they do follow-up work on their files. At the end

12 L Curran 'Making Connections: the Benefits of Working Holistically to Resolve People's Legal Problems' (2005) 12 *E Law – Murdoch University Journal of Law* 1&2

13 J Dickson '25 Years of Clinical Legal Education at La Trobe University'(2004) Volume 29 Issue 1, *Alternative Law Journal* 4.

14 L Curran 'Making Connections: the Benefits of Working Holistically to Resolve People's Legal Problems' (2005) 12 *E Law – Murdoch University Journal of Law* 1&2

of each day there is a one hour seminar in which client cases and strategies are discussed. In addition, the clinical supervisor structures questions for students around ethical issues and the implications of their case work for the broader society. This informs both the identification of their law reform topics and enables students to discuss ideas. These sessions also allow time for students to clarify issues in their law reform projects discussing obstacles and how to overcome them and reinforcing and refining research techniques covered in earlier courses in their law degree. In addition, classes at university later in the year examine the role of law reform, law reform bodies and explores issues around presenting convincing arguments and submission writing.

b. Client interviewing and case-work approach as central to finding the client narrative in law reform projects.

The student engagement with law reform activities is different from many clinical programs. Historically, the approach arose from student feedback, imperatives of the legal service and comments from the private profession.[16] Because of this students have a role in identifying systemic issues emerging in their case work and areas that may be in need of law reform. This enables students to develop skills in delivering legal services to clients and to learn how to develop policy responses and construct law reform submission or write reports.

For the first two weeks of the placement, the students observe client interviews conducted by the clinical supervisor. The clinic uses a non-hierarchical approach in interviewing its clients. The interview commences with a free narrative from the client, triggered by the questions such as "so how can we help you today?" The free narrative will often goes for up to five minutes. The rationale behind giving so long to the free narrative [which has proved to be successful over many years] is to make the client feel comfortable, to let them get their story off their chest, to give them a very real sense that they are being listened to and on a more pragmatic level, to ensure that matters are revealed which may not emerge in a more structured interview process which limits the discussion too quickly to the technical legal issues which are revealed.[17] It is our experience that often it is the free narrative opportunity which can give the student lawyer and a clinical supervisor a sense of the client, how the client is feeling, and other matters that may be relevant in defending the case or seeking a remedy. It also enables clients to communicate their experiences and interaction with the legal system. The interview then follows the format of closed and open questioning, establishment

15 T Vinson, 'Dropping of the Edge: The Distribution of Disadvantage in Australia', (2007) Jesuit Social Services 60–70.

16 L Curran (2003) 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change' (December 2004) *International Journal of Clinical Legal Education*, 162.

17 For a discussion of the value of narrative and client centred representation in the context of representation of clients in court cases see J Mitchell, 'Narrative and Client-centred Representation: what is a true believer to do when his two favorite theories collide' (1999) Volume 6 No. 1 *Clinical Law Review*, 85. Mitchell the outlines the value of storytelling as a basic form of communication and warns against client voices been muted by the narratives that lawyers tell on their behalf. In the article Mitchell stresses the importance of the lawyers Chile hearing the client's story and making a range of strategic decisions by the client with a lawyer and the student lawyers as far as possible. Mitchell underlines the importance of respecting the client and providing them with voice. He notes that the lawyer's role is to provide as much as possible this voice as authentically as it has been given and through a process of filtering through the interpretive biases of a lawyer, 102.

of facts and issues, concept checking [that is checking understandings are correct] and seeking clarification around what it is that the client wants.[18]

For the first two weeks of clinic the students are mere observers of the lawyering styles of the clinical supervisor and other lawyers at the placement site. This means that they observe the clinical supervisor going through the stages of the interview outlined above but also explaining in non-technical legal language the range of options available to the client by way of legal advice and the legal processes that might be involved in their case. The clinical supervisor will clarify what the client's expectations might be, explain what will happen next, and what the lawyer will do by way of the follow-up work. The client is then asked if they have any questions.[19]

In the model of student lawyering adopted at La Trobe University, when it comes time for the student to conduct the client interview on their own, the student will meet the client at reception, take them to the interview room using some icebreaking questions and conversation to build rapport. Once in the interview room the student lawyer will then take the free narrative, clarify the story with questions, seek understandings, concept check and clarify the key issues with the client thus adopting a client-centred approach to lawyering. The student leaves the room briefly and takes a seat in the clinical superviser's office. The door is shut and the student lawyer quietly explains the facts, the issues and the client's concerns to the clinical supervisor. The clinical supervisor will then ask for any clarification. This may mean the student has to go in and check these answers with the client before legal advice is given.

The clinical supervisor and the student will then explore the legal and non legal options available to the client. This will include an exploration as to whether or not the client may be able to access support in relation to their non legal issues from the health service where the legal service is co-located or whether there are any other supports that can be offered to the client by way of educational opportunities, work and training. The legal options are detailed by the student in their notes. The supervisor watches very closely as she explains the legal advice in consultation with the student to ensure that what is written down accords with the legal advice to be given. Experience has taught the author that, it is critically important to ensure that the student understands the legal advice and that they record what is needed to be conveyed to the client in a step-by-step format. In the State of Victoria, it is an offence under the *Legal Profession Act 2005* for a person who does not hold a solicitor's practicing certificate to give legal advice. It is therefore critical to ensure that any legal advice given to the client is accurate. It is stressed to the students that the client will be taking action and making decisions on the basis of this advice. When the student returns, on their own, to provide legal advice to the client they are required to give the client opportunities to respond to the advice and note any concerns or preferred options.

Leaving it to the student to deliver the legal advice to the client unaccompanied by the clinical supervisor is a risk that needs to be carefully managed. This is achieved by students writing down the legal options and advice given by the supervising solicitor, the students' repeating the advice in their own words to concept check that they understand the advice. At La Trobe University, we are firmly of the view, that if the clinical supervisor were to give the legal advice directly to the client

18 A Chay and J Smith, 'Approaching Legal Interviewing', *Legal Interviewing in Practice*, Law Book Company, 1996, Ch, 1, 13–21.

19 B Wolski, 'Client Interviewing', *Legal Skills: A Practical Guide for Students*, Thompson, 2006, Ch 2, 59–124.

after the student has done the initial interview, this removes confidence of the client in the student and undermines the students' capacity to take responsibility for the advice that they give. It is my experience, that this approach reassures the client that the student has matters under control, progresses their relationship and places high expectations on the student about the importance of giving the right legal advice This means the students develop a strong sense of commitment and conviction as well as assuming professional responsibility for the file. In the context of their selection of a law reform project it means that students have a deeper understanding of client contexts, and their responsibilities in accurately identifying and selecting issues they will draw on for their law reform project.

Regular client feedback that is given to the legal service is that clients have confidence in the students, that the students are often the first person who was listened to the client, who may have previously been silenced or turned away. What the students lack in experience, they make up for in their preparedness to work hard for the client, driven by their enthusiasm for the client's case.

However, the student lawyers also have the opportunity of seeing a different lawyering style. As part of the observation process they will the Principal Solicitor of the Legal Service as well. The Principal Solicitor has a more hierarchical approach to lawyering than the clinical supervisor. It is our view that this is invaluable as it exposes students to more than one approach. Ultimately, although the non-hierarchical approach is preferred as a model for client interviewing, the students can make up their own minds as to the model they prefer when they enter practice.

There is always a need for flexibility in the lawyering approach given the variety of clients that students may need to deal with. For instance, students encounter clients who may be both aggressive and rambling, and would not allow them an opportunity to get the key facts or to give the advice that the client is seeking. In one example this occurred where the client was in fact in the midst of a psychotic episode. Clearly, in such a situation the student lawyer needs to be able to adapt their lawyering approach to fit with the client and their circumstances. In that situation the student also had to be in a position to recognise that instructions should only be given when the client fully understood the actual instructions they were giving and when they were able to make a decision that was informed. A state of psychosis or a drug induced state are clearly not indicators of this.

Issues around capacity to give instructions, where a client is clearly having difficulty, are a good example of the reasons why there is a need for insight, for non-judgmental approaches and for clarity about what is actually taking place in the interview room.[20]

Duncan has noted, profound opportunities to recognize the impact of ethical dilemmas arise in real client clinical situations. He notes that clinic can provide the most powerful experience of the real context within which the law operates.[21] The latter also provides a sound reason as to why the student observations about how the law impacts upon their clients might be extended to a law reform context.

20 As a result of this particular experience one past student wrote her law reform assignment issues of capacity and training for lawyers dealing with clients with an intellectual disability. This was published and has been used by law associations.

21 N Duncan, 'Ethical Practice and Clinical Legal Education, (August 2005) *International Journal of Clinical Legal Education*, 7, 13 and 19.

c. Why Client Interviewing and Law Reform Activities should Interact

Shah has highlighted the problems where community development approaches are taken to address structural issues when they are removed from the experiences of the people on the ground.[22] Shah's article, although it promotes greater involvement by lawyers with community based organisations to promote social change, does also convey some of its limits. Shah highlights the danger when governments and industry can increasingly hold disadvantaged groups or victims as to blame for their own situation.

However, often the lack of effective involvement, integration and empowerment of the core community in the measures designed to improve their conditions is problematic. For this reason it is important that, in addition to Shah's encouragement of lawyers to engage more constructively and collaboratively with community organisations, this should never displace the client experience and client narratives should form part of the law reform work undertaken. If clients are not permitted within a lawyer-client relationship to provide the context of their situation, then this failure creates a disconnect. Too often by removing themselves from grassroots experience and trying to advocate for people, well meaning people can impose their own impressions and views on what is occurring on the ground. This can make it easy for policymakers to ignore the clients' experience and the impact of the law upon them.[23] Often what has resonance in many debates, is the telling of the clients' stories.[24] This can often make it more difficult for decision-makers to dismiss the advocates as being ill informed or 'party politically motivated.'[25]

In the context of the representation of clients in court, Mitchell notes that allowing the client to tell a story and actually hearing it is a concept that is quite nuanced:

> It incorporates a constellation of ideas. Listen to the client's story. Hear what they want. Try to be creative about ways to tell the story. Look for opportunities to bring their story into the legal process. At the same time, join together to discuss any risks and problems which may result from various strategic choices including the risks in even telling the story and whether those risks are worth it to the client.

This is a balance which students at the clinical placement in my program try to achieve.[26]

22 D Shah, 'Lawyering for Empowerment: Community Development and Social Change', (1999) Volume 6 No.1, *Clinical Law Review* 217–257.

23 D F Haynes, 'Client-centred Human Rights Advocacy' (2006) Volume 13 *Clinical Law Review*, 379.

24 P Lynch, 'Human Rights Lawyering for People Experiencing Homelessness' (2004) Volume 10 No. 2 *Australian Journal of Human Rights*, 59 and C Parker, 'The Logic of Professionalism: Stages of Domination in Legal Service Delivery to the Disadvantaged' (1994) Volume 22 No.2, *International Journal of the Sociology of Law*, June, 145-167.

25 D F Haynes, 'Client-centred Human Rights Advocacy' (2006) Vol. 13 *Clinical Law Review*, 379 and see comments attributed to the Australian Attorney general Mr Philip Ruddock, The Australian, 2 October 2006.

26 J Mitchell, 'Narrative and Client Centred Representation: *What is a True Believer to do when his two Favorite Theories Collide', Vol. 6 No. 1 (1999) Clinical Law Review*, 85, 103.

d. The importance of ensuring ample opportunities for student feedback and reflection in the course design

As has been noted above, in addition to self appraisals between the students and their supervisor and the completion of a journal reflections on student lawyering, the students at the WHCLS clinic have a one hour debrief/seminar at the end of each clinical day. In this seminar students go through the facts, issues and law of their case, brainstorm other options and share insights about the client experience, their role as lawyers and the reality of the operation of the legal system. Some clinical programs in their feedback and reflections focus only on client file work and lawyering, however we believe that our approach to feedback and reflection broadens the students' awareness beyond the exigencies of their day to day practice and enables space for group analysis and evaluation of the variations between practice and theory.

The discussion in the seminar often includes analysis of the issues confronting clients and the realities of the practical operations of the legal system and how it interacts with the community. Back in the seminar at university on the following Monday, the students critique their practical experience of the legal system at clinic, looking at how it relates to the theoretical material that is contained within their readings for university. It is this environment and approach to teaching clinic which inspires the students when it comes to selecting their topics for a law reform project. In addition, time is spent in these discussions underlining the importance of perspective, the importance of credible well researched and articulated positions. These discussions help to ensure that students avoid personal supposition and bias in their law reform assignments since they come to see that if they wish to influence decision-makers then emotive and unsupported assertions will hold little weight. As students consider the need to influence decision-makers as the imperative, their work tends to have a superior quality than work that is purely prepared for a university assessor. This has meant that decision-makers respond favorably to the student work both to encourage students to participate in public life but also because the work is of a high calibre. From the students' perspective, they can use the acknowledgements of their work by decision-makers or media and the experience of submission writing in their resumes as they apply for jobs.

O'Leary has noted the value of opportunities for feedback and reflection:

> Moreover, my experiences have led me to conclude that when reflection and feedback become part of the office culture, clinic faculty, staff and students feel more connected to the enterprise of teaching, learning and social justice lawyering, they're more connected to a team, and feel even better about their work.

I would add that such opportunities for feedback and reflection by the students both in their teams on placement and individually with the clinical supervisor add a depth to their analysis and evaluation of any given problem. Such discussion and reflection means the student lawyer can see the problem and the issues from a range of different perspectives. They have to answer queries and questions from team members and the clinical supervisor about their approach to the client. Discussion of the client's problem (with legal professional privilege operating) can also be very challenging to the individual student, as their team can flush out the students own prejudices and any judgmental elements which often sees the students having to justify and reflect on their own biases. The process of feedback and reflection needs to be given additional time but the ability of students to relate the specifics of their case work to the broader societal implications is transformative. Students have to articulate the issues and relevant law and unpack interactions with

the client, contextualise the problems and comment on the client's situation.

e. The law reform project – selection of topics and process

The students identify the law reform project not by some random examination of the Internet for a topic that inspires them or by their lecturer providing them with set essay topics but rather, they select areas of interest that are generally based on their own observations of how the legal system impacts upon the client. In addition, students whilst on clinical placement and while still exploring which topics they will select, will have discussions with professionals at the health and legal service to gain a sense of whether or not the students' client experience is a common one and how widespread it is in the West Heidelberg community and beyond. After this process, a topic is selected in consultation with the lawyers at the legal service.

In the law reform projects clients are anonymised and steps are taken to guard against the risk of any breach of confidentiality. Many client matters are also resolved before the law reform project is completed. Students undertake further research to identify whether client experiences that reflect problematic responses by the legal system are widespread. If their research reveals that it is widespread then students undertake literature reviews, collate similar case histories and identify what needs to occur if the problem is to be rectified. This means that the law reform activity emerges directly from client experiences but confidentiality is preserved. The model of interviewing clients which enables scope for the free narrative and a respectful environment means that there is a capacity for more of the issues to emerge that have impacted upon clients' lives and choices. There is also a capacity to identify trends in case-work and cases where the same problems have re-occurred.

With the University framework for the clinic, the emphasis on legal research also means that there is an expectation that the students will examine relevant literature, reports, research and engage with the other professionals at the site of the clinical placement to learn of the factors which affect any problem and how it might be resolved. The students are required to investigate the problem or issue of law reform that they have selected. Sometimes, it may not involve a change to the law but rather a retention of the law or its refinement. The students also see this as an opportunity to give a 'voice' to their clients. It is very important as a clinical supervisor and law lecturer to guide and explain to students the dangers of stereotyping, pre-judgment and the need to ensure balanced and evidence based critiquing.

Originally, the students undertook their projects in teams. This has changed as it became too unwieldy for the supervisor to manage both in terms of the ethics approval process (discussed later in this article) and some of the student dynamics which occurred. The law reform project is now conducted on an individual rather than team basis. Even so, as the students undertake the clinical placement in teams of four, I find the students help each other out with materials that are relevant to each other's projects. In the new law reform model, students are required to complete a background research paper of 2,500 words on their law reform topic and submit a 500 word letter to a decision-maker summarising the issues. This is submitted and marked in the same way as a normal piece of university against pre-set criteria discussed later in this article. A student who achieves an 'A 'grade and whose work is of 'sufficiently high enough standard' will have their background paper and letter sent to decision-makers. Sometimes, to have a significant impact, the students' work may be disseminated more widely. The student is required by e-mail to consent to

any suggested 'tracked changes' inserted by the clinical supervisor and to consent to the publication of their project.

f. The Assessment Process for the Law Reform Projects

In La Trobe University's clinical program at the WHCLS, the students are assessed as follows:

- Placement 45%
- Class Participation 5%
- Class Presentation on Ethics 5%
- Client Report 15%
- Law Reform Project 30%

In many university connected clinics the student has to submit an assignment for the assessment, in addition to receiving a grading for their actual performance on placement. Often students on reaching the final years of law school are tired and bored with their studies and cannot see the connection between what they do at University in their law school and its relevance to practice. In addition, they often have the experience of submitting assignments which are seen by only one person and are graded without further review. In my experience, by turning the assessment into a project which is assessed as a normal piece of university work but with the possibility that it might (if of sufficient quality) be disseminated to decision-makers, this makes the students ensure that their arguments are coherent and constructive. Realising that they may have the ability to inform or change the laws and policy means the students work to a much higher standard than that which would normally be the case. The students 'lift their game'. By linking their assignment to a real life problem where the student may be able to convey client experience inspires students to perform and what they learn through this process is significant.

Students are given time at clinic to work on their project as well as their client work. Nowadays often publication of the students' individual law reform projects also occurs again in a glossy form of Occasional Papers produced by the University itself. This is sent to a very extensive range of organisations which include the members of Parliament, educational institutions including the Council for Legal Education, the Law Societies around the country, non-government organisations, social welfare and health organisations as may be relevant, media outlets, members of the judiciary and community groups and to the clients who may have requested a copy in the course of the law reform project. This reflects a new recognition by University of the important role of clinical legal education in the context of the broader society and for the University itself.

B. THE VALUE OF THE CLIENT-CENTRED LAW REFORM APPROACH

a. The client-centred approach in conducting the law reform project and how risks can be minimised

A challenge for students is that often they need to regulate the passionate conviction about the client's experience and their own sense of injustice about it. The students' training means they seek to give expression to the client's voice but in a credible way so that decision-makers will not ignore it or dismiss it. This means they have to think through their strategy and how it can meet these two

ends whilst at the same keeping the clients' integrity. This is an important lesson for students as often their rage or zeal could undermine the actual client voice. It is important therefore as the clinical supervisor/lecture to carefully outline the dangers involved in not yet fully thinking through the issue, what they want to say and how to say it. I fully agree with O'Leary's comment that:

> It is in the interest of a clinical law office and its students, faculty, staff and clients to regularly and systematically set program goals and then assess whether the goals are achieved as well as whether the goals are right in light of social justice objectives. The needs of both client groups and students will change over time, therefore the goals of the program must change over time.[27]

Much of the literature around client-centred lawyering highlights the dangers of paternalism, destruction of the voice of the client, and the dangers of imposing a culturally laden middle class spin on a problem which does not do justice to the client or the issue.[28]

Weng has observed that the human reality is that people react differently to people who may be different from them.[29] Weng notes that culturally insensitive and discriminatory responses may be unconscious[30] and argues that it is therefore important for a lawyer to receive multi-cultural training raising their awareness as to how their own culture can influence the manner in which they approach clients of a different culture so as to guard against judgmental practice. In the article, Weng states that such self awareness is important in mitigating against inappropriate conclusions by a student lawyer. Weng states that being involved in real life examples of how unconscious categorisation can affect behavior and cultural self awareness can enable more accurate, client-centred lawyering.[31] Cultural training and self awareness are integrated into the teaching program of the clinic at WHCLS. Often students on clinical placement at West Heidelberg have to deal first hand with police, housing workers and social workers who proclaim that the reason for our clients' dilemma is because of the cultural grouping they belong to and their different ways. When these are used as justifications for different treatment, our student lawyers very quickly become aware of the dangers of stereotyping.

I do not claim that the student law reform projects are the easy to guide or to supervise. Extensive thought must be given to the design of the clinical teaching program to ensure that where students are representing clients from disadvantaged backgrounds and cultures that are different to their own, there is scope in the course design for students to learn about different cultures and causes of disadvantage and its impacts.

b. Students truly challenged

The reality is that many of our students come from middle class backgrounds and have never been exposed to the issues that confront our clients before. This can be extremely personally challenging

27 K O'Leary, Clinical Law Offices and Local Social Justice Strategies: Case Selection and Quality Assessment as an Integral Part of the Social Justice Agenda of Clinics, (2005) Volume 11 No.2 *Clinical Law Review*, 335, 339.

28 L F Smith, 'Why Clinical Programs Should Embrace Civic Engagement, Service Learning and Community Based Research', (2004) Volume 10, *Clinical Law Review*, Spring, 723.

29 C Weng, Multi-cultural Lawyering: Teaching Psychology to Develop Cultural Self Awareness, Vol. 11, No.2 (2005) *Clinical Law Review*, 369.

30 C Weng, *Op cit* at 371.

31 C Weng, *Op cit* at 373–376.

for many of the students. Again, the opportunities for daily de-briefs and discussions which are structured into the course's design are important, as well as the availability of counselling for students at the university. These are also elements of student care. Yet, it is the students' exposure to the variations in treatment of the different clients by the legal and social welfare system; the client- centered approach taken to interviewing clients and in the follow-up work on the client's case that enables a transformative process to occur for students. The students become aware of the structural impediments confronting clients in many of the cases. It is important that the students' law reform projects allow space for the freshness of student ideas. These must be refined so that sophisticated suggestions or recommendations ensure that the project will be well received. A combination student freshness and carefully constructed argument can lend the projects a uniqueness that other law reform submissions by other organisations who are more cynical and world weary can lack.

It is this commitment to client and the consequential desire of the student to improve the justice system for future clients that generates in the students the desire to influence decision-makers.. Sometimes, they are so keen and motivated that we need to remind them of their other commitments in their other law subjects. As one student stated:

> I had gotten so far in my law degree that I had begun to wonder whether this was all for me and whether I had just wasted my time. I thought that I would be hopeless with clients. The clinic came just at the right time. I now see the relevance of my Degree. I'm not as hopeless with clients as I thought I would be and I also see through the law reform project that with my training and my education, I can have a role in improving the justice system.[32]

It is rare in the clinical legal education program at La Trobe University in West Heidelberg that we have to deal with lazy students or students who don't take responsibility for the client work. It is my view, that the reason for this is the combination of the client-centred lawyering approach we adopt in casework and the opportunity that the students are given to make a difference through the law reform projects.

c. Some examples of the impact of law students' law reform work

In terms of the impact of the students' law reform projects in moving the operation of the justice system for clients there is evidence that this has occurred. The students by articulating the problems can explain the experiences of the clients (which would otherwise not have been exposed), examine the issues and arguments on both sides for change and based on this work make suggestions for improvements. Examples of the impact of the students' work include:

1. The decision to locate a new specialist family violence court at the Heidelberg Court following a student report outlining problems for victims of domestic violence based on their experience at the West Heidelberg Community Legal Service. A representative from the Department of Justice's Court Services Division advised that were it not for the timely arrival of the students report the court may have been located elsewhere. In addition, many of the students' recommendations on the need for linked up services to support victims of domestic violence and greater powers for the magistrate in dealing with perpetrators of

32 Clinical Legal Education Student e-mail, 2006.

violence were adopted in new legislation in 2004.

2. A request by the Australian representative body for counsellors to publish the students' guidelines for counsellors in dealing ethically and lawfully with care and protection cases for children. The agency asked if the student could do further paid on the guidelines for counsellors.
3. Considerable media coverage and interest in the issue of mobile phone debt and its impact upon young people. Within 24 hours of the release of the report there were 84 media contacts made and 22 interviews conducted with media outlets. This included coverage on national television and radio current affairs,as well as coverage of the issue on the BBC and in a New Zealand daily newspaper. Although the report is now three years old the last media enquiry in relation to this report was on 28 June 2007.
4. The adoption of some of the students' recommendations on how to assist self-represented litigants in the Magistrate's Court forms part of the Court's Strategic Plan for the next ten years.

d. A Case Study of a Law Reform Project Undertaken by Clinical Students

Case Study: The Somali Project: Crossing the Cultural Divide

i. Client input:

The students had cases involving a number of Somali clients. The clients had come to the legal service to seek help in a range of legal issues. These included the non-payment of parking fines, issues around how they were dealt with by the police in relation to a lack of support in applications for protection from domestic violence, criminal matters, debt matters, financial problems, matters pertaining to immigration status, social security entitlements and matters in which they alleged discrimination in the treatment by government officials. The latter were in the areas of housing and the care and protection of children.

ii. Problem identification:

As stated, opportunities for student reflection and analysis of the days events occur in a number of ways firstly through the student debrief at the end of the day with their teams on placement (of four students), in class on the following Monday as part of the larger group (of twelve students) and more personally in their own reflective journals which they are required to keep for supervisor monitoring of their progress. These discussions enable opportunities for students to share their client experiences and compare any commonalities or trends in what they had observed.

In this case, the students identified that a number of the Somali clients that they had interviewed had very little understanding of the Australian legal system, its laws, procedures and processes and yet these clients were still subject to these laws procedures and processes. One example was a case which involved a Somali client who wanted to challenge a parking fine on the basis that there was a street with a curb and therefore he should be allowed to park there. This client said the parking

fine was unlawful as it was clearly a parking space. He did not understand that signs limiting parking and parking restrictions imposed by the local council gave them the authority to fine someone if these restrictions were ignored. The client insisted on challenging the fine and subsequently lost his case when he asked for it to be referred to open court. The student had tried to explain to the client his legal position but the client could not understand the concept of a council being able to impose fines.

In another case, the student's client had been assaulted at a function in front of other members of the Somali community. The police knew the identity of the man. The client was seeking the legal services assistance with a claim as a victim of crime under state legislation. A precondition for her claim was that the police had to make a report and take a statement. Despite numerous requests to the police by the client and the witnesses, the police had failed take statements or press criminal charges. The student lawyer intervened on the client's behalf to make the police take action. This intervention led to improved responsiveness by the police.

The student also investigated the making of a formal complaint against police on behalf of the client by conducting research into the police complaints mechanisms and the possibility of a complaint through the Equal Opportunity Commission in Victoria. In the end, the client's instructions were not to proceed with any complaint against police about their inaction and some racist comments as any such complaint would be investigated by the police. She indicated that her own experience in Somalia with police had been terrifying and that she would rather forget about it. The client also communicated to the student lawyer how disappointed she was with the legal system as it had failed to protect her. The student heeded the client's instructions.

There were many other instances in the student client casework that gave rise to the concerns about the treatment of Somali people. The students in one placement group on a Wednesday decided that they would talk to other service providers including the Principal Solicitor of the legal service and the health service about their experiences of how Somalian clients were treated. The students decided that there was a definite trend. Issues emerging included a lack of understanding of the systems that operated, expectations of the community placed on them by government agencies; the lack of any understanding by both the Somalian community about these expectations and a lack of awareness by agencies of the background, cultural experiences and struggles of Somali population in West Heidelberg.

iii. Fact finding

The students did some demographic research in relation to the numbers of Somalian people in West Heidelberg and surrounding districts examined why the Somalian people came to the district and the numbers in private and public rental as well as conducting research into the experiences of Somali people as new arrivals. Having gathered this information, the students were keen for the legal service to conduct a community legal education forum with members of the Somali community with a view to explaining their legal rights and responsibilities insofar as the Australian legal system was concerned.

The legal service held this forum. The clinical supervisor asked students to develop a plan as to how the forum would progress and to devise the questions that might be asked. As the students had never conducted a public meeting before this was a real challenge for them. The supervisor had to remind students to provide ample opportunity, in the design of the forum, for the some the

Somali community to explain their experiences (by way of narratives and stories) of the legal system in order to obtain the Somalian perspectives.

I suggested to the students that they might need to prepare some prompts to stimulate discussion and form ideas as to how to earn the trust of the community before we commenced proceeding so at the forum. In my own research into legal services I knew that clients do not necessarily know how to identify what is a legal problem and indicated that this might be issue.[33] Therefore, the students had to make suggestions and devise scenarios and ask the Somali community to respond on the basis of their own experience. These scenarios, I indicated, could be based on the existing experience of the students with the own client base. In organising the public meeting/forum with the Somali community, I suggested that the students liaise closely with the Somali worker at the health service and take guidance from her around the agenda for the meeting as well as how to approach the Somali community. Most of the students in the Wednesday's group had already had contact with the Somali worker through the casework and so had a positive relationship with her. The students took advice from her on how to advertise the meeting and ensure a representative attendance by the Somali community. This involved the Somali worker explaining to various people in her community the purpose of the meeting and its agenda and what it sought to achieve. It was also important to be clear about what the Somali community might get out of the meeting in terms of better understanding the legal system and by blocking out appointments at the legal service if they needed legal advice on individual issues that emerged from the forum.

The forum initially was fairly quiet but as it progressed community members were very vocal about their experiences and understandings of the legal system. The forum revealed a fundamental lack of understanding of how the legal system in Australia operated including the role of police and the State and the independent role of a lawyer. The members of the community knew little about the role of lawyers and expressed unrealistic expectations of a legal representative for example, the role of a lawyer was to 'get them off' at any cost. This explained many of the misunderstandings that has arisen in client casework and was able to inform the legal service about how it could better offer its services to this community. At the forum the role of police, lawyers and the courts had to be clearly outlined as there was significant misunderstanding. For example, notions of legal professional privilege were unfamiliar. Clients revealed a concern about telling their lawyer the truth about their experiences for fear their lawyer would reveal them to police. Clients also revealed a lack of understanding of the importance of the presentation of evidence in court cases and the role of judges as independent assessors of that evidence in making the final decision.

Although the students only observed the meeting and did not actively participate in the meeting (due to the problems with ethics approval mentioned earlier) they did have critical input into the agenda for the meeting and liaising with relevant people as to how to conduct the forum. The meeting was facilitated by the Somali worker, the clinical supervisor of the students/lawyer and the Principal Solicitor of the legal service. What emerged, based on the clients' narratives was a picture of frustration, a lack of understanding both of the Somali community and the legal system, and a range of assumptions about their knowledge of the legal system.

What also emerged were some concerning experiences by the participants in the forum about their treatment by various personnel which they believed was often based on their race. The legal service

33 L Curran & M Noone 'The Challenge of Defining Unmet Legal Need' (2007) Volume 21 *Journal of Law and Social Policy* 63.

staff tried to explain in simple terms the manner in which the legal system operated and the various agencies that worked within it and their role. The participants of the forum asked for a further forum to discuss the issues. This occurred in the following year and follow up on individual cases was facilitated with block legal interviews being made available.

The community members present were aware before attending the forum that the students would be observing and that they were working on a law reform project about the Somali and community and the Australian legal system. They were aware that any material used by the students emerging from the forum would not identify any person at the forum. At the conclusion of the meeting, each participant was again asked if they consented to the students raising in general terms the experience of their community in a report with their confidentiality protected.

The students did considerable research and talked to many service providers before they commenced drafting their law reform project. They also had their own experience with clients and the experiences of the clinical supervisor and the Principal Solicitor to inform them about some of the issues that confront Somali clients. They had also learned a lot about Somalia and the experiences of the Somali community firsthand at the forum. As an elder of the Somali community is also based at the health service they consulted with him a draft of the report. Each chapter was written by an individual student who selected an area that was of interest to them or that had been inspired by their own client experience. The chapters included a chapter on housing, domestic violence and one by way of background about the reasons for Somalians seeking refuge in Australia, on the levels of knowledge of the legal system and the final chapter on the need for improvements in information provided to the Somali community.

The report, which was a team project was researched, written and compiled by the students and submitted as an assignment. The students received an individual grade as they each wrote a separate chapter. It was received by the law school office as a normal piece of student work. It was then graded. Once a decision was made that the report would be published, the draft report was submitted for consideration and final input from members of the Somali community and the Committee of Management of the legal service. In this way, the community's representatives were able to check for any misrepresentations or errors. The clinical supervisor edited the work, compiling it, formatting it and printing it and sending it about according to the mailing list suggested by the students.

iv. How the Somali report was received in the public domain and its impact

The report was extensively covered in local media in Australia. This included the West Heidelberg area, the major metropolitan daily newspaper and also a national newspaper. It was also discussed on community radio. Various government and Parliamentary decision-makers said that they found the report informative and helpful in terms of understanding the obstacles confronting the newly-arrived Australians from the Somalian region.

One important positive outcome from the report was an indication by a senior member of the management of the State Government's Office of Housing in Victoria, that the Minister for Housing of the time, had sent a directive, based on the students report, to the Department to improve the cultural protocols in how the Departmental officials dealt with people from the Somali and community and newly-arrived communities. A detailed letter from the Director of Housing was forwarded to the legal service outlining Office of Housing policy and suggested changes to that policy and thanking students for their contribution to this debate.

One of the unfortunate and unintended outcomes of the report was that certain representations made in the report about the need for an improved knowledge of how the legal system operates through improved community legal education and community development opportunities were manipulated and reinterpreted. The report was used by the Federal government of the time to justify the introduction of a citizenship test. This citizenship test has caused widespread concern in the Australian community particularly in the migrant community. Ironically, many people born and bred in Australia would not themselves be able to answer many of the questions contained in the citizenship test.

Although the students' project was written and published in 2004, the project continues to inform a range of different decision makers. Recently, a Supervising Magistrate at a Magistrates Court requested the number of copies of the report to circulate to her Magistracy so as to improve understandings of cultural contexts when the court was dealing with domestic violence cases.

The report has also prompted the West Heidelberg Community Legal Service, after a discussion with the Somali worker and program manager of the Community Health Service to apply as a client to an organisation called the Public Interest Law Clearinghouse[34] on the legal merit of taking an action on behalf of the Somali community in relation to the failure by government to provide affordable accessible and appropriate housing for members of the Somalian community. We will keep the Somalian community informed of any progress and have received a Memorandum of Advice from Queens Counsel. We would not commit to any further course of action without properly consulting the individuals and members of the Somalian community for their instructions. Counsel's Opinion may be useful in applying pressure on a policy-makers into the future. Again, any such action would be done after seeking advice from Somalia community itself. This process emerged wholly because of the law students' identification of the problems with housing in the Somali community.

e. The reasons why clinical programs are ideally placed to add capacity to organisational law reform

In 1992, Giddings described how legal centres use casework to achieve a range of legal and social changes. He stressed that their work in this area is not unconnected to individual cases which inform the processes that lead to the law reform activity.[35] He observed that the community legal centre (CLC) work is not very often at superior court level but is more often directed at grass roots cases. Giddings stated that "Casework needs to be viewed as only one mechanism which may assist CLCs in achieving their objectives."[36] Giddings reflected that it is the casework of CLCs that is attractive to funders, but argued that casework can be structured in such a way as to "stretch the

34 The Public Interest Law Clearing Centre (PILCH) is a community legal centre which takes applications where a matter is in the public interest, and the matches legal matter with a law firm or a barrister on a pro bono basis. Interestingly, this legal centre runs the Secretariat made up of administrators and solicitors that can either take on case themselves by acting as instructing solicitors or match the case with pro bono lawyers. They also have a membership which involves law firms and barristers paying a membership fee to provide their services for free to clients in public interest law cases. The list of barristers is now quite extensive. This legal service has grown in size and has conducted significant test cases in the state of Victoria and Australia wide. It now also houses a homelessness law clinic and a human rights law centre.

35 J Giddings, 'Casework, Bloody Case-work' (1992) Volume 17 No. 6 *Alternative Law Journal*, 261–265.

36 *Ibid*, 261.

benefits beyond the individual assisted."[37] Such benefit sharing, he stated, include changing existing interpretations of particular laws, amendments of Statutes, maintaining or increasing the accountability of groups or individuals in positions of power and/or changing the practices adopted by particular industries.

Giddings also examined a series of test cases that CLCs had been involved in: Housing in 1982[38], Credit in 1989[39], Violence Against Women and Children (VAWC) in 1991[40], Employment in 1991[41] and Police[42] in 1989. Giddings stated that often CLCs do the work neglected by the private profession as clients do not have the capacity to pay for a private lawyer. He observedthat therefore, CLCs often represent groups in the community who traditionally have little opportunity to exert their legal rights. He argued that change can be bought about not only by challenges in the courts (which is often not a feasible opportunity for impecunious clients or CLCs) but through improving the process to make it more just.[43] He noted that collectively legal centres through their casework have been able to identify trends and respond. Similarly, Schetzer also observed that the State has limited capacity to respond to those who are disadvantaged and that community legal centres (and implicitly clinical programs) are well placed to ensure that feedback on policies and how they operate on the ground is provided to governments.[44]

37 *Ibid*, 261.

38 The CLCs in a case secured the release from prison of squatters, See M Noone and others, 'Bona Vista: A Large Attractive Property' (1983) Volume 8 No.6, Legal Service Bulletin, 152–157, Ministry of Consumer Affairs, Annual Report, 1991, 43.

39 In 1989, HFC Financial Services was taken to court by CLCs and financial counsellors for failing to comply with certain conditions in their dealings with clients. HFC Financial Services was ordered by the Victoria Court of Appeal to pay over 3 million dollars to a fund to establish the Consumer Law Centre. As a consequence of this case, credit providers licenses would only be provided in future where certain conditions were met that protected consumers. J Giddings, 'Casework, Bloody Casework'(1992) Volume 17 No. 6 *Alternative Law Journal*, 261, 262.

40 In 1991 the Women's Legal Resource Group in Queensland gave support to a woman charged with murder after 22 years of domestic violence against her by her partner. In the Queensland Supreme Court she was found not guilty on the basis of self defence. J Giddings, 'Casework, Bloody Casework', Volume 17 No. 6 *Alternative Law Journal*, 26, 262.

41 The Public Interest Advocacy Centre (PIAC) was involved in a High Court Case, Australian Iron and *Steel v Banovic* (1989) EOC 92–271. In this case by a 3-2 majority the High Court upheld the claims of eight women over their retrenchment as it was deemed to be discriminatory. J Giddings, 'Casework, Bloody Casework', (1992) Volume 17 No. 6 *Alternative Law Journal*, 261, 262.

42 Giddings notes that CLCs were granted standing to appear in Coronial inquiries into police shootings. This recognised that they had something worthwhile to submit. He also notes that concern about the treatment by police of young people led to the establishment of' Alphaline' by the Fitzroy Legal Service. This was a twenty-four hour telephone advice line for young people facing police questioning which received funding. J Giddings, 'Casework, Bloody Casework'(1992) Volume 17 No. 6 *Alternative Law Journal*, 261, 263.

43 J Giddings, 'Casework, Bloody Casework' (1992) Volume 17 No. 6 *Alternative Law Journal*, 261 and L Curran, 'Making the Legal System More Responsive to Community: A Report on the Impact of Victorian Community Legal centre Law Reform Initiatives', West Heidelberg Community Legal Service, June 2007.

44 L Schetzer, 'Community Legal Centres: Resilience and Diversity in the Face of a Changing Policy Environment', (1992) Volume 31 No.3 *Alternative Law Journal* 159.

C. SOME OF THE PITFALLS AND SOLUTIONS

a. Problems with the Ethics Approval Process for students

One of the difficulties encountered in the first four years of the conduct of the law reform project at La Trobe University was the overly bureaucratic ethics approval process at the University that the students were required to undertake. Any research, involving human participants required ethics approval from the university. When we first conducted the projects during 2002–2003, when the students were going to interview an 'expert in the field' ethics approval was not required. This meant that students were able to go in the interview people who were psychologists, lawyers, scientists and so on depending on the relevance to the project. This changed in 2003 with students being required to gain ethics approval for any request for interviews or consultations with people. Students can request information that was publicly available but cannot directly interview of the clients or the workers without ethics approval in the conduct of research. This change did not effect students conducting interviews and seeking information as part of the client-casework on placement but related to when students wanted to research by interview the experts relevant to their research for the law reform project. Since this change, there has been an effect, to a certain degree, on the level to which the students' law reform projects can remain 'client-centred'.

Whilst fully understanding the importance of appropriate ethics protection for human participants in research, the process was unsuited to the student research in that it was unduly bureaucratic and often not timely. Initially, the ethics approval process required the students to complete a 40 page application form. The forms did not relate to socio- legal research practices but were more akin to a medical science research. For example, questions included the measures that were to be taken if the students were to conduct electro- convulsive shock therapy and the taking of tissue samples. The process would often take a long time to get approval leaving little time for the students to conduct interviews, and write up for the results in time for assessment.

As clinical supervisor and law lecturer, I liaised with the various university personnel and instrumentalities that were in charge of the ethics approval process to try to streamline the ethics approval process so that it was simpler for students but so that it still provided ethical protection for human participants. I have tried to make the ethics approval process more relevant to socio-legal research rather than as it was, based on a medical research and experimentation model. In the end, the energy that this took and the stonewalling by those within the central bureaucracy proved difficult and I decided that these energies would be better placed elsewhere. Even though there were attempts to accommodate the student projects, the process remained cumbersome and placed unrealistic expectations upon the students.

Students still have the option of applying for University ethics approval for their projects, however, they now rarely take this option as it is too work intensive and they may not receive the approval they require in a timely fashion in terms of their due date for their assignment. Instead, the students now use their casework experiences and discussions with personnel at the site of the clinical placement about the broader issues around their projects. They now rely mainly on publicly available information from community organisations and research institutes as they can no longer interview people beyond the clinical placement experience.

The students' law reform projects no longer benefit from interviews with experts as they once did. This contact with other professionals often had the side benefit of opening up future pathways for

students in employment It has also clearly cut out the opportunity for the students to conduct further interview research with clients of the legal service beyond their own normal client interviews in relation to the casework. It has not however curtailed the capacity of the students to reflect client experiences as they can still use de-identified case studies based on real clients seen by both the workers at the legal service and in the broader health service as part of their placement experience. Sadly, in manoeuvring the ethical problems this has created a disconnect in terms of the provision of the client voice and client centred law reform. However, students still decide to do a project based on their own experiences with clients or those of other personnel at the legal service the health service and in this way the client voice can still be heard.

b. The use of 'spin'

As stated earlier the danger which emerged specifically in the case study on the experiences of the Somali community with government manipulating the students' findings highlighted one of the problems encountered in law reform work where well intentioned student input into the public debate is distorted. Nonetheless, the experience made the students aware that they needed to question statements by those in authority and not presume that just because statements are made by government they are correct. This incident was a warning to us all.

c. Disorientation

Another issue is the discomfort both the students and the clinical supervisor can be exposed to as they analyse the layers that can impact on clients from disadvantaged communities. Aiken acknowledges that injustice can be disorienting. She argues that when this disorienting experience occurs we should seize upon it and help the students develop a critical consciousness of the operation of power and privilege both in the situation they are observing and in themselves.[45] As stated earlier the use of feedback and reflection time built into the course design is a critical component in equipping students to develop a critical consciousness but also in order to ensure that students are given strategies by their lecturer/supervisor to deal with this disorientation. There are also articles that students can read which reveal other experiences of students in clinical programs that convey strategies for dealing with clients and difficult situations.[46]

D THE CRITICAL ROLE FOR UNIVERSITIES IN LAW REFORM ACTIVITIES OF CLINICS

Many international law clinics are based in legal aid services.[47] This is the case in Australia, Canada, and South Africa, the United States of America and the United Kingdom. The link that such

45 J H Aiken, 'Striving to Teach "Justice, Fairness and Morality" (1997) Volume 4 *Clinical Law Review*, 1, 63. For an article discussing the reasons why lawyers should defend unpopular causes on the basis of professionalism, duty to the court, fealty to the truth, duty to the client and the bounds of the zeal see A Smith, 'Defending the Unpopular down-under', (2006) Volume 30 *Melbourne University Law Review*, 495.

46 R. Radar, Confessions of Guilt: A Clinic Student's Reflections on Representing Indigent Client Defendants (1994) Vol. 1 No. 2, Clinical Law Review 299–345 and J. Howard, Learning to Think Like a Lawyer Through Experience (1995) Volume 12, No. 1 Clinical Law Review, 167–299.

47 I define legal aid service broadly so as to include legal aid commissions, community legal centres and law firms with a public interest law or human rights focus.

clinical programs have to University settings also means that universities are ideally placed to complement case-work with their resources and skill in areas of research capacity and in law reform activities. In addition, sometimes universities also have scope, given the array of interdisciplinary scholars, to inform this law reform and research work in ways in which cash strapped legal aid organisations would be unable to. Universities and their students can build the capacity of legal aid services to respond to emerging trends in case-work where issues of access to justice are ever present and can assist in the conducting of research into problems, brainstorming solutions and making recommendations which may improve either access to the legal system or make the legal system more just.[48]

Aiken has lamented that legal educators neglect issues of justice because many fail to raise them when the opportunity arises. She claims that in this way legal education is failing. She argues that educators often act as if lawyers play no role in the operation of justice. She expresses concern that too often the message that students receive is that justice is merely the product of the application of neutral rules. She states that academics ignore the fact that the exercise of judgment, perhaps the most fundamental of legal skills, is inherently value laden.[49] She notes the role that law lecturers can play in fostering students concerns about fairness and that they should not limit the consideration of law to only to only what the law says. She argues that the failure of law lectures to address the students' concerns about fairness may communicate to students that those concerns have no place in the practice of law. Aiken is concerned that legal educators often ignore the significant role that lawyers play in shaping public policy.[50] In my clinical program at West Heidelberg, the centerpiece is the exposure of students to client experience, the encouragement of questioning, and the need for them to critique the role of fairness and it's interaction with the legal system. The law reform project offers them an opportunity, in addition to the client casework, to do this.

Balos in a provocative statement, has argued that:

> The systemic nature of the forces that hold in place the traditional values of the legal profession makes the prospect of a fundamental restructuring of legal education a daunting one. Both legal education and the profession are embedded in values and cultural norms that will not be disrupted easily. Given the structure of the traditional law school curriculum, pedagogical method, and culture, all of which construct of the prevailing boundaries in service to the status quo, the question to be asked is whether one can create a professional school that disrupts the

48 Aiken has also argued that university courses should involve opportunities for students to commence a lifetime process of examining the exercise of privilege and the development of an appreciation of the professional value of striving for justice, fairness and morality. See J H Aiken, 'Striving to Teach "Justice, Fairness and Morality" (1997) Volume 4 *Clinical Law Review*, 1.

49 Babich, by contrast has argued that clinical programs adopt a self consciously apolitical approach. Problematic in his argument, is that it is based on a political approach. A Babich, The Apolitical Law School Clinic, (2005) Volume .11.Issue 2 *Clinical Law Review*, 447, 467. Whilst this author agrees that in determining a focus on developing and implementing legal strategies to achieve the clients lawful goals does not involve the lawyer in selecting these goals, to go on to argue that apolitical philosophy defuses controversy by offering a politically neutral viewpoint presumes that the advocate themselves come to the legal solving process devoid of any personal contexts or without unconscious views on what is or is not political.

50 J H Aiken, 'Striving to Teach "Justice, Fairness and Morality" (1997) Volume 4 *Clinical Law Review*, 1, 6–7.

> predominant construction of lawyer identity and the framework within which professionalism is defined… perhaps then all of us in the law school and legal community can begin efforts to engage collaboratively in the pursuit of justice as constitutive of professional identity.[51]

This quote highlights the challenge for traditional law schools but if law school are to continue to remain relevant to their students and to the legal profession and society in general then they may need to rise to meet the challenges that Balos presents.

By contrast, Schrag and Meltsner[52] have argued that evolutionary change is occurring even within law schools:

> Law schools are generally more hospitable places for teachers and students interested in law reform and social service than they were when we started teaching more than 25 years ago. Clinical programs are larger and much better established, and teachers who do not themselves teach in clinics are much more accepting of what clinics offer students. Scholarship interests of traditional teachers have changed; law reviews today contain few articles describing legal doctrine as if it was static and many articles (some of them rather abstractly) criticizing existing social arrangements and legal theories. Service that faculty members provide to the community is often reckoned as a positive factor in tenure decisions, and many faculty members who do not engage in clinics engage on a personal level in public service activities, often in conjunction with public interest law firms or government agencies.

This highlights the value of student clinical engagement in policy, not just for clients and students but also for universities themselves.

Conclusion

Feedback from a broad range of organisations has included statements about the value of the input from students, a raised awareness about the experiences of clients and members of the community, and a willingness by these organisations to investigate and take on board recommendations and suggestions made by the students.

Glanville has stated that the history of CLCs has "recognised the connections between direct service work with individuals and the need for legal education and law reform if any change is to be sustained in the longer term."[53] I have argued in this paper, that clinical legal education programs which engage in law reform that is connected to client experience, can present an ideal opportunity for building a greater capacity for organisations where clinics are based in growing research aptitude and positioning client experience into a broader realm that involves improving the justice system. Student lawyers, if given the opportunity can have a role to play in this.

In the seven years since the law reform project was introduced, the students' work has been widely acknowledged not just by the university but has gained in reputation with governments at State and

51 B Balos, 'The Bounds of Professionalism: Challenging our Students; Challenging Ourselves' (1997) Volume 4 *Clinical Law Review*, 129, 146.

52 P G Schrag, M Meltsner, 'Law School Clinics and Social Reform' *Reflections on Clinical Legal Education*, Northeastern University Press, USA, 1998, 313 at 315.

53 L Glanville, 'Community Legal Centres: Can CLCs advocate for themselves?', (1999) Volume 24 Issue 3) *Alternative Law Journal*, 154–156.

Federal level. The detailed and high quality work produced by the students under supervision, their ability to base it on real life client experiences and the calibre of the research and suggestions have impressed decision-makers. The decision-makers have not only implemented some of the students suggestions but they seem impressed by the fact that the law students are engaging with the clients and the decision-making processes and mechanisms. In mid 2007, at a book launch, the President of the Court of Appeal praised the students' law reform work at La Trobe University and noted that more law schools should engage in such useful work on behalf of the community. The President then went on to say he was going to a Council of Legal Education Board meeting to table a collection of the students work in the clinic and was going to suggest that clinics undertaking law reform should be part of the future agenda for educating law student in Victoria.