ISSN 1467-1069

INTERNATIONAL JOURNAL OF

Clinical Legal Education

NORTHUMBRIA LAW • PRESS

July 2004 pages 1–94

INTERNATIONAL JOURNAL OF
Clinical Legal Education

July 2004 Edition No. 4. Pages 1–94

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Yearly subscription rates (2 issues) in 2004

£50 Sterling – Organisations
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ER-99868B/06/04

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Foreword

This is the fourth edition of the International Journal of Clinical Legal Education. The journal draws on contributions from the first International Journal of Clinical Legal Education Conference which took place in London in July 2003 and from other contributors. The conference drew together a wide range of international participants; from those just developing an interest in clinical legal education to those with a wealth of experience to share and was a rare opportunity to spend time discussing and reflecting on all aspects of clinical legal education.

This edition of the journal reflects this and includes a number of common issues that were discussed both formally and informally at the conference, in particular, articles on the nature of clinical scholarship by Frank Bloch and research on the effectiveness of problem based learning from Northumbria. In addition, the seemingly tireless efforts of clinicians to keep expanding the clinical method further and over a wider geographical area is in evidence with articles from Sue Campbell in Australia, Emilija Stankovic Karajovic in Serbia and Jay Pottenger, who writes about his experiences in China.

Following the production of this edition of the journal I will be handing over editorship to Philip Plowden, Associate Dean of Clinical Legal Education at Northumbria. I would like to thank Sheila Bone of Northumbria Law Press and the Editorial Board who have given me tremendous support and assistance over the years and I wish the journal well for the future.

Cath Sylvester

Editor

The case for clinical scholarship

*Frank S. Bloch**

Introduction

There is an inherent tension in legal education between its academic and professional missions, sometimes characterised as a conflict between theory and practice. A theory-practice tension is not unique to legal education, of course; often in professional education there are deep differences of opinion concerning the relative importance of academic inquiry and research, on the one hand, and practical training and service delivery, on the other.[1] This tension is especially salient with respect to modern legal education, however, because the recent advent of clinical legal education presents the legal academy with a unique opportunity to cut across these traditional lines of conflict.

Lines between theory and practice have been blurred considerably in law teaching already, with the spreading influence of clinical legal education around the world.[2] In this article, I address the implications of this trend on legal scholarship – the aspect of legal academia where theory-practice tensions tend to be strongest. Following a brief discussion of clinical education's still uncertain place in the legal academy, I turn to the role of legal scholarship and the potential contributions of clinical education to legal academic literature. Rejecting the strongest criticisms voiced by some clinicians to the effect that scholarship adds little or no value to the primary mission of legal education, which is the training of future lawyers, I explore the many facets of an emerging "clinical scholarship" informed by clinical practice. I also reject the notion that scholarship is less important for clinicians than for other law faculty, by making the case that clinical scholarship

* *Professor of Law, Vanderbilt University Law School (USA).* *This article is based on a paper presented by the author at the First International Journal of Clinical Legal Education Conference, held at the Institute of Advanced Legal Studies, University of London in June–July 2003.*

1 *Medical education is a prime non-law example. See Lelia B. Helms, Charles M. Helms, Selden E. Biggs, Litigation in Medical Education: Retrospect and Prospect, 11 J. Contemp. Health L. & Pol'y 317, 320 (1995) (discussing the "complex interdependence of medical education, research, and patient care activities" as "one of the hallmarks of academic medicine"); Abraham Flexner, Medical Education in the United States and Canada (Carnegie Found. Bull. No. 4, New York, 1910). Another is the field of education. See generally Leo S. Shulman, Theory, Practice, and the Education of Professionals, 98 Elementary Sch. 511 (1998). See also Donald A. Schon, Educating the Reflective Legal Practitioner, 2 Clinical L. Rev. 231, 233 (1995) (discussing the distinction between the theory of the classroom and the reality of practice in professional education, particularly legal education).*

2 *The very existence of this journal is an indication of clinical education's increasing international influence. Texts on clinical law teaching around the world offer further support. See, e.g., Gary Bellow & Bea Moulton, The Lawyering Process: Materials for Clinical Instruction in Advocacy (1978) (United States) (hereinafter The Lawyering Process); Marlene Le Brun & Richard Johnson, The Quiet (R)evolution: Improving Student Learning in Law (1994) (Australia and Canada); Clinical Legal Education (N.R. Madhava Menon, ed. 1998) (India).*

strengthens clinical legal education by helping advance its two main goals of improving the quality of law practice and enhancing the public role of the profession.

As a clinical law teacher based in the United States, my approach to these issues naturally reflects developments in my home country – and much of what I say in this article comes from that perspective.[3] There are, however, many common points of reference among clinical law teachers around the world on most of the basic tenets of clinical legal education. Moreover, clinical education is still a "work in progress," even in those countries where it is most firmly established. As a result, there is much to be learned across national and regional lines. Indeed, wide differences in what is meant by clinical legal education around the world and wide variation in the extent to which it has gained a role in legal education help make the case for clinical scholarship worldwide. As Neil Gold said in the inaugural issue of this journal, clinical legal education "knows no jurisdictional boundaries, nor is it culturally limited in its application... An international journal promotes the study of and reflections on [clinical legal education] in a comparative or cross-jurisdictional way."[4]

Clinical Education and the Legal Academy

In its most basic form, clinical legal education has two complementary aims: promoting professional skills training, thereby improving the quality of law practice; and supporting law school involvement in public service, thereby raising standards of lawyer professional and public responsibility. Typically, clinical programs engage law students in experiential learning of various lawyering skills and values through active participation in some type of public service activity, such as a legal aid clinic. To those unfamiliar with legal education, this must seem anything but revolutionary. Of course law schools should direct some of their resources to training law students how to become lawyers – and to appreciate personally the public role of the profession they are about to enter. But clinical legal education has faced barriers to entry into the legal academy, to one degree or another, throughout the world.

Until relatively recently most lawyers in the United States and other former British colonies were trained in the distinctively non-academic settings of law offices and chambers.[5] Nonetheless, ever since lawyer training – and perhaps more importantly, law teachers – moved to the world of academia, university-based law faculty have tended to orient the law school curriculum and their broader institutional agendas more toward academics and theory than professionalism and practice. An important example from the United States of this academic orientation of law study is the famous Langdellian revolution at Harvard Law School in the 1850s – and its survival to an astonishing degree up to the present. At the heart of Christopher Columbus Langdell's case

3 *I have the benefit, however, of having worked for many years with clinical colleagues in India. For some insights I have gained from that experience, see Frank S. Bloch & Iqbal S. Ishar, Legal Aid, Public Service and Clinical Legal Education: Future Directions From India and the United States, 12 Mich. J. Int'l L. 92 (1990).*

4 *Neil Gold, Why Not an International Journal of Clinical Legal Education?, 1 Intl'l J. Clinical L. Educ. 7, 12 (2000).*

5 *See Nickolas J. James, A Brief History of Critique in Australian Legal Education, 24 Melb. U. L. Rev. 965, 966 (2000) ("Until the latter half of the 19th century aspiring lawyers in Australia were trained by more experienced practitioners in accordance with the apprenticeship model imported from England."); John E. Douglass, Between Pettifoggers and Professionals: Pleaders and practitioners and the Beginnings of the Legal Profession in Colonial Maryland, 39 Am. J. Legal Hist. 359, 384 (1995) (noting that colonial lawyers were trained in lawyers' chambers and that "it was out of lawyers' chambers that America's early law schools developed.").*

method of instruction was his belief in the primacy of the law and in the ability to deduce law from given hypothetical facts. Legal education was to focus on case law, from which legal principles could be found and understood; law teachers following this approach do not concede, and therefore do not address in any way, other realities that might influence how law and legal rules develop.[6]

Hailed at the time as a scientific approach to the law, the case method of law teaching resulted in a domination of textbook and classroom legal education with a top-down view of the law.[7] The concentration of virtually all instruction and scholarship on doctrine as developed by appellate courts led in turn to an academic perspective on law that was largely removed from the real world of law practice. As a practical matter, it pushed any interest in law practice so far into the background that the idea of practical training seemed out of place in law school – except, perhaps, via a moot court appellate argument. The outlet for legal education was a "law" school, not a "lawyer" school.[8]

This does not mean to say that US law schools had abandoned the profession completely. On the contrary; law schools in the United States have always been, above all, professional schools. Unlike some other countries, where law studies often represent a choice of discipline for one's higher education rather than a commitment to enter the legal profession,[9] virtually all US law students go to law school after four years at university specifically in order to qualify for the bar examination and, ultimately, to enter the practice of law. Quite pragmatically and regardless of the academic and theoretical orientation of their faculties, all US law schools have always offered, and will continue to offer, a core curriculum designed to fulfil that goal. Indeed, the case method and the focus on doctrine in legal scholarship that went with it had strong, albeit narrowly limited, professional training roots.[10] As Judge (formerly Professor) Richard Posner has observed: "It used to be that law professors were in the university but of the legal profession... The job of the professor was to produce knowledge useful to practitioners. To be useful it had to have a credible source and to be packaged in a form the practitioner could use. The source was the law professor viewed as a superior lawyer."[11]

Whether simply an accommodation to its new academic setting or a sign of its insecurity in the academy, legal education in the United States moved more-or-less steadily away from its preparation-for-practice roots through the mid-twentieth century. The medium of instruction for

6 *See generally, Dennis Patterson, Langdell's Legacy, 90 NW. U. L. Rev. 196 (1995).*

7 *As one commentator noted recently, "Modern critics have pointed out that Langdell ignored the realities of the law, that by limiting his focus to the few general principles found in selected cases, he squeezed law into a few preconceived and artificial categories. In addition, the case method vastly overemphasised the appellate courts' importance in the legal system." Alexander Scherr, Lawyer and Decisions: A Model of Practical Judgment, 47 Vill. L. Rev. 161, 167 n.18 (2002).*

8 *This point was captured in the title of perhaps the most famous early article championing clinical education: Jerome Frank, Why Not a Clinical Lawyer-School?, 81 U. Pa. L. Rev. 907 (1933). In a stunning critique of Langdell and his case method, Frank observed: "The lawyer-client relation, the numerous non-rational factors involved in persuasion of a judge at a trial, the face-to-face appeals to the emotions of juries, the elements that go to make up what is loosely known as the 'atmosphere' of a case – everything that is undisclosed in judicial opinions – was virtually unknown (and was therefore meaningless) to Langdell. A great part of the realities of the life of the average lawyer was unreal to him." Id. at 908.*

9 *India is an example of a country where many law students have no intention whatsoever to practice law.*

10 *Indeed, some practice-oriented critics of current highly interdisciplinary legal scholarship yearn for a return to the "good old days" of more accessible (and practice-relevant) doctrinal writing. See note 51 infra.*

11 *Richard A. Posner, Overcoming Law 82–83 (1995).*

reaching legal education's professional training goal had become, to the point of near exclusivity, appellate court opinions and scholarship that analysed those opinions. The effect of this was not lost on the legal profession; among the reasons put forward for written codes of professional ethics in the early 1900s was "an acknowledgement of a changed legal profession, a profession with far more lawyers, differing in class and educational background, and trained in the law through law school instead of apprenticeships."[12] A return to some practice focus in US legal education came with the strong growth of clinical education in the mid-1960s and early-1970s, when a number of reports were issued by the American Bar Association, the Association of American Law Schools, and independent academics on the tension between theory and practice in legal education – most of which criticised law schools for failing to address this problem adequately.[13] Law schools began to pick up on the idea that the curriculum could benefit from some instruction in the actual work of lawyer.[14]

This recognition did not surface on its own, however. The clinical education movement came out of a push at that time for a greater focus on professional responsibility and public interest practice, more so than skills instruction.[15] Virtually all of the new or expanded clinical programs that developed in the United States during those years operated out of some form of legal aid office, typically with interrelated goals of providing legal representation to the community and increasing student awareness of their public responsibilities as lawyers.[16] Thus, the single most important catalyst for modern US clinical legal education was the not haphazardly named Ford Foundation-funded Council on Legal Education for Professional Responsibility (CLEPR), whose president, William Pincus, observed that clinical programs and law students who participate in those programs would help "society provide more and better legal services to those who need them."[17]

Not surprisingly, clinical education has met substantial resistance from traditional legal educators along the way. Opposition has come on virtually all fronts: over the granting of credit for clinical courses, in limiting the status of clinical faculty, and, most important for purposes of this paper, by means of a territorial dispute over scholarship. Although each of these areas of conflict has its

12 *James M. Altman, Considering the A.B.A.'s 1908 Canons of Ethics, 71 Fordham L. Rev. 2395, 2415 (2003).*

13 *See Jean R. Sternlight, Symbiotic Legal Theory and Legal Practice: Advocating A Common Sense Jurisprudence of Law and Practical Applications, 50 U. Miami L. Rev. 707, 723–25 (1996).*

14 *There were clinical programs in the US prior to this time, but they were few and far between. For descriptions of some important early programs, see John S. Bradway, The Beginning of the Legal Clinic of the University of Southern California, 2 S. Cal. L. Rev. 252 (1929); John S. Bradway, Some Distinctive Features of a Legal Aid Clinic Course, 1 U. Chi. L. Rev. 469 (1934); Alan Merson, Denver Law Students in Court: The First Sixty-Five Years, in Clinical Education and the Law School of the Future 138 (Univ. of Chicago Law Sch. Conference Series No. 20, Edmund W. Kitch ed., 1970).*

15 *This was true not only in the United States, but in other countries as well. See, e.g., Judith Dickson, Clinical legal Education in the 21st Century: Still Educating for Service?, 1 Intl'l J. Clinical Legal Educ. 33, 33–34 (2000) (noting that clinical legal education developed in Australia, as in the US, "primarily in response to an obvious lack of legal services for the poor" and that "[a] service ideal therefore underpinned the educational adventure") (emphasis in the original).*

16 *The times had their effect on the traditional law school curriculum as well, and new classroom courses on law and poverty were offered at a number of schools in the late 1960s and early 1970s; however, interest in those courses began to wane after reaching a peak a few years later. Examples of published teaching materials from that time include G. Cooper, C. Berger, P. Dodyk, M. Paulsen, P. Schrag, and M. Sovern, Cases and Materials on Law and Poverty (2d ed. 1973) and A. LaFrance, M. Schroeder, R. Bennett & W. Boyd, Law of the Poor (1973). None of the book published in the 1970s have survived, but a new text was published in 1997. See J. Nice & L. Trubek, Cases and Materials on Poverty Law (1997 & Supp. 1999).*

17 *William Pincus, A Small Proposal for a Big Change in Legal Education, 1970 U. Tol. L. Rev. 913, 916 (1970).*

own story to tell, I believe that the latter has been the most damaging in the long term because what lies behind the question whether scholarship belongs in clinical legal education goes deeper than protecting traditional faculty's academic turf. Depending on one's view and the definition of key terms, clinical legal education represents, to one degree or another, the professional skills and public service dimensions of the curriculum. These are vital areas of study, with potentially profound implications for the legal profession and the administration of justice. If clinicians are kept outside the mainstream of academic scholarship, this important work is effectively sidelined outside the world of ideas.

What makes clinical scholarship clinical?

At one level, one could say that clinical scholarship is scholarship written by clinicians. Apart from the circularity of the double use of the term "scholarship" that carries with it the ambiguity of the term itself,[18] this approach is subject to the criticism that it downplays – indeed, effectively eliminates the idea that clinicians as clinicians have something unique to offer in their academic wiring. As Peter Hoffman noted in the inaugural issue of the *Clinical Law Review*, "the mere fact that an article is written by a clinical teacher does not mean it is clinical scholarship."[19]

Thus, clinical scholarship must be something other than scholarship written by clinicians if the term is to have any meaning. And the term is, indeed, meaningful. The clinical movement has succeeded in broadening the scope of legal education in at least three ways adding serious skills instruction to the curriculum, creating centres for students and faculty to engage in public-oriented law practice, and (re)introducing experiential learning to the study of law and it is on these matters that clinical faculty can most productively concentrate their scholarship. Clinicians should not let themselves be co-opted by an ailing and increasingly removed-from-practice form of legal scholarship;[20] instead, they should take the offensive by putting the "clinical" back into "clinical scholarship" and then producing it in force.

Even with a specifically clinical-oriented clinical scholarship, there are substantial differences of opinion over what direction it should take. That debate tends to divide into two camps: one that urges clinicians to concentrate their scholarship on skills, a field that has become known as "lawyering", and another that urges a concentration on law and social change. The arguments over whether clinical scholarship should have a predominantly skills or public interest orientation touch on the underlying values and purposes of clinical legal education. Indeed, the contrasting views on this issue can be seen as a proxy for a debate over the heart and soul of the clinical movement when understood in the context of broader questions concerning the ultimate value of clinical scholarship. In addition to these more substantively focused lines of clinical scholarship, there is a third line that tracks the clinical movement's contribution to legal education reform. This literature addresses issues relevant to the clinical movement and its future, particularly various

18 *This question – what is scholarship? – has discussed and debated outside the clinical context forever. See, e.g., Roger C. Cramton, Demystifying Legal Scholarship, 75 GEO. L.J. 1, 8 (1986).*

19 *Peter Toll Hoffman, Clinical Scholarship and Skills Training, 1 Clin. L. Rev. 93, 93 (1994).*

20 *John Elson has made this point most strongly in an influential article published in 1989. See John S. Elson, The Case Against Legal Scholarship or, If the Professor Must Publish, Must the Profession Perish?, 39 J. Legal Educ. 343 (1989) [hereinafter The Case Against Legal Scholarship]. See also John S. Elson, Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia, 64 Tenn. L. Rev. 1135 (1997). Elson's views are discussed further infra at text accompanying notes 52–53.*

aspects of the clinical methodology. This is not really a third "camp" since virtually everyone in the clinical community agrees that writing about clinical education and clinical methods is "clinical" and this type of writing is strongly encouraged and widely read.[21]

The line is not always so clear, however, between writing about clinical teaching and writing about lawyering skills and/or the public role of the profession. Except at perhaps the most technical level, one cannot divorce the clinical methodology from clinical legal education's curricular and social objectives. Understandably, the first flow of clinical scholarship in the 1970s and early 1980s dealt largely with clinical teaching and its educational value in the law school context. But already then, interest in explaining and developing the methodology was tied to a broader set of interests in professional skills and professional responsibility. This integration of method and substance is seen in the following description of what the authors describe as a "burgeoning" clinical scholarship at that time:

> By focusing on clinical education as a method, clinicians began to explore what clinical teachers were and should be doing, how clinical teaching methodology could be infused throughout the law school curriculum, and what the purposes and goals of clinical teaching should be. Important early examples of clinical scholarship focused on clinical methodology, what it meant for students to assume and perform the lawyer's role in the legal system, how to identify and teach the elements of various lawyering skills, how to develop and explain theories of lawyering, how to refine and improve the supervisory process, and how to incorporate experiential learning theory into clinical law teaching.[22]

The key to a meaningful definition of clinical scholarship lies in the uniqueness of the clinical approach to law teaching and the study of law. Compared to traditional academics, clinical faculty has a far wider window on the legal world and their scholarship should take advantage of it for themselves, for the clinical movement, and for the larger legal community.[23] As noted above and discussed in more detail in the next two sections, that scholarship may be about skills, public interest practice, or clinical legal education itself. What is important is that clinical legal educators take the initiative to claim their scholarship and direct it in a way that supports and advances the broader goals of the clinical movement.

What is the defining subject matter: skills or public interest?

When one looks at the clinical movement from a historical perspective to some extent from its earliest days, but certainly from the beginning of its modern era in the late 1960s and early 1970s the original "subject matter" of clinical legal education was essentially legal aid and public interest practice. As mentioned earlier, virtually all clinical legal education at the time took place in working legal aid clinics. The public side of lawyering was also emphasised in Gary Bellow's and

21 *This can be seen by a casual review of articles published in the clinically centred Clinical Law Review and, before the Review came into existence, among the articles written by clinicians that were published in the mainstream Journal of Legal Education.*

22 *Margaret Martin Barry, Jon C. Dubin, and Peter A. Joy, Clinical Education for the Millennium: The Third Wave, 7 Clinical L. Rev. 1, 16–17 (2000).*

23 *See Richard A. Boswell, Keeping the Practice in Clinical Education and Scholarship, 43 Hastings L.J. 1187, 1193 (1992) ("As active practitioners within the academy, [clinicians] are uniquely able to contribute to legal education's understanding of the outside world").*

Bea Moulton's seminal 1978 text for clinical courses, *The Lawyering Process*.[24] Although at one level a systematic treatment of what lawyers do in any type of practice the major tasks examined are interviewing, case preparation and investigation, negotiation, witness examination, oral argument and counselling. The book leads students to explore most fully the decision-making process of client representation and, in particular, how lawyers own subjectivity must integrate the complex social and political dimensions of their role.[25] As Alex Hurder has observed, "[t]he common thread running through [the materials in the book] is that the choices lawyers make cannot be isolated from their understanding of the legal system and its fundamental values."[26]

Clinician have and will continue to write about public interest and social justice, consistent with the central role that these matters have held in clinical education from the beginning.[27] This will be the case not only because of clinician's interest in and dedication to the public role of lawyers, but also because such work is central to the teaching and professional goals of the clinical movement.[28] Of course, future clinical scholarship along these lines will reflect current circumstances in the profession and the academy. Thus, as the first co-editors of the *Clinical Law Review* noted in their forward to the inaugural issue of the journal: "Most of us probably would also agree that one goal of clinical teaching is to foster, and to carry on, legal practice in the public interest. But our understanding of this goal is changing, and so is our understanding of the means by which it might be achieved."[29]

Some have felt recently that a more deliberate skills orientation is needed in clinical scholarship. Peter Hoffman, a leading proponent of skills-focused clinical scholarship, finds that there is relatively little scholarship devoted to skills written by clinicians because "skills training appears no longer to be a subject of importance to clinical teachers."[30] In order to correct what he sees as an imbalance in clinical education away from skills and skills-oriented clinical scholarship, he argues that skills training is the central goal of clinical education and urges clinical teachers to see themselves primarily as teaching lawyering skills. With such an adjustment of perspective, he expects that clinical education and clinical scholarship will get back on track:

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24 The Lawyering Process, supra note 2.

25 For an insightful analysis of Bellow's and Moulton's approach to these issues in The Lawyering Process, see Alexander Scherr, Lawyers and Decisions: A Model of Practical Judgment, 47 Vill. L. Rev. 161, 183–88 (2002).

26 Alex J. Hurder, The Pursuit of Justice: New Directions in Scholarship About the Practice of Law, 53 J. Legal Educ. 167, 170 (2002).

27 See Margaret Martin Barry, Jon C. Dubin, and Peter A. Joy, supra note 22, at 55 (acknowledging "clinical education's long-standing commitment to social justice and the inculcation of the professional values of access to justice, fairness, and non-discrimination in the legal system")

28 For recent clinical scholarship on "the social justice mission of clinical legal education," presented at the Rutgers-Newark Law School Conference on that topic, see Jane H. Aiken, Provacateurs for Justice, 7 Clin. L. Rev. 287 (2001); Antoinette Sedillo Lopez, Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training, 7 Clin. L. Rev. 307 (2001); Stephen L. Wizner, Beyond Skills Training, 7 Clin. L. Rev. 327 (2001).

29 Stephen Ellmann, Isabelle R. Gunning & Randy Hertz, Why Not a Clinical Lawyer-Journal?, 1 Clin. L. Rev. 1, 6 (1994).

30 Peter Toll Hoffman, supra note 19, at 103. Hoffman notes that this anti-skills bent goes beyond scholarship preferences: "Not only is there little scholarship about skills, but those conferences and workshops on clinical legal education... infrequently focus on lawyering skills as the topic of presentations." Id. As an example, Hoffman notes that a 1994 program sponsored by the American Association of Law Schools' Section on Clinical Legal Education "was devoted primarily to presentations on social justice and clinical legal education. Not one of the scheduled presentations was directly related to skills training." Id. at 113 n.67.

> The most important consequence of considering clinical legal education as a form of skills training is that it will encourage closer examination of the skills models being taught. The more clinical teachers analyse and test the different skills models and develop new models in response, the more scholarship we will see about skills.[31]

Hoffman also sets out his vision of a skills-oriented clinical scholarship: it should "help lawyers improve their representation of clients and help law students prepare to practice law"; "be practical in its orientation and design"; "be grounded in experience, rather than deduced from pure theory untested by practice"; and be accessible to its intended recipients, lawyers and law students."[32]

Picking up on this theme and incorporating the lawyering skills and values message of the American Bar Association's 1992 MacCrate Report,[33] Peter Joy has argued that "clinical scholarship must incorporate both skills and values in order to fulfil its purpose of benefiting clinicians and the legal profession."[34] In order to highlight the client focus that clinical legal education has brought to law teaching and has urged on the profession, Joy's definition of clinical scholarship focuses on lawyering skills and professional values in a manner "designed to improve the ability of lawyers to represent clients and to help law students prepare to represent clients."[35] Noting that much of current scholarship written by clinicians is far removed from such a focus, he charges that "clinicians are suppressing our unique perspective as both law teachers and practicing lawyers."[36]

Writing about skills and practice does not necessarily lead to effective exchanges between clinical teachers and practicing lawyers; it can be highly theoretical, to the point that it can lose the professional audience. Thus, Richard Boswell has observed that "some of the recent scholarship of clinicians, while representing a significant contribution to understanding the role of law and lawyers in society, is more exclusive than inclusive. . . . It does not speak in the language of clients, lawyers, or even judges."[37] In his view, clinical scholarship should serve as a "bridge" between the legal academy and the larger professional world:

> New clinical scholarship need not supplant the critical theories of the past two decades, but could inform each constituency about the other: scholarship that focuses on what clinicians talk about and experience on a daily basis in our interactions with clients, students, lawyers, judges, social workers, legislators, and countless others; scholarship that willingly addresses and grapples with moral and ethical questions. This kind of scholarship might help to draw links between each of these important constituencies of our work. Indeed, it might well lead us to a deeper mutual understanding.[38]

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31 Id. at 114.

32 Id. at 114. For a discussion of Hoffman's vision, see Peter A. Joy, Clinical Scholarship: Improving the Practice of Law, 2 Clinical L. Rev. 385, 394–97 (1996).

33 See note 55, infra, and accompanying text.

34 Peter A. Joy, Clinical Scholarship: Improving the Practice of Law, 2 Clinical L. Rev. 385, 387 (1996).

35 Id. at 388.

36 Id. at 390.

37 Richard A. Boswell, Keeping the Practice in Clinical Education and Scholarship, 43 Hastings L.J. 1187, 1192–93 (1992).

38 Id. at 1194.

One example of current work along these lines is an international research project that seeks to bring together the legal profession, legal educators, and social scientists in order to develop a shared approach to evaluating and improving lawyer-client communications.[39]

Writing about clinical education

As mentioned earlier, any definition of clinical scholarship also encompasses writing on clinical education itself. This is perfectly natural; persons involved in a reform movement want to share (and advertise) their project in writing. Moreover, clinical teachers have been accepted most easily into the legal academy as teaching colleagues, which has helped to encourage clinicians to write about law teaching. Objectively, this is a good thing; since the clinical movement is dedicated to reforming legal education, one can say that clinical teachers have a responsibility to write about teaching. Articles and essays on clinical teaching methods appear regularly; much of this work has been received positively in the legal academy, reinforcing the notion that clinical education has had a transformative effect on professional training.

The volume of this work is huge and giving justice to its content is far beyond the scope of this paper. Nonetheless, some examples will give a flavour of this far-reaching literature. The clinical faculty at Vanderbilt University Law School published an anthology of readings for live-client clinics a number of years ago composed almost exclusively of what most clinicians would agree is clinical scholarship.[40] The first chapter of the anthology addresses the subject of live-client clinical education, and does so in two parts: one covering curricular objectives and the other covering the clinical methodology. Beginning with Jerome Frank's seminal article, *Why Not A Clinical Lawyer-School?*,[41] the part on curricular objectives includes articles that map the future of clinical education in the context of its past (or lack thereof),[42] reflect on the influence the MacCrate Report's Statement of Fundamental Skills and Values on a professional training curriculum,[43] and explore how the range of learning opportunities that can come from the supervised clinical practice.[44] The part on the clinical methodology includes articles that set forth an educational context for clinical legal education,[45] criticise the actual clinical teaching that takes place,[46] and offer models for clinical instruction.[47]

There is, however, a dark side to this success story. A false dichotomy between teaching and scholarship that plagues legal education generally tends to be applied with special vengeance to

39 *See Clark D. Cunningham, Evaluating Effective Lawyer-Client Communication: An International Project Moving From Research to Reform, 67 Fordham L. Rev. 1959 (1999).*

40 *Clinical Anthology: Readings for Live-Client Clinics (Alex J. Hurder, Frank S. Bloch, Susan L. Brooks & Susan L. Kay eds., 1997). The editors discuss their debt to clinical scholarship in Frank S. Bloch, Susan L. Brooks, Alex J. Hurder & Susan L. Kay, Filling in 'The Larger Puzzle': Clinical Scholarship in the Wake of The Lawyering Process, 10 Clinical L. Rev. 221 (2003).*

41 *See note 2, supra.*

42 *Anthony G. Amsterdam, Clinical Legal Education – A 21st Century Perspective, 34 J. Legal Educ. 612 (1984).*

43 *Jonathan Rose, The MacCrate Report's Restatement of Legal Education: The Need for Reflection and Horse Sense, 44 J. Legal Educ. 548 (1994).*

44 *Ann Shalleck, Clinical Contexts: Theory and Practice in Law and Supervision, 21 N.Y.U. Rev. L. & Soc. Change 109 (1993).*

45 *Frank S. Bloch, The Andragogical Basis of Clinical Legal Education, 35 Vend. L. Rev. 321 (1982).*

46 *Robert Condlin, "Tastes Great, Less Filling": The Law School Clinic and Political Critique, 36 J. Legal Educ. 45 (1986).*

47 *Minna J. Kotkin, Reconsidering Role Assumption in Clinical Education, 19 N. Mex. L. Rev. 185 (1989).*

clinical law teachers.[48] Articles, or even books, that address clinical legal education are not valued in the same way as is traditional academic scholarship. Even to the extent that the issues addressed in these types of works – law school instruction and preparation for the practice of law – are recognised as important to the legal academy, writing about them is not seen as academic. This is, of course, not unique to writings on clinical legal education; downgrading writing on clinical teaching puts clinicians, in this respect at least, on a par with other law teachers who write about teaching.

Does this mean that clinicians should abandon clinical education as a subject for clinical scholarship? Is it simply a question of terminology: keep writing about clinical education, but don't call it clinical scholarship? In my opinion, the answer to both questions is a resounding "no." The clinical movement is just that – a movement – and the word needs to be spread in the coming years, particularly across national and regional boundaries. And because clinical education stands for much more than a novel set of course descriptions, which are properly not considered scholarly in nature, more substantial writing on clinical education deserves to share the label of clinical scholarship.

Clinical scholarship, academic status, and the elusive problem of legitimacy

Scholarship is, of course, the key to professional status and personal security in the legal education; "publish or perish" is an old story at law schools and elsewhere in the academic world. For traditional academics, it is an easy either/or proposition: either you publish at a certain level of quality and quantity or you move on. Although the publication requirement varies considerably from school to school, if you achieve at the expected level – often with different levels of expectation pre- and post-tenure – you enjoy continuing and relatively undifferentiated status along with your colleagues on the law faculty.[49] The title "law professor" is reserved for scholars, or at least persons who can pretend to be scholars,[50] and once you're in the club you're a member for life.

The role of scholarship is not so simple in the world of clinical legal education. In addition to the issues of content referred to earlier – is what clinicians write really scholarship? – one can ask quite legitimately whether clinicians should write at all. After all, if clinical programs are intended to counterbalance removed-from-practice classroom instruction, shouldn't clinical teachers devote themselves to practice and practice-based instruction rather than mimic their scholarship producing nonclinical counterparts?

Many clinicians thus find themselves, for better or worse, off the traditional scholarship treadmill. For better, in the sense that clinical faculty can argue for a wider definition of "scholarship" than

48 *For a discussion of this and another false dichotomy in clinical legal education, practical training vs. public service, see Frank S. Bloch, Teaching and Doing Justice: The Importance of Clinical Legal Education to Law Schools Facing New Global Challenges (paper presented on 8 March 2003 at the Conference on Global Challenges for Legal Education and Human Rights Teaching, sponsored by the UK Centre for Legal Education and the University of Warwick).*

49 *Status is relatively undifferentiated for law professors in the US since the tenure and promotion policies at most schools – unlike traditional academic departments – favour early tenure decisions and simultaneous promotion of tenured faculty to full professor.*

50 *Obviously, the correlation is not complete. But there can be no doubt that the production of scholarship is a key expected output of law faculty and a measure of their and their home institution's standing.*

their traditional academic colleagues by pointing out the broad social and professional goals of the clinical movement and the relative richness and complexities of the clinical teaching method. Worse in the sense that distinguishing between writing about clinical teaching and traditional law teaching can result in two dramatically contrasting, but equally negative, institutional consequences: rejection of the distinction by the faculty, followed by a "blood bath" at the time of promotion or tenure; or acceptance of the distinction, followed by an almost unavoidable second-class status for the clinical program and its faculty. Just as including serious writing about clinical education within the definition of clinical scholarship is a key to keeping the "clinical" in clinical scholarship, we need to be mindful of the consequences of taking the "scholarship" out.

My conception of clinical scholarship is simple and direct: it must be informed by the clinical experience (in other words, written by a clinician relative to his or her clinical work) and it must advance the goals of the clinical movement (certainly beyond lawyering skills and values, but not any writing that happens to be by a clinician). This may be too vague for some, but too close a definition runs the risk of marginalisation. In my opinion, for clinical scholarship to survive it must both establish its identity and at the same time combat false compartmentalisation. Arguing over whether clinical scholarship should focus on skills or public interest practice misses the point; both are informed by the clinical experience and both address issues important to the clinical movement. Clinical law teachers have a duty to write about the academic side of their work, whether on the lawyering process, law and society, or legal education reform. Indeed, having both the responsibility for and the opportunity to write clinical scholarship is a key to establishing clinical legal education's rightful place in the legal academy.

The Case for Clinical Scholarship

The proper place of scholarship in the legal academy is a serious question that has occupied lawyers, judges, and law faculties both in private discussions and in print over the years, and will continue to do so for a long, long while. There is no reason to review the general debate here,[51] but some mention of critiques of particular relevance to a clinical perspective on the issues is warranted before turning specifically to the case for clinical scholarship. In a widely cited article, *The Case Against Legal Scholarship*, John Elson makes the simple point that typifies many clinicians' aversion to traditional legal scholarship: when law schools devote so much resources – and professors so much time and energy – to scholarship directed at obscure subjects of the professors' personal interests, they necessarily limit the amount of attention paid to the central task of educating new lawyers.[52] Specifically, Professor Elson argues:

> [F]irst, law schools have a paramount duty to educate their students for practice competence; second, law schools generally are not fulfilling that duty satisfactorily; third, the more emphasis law schools give to the production of legal scholarship, the

51 *Much of the debate over modern legal scholarship began with a widely cited and discussed 1992 article by Judge Harry T. Edwards, in which he argued that the legal academy had become self-indulgent and almost irrelevant to the profession. See Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34 (1992). For Judge Edward's comments following strong response to the article, see Harry T. Edwards, The Growing Disjunction Between Legal Education and the Profession: A Postscript, 91 Mich. L. Rev. 2191 (1993) (symposium on the 1992 article). See generally Peter A. Joy, Clinical Scholarship: Improving the Practice of Law, 2 Clinical. L. Rev. 385 (1996) (discussing a "growing introspection over legal scholarship and the dissonance between legal scholarship and the legal profession").*

52 *See John S. Elson, The Case Against Legal Scholarship, supra note 20, at 370–71.*

> less satisfactory their education for professional competence is likely to be; and, fourth, the reasons commonly asserted for the primacy of law school's scholarly mission do not justify the resulting cost to their mission of professional education.[53]

Elson's argument is, in effect, a classic slicing-a-static-pie argument – but one that has a strong realistic appeal in the traditional academic setting. If his reasoning is carried over to clinical scholarship, it could suggest that clinicians not write at all – for reasons very different from those mentioned earlier in the context of clinical education and academic legitimacy: what clinicians can write about is not scholarship. However, just the opposite is true. A great strength of clinical legal education is that it embraces its tie to the "real world" of law practice. The clinical methodology gains much of its richness when students are immersed in actual lawyer work, with all of its complexities and ambiguities. The resulting exposure of clinical teachers to practice in this unique setting, both directly and through the eyes (and experience) of their students, offers them the opportunity to study the profession from a different perspective than their academic colleagues and to write about important matters that might not be written about otherwise.[54] If taken up with real enthusiasm and as an integral part of their clinical practice, clinical scholars can not only bridge existing gaps between the legal academy and the legal profession, but in doing so can enrich both by shedding new light from each on the other.

I do not mean to suggest that the practice of law and the role that lawyers play in the legal process had not been written about before. Nor can I say that clinicians should have an exclusive claim on the field. But there can be no doubt that the clinical movement and the growing body of clinical scholarship have expanded the scope of this work and have done so in ways that are particularly important to the future of the legal profession. Clinicians are credited in the United States, for example, with redefining the scope of law practice and what it means to be a "good" lawyer. Thus, the American Bar Association's historic MacCrate Report, in which a select committee identified fourteen critical skills and values of the profession, drew heavily on the work of clinical legal education and relied to a substantial extent on clinical faculty.[55] Another important contribution along these lines is the "Best Practices Project" at the Center on Professionalism at the University of South Carolina, a project undertaken with the co-sponsorship of the Clinical Legal Education Association to identify the best practices for preparing new lawyers for law practice.[56]

Moreover, clinicians through their scholarship have pressed their case lawyers in the field, urging greater appreciation of their insights on lawyering and application of their work on professional skills and values. By combining their academic-based appreciation of the broader roles of law and lawyers in society together with on-the-ground exposure to client's problems and the limits of the legal system's ability to address those problems, clinical scholarship on new approaches to lawyering has helped equip lawyers to serve better their client's needs. A prominent example is the extensive literature on client-centred lawyering. Applied first by clinicians in the context of legal

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53 Id. at 344 (citations omitted).

54 Thus, it was a pair of clinicians who opened the way for critical examination of the "lawyering process" in a highly influential book of the same name. See The Lawyering Process, supra note 2. The Clinical Law Review published a symposium issue celebrating the twenty-fifth anniversary of the publication of the book in 2003. See Symposium, The 25th Anniversary of Gary Bellow's and Bea Moulton's The Lawyering Process, 10 Clinical L. Rev. 1–468 (2003).

55 Section of Legal Educ. and Admissions to the Bar, A.M. Bar Ass'n, Legal Education and Professional Development – an Educational Continuum (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992).

56 This project can be viewed at: http://professionalism.law.sc.edu/news.cfm#CLEA.

counselling, client-centredness has made its way into a wide range of work on law practice.[57] Another example is the field of "therapeutic jurisprudence," which clinicians have used to go beyond the realm of win-lose results and examine how law and how it is practiced can have can have an influence on clients' physical and psychological well being.[58]

The range of what can be covered in clinical scholarship is illustrated by an important link between two major goals of clinical legal education: improving the quality of practical training in law school is itself public service. In most countries there are plenty of lawyers. At the same time, there is a real shortage of good lawyers – especially in lower income communities. Lawyer incompetence is its own form of injustice; therefore, the practical training aspects of clinical legal education serve the public by improving lawyer competence through the use of experiential teaching and learning. Depending on the availability of resources and differing local rules and practices, this can include supervised "real world" legal work at law school clinics or in fieldwork placements and/or classroom work using simulated problem-based materials.

Of course, improving the quality of the bar involves more than raising levels of technical competence. Clinical education also seeks to address generally the public role of law and lawyers in society and to motivate young lawyers to work for the public good. Depending again on the availability of resources and differing local social, economic, and political contexts, clinical programs bring this message home to law students by having them contribute directly to the public interest in a variety of ways. Here again, the richness of "live client" or real-world-based clinical education can lead to a unique clinical scholarship.

Gary Palm has argued, for example, that clinical scholarship should be incorporated directly into the teaching and public service missions of clinical legal education.[59] According to him, "the 'complete' clinical teacher is one whose collaborative work with students includes some efforts to obtain reforms to correct systemic problems which have been identified through representing individual and organisational clients directly."[60] Although a well-known sceptic on the subject of clinicians engaging in traditional scholarship,[61] he finds that scholarship linked to this type of "complete" clinical work – what he might call "true" clinical scholarship – adds value to the enterprise and can support the ultimate goals of the clinical movement:

> For the clinical teacher who engages in such efforts to achieve systemic reform, scholarship affords a means to expand a clinical programme's efficacy by sharing

57 D. Binder & S. Price, Legal Interviewing and Counseling: A Client-centred Approach (1977). See also Robert D. Dinerstein, Client-centred Counseling: Reappraisal and Refinement, 32 Ariz. L. Rev. 501 (1990); Donald G. Gifford, The Synthesis of Legal Counseling and Negotiation Models: Preserving Client-centred Advocacy in the Negotiation Context, 34 UCLA L. Rev. 811 (1987).

58 See David B. Wexler, "Reflections on the Scope of Therapeutic Jurisprudence, 1 Psychol., Pub. Pol'y & L. 220, 224 (1995).

59 See Gary H. Palm, Reconceptualizing Clinical Scholarship as Clinical Instruction, 1 Clinical L. Rev. 127 (1994) [hereinafter Reconceptualizing Clinical Scholarship]. See also Lucie E. White, Collaborative Lawyering in the Field? On Mapping the Paths From Rhetoric to Practice, 1 Clinical L. Rev. 157 (1994) (describes an advanced clinical seminar at UCLA in which students investigated grassroots social initiatives and examined the types of organisations involved, the roles of lawyers in the organisations' agendas, and the inherent tensions of the work; stresses the need for critical reflection on the dynamics and process of grassroots organising, and for increased clinical scholarship).

60 Gary H. Palm, Reconceptualizing Clinical Scholarship, supra note 59, at 132.

61 This view was expressed in print during his tenure as Chair of the Section on Clinical Legal Education of the Association of American Law Schools. See Gary H. Palm, Message from the Chair, in AALS Section on Clinical Legal Education, Newsletter, Sept. 1986, at 1.

> information about successful approaches with other clinical teachers. Moreover, articles of this sort will stimulate others to come up with yet other ideas to improve clinical programs and the quality of representation of clients.[62]

I mentioned earlier that clinical education is a work in progress. So is clinical scholarship. There are countless ways that the complexities of clinical practice can be matched with those of the legal profession and the academy to present interesting and worthwhile questions to consider. Take, for example, the matter of client voice. The context of clinical practice led clinical scholars to introduce client narrative in their legal scholarship, an innovation that has been followed widely by non-clinical scholars as well.[63] This came naturally to clinicians not only since they focus directly on clients and clients' needs with their students in their capacity as lawyer-teachers, but also because the nuances of lawyer-client interaction is a key component of the clinical curriculum. Clinicians must continue to draw on their access to this unique perspective in order to enrich particularly clinical scholarship, but at the same time address important sensitivities this opportunity presents. Just as clinical scholars have pointed out regularly in the context of client representation that clients have and own their own voices,[64] a proper understanding of and respect for their ownership of clients' voices is indispensable to a responsible clinical scholarship.[65] Not only should clients' voices, when used, be understood and credited, but they should also be representative of the appropriate community according to the issues discussed in the work. But use of client narrative in legal scholarship is itself problematic and needs to be examined in the context of the ethics of telling a client's story in print. Despite their experience in working with clients as lawyers and teachers, this is an area where clinicians may need to turn to fellow scholars (clinical or not) for guidance.[66]

Conclusion

I do not underestimate the difficulties that clinicians face in writing serious scholarship; the life of a clinical law teacher is quite different from that of his or her traditional academic counterpart. First and foremost, for live-client clinical teachers, is the stress and on-going responsibility that goes with handling real cases. Then there are the tremendous time demands of one-on-one

62 *Gary H. Palm, Reconceptualizing Clinical Scholarship, supra note 59, at 132. See also Stephen Ellmann, Isabelle R. Gunning & Randy Hertz, supra note 29, at 2 ("Like their nonclinical colleagues, clinicians have come to see scholarship as a means of disseminating information about innovative approaches and exploring ideas that grow out of clinical teaching experiences").*

63 *Among the clinicians credited with early client narrative Scholarship are Anthony Alfieri, Clark Cunningham, and Lucie White. See, e.g., Anthony V. Alfieri, Speaking Out of Turn: The Story of Josephine V., 4 Geo. J. Legal Ethics 619 (1991); Clark D. Cunningham, The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse, 77 Cornell L. Rev. 1298 (1992); Lucie White, Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G., 38 Buff. L. Rev. 1 (1990). See generally, Binny Miller, Telling Stories About Cases and Clients: The Ethics of Narrative, 14 Geo. J. Legal Ethics 1, 7–12 (2000).*

64 *See note 57, supra, and accompanying text.*

65 *Cf. Robert Dinerstein, Clinical Education in a Different Voice: A Reply to Robert Rader, 1 Clinical L. Rev. 711, 711 (1995) ("many of our current discussions about clinical scholarship decry the absence (or appropriation) of client voice in clinical scholarship").*

66 *See Binny Miller, supra note 63, at 4 ("the client focus of the collaborative lawyering approach suggests that legal academics need to consider whether clients should have a say in decisions about how their stories are told. Yet surprisingly, while clients are in the forefront of many law review articles, they are almost invisible in the decision making process about which story to tell or whether to tell a story at all"); id. at 5 ("While the ethics of scholarship literature examines the integrity of scholars' conclusions, it does not look in depth at clients as the subject of scholarship. The authors of stories about clients also sidestep the ethical issues").*

teaching/supervision/critique required for just about any type of clinical course. As one clinician wrote recently, the challenges that clinical teachers face in producing written scholarship are "daunting."[67]

Nonetheless, clinical teachers are academic lawyers; scholarship should be what they do. Clinicians through their clinical scholarship have begun to change the way the profession looks at itself and, to some degree, what it does. Clinical scholars are, and must continue to be, active voices in the profession and society. Ultimately, the benefits of legitimacy brought about by the publication of serious clinical scholarship will also support the active, public service mission of clinical legal education. Contrasting the current distressed state of federally funded legal services in the United States with a relatively strong and stable system of clinical education, Professor Rick Wilson notes:

> The clinical legal education movement, on the other hand, by casting itself more as a fundamental component of legal education than as another means by which legal services can be provided to the poor, has been successful in accomplishing a legitimate role for itself in U.S. legal culture. It is helped in this effort by the development of a body of clinical scholarship that contributes to its legitimate academic standing, as well as the fact that it has never been primarily funded by the state.[68]

This is "publish or perish" in a constructive sense, using the "bully pulpit" of academia to ensure a permanent place in legal education for all that clinical education has shown the legal academy it can be.

67 *Kimberly E. O'Leary, Evaluating Clinical Teaching – Suggestions for Law Professors Who Have Never Used the Clinical Teaching Method, 29 N. KY. L. REV. 491, 511 (2002). Other "challenges" noted by Professor Leary on a non-exclusive list include having to learn the clinical teaching methodology, writing about problems not addressed by "traditional" scholarship, not knowing the unwritten rules about scholarly writing, and dealing with political battles surrounding the clinic. Id. at 511–14. For a view of these issues from the perspectives of a legal writing instructor, see Susan P. Liemer, The Quest for Scholarship: The Legal Writing Professor's Paradox, 80 OR. L. REV. 1007 2001*

68 *Richard J. Wilson, Three Law School Clinics in Chile, 1970–2000: Innovation, Resistance, and Conformity in the Global South, 8 CLINICAL L. REV. 515, 579 (2002).*

A student right of audience? Implications of law students appearing in court

*Susan Campbell**

This article examines the policy considerations underlying the common law limitation of the right of audience in the courts to professionally qualified and regulated advocates. It discusses the program conducted by Monash University in Australia whereby law students regularly represent their clients in court and analyses the safeguards built into this program in an attempt to meet those policy considerations. Finally the article looks briefly at the intriguing question of whether student advocates might be immune from liability for negligence, since that immunity still applies in Australia.

PART I The common law right of audience

The common law principle that only professionally qualified lawyers are entitled to represent litigants in court is deeply embedded in English and Australian legal consciousness. Judith Dickson[1] has traced the origins of this principle back as early as the late fourteenth century but contemporary courts in both jurisdictions usually begin a discussion of the principle with reference to *Collier v Hicks*[2] where Lord Tenterden CJ said "the Superior Courts do not allow every person to interfere in the proceedings as an advocate but confine that privilege to gentlemen admitted to the Bar by the members of one of the Inns of Court"[3] and Parke J referred to the "ancient usage" whereby "persons of a particular class are allowed to practise as advocates".[4]

A snapshot of cases across the succeeding one hundred and seventy years shows the courts upholding this principle without question. In *Tritonia Ltd v Equity and Law Life Assurance Society*[5] Viscount Simon LC referred to the rule "limiting a right of audience on behalf of others to

I am grateful for the comments of the member of the Editorial Board who acted as referee for this article.

My thanks also to my research assistant, Safeera Abdul Wahid.

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1 *Dickson J, "Students in Court: Competent and Ethical Advocates" (1998) vol 16(2) Journal of Professional Legal Education 155 at p.158*

2 *(1831) 2 B. & Ad. 663; 109 ER 1290*

3 *ibid at 668; 1292*

4 *ibid at 671; 1293*

5 *[1943] AC 584*

members of the English or Scottish or Northern Irish Bars"[6] and in *Abse v Smith*[7] Lord Donaldson MR went so far as to say "Limitation of the categories of persons whom courts are prepared to hear as advocates for parties to proceedings before them is, so far as I know, a feature of all developed systems for the administration of justice."[8]

In Australia both State and Federal courts have unhesitatingly applied the principle, the most recent example being the decision of the New South Wales Court of Appeal in *Damjanovic v Maley*.[9]

The emergence in the 1970's of the concept of the "McKenzie friend" might be thought to have represented an inroad into the profession's monopoly on the right of audience. However it is clear from McKenzie and subsequent cases that the role of a McKenzie friend does not include the right to address the court. In *McKenzie v McKenzie*[10] itself Davies LJ[11] quoted the words of Lord Tenterden CJ in *Collier v Hicks* that any one may attend court "as a friend of either party, may take notes, may quietly make suggestions, and give advice but no one can demand to take part in the proceedings as an advocate."[12]

Recent English cases (which may reflect a trend toward the increasing use of lay advocates) reinforce the limits on the activities of a McKenzie friend. They go on to assert a court's power to control and if necessary to banish a McKenzie friend whose conduct disrupts the proceedings. In *R v Bow County Court ex p Pelling*[13] Lord Woolf gave as an example the friend indirectly running the case and using the litigant as a puppet. Staughton LJ in *R v Leicester City Justices ex p Barrow*[14] cited conduct such as wasting time as by prompting the litigant to ask irrelevant questions.

Whatever the behaviour of a McKenzie friend, it is clear that the role in fact reinforces the common law limitation on the right of audience.

The principle is largely mirrored, rather than altered, by statute.[15] Australian legislation governing the jurisdiction and procedure in each court generally provides that a party to proceedings before the court may appear either personally or by a legal practitioner. It is worth noting that, even in those States where the profession was formerly divided, the legislation frequently gave both branches of the profession a right of audience. For example, the New South Wales *District Court Act* 1973 provides that "A party to any proceedings may appear by a barrister or solicitor retained by or on behalf of that party."[16]

In those States where the profession is legally fused, such as Victoria, the distinction between barristers and solicitors is of course irrelevant (although it is not entirely unknown for some judges to be "unable to hear" a solicitor seeking to appear before them).

The recent extension of the right of audience to solicitors in England and Wales, through the *Courts and Legal Services Act* 1990 and the *Access to Justice Act* 1999, brings Australian and English jurisdictions broadly into line but in neither case does the relevant legislation affect the underlying common law principle prohibiting unqualified advocates.

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6 *ibid at 587*

7 *[1986] 2 WLR 322*

8 *ibid at 326*

9 *[2002] NSWCA 230*

10 *[1971] P 33*

11 *ibid at 38*

12 *(1831) 2 B.& Ad. 663 at 668; 109 ER 1290 at 1292*

13 *[1999] 4 All ER 751*

14 *[1991] 2 QB 260*

15 *apart from minor inroads such as that effected by the Lay Representatives (Rights of Audience) Order 1992*

16 *s.43*

While the courts have consistently maintained the right of audience principle, the policies put forward to justify it vary considerably (as is often the case in reasoning based on the public interest). One might reasonably assume that the paramount consideration should be the protection of the litigant from incompetent advocacy, and this is indeed one of the bases on which the principle is founded. But in *Tritonia*[17] the only consideration relied upon by the House of Lords was the assistance to the court itself which trained advocates provide.

One might also expect numerous references to the complexities of litigation, which cannot properly be handled by untrained advocates. But in *Collier v Hicks*[18] itself Lord Tenterden CJ said that it was to the benefit of the parties that they should not be represented at all, otherwise they might be put to "heavy and grievous expense" and that it was in the interests of justice, at least in summary proceedings, to hear only the parties themselves, "without that nicety of discussion, and subtlety of argument, which are likely to be introduced by persons more accustomed to legal questions".[19]

Some courts are concerned that an untrained advocate might "cause the litigant loss",[20] which suggests that the judges had forgotten that, in Australia at least, a client has no right to sue an incompetent professional advocate for any loss caused by the latter's negligence.

In addition to a general concern for the competence of advocates, whether for the assistance of the court or in the interest of the litigant, the other consideration most referred to is the issue of "probity", that is, that an admitted practitioner as an officer of the court owes clearly recognised duties to the court and to the administration of justice and in certain situations such duties take precedence over the client's own interests. This policy is put most forcefully by Donaldson MR in *Abse v Smith*[21] and is worth quoting at length.

> "But quite apart from the public interest in ensuring that advocates appearing in the courts have the requisite standard of skill, there is another and even more important requirement.....This is the requirement of absolute probity. The public interest requires that the courts shall be able to have absolute trust in the advocates who appear before them. The only interest and duty of the judge is to seek to do justice in accordance with the law. The interest of the parties is to seek a favourable decision and their duty is limited to complying with the rules of court, giving truthful testimony and refraining from taking positive steps to deceive the court. The interest and duty of the advocate is much more complex, because it involves divided loyalties. He wishes to promote his client's interest and it is his duty to do so by all legitimate means. But he also has an interest in the proper administration of justice, to which his profession is dedicated, and he owes a duty to the court to assist in ensuring that this is achieved. The potential for conflict between these interests and duties is very considerable, yet the public interest in the administration of justice requires that they be resolved in accordance with established professional rules and conventions and that the judges shall be in a position to assume that they are being so resolved. There is thus an overriding public interest in the maintenance amongst

17 *note 5 above*

18 *note 2 above*

19 *ibid at 668*

20 *per Stein JA in Damjanovic v Maley note 9 above: "Lay advocates are unqualified, unaccredited and uninsured" at para 79*

21 *note 7 above*

> advocates not only of a general standard of probity, but of a high professional standard, involving a skilled appreciation of how conflicts of duty are to be resolved."[22]

This statement of the advocate's duty to the administration of justice, compelling as it is, seems, to Australian readers at least, remarkably familiar from the decisions justifying the continuation of an advocate's immunity from liability for negligence and there is some irony in the fact that the same arguments are used to justify both a monopoly of the right of audience and immunity from an obligation to take reasonable care in the exercise of that monopoly.[23]

Further secondary arguments in support of the monopoly on the right of audience were collected by Stein JA in *Damjanovic*,[24] such as the fact that a lay advocate is not subject to a disciplinary code, may not be liable to an order for costs, is likely to take longer in the conduct of proceedings and would not recognise a duty to the opponent. He concluded by citing Mahoney AP in another New South Wales Court of Appeal decision,[25] where that judge formulated three guiding principles in the preservation of the restriction of the right of audience:

> "First, the duty owed by counsel to the court; secondly, the possibility of unqualified advocates interfering with the course of a proceeding and causing loss and delay; and thirdly, the public interest in the effective efficient and timeous disposal of litigation: "the administration of justice requires that full assistance be available to the court in determining the issues of fact and law which come before it. The isolation of issues and the presentation of the consideration (sic) which support one answer rather than another are things best done by a person experienced in such matters."[26]

These arguments will be examined more closely in Part III of this article.

Given the courts' unwavering support for the restriction of the right of audience to the profession, the question must now be asked: on what legal basis may law students (or those lay advocates who were the subject of the cases already discussed) seek to appear before the court?

The answer lies in another familiar concept: the inherent jurisdiction of every court to regulate proceedings before it. As an element of this jurisdiction, every court has a discretion to permit any person to appear as advocate before it. This discretion was upheld by the Privy Council (on appeal from the Supreme Court of New South Wales) in *O'Toole v Scott*[27] and has been recognised in English cases such as *Abse v Smith*[28] which canvassed a number of earlier English cases to the same effect. The Privy Council held that statutory provisions granting the usual right of audience to the profession did not abrogate the discretion so that, while members of the profession have a right to appear, this exists side by side with the court's general discretion to permit other persons to appear.

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22 ibid at 326

23 Abse v Smith was decided in 1986 not long before the enactment of the Courts and Legal Services Act 1990 and Donaldson MR went on to say that the best way to ensure the maintenance of high standards was to limit advocacy to a relatively small group of practitioners, ie the Bar – at 327

24 note 19 above

25 Scotts Head Developments Pty. Ltd v Pallisar Pty. Ltd (unreported, Court of Appeal, 6 September 1994)

26 ibid at pp. 3–4

27 [1965] AC 939

28 note 7 above

The position in Australia, therefore, is that an unqualified advocate, such as a student, while having no right to appear, does have the right to seek the court's exercise of its discretion in granting him or her leave to appear.[29]

Although the position is now different in England in that the discretion has been abrogated by s.27(1) *Courts and Legal Services Act* 1990, it is proposed to examine the criteria on which the common law discretion will be exercised, because it is suggested that similar criteria should be applied by courts in granting a right of audience under s.27(2)(c) of the Act.

The Australian cases indicate that there are two issues which arise when the court is considering whether or not to exercise its discretion and grant an unqualified advocate leave to appear.

First, should the discretion be exercised liberally or only in exceptional cases?

Secondly, is it exercised differently according to whether the proceedings in question are in the lower courts or in a superior court such as a Supreme Court?

With regard to the first issue, the Privy Council expressly considered the question. It concluded:

> "[The discretion] can be exercised either on general grounds common to many cases or on special grounds arising in a particular case. Its exercise should not be confined to cases where there is a strict necessity; it should be regarded as proper for a magistrate to exercise the discretion in order to secure or promote convenience and expedition and efficiency in the administration of justice."[30]

However subsequent Australian cases have expressed the position more narrowly. In *R v Schagen*[31] the Western Australian Court of Criminal Appeal permitted two students to represent an appellant who was deaf and "virtually incomprehensible" but made it plain that it was a rare and exceptional case. In *Galladin Pty Ltd v Aimnorth Pty Ltd*[32] Perry J of the South Australian Supreme Court said the discretion must be carefully controlled. In *Damjanovic v Maley*[33] Stein JA said that the authorities suggest that higher courts should be very chary at giving leave and, on the facts of the case before him, found that the circumstances relied upon by the applicant for leave to appear were not "so exceptional or special"[34] as to make it appropriate for the court to have granted leave to appear. In *Scotts Head Developments Pty Ltd v Pallisar Pty. Ltd*[35] Mahoney AP appeared to ignore the very nature of a discretion when he acknowledged that the court had a discretion but said that the court "has long adopted the general rule that it will not allow an appearance by a person who has not been admitted to practice before it."

(However none of the Australian cases appear to have taken a position as extreme as that adopted by the Court of Appeal in *Abse v Smith*[36] where the issue was whether a solicitor should have been permitted to appear to read a statement agreed between the parties in settlement of a defamation action. Not only did the Court of Appeal refuse to countenance appearance by the solicitor; it also held that it was for the judges of the court collectively to decide whether or not to modify established practices.)

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29 This is in marked contrast to the position in the United States where all 50 States have introduced "Student Practice Rules" – see Kuruc J W & Brown R A "Student Practice rules in the United States" (1994) August The Bar Examiner 40 and the ABA Model Student Legal Assistance Rule

30 O'Toole v Scott note 26 above at 959

31 (1993) 65 A Crim R 500

32 (1993) 60 SASR 145

33 note 9 above

34 ibid para 87

35 note 24 above

36 note 7 above

It appears therefore that, at least in superior courts, the discretion will be exercised only rarely. Furthermore some of the cases involve a complicating factor, that of a corporate party seeking to appear through an unqualified advocate, in breach of the established rule that corporations may conduct litigation only through a legal practitioner. It may be, therefore, that the corporate litigant carries a double burden in seeking to persuade the court to permit representation by a lay advocate.

As to the second issue, whether the discretion will be exercised differently according to the court's place in the hierarchy, *O'Toole v Scott*[37] concerned a summary prosecution in the Magistrates' Court (the lowest court in the Australian hierarchy). All the other cases discussed related to applications for leave to appear in either the District Court (the court between the Magistrates' Court and the Supreme Court) or in Supreme Courts. It may be that the Privy Council in *O'Toole* was willing to take a more relaxed view of the possibility of unqualified advocates appearing in the Magistrates Courts, particularly as the unqualified advocate in question was a police prosecutor.

In contrast it is not surprising, given the nature and complexity of the Supreme Courts' jurisdiction, if the judges are extremely reluctant to countenance lay advocacy.

The examination of the cases on the circumstances in which a court will grant a lay advocate leave to appear discloses no consistent criteria to guide future applicants. It would seem that an unqualified advocate seeking leave to appear would be dependent entirely upon the circumstances of the individual case and the inclination of the presiding judge or magistrate.

PART II The Monash Student Appearance Program

It is in this context of ancient legal principle and judicial discretion that the Monash University clinical legal education teachers developed the "Student Appearance Program" which after ten years has become a routine part of the clinical students' experience. This part of the article will outline the key elements in the program, the social and political context and the strategies adopted in persuading courts to accept the concept of students appearing regularly before them.

The Monash clinical program is based in two community legal centres. The students, in the final year of their law degree, work in the centre for a semester (five months) for credit for their degree. They are supervised by teaching staff who are qualified and experienced practitioners. Clients come from the local community.

The fundamental philosophy of the program is that students take frontline responsibility for the conduct of their clients' matters. They take initial instructions, then discuss the problem with their supervisor before returning to the client with advice. If the matter is appropriate for the centre to take on, the student opens a file and carries out all the tasks required, whether it be research, writing to the opposing party, briefing counsel etc. All the students' work is closely supervised: all letters and documents are checked by the supervisor before being typed and supervisors hold a weekly file review with each individual student to discuss the next steps to be taken, strategies to be adopted etc.

Among the most common types of matters handled by the centres are summary criminal prosecutions and simple family law matters. Despite the existence of a public legal aid system these clients are frequently ineligible for aid.

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37 note 26 above

The legal aid system in Victoria is administered by a body formerly entitled the Legal Aid Commission of Victoria (now Victoria Legal Aid) established under the Victorian *Legal Aid Act* 1978.

The Act provides two key criteria for the granting of legal aid: a means test and a "merit" test. The "merit" provision is suitably broad: if the provision of aid is "reasonable having regard to all relevant matters": (s.24(1)). Section 24(4) provides that all relevant matters include: "the nature and extent of any benefit that may accrue to the person, to the public or to any section of the public from the provision of the assistance or of any detriment that may be suffered by the person, by the public or by any section of the public if the assistance is not provided"; and in the case of court proceedings, "whether the proceeding is likely to terminate in a manner favourable to the person".

In order to implement these legislative criteria, the Legal Aid Commission formulated a detailed means test and a set of priorities and guidelines under the merit test. Although criminal matters are generally the first priority, within that category, for obvious reasons, priority is given to matters carrying the more serious penalties. Generally, for summary criminal matters, aid will not be granted unless the applicant faces a real risk of imprisonment or fines totalling above a certain minimum.

Although no observer could challenge these priorities, within the context of continuing constraints in the legal aid budget the result is that numbers of legal centre clients facing summary criminal or traffic charges cannot afford counsel's fee but are ineligible for legal aid.

A detailed breakdown of the number of unrepresented defendants in the Magistrates court is not available, nor does the legal aid body publish statistics of applications and their outcomes in other than broad general categories. But the Legal Aid Commission of Victoria Statutory Annual Reports for the period 1989–1992 show a sharp increase in the percentage of applications refused, from 20.5% in 1989–90 to 26.4% in 1990–1991 to 29.3% for 1991–1992.[38]

In the area of family law, the second general area of priority for the Legal Aid Commission, aid has never been available for divorce applications, which under the Commonwealth *Family Law Act* 1975 follow a simple procedure and can realistically be handled by an English-speaking applicant. However an applicant with language difficulties cannot be expected to present the application unassisted.

By 1992 the Family Court was beginning to speak publicly of the need for improved legal aid. In his Foreword to the Court's Annual Report of 1991–92 the Chief Justice wrote:

> "There are three major impediments to access to the court. The first of these is effective legal representation and this has been progressively diminished by the combined effects of the recession and a significant reduction in legal aid funds available in the area of family law."[39]

(The legal aid situation in Australia has worsened with the intervention of the conservative Federal Government elected in 1996. The Federal Government has always contributed more than 50% of total legal aid funds and the new government set about severely reducing its contribution. In 1997 the director of the UK Legal Action Group visiting Australia commented that legal aid funding in the UK amounted to A$60 per head of population, whereas in Australia it amounted to A$15 per head.)[40]

38 *Legal Aid Commission of Victoria, Statutory Annual Reports, 1989–1990, 1990–1991, 1991–1992, Education and Information Division Legal Aid Commission of Victoria Melbourne.*

39 *Family Court of Australia, Annual Report 1991–1992 Australian Government Publishing Service, Canberra, at p.8*

40 *cited in (1997) November NSW Law Society Journal at p.19*

It was in this context that clinical teachers and students were seeing increasing numbers of clients in criminal and family matters who were not eligible for legal aid but who, on any reasonable view, were quite unable to represent themselves, because of their language or educational disadvantages. It was particularly frustrating for students who might have devoted a great deal of time and effort to preparing a client's case, but felt that their work was almost wasted because of the lack of competent representation. We therefore decided to embark upon a campaign to enable students to provide that representation. Our objectives were both the provision of better service to our clients and the expansion of our students' educational experience.

A previous attempt to have students permitted to represent their clients had failed. We approached the Chief Justice of the Family Court with a proposal that students be granted a limited right of audience in the local registry of the Court, where the legal centres were well known to registry staff.

Unfortunately we failed to do our homework properly and although the Chief Justice personally favoured the idea, it met with "almost universal opposition"[41] from the other members of the court, who took the view that an amendment to the relevant provision of the Court Rules would be required. Had we done our research and prepared a full submission on the law and the existence of the *O'Toole v Scott*[42] discretion, the result might have been different, because less than three years later we received a very positive response from the Judge in charge of our region of the court.

It is possible that the change in attitude was caused by a realisation of the impact of the steady increase in the number of unrepresented litigants, particularly in the local registry. (The Registry in Dandenong, in the outer south-east of Melbourne, is generally regarded as having the highest percentage of unrepresented litigants – 40% – of any Family Court registry in Australia. Its catchment area includes high levels of non-English-speaking residents and socio-economic disadvantage.)

Having learnt our lesson from the first approach to the Family Court, we now did the research and prepared a far more detailed submission and a set of guidelines, setting out the criteria limiting the clients, cases and students to which the proposed "Student Appearance program" might apply.

The key components of the guidelines were, and still are:

- students would appear only for clients who had no access to qualified representation (other than a legal aid Duty Lawyer);
- students would appear only in unopposed matters in the Magistrates Court and the Family Court;
- students' appearances would be 'supervised' in court by a qualified practitioner.

The guidelines have a number of underlying objectives. The restriction of student appearances to matters where the client has no access to qualified representation serves three purposes. We can say in all honesty that the client can hardly be worse off with representation by a well prepared and supervised student than if he or she had to appear unrepresented. The private profession can see that there is no risk of the program taking clients who would otherwise be paying their fees (personally or through Legal Aid); and there is an obvious benefit to courts increasingly burdened with unrepresented litigants.

The restriction to unopposed matters in the Magistrates Court or Family Court enabled us to meet

41 Correspondence Hon Justice Nicholson, Chief Justice, Family Court of Australia, to the author, 13 June 1990

42 note 26 above

the major categories of need among our legal centre clients – guilty pleas in summary criminal matters in the Magistrates Court and divorce applications in the Family Court where for language or other reasons the client could not reasonably be expected to present the application unaided. (The nature of our clientele is such that we get a significant number of relatively complex divorce applications: for example, where the parties married in Afghanistan, fled to a refugee camp in Pakistan, then separated somewhere between there and Australia. The Marriage Certificate is lost and a new one cannot be obtained because the equivalent of the Registry of Births Deaths and Marriages in Kabul has been bombed by one side or another. The client has not seen her husband for two years and, as refugees, there may not be any family members in Australia on whom substituted service of the application may be effected. Cases such as these provide a wonderful learning experience for the student and if he or she has been responsible for the preparation of all the documents necessary to support the application, the opportunity to present the application in court as the culmination of his or her work provides a remarkable sense of achievement.)

Cases in these categories are most likely to be ineligible for legal aid and therefore meet the "no other access to representation" criterion. Furthermore, they are by their nature able to be prepared fully in advance – the possibility of ambush by an opposing party is minimal or non-existent and, as most legal centre supervisors are solicitors rather than barristers, we are thoroughly confident of our ability to prepare our students for these cases.

The third critical element in the guidelines, that a student would be "supervised" in court by a qualified practitioner, provides the reassurance of someone who could step in and take over if something went wrong (although this has never been necessary).

A final element which we regard as important is that, as teaching staff, we take responsibility for assessing whether an individual student is competent to appear. There is no expectation that every student enrolled in the clinical subject will have the opportunity to appear.

Having prepared the explanation of the law and the guidelines, we laid the groundwork in other ways before approaching the courts. We decided it would be important to have the support of, or at least no active opposition from, the profession. The Law Institute (the equivalent of the Law Society) was remarkably positive, its Council voting unanimously to support our proposal.[43]

The Victorian Bar Council referred the proposal to several sub-committees, wrote several expositions of the relevant legal issues and then concluded that it was a matter for the courts.[44]

At the same time, we asked those of our students who had accompanied a client to court as a McKenzie friend, or represented a client in a tribunal, to write brief accounts of their experience. The purpose was to attach these accounts to our submission to the Magistrates Court, to illustrate in concrete terms the types of cases in which we proposed students should be allowed to appear and to provide preliminary evidence that our students were indeed competent in "lower level matters". (Several students who had gone to court as a McKenzie friend were asked by the Magistrate to speak on behalf of the client and had acquitted themselves well, despite the fact that they had not expected to represent the client in this way and had therefore not prepared for it.)

The proposal was finally ready to be submitted to the Chief Magistrate. (After our false start with the Family Court we decided to begin this time with the Magistrates Court.) We included

43 Council of the Law Institute of Victoria, 21 November 1991

44 Correspondence A J Kirkham, QC, Chairman, Victorian Bar Council, to the author, 8 and 14 May 1992

information on the clinical program and described the Student Appearance proposal as 'the logical extension of our existing course'. The proposal was considered by the Council of Magistrates and received the support of the 'overwhelming majority'.[45] A very small minority expressed strong disagreement and of course the Chief Magistrate, who personally supported it, could not direct her colleagues in the exercise of their discretion.

We then submitted the proposal to the Judge Administrator of our region of the Family Court. Within a month the Chief Justice and Southern Region Judges gave their support and the program began at the beginning of 1993.

The process

Once the clinic supervisor has identified a case as meeting the guidelines and the student wants to represent the client, the program is explained to the client, who of course is free to decide either to represent him or herself or to rely on a Duty Lawyer. If the client wants the student to represent him or her, s/he is asked to sign a form of consent. This includes an acknowledgement that the client is aware that the student is not a qualified lawyer. This form can be produced to the court if required and is placed on the client's file after the hearing.

The student is then responsible for preparing the matter fully. Most teachers require their students to prepare a complete "script", which the teacher then checks, but the student is of course told that on no account are they to read their script in court. The objective is that the student knows the facts, the law and the procedure so thoroughly that they can answer any question put to them, preferably without reference to their notes. (In this respect it is easy to understand that a student's performance may be much more competent than a junior barrister who has received the brief only the night before the hearing.)

In the early years of the program, clinic teachers tried to act as the in-court supervisor of their students wherever possible. As the program became more routine and we became more confident of the courts' attitude, we have tended to arrange for other practitioners, barristers or legal aid lawyers, to act as in court supervisors.

On the day of the hearing when the student checks in with the court office, s/he informs the court co-ordinator that it is a student appearance and this is noted on the court file. This means that when the case is called the Magistrate or Registrar can see that a student is representing the client. All the student has to do is formally to seek leave to appear on behalf of the relevant party. From then on the case proceeds as normal.

Assessment

Initially we had not intended that appearances would be assessable. However, it quickly became apparent that the students put so much work into their preparation, in a subject which itself required significantly more work than a conventional academic subject, that fairness required that they be allowed to count appearances as part of their assessment.

We therefore introduced a regime that allowed students to choose, for 20% of the total mark in the clinical subject, either an assignment (which had previously been mandatory) or two

45 Correspondence Ms Sally Brown, Chief Magistrate, Magistrates Court of Victoria, to the author, 21 January 1993

appearances and a 1000 word report. The elements of assessment for the appearances themselves are: pre-hearing preparation; adherence to rules of court etiquette; content of appearance; and after-court explanation to the client.

For the report, the student is required to compare the two appearances in respect of issues such as preparation, supervisor's role, how the clients felt about being represented by a student; ethical issues and what they learnt from the experience.

The introduction of assessment into the program added an additional practical factor – the in-court supervisor would be asked to complete the assessment form.[46] However as the majority of supervisors are more than willing to give students detailed feedback this has not proved to be a difficulty.

Secondly when a student has done one appearance and therefore opted for this form of assessment there is some pressure on the clinic supervisor to "find" a second appearance for that student. The teacher's responsibility to balance the interests of clients and students is discussed more fully below.

Magistrates' attitude

Given that a small number of Magistrates had made it known in advance that they opposed the program we have experienced very few difficulties. A record was kept of every appearance in the first few years and when an individual Magistrate refused leave to a student, all teachers tried in subsequent cases to ensure that a case was not heard before that Magistrate. Some Magistrates who refused leave in the first case that came before them eventually changed their mind and granted leave in later cases without demur.

Evaluating the students' performance

In the ten years since the program began students have represented more than 1,000 clients who would otherwise have gone unrepresented.

No systematic evaluation of the quality of the students' performance has been carried out but the marks awarded by practitioners who act as in-court supervisors indicate a high level of competence. In one semester the average mark given by external supervisors was 87.5%.

In a research project recently completed by the author and Judith Dickson of La Trobe University,[47] magistrates who had presided over, and practitioners who had supervised, at least two appearances were interviewed about their views of the program. The magistrates were clearly very positive. They supported the program because of its educational value to students; they thought that the students' performance was generally as good as that of junior practitioners and that they assisted the court.

Similarly the practitioners interviewed considered that the students they had seen were often as good as and sometimes better than junior practitioners, mainly because the students had obviously prepared so thoroughly; and one said the students were of a very high standard. The practitioners all agreed that the representation provided by the students was much more efficient in the court process than an unrepresented defendant.

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46 *On one occasion, when the author was in-court supervisor for one of her students, when the student had finished her plea, the Magistrate looked across and said "Well Mrs Campbell, you would have to give her 10 out of 10 for that". The thought of giving the magistrates the assessment form to complete flashed briefly through our minds.*

47 *Dickson, J and Campbell, S, Student Advocacy in Australian Courts: Recommendations for a Model Program, Report to the Commonwealth Attorney-General's Department, September 2003. It is hoped to publish an article based on this project in the near future.*

Clients' views of the service they received from the students have not been recorded other than anecdotally. It is probable that most clients, who had become used to dealing with a student during the conduct of their matter in the legal centre, took it for granted when the same student represented them. Clients were therefore not particularly concerned by the legal significance of having a student represent them, even though they had had this aspect brought to their attention when the consent form was explained to them.

The role of the clinic supervisor

The clinic supervisors play a dual role: they are teachers and practitioners. In all the work of the legal centres in which students are involved, they have a dual responsibility – to protect the client's interest in receiving competent legal service and the student's interest in expanding their educational experience. The supervisor must constantly weigh and balance the two interests. This requires a careful assessment of the legal tasks which must be carried out and the timeframe within which this must be done, in order to advance the client's position; and an equally careful assessment of the competence of the individual student and their capacity to meet the relevant timeframe. The student will learn more if they are given the responsibility and the opportunity to perform the work required; but the client will suffer if the student cannot competently complete it within time. Into this mix the supervisor must add their own availability – to be accessible to advise the student and to check their work.

The same process applies within the specific context of the student appearance program. When a client comes into the legal centre with, for example, a summary criminal matter, the supervisor must assess a number of interlocking factors:

- should the client plead guilty or not guilty? If the plea is not guilty, the matter will not be within the program guidelines;
- might the client be eligible for legal aid? If so, again the case is outside the guidelines;
- is there time to make an application for legal aid?
- even if the appropriate plea is guilty, is the case appropriate for student representation, bearing in mind the seriousness of the charge, the client's prior history etc? These factors might on reflection strengthen an application for legal aid.
- If the case is appropriate for student representation, is the individual student who has interviewed the client and taken on the conduct of the matter competent to do it?

In this complex formula the supervisor must be careful to put aside the consideration, mentioned earlier, that the student "needs a second appearance".

The supervisor identifies and articulates these factors in discussion with the student. In so doing the supervisor is modelling for the student the careful professional attitude of putting the client's interest first and acknowledging the ethical obligations inherent in the lawyer's role.

The more substantial aspect of the supervisor's role in the student appearance program relates to the student's preparation for the appearance. With every appearance, the reputation of the program is at stake and the supervisor must provide the student with advice, support and the

appropriate sense of responsibility for the client; while not burdening him or her with the added responsibility of the fate of the whole program.

From the moment that the question of student representation is discussed throughout the preparation of the appearance, the supervisor helps the student to identify the ethical issues involved: the duty to put the client's case, the duty not to mislead the court. What can be said on behalf of the client? What must not be said?

Part III Can student appearances meet the policies underlying the limited right of audience?

Can a Student Appearance program, operating within the guidelines discussed earlier, meet the justifications put forward by the courts for the restriction of the right of audience to qualified practitioners?

There is no doubt that, as long as the emphasis is on the formal status of admitted practitioners, students do not have that status. But can they meet the substance of the courts' requirements?

It is suggested that, provided students' appearances are confined to limited categories of cases and clinic supervisors continue to take full responsibility for their thorough preparation, they do in fact meet the major requirements.

The critical issue is that *ex hypothesi* the alternative to student representation is litigants in person. There can be no doubt that a well prepared student is far more likely, in the words of Mahoney AP, to provide "full assistance to the court...in the isolation of issues and the presentation of considerations which support one answer rather than another."[48] Whether in a guilty plea or a family law application the student presents the facts relevantly and concisely, identifies the legal issues and articulates the outcomes sought. It is virtually impossible for the overwhelming majority of litigants in person to do this.

Secondly the clinic supervisors ensure that students are extremely conscious of their duty to the court and considerable care is taken in the preparation of the appearance to ensure that this duty is fulfilled. Although the litigant in person has a duty not to mislead the court[49] it is asking a great deal of the average person that they resist the temptation to cross the fine line between putting the truth as favourably as possible and exaggerating or embellishing it.

Thirdly, the role of any advocate, qualified or not, includes controlling the anxious or temperamental litigant who, in the absence of the sense that their story is being told and heard, might well disrupt the proceedings by outbursts or abuse.

The one consideration underlying the restricted right of audience which student appearances cannot meet is the availability of disciplinary sanctions over practitioners who fail to meet their ethical obligations. The very fact that students are not admitted to practice makes this self-evident (although presumably if a student's conduct were inappropriate in the extreme they could be held in contempt of court).

It is to meet this issue that the research project referred to above, in proposing model legislation governing student advocacy, recommends that a provision be included imposing "the same duties

48 Scotts Head Developments Pty. Ltd v Pallisar, note 24 above

49 Vernon v Bosley (No.2) [1997] 1 All ER 614 per Stuart-Smith LJ at p.629

and obligations" on student advocates as if they were qualified practitioners.

The final issue to be considered is whether a student could "cause the litigant loss" and this leads to a discussion of whether a student advocate would be liable to a client in negligence.

PART IV A student immunity?

The applicable authority in Australia on the advocate's immunity from liability for negligent in-court conduct is the decision of the High Court of Australia in *Giannarelli v Wraith*[50] where by a 4/3 majority the Court upheld the immunity, following the same reasoning as *Rondel v Worsley*[51] and *Saif Ali v Sydney Mitchell & Co.*[52]

In 1999[53] the High Court was expressly invited to reconsider its decision in *Giannarelli v Wraith*.[54] In a decision handed down seven months before that of the House of Lords in *Arthur J.S. Hall & Co. Ltd. v Simons*,[55] effectively abolishing the immunity, the Court rejected the invitation. The practitioners who were defendants to the claims in this case were held not to have been negligent and the Court was therefore able to put aside the issue of advocates' immunity on the basis that it did not need to be considered.

However there were indications from three judges that on "another day"[56] the issue might be reconsidered. Gaudron J (since retired) said that had the question of "immunity" arisen, she would have granted leave to re-open *Giannarelli* because proximity – "more precisely the nature of the relationship mandated by that notion – may exclude the existence of a duty of care on the part of legal practitioners with respect to work in court."[57] Gummow J acknowledged that a number of issues arise with respect to the immunity.[58] Kirby J devoted a significant part of his judgment to the policy issues relevant to the immunity and said that the binding authority of *Giannarelli* is confined to immunity in respect of in-court conduct.[59]

It therefore seems likely that the issue of the immunity will be re-opened by the High Court in a case where it cannot be avoided.

However, as long as *Giannarelli v Wraith* remains the applicable law in Australia, it is necessary to analyse the reasoning in that decision in an attempt to answer the question of whether students as advocates might also be immune from liability for any negligence in the conduct of the matter in court.

The plaintiffs in *Giannarelli* were three men who had been convicted of perjury as a result of evidence they gave to a Royal Commission. The negligence complained of against their counsel was that the latter failed to raise in the plaintiffs' defence of the perjury proceedings provisions of the Commonwealth *Royal Commissions Act* 1902 which rendered evidence given to a Royal Commission inadmissible in criminal proceedings. There could perhaps be no clearer example of professional negligence.

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50 (1987–1988) 165 CLR 543

51 [1969] 1 AC 191

52 [1980] AC 198

53 Boland v Yates Property Corporation Pty. Ltd and Another 167 ALR 575

54 note 49 above

55 [2002] 1 AC 665

56 Boland note 52 above at p.604 para 116

57 ibid p.602 para 107

58 ibid p.603–4 paras 113–114

59 ibid p. 618 para 150

The leading judgment in the High Court is that of Mason CJ. After referring to *Rondel v Worsley*'s[60] rejection of the argument that a barrister's inability to sue for his fees could support his immunity in negligence, the Chief Justice went on to support the maintenance of the immunity on two considerations of public policy. The first is counsel's duty to the court, which overrides the duty to the client but which might be threatened by counsel's concern to avoid the risk of a negligence action by the client. The second consideration is the "relitigation" argument, that an action for negligence would constitute a collateral attack on the decision in the principal case.[61]

Leaving aside the merits of these arguments, which have been dealt with persuasively by the House of Lords, the question becomes: can such considerations of public policy apply equally to unqualified advocates appearing by leave of the court?

It is clear that the "relitigation" argument can logically apply with equal force to cases conducted by a lay advocate and those conducted by an admitted practitioner, because it is an argument based not on the status of the advocate or even on his or her role, but one based on the efficient operation of the system, the administration of justice in the abstract.[62]

As to the first ground of public policy, that the risk of being sued for negligence by the client might influence the advocate's conduct of the case at the expense of his or her duty to exercise independent judgment in the interest of the court, prima facie it might be concluded that the immunity could not apply to unqualified advocates simply because they do not owe a duty to the court as qualified advocates do. The justification for the immunity would therefore not apply to unqualified advocates. And it is probably no answer to this argument to say that, in seeking leave to appear, the unqualified advocate voluntarily assumes the duty imposed upon qualified advocates by virtue of their status as officers of the court.

However analysis of this justification for the immunity at a deeper level produces another issue. Is the immunity in fact based upon the advocate's status or upon the function he or she fulfils in the conduct of litigation? If it is based upon the advocate's status as a person admitted to a regulated profession who is subject to prescribed disciplinary sanctions for unacceptable conduct, then there can be no basis for extending the immunity to unqualified advocates.

Alternatively, if the immunity is justified on the basis of the function the advocate performs within the system of justice, then there may be no reason why any person carrying out this function with the permission of the court should not be covered by the immunity.

A close analysis of the majority judgments in *Giannarelli v Wraith* suggests that this may well be the case. The judgments refer throughout to the advocate's role in assisting the administration of justice, to counsel exercising an independent judgment "in the interests of the court".[63] For example, Mason CJ said:

> "It follows that the exposure of counsel to liability in negligence for breach of a common law duty of care would create a real risk of adverse consequences for the efficient administration of justice. Litigation would tend to become more lengthy, more complex and more costly."[64]

60 note 50 above

61 Giannarelli v Wraith note 49 above at p.555

62 It is also an argument which ignores the fact that the capacity of a disappointed litigant to sue his or her solicitor for negligence in the preparation of the case has exactly the same consequences of relitigating, 'tarnishing' the earlier decision and bringing the administration of justice into disrepute – per Wilson J at 574.

63 Giannarelli v Wraith note 49 above at p.557

64 id

Brennan J said:

> "If the immunity of counsel were abrogated, the assistance which courts obtain from the advocacy of an independent profession would be imperilled."[65]

The point is reinforced by the court's acceptance that the immunity extends to a solicitor/advocate. As Wilson J said,

> "The critical factors are the function (the advocate) is performing at the material time and the impact which non-recognition of immunity might have upon the administration of justice. *It is the function of advocacy that attracts the immunity*, (emphasis added) and, accordingly, it matters little whether the advocate is admitted to practice as a solicitor or as a barrister or as both."[66]

If it is accepted that the immunity exists to protect the advocate's role in the administration of justice, then it is at least arguable that an unqualified advocate should also benefit from the immunity, at least where the litigant would otherwise be unrepresented. The unqualified advocate is given leave to appear precisely because the courts accept that they are assisted by the appearance of an advocate who is able to present the litigant's case clearly, concisely and honestly.

In theory, therefore, the Monash students might be protected by the immunity. On the other hand, the argument that the advocate is entitled to immunity because of the role he or she plays in assisting the court and therefore advancing the administration of justice would not necessarily apply to all unqualified advocates, such as those who feature in cases such as *Paragon Finance plc v Noueiri*[67] and *R v Leicester City Justices ex p Barrow*.[68]

But it is difficult to see how the courts could draw a distinction between the unqualified advocate operating within a program which ensures careful supervision and preparation, and those who seek to appear without such endorsement. It would not be acceptable to apply the immunity on a case by case basis.

Furthermore, given the criticism which the immunity attracts, acknowledged by the House of Lords[69] and by the minority judges in *Giannarelli v Wraith*,[70] it is unlikely in the extreme that the High Court would extend the immunity, no matter how strictly logical the argument.

Consequently the Monash program has never relied upon the possibility of its students being protected by the immunity. Instead we rely upon more pragmatic considerations: the fact that, in

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65 *ibid at p.579*

66 *ibid at p. 577*

67 *[2001] 1 WLR 2357 per Brooke LJ at 2363, quoting Judge LJ in another case involving the same lay advocate: 'The courts from the master to the House of Lords have been inundated with a series of applications by Mr Alexander which have ultimately proved to be ill-founded. Time and again the exercise has been pointless and wasteful of limited court resources and from time to time has involved the defendants in additional expense."*

68 *note 13 above, where Watkins LJ said (at p.271): "Increasingly justices are being placed in the intolerable position of being faced with people claiming to be friends of defendants who are either politically motivated or activists opposing some authority or other whose function it is to carry out the wishes of Parliament."*

69 *Arthur J S Hall & Co. Ltd v Simons note 54 above per Lord Steyn at p.678*

70 *note 49 above, per Deane J : "I do not consider that the considerations of public policy which are expounded in Rondel v Worsley and in the majority judgments in the present case outweigh or even balance the injustice and consequent public detriment involved in depriving a person, who is caught up in litigation and engages the professional services of a legal practitioner, of all redress under the common law for 'in court' negligence, however gross and callous in its nature or devastating in its consequences" at p.588*

the categories of cases in which students appear, it is highly unlikely that a client would suffer any provable "loss" which could be attributed to a student's conduct; and the assumption that a client who wished to sue would be advised to sue either the in-court supervisor, or the clinic supervisor and the University, all of whom are covered by professional indemnity insurance.

But ultimately we rely upon careful selection of cases and students and meticulous preparation of the content of the appearance.

Conclusion

In an ideal system every litigant would be represented by qualified and competent counsel.

But as long as the public legal aid system does not fulfil this ideal, law students can play a small but important role in filling the gap. If a system is established which ensures a certain minimum level of competence the courts as well as the litigants will benefit and the students' education will be enriched.

Legislative provision would regularise the concept, define the parameters within which students could appear and establish a minimum threshold of ethical responsibility in the interests of the litigant and the administration of justice.

Problem-based learning and clinical legal education: What can clinical educators learn from PBL?

Cath Sylvester[1], *Jonny Hall*[2], *Elaine Hall*[3]

This paper originated as a session at the Society of Legal Scholars conference in Leicester in September 2002. The writers[4] have been teaching in Northumbria University's Student Law Office for a number of years. We knew the practical benefits of clinical legal education but two particular problems presented themselves. The first was articulating the rationale for doing it beyond the fact that it exposes students to real practice. Given the fact that the UK already has a training contract regime whereby trainee solicitors spend the first two years of their professional life being supervised and supported by qualified professionals, what is the purpose of clinical legal education? The second problem we had arose when we looked at our Year 3 training programme[5] and then student attitudes and ability when they reached the Year 4 programme.

We found that many of our new Year 4 students did not engage in our firm meetings to discuss other students' cases very well. That once the client had been interviewed many of them simply approached their supervisor for the next step. That they effectively expected the supervisor to tell them where to look for the law, or just tell them the law. In short that they had some way to go in becoming effective problem solvers.

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4 *Reference to the writers throughout this paper is to Cath Sylvester and Jonny Hall who work in the Student Law Office. Elaine Hall was responsible for designing the research and evaluating it*

5 *In Year 3 of the degree students run a simulated case study. They are required to interview an actress about a legal problem and then undertake certain simulated tasks: writing to the client and opponent, keeping attendance notes, managing the file etc. In Year 4 students run cases fully for members of the public under the supervision of qualified lawyers.*

It was these difficulties that drew us to the theory of Problem Based Learning (PBL) and its methodology. This paper explores this element of what we are trying to achieve through the clinic experience, the basic theory of PBL[6], a description of the problems that we have encountered with our programme, the implementation of PBL in our Year 3 programme and some research conducted into the student experience in our new Year 3 programme.

Clinical Legal Education at Northumbria

Unlike other providers of professional education, both for the barrister's qualification – the Bar Vocational Course – and solicitors – the Legal Practice Course, Northumbria University places the activities of the students in the Law Office at the heart of the professional training that students are being given. There can be many claims for the positive role that the clinic can play. It has been argued that the clinic experience can encourage students to undertake *pro bono* work[7], that it can orientate some students towards social welfare law[8], that skills can more effectively be taught through real cases.

We believe that all of these are true but that a key goal of clinic training should also be to assist students to bridge a gap. The gap between on the one hand being taught discrete law subjects in the classroom and reproducing that knowledge for examination and on the other assisting a client in real life whose problem stretches across several areas and encompasses law that they may not have encountered before.

The clinic at Northumbria is one of the longest running clinical programmes in the UK[9]. It started in 1981 based in a room in the University (then Polytechnic) and was offered to small numbers of students taking a Legal Methods and Institutions course. Because of the constraints of the then professional practice rules for solicitors and a general concern about a possible threat to local solicitors it was limited in what it could do. The clinic could only advise students in the University, it could not go on the court record as acting and could not apply for legal aid for eligible clients. The programme was motivated entirely by educational objectives and, as student enthusiasm for it grew, the University expanded its provision.

In the early days it appears that no one thought of the Clinic as having a role to play in provision of legal services in the area and because of the above limitations its contribution was restricted. Indeed, in 1988 the Clinic was based in a local Law Centre[10] in order to increase the number of cases in the clinic because at that time there was a struggle getting enough appropriate work.

It was only in 1992 when the Student Law Office as it now is, opened in the University. The professional rules had changed to allow us to act for members of the public and the local profession had been reassured that we would not jeopardise their practices. In the same year the

6 *While it has been described many times we believe a brief description of the theory is necessary due to the fact that PBL has seen very little take up in law schools.*

7 *Including for example the Attorney General for England and Wales*

8 *see for example "Beyond Skills Training" Stephen Wizner Clin. L. Rev 7/2 2001 and see also "Striving to Teach Justice, Fairness and Morality" Jane Harris Aiken, Clin. L. Rev. 4 1997*

9 *The first CLE programmes in the UK were started in the mid 1970's at Warwick and Kent Universities. By 1980 only four clinics remained in existence at Birmingham, Warwick, South Bank and Northumbria.*

10 *Gateshead Law Centre hosted an advice session run by students from 1988 to 1991*

University enrolled its first year of students on a new four year exempting law degree course[11] which combined the academic and professional requirements for legal training in one integrated course. Clinical legal education was an obvious contender for delivering some of the skills elements required by this new degree[12] and the change in the rules gave us the opportunity to offer a much more intense programme.

The exempting degree from its outset aimed to incorporate the development of skills with the learning of academic law. The degree meets all the necessary academic requirements for the qualifying law degree[13] together with the more practice orientated areas covered by the current Legal Practice Course for those wishing to become solicitors and the Bar Vocational Course for those wishing to become barristers. However, the course is unique in that it integrates the two elements from day one of the 4 year degree and does not distinguish between them. Consequently in year 1 students cover some of the more traditional subjects such as contract and property law but will also study a combination of criminal litigation, crime and evidence in a series of concurrent and interlinked lectures and seminars. In year 2 students study tort, civil litigation and procedure using a similar method. From the outset legal skills will be incorporated where appropriate, so year 1 students start to practice and develop their advocacy skills in criminal litigation seminars by presenting mock bail applications. Students are introduced to the Student Law Office Programme in year 3 when they undertake a training programme. In year 4 the Student Law Office real client programme is a substantial part of their final year programme. Although year 4 students also study additional options, the core of the year is the student law office programme and a project. This combination gives students enough flexibility in time to manage their Student Law Office case load professionally and complete their other academic commitments[14].

The motivating force behind the development of the clinical programme to its current form at Northumbria was Hugh Brayne, who following a visit to a clinic at the University of Connecticut in 1990, realised the potential of clinical education 'I was able to see what law students were really capable of...they took almost total responsibility for big cases, including serious crime and appeal cases, and were clearly doing it well'[15]. He also saw the benefits of proper training programmes to prepare students for clinical work.

Clinical work at Northumbria has had the luxury of being driven primarily by educational and not practical objectives. From the outset the real client programme was backed up by a training programme concentrating on the more widely recognised lawyers' skills; interviewing, research, drafting, negotiation and advocacy[16]. By 1994 the Student Law Office was a compulsory element for all year 4 students taking the exempting degree and we provided a training programme based on a simulated case study to year 3 students with the aim of preparing them for their real client work.

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11 The University of Northumbria remains the only provider of the integrated course which combines all the elements required for a qualifying degree and the requirements of the Legal Practice Course or Bar Vocational Course.

12 The contents of the law degree Legal Practice Course and Bar Vocational Course are determined by the Joint Announcement of the Council for Legal Education and the General Bar Council 1995 and 1999 and the LPC written standards or the Bar Vocational Course Core Specification Requirements and Guidance.

13 Ibid

14 For more detailed breakdown of the 4 year curriculum for the exempting degree see the Appendix E.

15 Hugh Brayne 'Law Students as Practitioners' Teaching Lawyers Skills Webb and Maugham 1996 Butterworths

16 Referred to by the acronym DRAIN skills. These skills were originally identified as key skills to be assessed as part of the Legal Practice Course

With a few permutations on the way we have broadly retained this approach but it is the Year 3 programme that we have subsequently changed.

Both year 3 and 4 programmes have evolved. In 2002 the year 4 programme expanded to play a more significant role. In terms of staffing we have been able to establish some academic staff as being entirely Law Office based and have retained and increased a group of staff who are enthusiastic about clinical work. We currently cater for intakes of over 120 students on each of years 3 and 4. We have 3 members of staff based full time conducting cases in the Law Office, two trainee solicitors and 12 other staff members who supervise Law Office work. In addition we have quality marks from the Legal Services Commission for providing specialist advice in housing and employment law.

Over the years we have become very skilled at identifying appropriate cases for clinic and have become more adventurous about what students can do. Our programme forms a compulsory element of the exempting degree and is an assessed course integrated into the curriculum. The aims of the Law Office were not only to develop traditionally recognised lawyers' skills[17] and to give the students a taste of real practice. From the outset we also wanted to encourage a shift in approach to tackling legal problems; one that took into account all the complex influences that affect the outcome of every case. We wanted students to solve problems not just by reference to text books but also by reference to the other factors affecting legal decisions.

Central to this was that there should be time within the programme for students to reflect upon what they do. The idea of the reflective practitioner, established by Donald Schon's work[18] is widely recognised as an important element of experiential learning. Schon talks of a 'professional artistry' whereby experienced practitioners 'frame new problems' with reference to their past experiences. Our undergraduate students didn't have much past practical legal experience but they had legal knowledge and general knowledge and a range of personal experiences all of which could help frame the problems presented by the Law Office work.

The year 4 programme aims and learning outcomes[19] set out clearly some of the wider educational aims behind the development of the Law Office programme. It comes as no surprise that the document refers to the development of skills of research, interviewing, negotiation, drafting and advocacy. However, this is just one of ten aims the majority of which support the overall aim of 'shifting the emphasis of student learning from a subject centred to a client centred approach'[20]. The objectives embrace the necessity of reflective work[21] as part of the experiential learning cycle, they also refer to development of students' analytical skills and of their abilities to plan, progress and action cases and to identify and respond to the a particular needs of the client.

These were ambitious objectives, but we hoped that the integrated nature of the exempting degree would prepare students for the year four programme. In addition all students taking part in the year 4 programme had to participate in a programme in year 3 which was to prepare them for the live client work.

17 Ibid

18 Donald Schon – Educating the Reflective Practitioner 1987

19 SLO Aims and Learning outcomes, see Appendix A

20 see Appendix A.

21 See Donald Schon's work on the reflective practitioner and Kolb's learning cycle for the part played by reflection in experiential learning.

The mechanics of the year 4 programme are that students are split into small 'firms' of six students. Each firm is supervised by a qualified member of staff and specialises in a subject area[22]. The firm members are not selected with reference to any criteria and many students will be specialising in an area of law they may not have learnt in lectures or seminars prior to the Law Office programme. Within the firms the students usually work in pairs on a case and typically will have two to three cases on the go at any one time. Cases are not pre-selected; indeed the only indication of what is in store is a brief enquiry form which gives a short statement of the problem described by the client. Students initially undertake an information gathering interview and it is at this stage that the students and the supervisor take a decision whether to accept the case or not.

The firms meet once per week for an hour meeting. The contents of the meetings are not prescribed. They may be used to review skills work, to plan ongoing cases and discuss tactics, to review the entire case load of the firm or to concentrate on one particular case. The day to day work on the file is carried out by the students, individually or in pairs, when they prepare letters, research and carry out interviews. A lot of work progressing the file is done individually and then checked and discussed with the supervisors.

Students are assessed on their work though the year. Assessment is not only on the basis of the development of the DRAIN[23] skills and reflective ability but also on their imput in practical sessions through the year. Initially the Law Office assessment regime avoided assessment of anything that could not be evidenced in written work, but in 1998 the criteria changed to allow some recognition of the students' participation and development in practical sessions. To reflect this, assessment criteria were prepared for practical work which included some rather cautiously worded requirements for the development of some of the lawyering skills identified in the objectives. One of the criteria we look for when assessing the students practical work is that they 'begin to develop an ability to review case files and to plan the conduct of a case and to begin to develop an ability to manage and analyse factual information on case files'.

The tentative use of the word 'begin' reveals how much of a struggle we felt this would be when we first drafted these criteria. Increasingly we were having conversations with others teaching in the Law Office that, whilst the students were coming into the year 4 programme with a basic understanding of interview skills and drafting procedures, it was an immense struggle to get them to 'think like a lawyer'.

Some of these concerns are obviously shared by the profession who have often bemoaned the compartmentalisation of legal subjects and the inability of students to relate their learning to real problems:

"As lawyers we don't get a set of instructions and say "that is a contract issue. I don't have to think of anything else." So why do we teach law that way?"[24]

22 *In 2002 the SLO yr 4 programme moved towards establishing three specialist areas of work ; employment law; housing law and civil litigation. Whilst other areas have developed through the year these areas remain very fertile sources of appropriate cases.*

23 *Op Cit.*

24 *Melissa Hardee Chair of the Legal Education and Training Group "Law Society Gazette," 13th November 2000.*

There is concern also about students' ability to research and analyse the law and facts:

"We would not mind the law degree covering less areas of law so long as graduates had good analytical and research skills."[25]

There is also concern expressed about the ability to problem solve:

"A criticism sometimes made of solicitor's training is that it is insufficiently rigorous; that trainees are not taught adequately to manipulate the law and devise strategies to meet the facts of a case and the demands of a client"[26]

We argue that two central aims for professional education have to be to prepare students for continuing education[27] and help them become effective problem solvers.[28]

We believe that clinic can help deliver these aims and that when one looks at other disciplines (most obviously in medicine, engineering and health care) these issues are being tackled through the use of PBL.

A definition of PBL

"Problem based courses start with problems rather than the exposition of disciplinary knowledge. They move students towards the acquisition of knowledge and skills through a staged sequence of problems presented in context, together with associated learning materials and support from teachers"[29]

The crucial and defining element of PBL is the presentation of the problem before complete subject knowledge is acquired.[30] It cannot simply be the addition of a problem to a single area that students have been taught via the traditional methods.[31] The method of delivering single subject areas through lectures and a textbook and then presenting students with a simulated problem that can be answered by reference to those sources is extensively used throughout England and Wales

25 *Andrew Holroyd, Chairman Law Society's Training Committee "Law Society Gazette," 23rd November 2001.*

26 *"Training Framework Review Consultation Paper" The Law Society, 2001.*

27 *see for example Moskovitz: "Doctors (like lawyers) spend their careers trying to solve problems and to do so they must learn how to learn" in "Beyond the Case Method, It's Time to Teach with Problems," M Mostkovitz, Journal of Legal Education, Vol 42 (1992) and citing Barrows and Tamblyn: "No medical student can learn all the scientific knowledge she might need in practice, and much of what she does learn will soon be forgotten or obsolete. When she gets into practice, she must be able – without the help of any teacher – to read what she needs to read in order to learn how to solve a patient's current problem. The problem method is the best way to get a medical student headed in that direction." from "Problem Based Learning: An Approach to Medical Education", HS Barrows and Tamblyn, Springer Verlag, New York 1980.*

28 *In fact some of the key components of this skill are contained in the Joint Statement Issued by the Law Society and General Council of the Bar (1999) relating to qualifying law degrees in England and Wales:*

"b. General Transferable Skills

Students should be able:

i. To apply knowledge to complex situations;

ii. To recognise potential alternative conclusions for particular situations, and provide supporting reasons for them;

iii. To select key relevant issues for research and to formulate them with clarity;

iv. ...

v. To make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question;

vi...."

29 *"The challenge of Problem Based Learning," Boud and Felleti eds, Kogan Page, (1997)*

30 *Programmes appear to differ upon how much traditional teaching there is prior to presentation of the problem*

31 *ibid.*

on the Legal Practice Course and Bar Vocational Course. This is not PBL and limits, in our view, the learning process while of course providing some opportunities for students to imitate expert's skills.[32]

PBL pioneers Barrows and Tamblyn[33] described the detailed steps involved in PBL:

1. The problem is encountered first
2. The problem is presented in the same way as presented in reality
3. The student works with the problem in a way that permits ability to reason and apply knowledge to be challenged and evaluated appropriate to his level of learning
4. Learning areas are identified in the process of work with the problem and used as a guide to individualised study
5. Skills and knowledge acquired are applied back to the problem to evaluate the effectiveness of learning and to reinforce it
6. Learning that has occurred is summarised and integrated into the student's existing knowledge and skills

Boud added the following:

1. Students take an active part in planning, organising and evaluating their own learning
2. Problems are multidisciplinary or transdisciplinary courses – this is far closer to real life where problems are not encountered in neatly packaged subject areas.
3. Focus is on the process of knowledge acquisition rather than the products of such processes – for our clinic experience the focus on the process of knowledge and acquisition and of producing a solution is even more important than in PBL courses designed to deliver knowledge and understanding of substantive areas
4. Staff are facilitators not instructors
5. Students learn to assess their own learning rather than relying on others for this[34]

For an example of PBL on a law course the reader is referred to the examples given and explanation by Jos Moust[35] of Maastricht University which remains the pioneering Law School in Europe which has embraced the method.

A brief summary of the process used is that students are presented with a problem and work in groups. In his article Moust describes this as the "seven steps" method:

"Step 1 Clarify terms and concepts not readily comprehensible

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32 "In fact, most teachers use problems to test, or promote, application of previously acquired knowledge. The problem is not posed first in the sequence. There is no independent inquiry outside of the assigned materials or resources. The teacher remains the expert who eventually provides a solution to the problem. Students may learn by imitating the expert's steps some problem-solving skills" " David A Cruickshank "Problem-Based Learning in Legal Education," in "Teaching Lawyers' Skills" Webb and Maughan eds, Butterworths, 1996. We discuss some of these problems later in this paper.

33 op cit.

34 "Problem Based Learning in Perspective," Boud, in "Problem-based Learning in Education for the Professions," Boud ed, Higher Education Research and Development Society of Australia, Sydney (1985) both cited by Cruickshank op cit.

35 "The Problem-Based Education Approach At The Maastricht Law School," Jos Moust, The Law Teacher

Step 2 Define the problem(s) involved

Step 3 Analyse the problem(s): brainstorm

Step 4 Analyse the problem(s): make a systematic inventory of the results from the brainstorm

Step 5 Formulate learning objectives

Step 6 Collect additional information outside the group (independent study)

Step 7 Synthesise and test the newly acquired information"[36]

The Advantages of PBL

Many claims have been made for the advantages of PBL.

One theory is that learning in the context of a problem should improve students' abilities to recall that information at a later stage[37]. However, research findings are at best mixed with some finding no difference or a decrease in performance and others finding increased retention.[38]

This could be explained by the fact that over the same time period students are not just learning the subject but also process skills.[39]

There is clearly a debate that continues about the efficacy of using the PBL method exclusively to impart knowledge to students. The writers themselves have concerns about whether the use of a PBL approach can adequately provide the students with the fundamental doctrinal knowledge necessary for the foundation subjects of an English Law degree[40]. We wonder whether it is time effective to always require students to begin with the problem and learn the detail of the discipline by forming their own learning objectives and then meeting to synthesise findings. We have concerns that there can be full coverage of the discipline within the time frame available using this method. On the other hand, if some traditional methods of teaching are inserted at the start of the course will that not defeat the object of the students defining their own learning objectives and taking responsibility for their own learning?

In the context of clinical legal education at Northumbria University we are not primarily focussing on the acquisition of knowledge however. Before entry into the Student Law Office students on

36 ibid. p.17

37 "PBL forces the students to learn the fundamental principles of the subject in the context of needing it to solve a problem. Hence, the subject knowledge is learned in formats different from those from the traditional subject-based format. We hope (and are yet awaiting irrefutable evidence) [our emphasis]that this makes a significant improvement in a student's ability to recall and later use the subject knowledge." "Problem-based Learning: Helping your students gain the most from PBL" D.R. Woods, Waterdown, Canada (1995)

38 see summary of findings in "Students' evaluation of a learning method: a Comparison Between Problem-Based learning and More Traditional Methods in A Specialist University Training Programme in Psychotherapy," Sunblad et al "Medical Teacher, Vol 24, No.3, 2002,pp.268–272." On measures of knowledge, the latest reviews of research in the medical field point to little or no difference between students in traditional programmes and those in PBL ones. See "Effectiveness of problem-based learning curricula: theory, practice and paper darts," Geoffrey R Norman and Henk G Schmidt, Medical Education 2000; 34:721–728 and. "Effectiveness of problem based learning curricula," J Colliver, Acad Med 2000;75:259–66.

39 D.R. Woods op cit. citing the view of Albanese and Mitchell that about 20% less subject knowledge can be covered in a PBL course compared to a conventional course "Problem-Based Learning: a Review of the Literature on outcomes and Implementation Issues." 1993, Academic Medicine, 68, 52–81.

40 As required to practise as a barrister or solicitor with a qualifying law degree ("Schedule 2 Joint Statement Issued by the Law Society and General Council of the Bar" 1999)

our law degree learn through a blend of what might be termed the case method and through what might be termed teaching using problems.

The intended learning outcomes of the Student Law Office experience are not primarily focussed on coverage in a discipline in the way that a more traditional lecture seminar course would be. This would not be possible anyway given the fact that the law the students encounter is dependent upon the types of cases that come into the office. Our important aims and learning outcomes include:[41]

- Shift the emphasis of student learning from a subject-centred to a client-centred approach.
- Develop skills of problem solving by analysing factual information arising from your case, applying the results of legal research and identifying the strengths and weaknesses of your case.

The power of the clinic experience to assist students to become better problem solvers has been recognised for some time. Indeed, Moskovitz recognised this when he advocated moving to the "problem method": "Problem solving is the single intellectual skill on which all law practice is based..."Law School clinics can give students this training, but clinics are at the fringe of legal education, usually reserved for a small number of third-year students."[42]

We believe it to be true that clinics, as with PBL, can develop some of the attributes of problem solving. We also recognise that problem solving as a skill of itself is ill defined and there is much doubt about whether it can be taught. Cruickshank[43] argues that a less ambitious case can be made for PBL. That PBL can provide:

- A basis for trial and error use of problem-solving strategies and hints
- A connection for the individual between the specific knowledge base and best personal approaches to typical problems
- An exposure to how others, peers and experts, solve the same problems
- A potential for learning and articulating an individualised method of problem-solving that will shorten the time span between novice and expert skill attainment

The question is whether clinical legal education, and in particular the model used in our SLO Year 4 programme is PBL as defined? They share some of the same attributes. The problem is of course posed first in the sequence, the students never have full knowledge of the law on which the problem is based (sometimes they have none). Students discuss the problem collaboratively (in pairs at least) and will identify the areas for research. They will feedback this research at the weekly firm meetings and discuss it with their peers and their supervisor. They will go on to identify new learning objectives (fact gathering and legal research) and they are required to reflect on the learning experience.

However, while some of the elements of the PBL approach were present in the Year 4 programme, they were not being utilised in a way that fully assisted students with problem solving.

Of course some students did develop these skills to a high level and others to lesser degrees. We considered what it was that appeared to be restricting the universal development of problem solving skills in the year 4 programme and identified the following issues:

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41 A full list of the aims and learning outcomes appears in Appendix A

42 op cit. Although this article appears to advocate the use of problems without some of the other methodology usually associated with PBL.

43 Op cit.

The nature of the problem

Whilst clinical programmes always produce a wealth of raw learning materials in the form of client instructions these can be overwhelming to students. Barrows and Tamblyn[44] identified the complexities brought by using real clients as a source of learning material, 'the available patient may present complexities or unrelated problems that can distract or confuse the learner. ....although important at some time, these may detract from the immediate value of the patient as a learning experience in certain stages of the student's education'. We were providing students with tools to refine their interviewing techniques and their research but we did not seem to be providing them with techniques for problem solving. Some students were failing in the basic steps in organising the material given to them by their clients. They were failing to identify the issues or problems arising from the case and to distinguish the relevant from the irrelevant. They had difficulties processing and analysing information in such a way as to develop a case plan or theory and in reviewing each step of the case in the light of their previous case plans and findings.

The tunnel vision approach to problem solving

One of the benefits of the exempting degree is that from the outset practice and procedure are taught in such a way as to highlight the links between the areas. So, for example criminal litigation is taught in conjunction with evidence and criminal procedure. Nevertheless the teaching methods are typically through the traditional lecture/seminar method.

Of course the typical seminar poses a problem, having provided students with the necessary information and references through prior lectures. Problem solving in this form is quite rightly, at the heart of the degree. However, some of the techniques required for seminar preparation are not necessarily useful for clinical work, indeed they can militate against developing a technique for solving problems in a clinical setting.

The significant differences are that the seminar problem has been written to test the students understanding of a subject area. The scenario is fixed and students preparing for the seminar learn very quickly to 'interpret' what is being asked for from the particular set of facts presented by the problems. The problem contains a series of cues which will send the student off to research the relevant area and come back with a range of answers. There is rarely any wholly irrelevant information in the question or any information which draws in knowledge from another areas or even general knowledge. The information is usually already presented in an organised and logical way, in fact usually the first stage of any problem solving approach has already been done for the student – the information clearly defines the problem. Indeed both lecturers and students alike find it very disturbing when students do go off on tangents. Everyone likes to feel that there is a finite number of possible answers to the question.

In a clinical setting problems are client centred. The problem itself comes from the client and may include much unnecessary information. It may disguise a number of different problems not all of which will necessarily be legal. It will almost certainly cut across subject boundaries and will require interpretation and investigation of the factual information before students can even ascertain what the problem is. Add to this an undercurrent of non verbal information such as whether the client would make a good witness, what are the client's real motives behind this – just defining the problem

44 Barrows and Tamblyn op cit.

is a huge step. Generally, early first interviews with clients are over very quickly. Students don't appreciate the range of information they need, for example that it is as important to know whether your client can afford to pay the court fee as whether their case demonstrates all the legal elements of a claim in negligence. Students struggle to understand their role in identifying the problem and expect the client to do this for them in a much more coherent way.

In addition students are not prepared for the fluid nature of the case. Having identified the issues in the case they are often positively annoyed when the client changes what they say or is confused. When the students have found their range of answers they are not just putting them to their clinical supervisor to approve they are putting it to the client who has the ultimate say in which way the case will progress. 'Many fail to recognise that the information they can learn only from the client – the client's perceptions, opinions and concerns, as well as her strengths and resources – is vital to building and executing a litigation strategy that will constitute success in the client's eyes.'[45]

The problem of the preconceived roles.

The study of law does not necessarily explain to students what the role of the lawyer is. 'Whilst the student has vivid images of dealing with court, staff, negotiating with the opposing counsel and arguing before judges, the relationship with a client is often abstract and minimised'.[46] Often traditional teaching methods reinforce this. The lawyer is the expert, just as the lecturer is the expert. The lawyers' job is to find the range of legal answers to the problem and to present them persuasively to the relevant legal tribunal and to manipulate the adversary system as far as possible to the client's advantage. In the same way the seminar tutor takes an answer and uses it to throw up different aspects of the same subject area or to challenge the students' response. Problem solving tends to be approached from the stand point of how the court would interpret the facts. Whilst this is a necessary skill for student to master in order to advise properly, it is not necessarily the same approach as that required to assess the best solution for this particular client with these particular circumstances.

Students have never had a client at the centre of the case determining its development and this may come as a shock. Some thrive on the motivation of representing a real person others never accept that the client is king; 'We have to put up with too much rubbish from client's not turning up. We are expected to be there at their beck and call, at the end of the day we are doing them a favour – it would be nice to be treated with more respect'[47].

Reluctance to draw their own and on others' wider experience in the problem-solving process.

Students are rarely required to work collaboratively during their studies. Whilst students probably do so informally in preparation for seminars there is no encouragement of a sharing of ideas. Obviously all contributions will inform a seminar discussion but there is no sense of working together to produce the complete range of responses. In clinical work it is the working out process that is as important as the conclusions. If students don't understand how the decision was reached

45 *Who's Listening? Introducing students to a client centred, client empowering and multidisciplinary problem-solving in a clinical setting – V Pualani Enos and Lois H Kanter. Clinical Law Review, Fall 2002 . Vol 9 no.1*

46 *Ibid P86*

47 *Extract from an anonymous feedback sheet from a year 4 student at Northumbria participating in the clinical programme*

they can't monitor the ongoing conduct of the case and respond to unexpected developments. Therefore the concept of being a 'firm' – a group with a common interest and of the meeting being a venue to try out ideas with a view to developing a case theory, is totally unknown to our students.

In addition there is a feeling of inhibition about expressing their own views or bringing to bear their own experiences. In some firms this happens naturally usually led by one student who takes the lead by being very open about their thought processes which reassures the others that this is acceptable. In other firms students remain focussed on their own cases, looking for acknowledgement from their supervisor that their proposed course of action is the right one. When the firm meeting works well collaboratively it is widely appreciated by students and this is often referred to in student feedback.[48]

Creative and co operative thinking

This is all part of the reflective process; the idea of framing each new enquiry against the experience we already have. Student's found this relatively easy when assessing the strengths and weaknesses of an interview but much harder when trying to frame the issues in their cases with reference to their wider knowledge. Of course students often do lack a wider understanding in which to put the issues in context and this may inhibit creative and expansive thinking but it can be a benefit too ' once acclimatised to the context, the student's lack of experience can be a boon, ...by making them less jaded and more open to thinking 'outside the box'[49].

Conflicting pressures

Of course one of the pleasures of teaching in a clinical setting is that student motivation is usually very high. Students normally take very seriously their responsibility to their clients and take ownership of their cases. On entry to the clinical programme their main priority is to have their own case load. This in turn places pressures on what can be achieved in a firm meeting. There is a law of diminishing returns; when the firm is handling only one or two cases it is easier to get all the students to focus on all the issues of that case and to participate in decisions on it. However, when the firm is handling 12 to 15 cases it is not possible to focus on each case in the same way and students become territorial about what they do. They do not always see the need to contribute to other cases when they have their own to work on. Of course there are ways round this; more complex cases involving a wider group or clinics taking a narrower area of work so that subject matter overlaps more. However, it is hard to justify to students the educational imperatives of progressing in this way when their overwhelming interest and motivation is to have their own case.

The other ever present conflict with legal clinical work is conflict between educational objectives and professional good practice. Whilst all our clients are aware of the educational objectives of the clinic,[50] our aim is to demonstrate to students good professional practice not just the bare minimum of keeping within the professional rules. Students who work efficiently and respond to issues quickly are rewarded. Much of the case work never gets to the firm meeting. It is done by

48 In end of year feedback at Northumbria one student identified the most enjoyable aspect of the fourth year course was 'the sense of teamwork and support I gained from being part of such a bonded firm in the SLO'.

49 Biting Off What They Can Chew: Strategies for involving students in problem solving beyond individual client representation'. Katherine Kruse, Clinical Law Review, Vol 8 No.2

50 All clients sign a form acknowledging the educational priorities of the Law Office

efficient students realising they need to respond to developments quickly. This hinders developing the problem solving process. In normal circumstances students take instructions and discuss these briefly at the firm meeting. They then go and research issues. There may be no time to bring this back for discussion to the firm meeting as the client cannot wait indefinitely for their letter of advice.

Clinical supervisors, whilst mindful of professional conduct requirements, also have time constraints on their time. The group problem solving process is curtailed or simply overtaken by events, that is not to say that individual students are not going through a problem solving process, but the message sent out to them is that this not a skill prioritised within the Law Office. Each step of the case is not transparent and available as part of the learning process to the whole firm.

The supervisor's role – facilitator/partner not teacher.

The demands of clinical work often make it very tempting to take a very interventionist role in casework, Kruse refers to this as 'the role of expert and expedition leader' which continually threatened the goal of 'giving the students primary and ultimate control over the problem solving process'.[51] This is not surprising as the normal professional requirement for teaching in clinical programmes is a degree of expertise in an area or procedure covered by clinic. In these circumstances it is to be expected that students look to supervisors for guidance in a way that allows them to opt out or not fully engage in the problem solving process. Indeed this division of labour is more comfortable for everyone concerned. At the University of Maastrict tutors are given a number of introductory workshops in the PBL method. They are taught to use questions to assist the problem solving process, to control discussions so that they do not go too far off course and to assist with the group dynamics.

The lecturer is more a facilitator than a lecturer. This is important; if students always perceive the tutor as the expert giving the right answer they will never truly assume responsibility for solving their own case problems. As Kruse identified 'my supervision emerged in some respects as more of a partnership between the students and me than I had experienced in the past. It was not a partnership of equals, because I knew more than the students did. But it was a partnership in which I, like my students, shared all I knew and all the limits of what I knew'.[52]

As a result of our concerns about the preparation of our students for the clinic experience, both through their education generally, and in the specific Year 3 training programme, we turned to the PBL methodology to see what lessons could be learned from it.

For several years, the Year 3 programme had revolved around a problem scenario. However, it appeared to the writers that there were several difficulties with the problem and the approach to the teaching sessions surrounding it. It had not been devised with a view to any of the existing experience and literature on PBL. It revolved around a faulty sofa. The difficulty that we perceived with this was that the problem covered knowledge that the students had previously covered in contract law (Sale of Goods legislation) and on an area that required little research. The legal issues were very straightforward and not multi layered. Little was required from the students in respect of the research. Instead the programme concentrated on the DRAIN skills. This was obviously an important part of the preparation for Year 4 but the skills were being practised in isolation from

51 See above note 42 P441

52 Ibid

attempts at problem solving. Feedback from students was generally not encouraging. Particularly feedback[53] from students in Year 4 who described the programme as being not good preparation for Year 4 and too easy.

For the year 2002/3 we decided to revamp the course. We introduced a more complex problem which the students would encounter through interviewing a client in pairs. The problem had the following features:

- The client has a disrepair problem with the window in her flat which is causing discomfort and damaging her furniture. Her landlord refuses to repair it
- The next door neighbour is a tenant of the landlord. She is an alcoholic and because of this a waste problem has developed in her flat to the extent that rats have now infested both her flat and the client's
- The client has reported both problems to the landlord who refuses to do anything about it and has told her that if she continues to complain/ goes to a lawyer he will force her to leave the flat

The problem thus encompasses several areas of law including:

- The nature of the particular tenancy
- The law on security of tenure
- The law on unlawful eviction
- The law on disrepair
- The law of nuisance
- Environmental Health Legislation
- The Civil Procedure Rules (CPR)

With the exception of the CPR students were not lectured on these topics. Students had some knowledge that they could build upon in respect of nuisance and property law but had not encountered most of the areas in any detail before.

We had also foreseen possible difficulties for the students in determining the type of tenancy and so had had an introductory workshop which students had prepared for by researching the facts of the client's agreement to ascertain the type of tenancy (the difficulties that were encountered with this are discussed later).

Students were given prior instruction in interviewing technique and in research methods.

Following the interview the students met in a workshop[54] having prepared an attendance note (note of the interview). They then worked in firms of 6 to identify the facts of the case (some students having got more detail than others). They were then asked to identify the problem as they perceived it and identify the learning objectives[55] including both legal and factual research.

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53 Admittedly the feedback referred to here was not gathered in a systematic way

54 Workshops generally had 1 tutor and 18 students. Occasionally 2 tutors were used

55 A copy of the form used can be found in Appendix B. The design of the form borrowed heavily from an example given by Jos Moust op cit.

The tutors' role was to go amongst the students assisting them by asking pertinent questions. Tutors attempted not to give answers but to guide the students through prompting.[56]

The students then worked in pairs in their own time to research the problem. Each pair was allocated a different area by the firm. This tended to be along the lines of the basic 3 areas: environmental health/ private law nuisance, disrepair and security of tenure.

Having researched the allocated areas the students returned to the workshop with a research report[57] which all the members of the firm were given and the firm discussed the outcome. Their task was to formulate further legal and factual research objectives arising from their learning and to begin to agree what the advice to the client should be – in preparation for each pair drafting a letter of advice to the client. The research reports were taken in by the tutors and commented upon within 7 days in order to provide the students with formative feedback.

At the next workshop letters of advice were discussed by the firms with tutor feedback at this stage also. The firms were also required to begin to draft a letter of claim to the landlord and in the final workshop students considered the response of the landlord and the action and further factual research that was necessary in respect of that.

Throughout this sequence students were identifying disputed factual issues. Where these were identified and requested relevant evidence would be provided to the students. Where they were not identified by certain firms they were not provided. At least 1 student commented that he realised that he had to be more proactive in thinking about the case and what was necessary because if he did not then he would not receive the information and his client would potentially suffer.

Assessment

The case study file that the pair kept was marked on a competent/ not yet competent basis. To a large degree this was in order to ensure that the students could keep a file properly, draft letters to a reasonable standard etc in order that they can function in Year 4 and be able to develop skills in Year 4 without being a liability or being unable to proceed. The assessment of the file was also in place to ensure student participation throughout the year.

We also set an additional coursework assessment that was on an entirely different problem. This problem was again on an area largely unknown to the students and required research of the legal issues which spanned several disciplines. The work was completed by the students individually. It was designed to test the process of Practical Legal Research rather than knowledge acquisition.

Tutor Assessment of the Impact of the Course and Strengths and Weaknesses

Tutors discussed these issues. All 3 tutors were surprised at how well the students took to the group discussion. Students often discussed the issues as if the tutor were not there. It was also felt that most of the students engaged with the problem and took finding out about the law seriously.

56 *So, for example, when the students had simply decided to look at the possibility of the neighbour being forced to deal with the rat problem the tutor might ask if the students felt anyone else might take action*

57 *A template for this is to be found at Appendix C. We note that the research report template (invented by others not involved with the PBL programme) has some similarities to the process the students are going through when they are working on the problem in the PBL format*

There were several perceived difficulties however. The most important of these revolved around the nature of the tenancy and security of tenure. It was found that the students found it incredibly difficult to navigate this area without significant input from the tutors. On a PBL course that is designed to deliver subject knowledge these difficulties may have been surmountable by allowing for several workshops on the subject to help the students slowly find their way through it. Our course is not built with this objective in mind. We wanted students to gain Practical Legal Research skills across a range of legal areas over a relatively small number of workshops. Textbooks and practitioner texts concerning the nature of the tenancy at English law are a minefield for the uninitiated. We discovered that it was too difficult for the students to understand without a guide through the area. This is not to say that Environmental Health legislation and the law on disrepair is simple. Merely that students can research these areas and then be assisted with further guidance to a good level of understanding without being given much more heavily interventionist traditional teaching in order to assist them.

The above is all rather impressionistic of course. Having put this new course into place we then decided to research the effect that it had had on the students from their perspective.

The research design

A questionnaire[58] was given to all students in SLO Year 3 after they had completed the PBL course, comprising five point Lickert scale questions designed to elicit students' feelings about the format of the PBL element, their levels of confidence about their learning and the desirability of this format compared to more traditional methods of instruction.

Sixty-five of 112 students completed the questionnaire when they came to collect their case study files. This response rate is in part due to the files being the joint work of two students – frequently only one of the pair came to the office. The responses were analysed using SPSS software.

Results

Structure of the PBL element

The PBL elements of working in a pair, working in a group to identify problems and working in a group to discuss research were all rated favourably by the majority of students, though the question of how much time was taken on group and pair work was less clear cut.

58 A copy can be found at appendix D

Table x: Positive statements about PBL element

	Was enjoyable			Helped my own learning			Contributed to the progress of the case		
	Agree	Disagree	Neutral	Agree	Disagree	Neutral	Agree	Disagree	Neutral
Working in a pair	82.3%	3.2%	14.5%	81.2%	6.3%	12.5%	81.2%	4.7%	14.1%
Working in a group to identify problems	79.1%	6.5%	14.5%	76.2%	7.9%	15.9%	75.3%	7.7%	16.9%
Working in a group to discuss research	77.7%	3.2%	19%	85.9%	1.6%	12.5%	81.5%	1.5%	16.9%

Table xx: Negative statements about PBL element

	Was frustrating			Was too time-consuming		
	Agree	Disagree	Neutral	Agree	Disagree	Neutral
Working in a pair	19.7%	63.9%	16.4%	27.4%	38.7%	33.9%
Working in a group to identify problems	9.8%	67.3%	23%	16.4%	52.5%	31.1%
Working in a group to discuss research	8.2%	65.6%	26.2%	12.9%	50%	37.1%

The case study was deemed to be more realistic than the examples used in other parts of the course and most students did not feel that it was too confusing or tried to cover too much. Students were evenly split, however, in terms of the complexity of the case in relation to other example cases given in other subjects. Again, the heavier workload of PBL is acknowledged by most students, though it is important to note that there is no significant relationship between considering the workload heavy and a more negative attitude to the PBL element.

The case study – overall

The case study	Agree	Disagree	Neutral
Was more realistic	83.1%	3.1%	13.8%
Was more confusing	7.8%	56.3%	35.9%
Was more complex	36.9%	30.8%	32.3%
Tried to cover too much	7.8%	46.9%	45.3%
Required more preparatory work	66.1%	10.8%	23.1%

Most students (58.7%) reported that they would have preferred to be lectured on housing law before the element began. Although some students felt that there might be a danger of superficiality, this did not have a significant relationship with their levels of confidence about knowledge of the law.

The case study – learning the law

The case study	Agree	Disagree	Neutral
Led to an overly superficial study of the legal issues	12.5%	50%	37.5%
Did not cover general issues of landlord and tenant law	18.8%	46.9%	34.4%

Student confidence

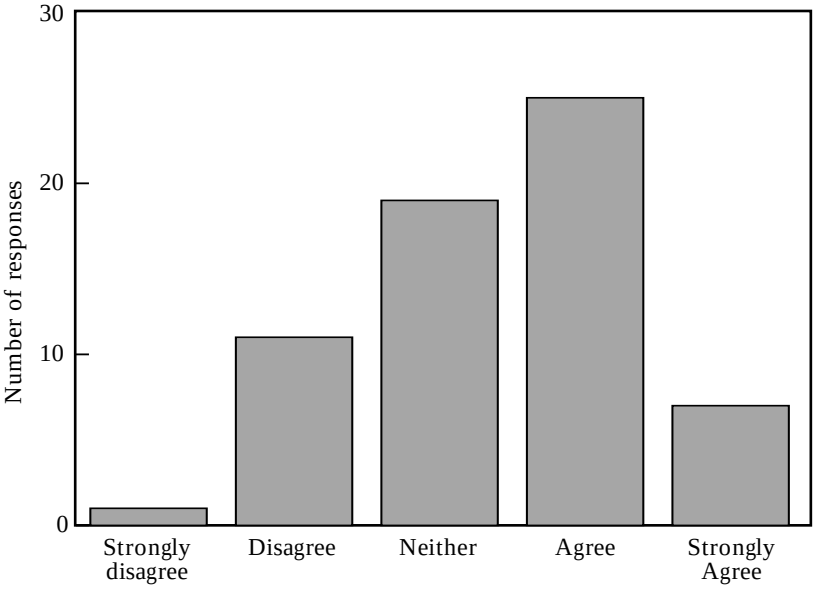
Research	Confident	Un-confident	Neutral
Using textbooks	77.7%	1.6%	20.6%
Using practitioner texts	79.3%	0%	20.6%
Using Halsburys	82.6%	1.6%	15.9%
Using the Internet	82.6%	3.2%	14.3%

Knowledge	Confident	Un-confident	Neutral
Disrepair	50.8%	3.2%	46%
Security of Tenure	46.1%	6.3%	47.6%
Environmental Health law	47.6%	4.8%	47.6%

Practical legal research	Confident	Un-confident	Neutral
Applying all aspects of the law to the case	81%	0%	19%
Identifying further legal research	77.8%	1.6%	20.6%
Identifying further factual research	79.4%	3.2%	17.5%
Integrating own research with others in the firm	82.5%	4.8%	12.7%
Understanding of procedural issues	69.8%	3.2%	27%
Client relationships	79.4%	1.6%	19%
Tackling a similar problem in the future	77.8%	3.2%	19%
Readiness for SLO Year 4	66.7%	6.3%	27%

Overall, while PBL appears to have had positive impacts on students' confidence and enjoyment of the course, there is a breadth of opinion about whether more of the degree should be taught in this way, with just over half of students welcoming more PBL, just under 20% actively disagreeing and the remaining group undecided.

It would be better if more of the degree was in this format.



PBL in this instance appears to have

- Been an enjoyable experience for students, even though time-consuming and hard work relative to more traditional methods
- In particular, sharing research in groups was a particularly good experience for students (positive aspects of all making individual contributions contr. normal seminar format)
- Been an experience that around half of students would like to repeat
- Encouraged students to develop high levels of confidence in research skills and practical legal skills
- Had a positive, though not so strong effect on students confidence about their knowledge of the law
- Made the majority of students feel that they can cope with real cases in year 4

Conclusions

If nothing else, we believe that the students will come better prepared for firm meetings in Year 4. Given the positive responses of the students to working in groups to identify problems and learn from each other we believe they will come to the weekly firm meeting with more of an idea of what is expected from it. We believe that this will be a success in itself. We also believe that the generally good levels of confidence in legal and factual research, and the application of the results, bode well for Year 4. Good levels of student enjoyment and confidence should help to ensure a positive start to a challenging year for our fledgling lawyers.

We believe that the PBL methodology has improved the Year 3 experience. The question remains about whether it can better inform our teaching in firms in Year 4. The writers attempted to use the "seven steps" model[59] in initial firm meetings with all 6 students at the beginning of Year 4. This did promote student discussion, cooperation and interest. The model was not persevered with however partly because the students then have to work in pairs on their cases. It became much more difficult to involve the 4 who were not running the case in the model beyond the initial meeting because they were not researching and running the case. One way forward may be to involve all 6 students in one case throughout the year while allowing the pairs to continue with running their own individual cases. The difficulty would be using cases sufficiently complex to warrant 6 students spending their time on it. We still have to continue to consider how PBL might further inform our Year 4 programme.

Appendix A

Student Law Office Year 4

"Aims

Introduce students to real legal practice in a supervised environment and to encourage their development as reflective practitioners.

Shift the emphasis of student learning from a subject-centred to a client-centred approach.

Develop the skills required to become effective legal practitioners and in particular the skills of interviewing, research, drafting and case management.

To develop students' awareness of the professional responsibilities and obligations of solicitors and to foster a culture of client care and adherence to the rules of professional conduct for solicitors and the Student Law Office procedures.

To develop students' abilities to analyse factual material, gather evidence and plan in order to progress their client's case.

To further develop file management, time management and recording skills.

To encourage students to discuss, plan and action cases both collaboratively and individually.

To prepare students for the training to be given in training contract.

To facilitate an awareness of wider social, cultural, ethical and political forces that shape the legal system and are affected by it and to appreciate some of the differences between law in theory and law in practice

Learning Outcomes

Students should be able to

Assume responsibility for the conduct of one or more student law office cases.

Attend and contributed to discussions in weekly firm meetings.

59 See Moust op cit.

Plan and interview a client and accurately record and analyse the information provided by the client.

Identify your client's needs and concerns and conduct your case in such a way as to address those needs.

Identify and research legal issues arising from your casework and present your research in a clear and effective way.

Develop skills of problem solving by analysing factual information arising from your case, applying the results of legal research and identifying the strengths and weaknesses of your case.

Develop both oral and written communication skills through preparation of written correspondence, client interviews and, when appropriate, representing clients at hearings or in telephone conversations with opposing representatives or third parties.

Organise, record and file information, correspondence, documentation and telephone information received in connection with your case in such a way as to comply with Law Office procedure and good file management.

Conduct your case so as to comply with the rules of the Student Law Office and the rules for the professional conduct of solicitors.

Learn to work with your supervisor and other students in your firm to achieve the most effective way of conducting your case.

Develop time management skills so as to conduct your case efficiently and comply with all deadlines required for the proper disposal of the case.

Draw on your experiences from casework and your discussions within your firm meetings to analyse the skills required by live client work and to develop those skills through the SLO programme.

Draw on your experiences from casework and discussions within your firm meetings to assess what factors affect the conduct and progress of your casework including the wider social, cultural, ethical and political considerations that might be relevant.

You will be competent in the legal skills of interviewing research and advocacy in accordance with the standards prescribed by the Legal Practice Board."

Appendix B

Firm Notes of meeting in workshop 4. You may want to make rough notes first before filling this in continue on separate sheet if necessary

IDENTIFICATION OF PROBLEM/WHAT THE CLIENT WANTS

AREAS FOR RESEARCH (remember to record who is researching what)

KEYWORDS/PHRASES

POSSIBLE SOURCES OF INFORMATION

ANY ADDITIONAL NOTES (eg factual information you think you may need)

Appendix C

Research report

IDENTIFICATION OF PROBLEM/AREA FOR RESEARCH

KEYWORDS

RESEARCH REPORT

ADDITIONAL INFORMATION REQUIRED

CONCLUSION

SOURCES

UPDATING

Appendix D

Student Law Office Year 3 Questionnaire

This has been the first year of approaching teaching SLO Year 3 in a different way. As part of our evaluation of this experience we need feedback on your experience of it.

We would be very grateful if you would fill in the attached questionnaire before picking up your case study file and manuals. Please hand the questionnaire to the office administrator.

This questionnaire is entirely anonymous. The administrator will simply note that you have completed it so that you can be entered in a draw for a prize (a choice of wine or chocolates to the winner).

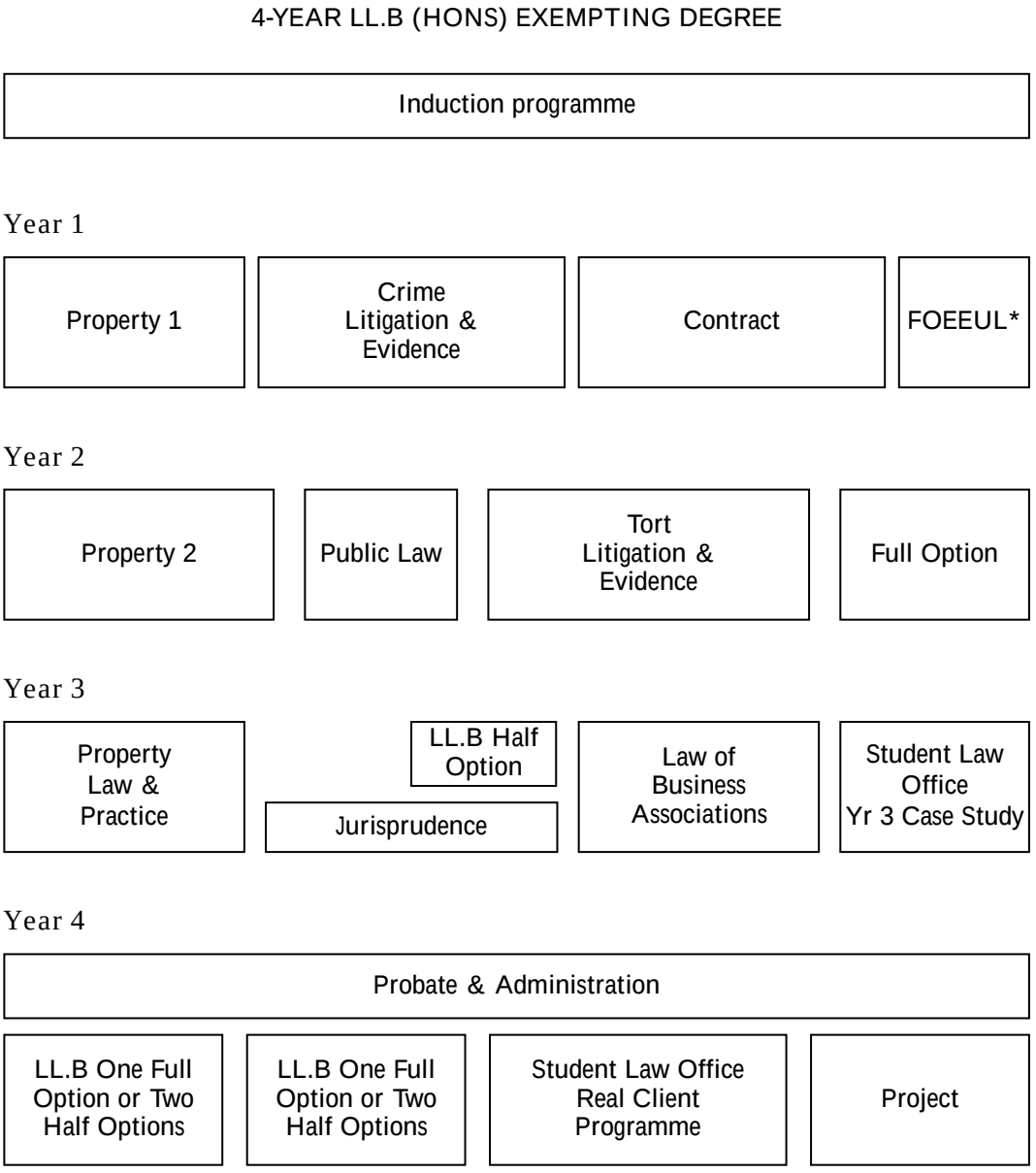
Please note that the questions relate to the first 7 workshops only and not the advocacy part of the course.

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
I would have preferred to have been lectured on housing law before the case study					
Working in a pair on the case was Enjoyable					
Frustrating					
Helpful to my own learning					
Too time-consuming					
Effective in making progress on the case					
Working in a group to identify the problems was Enjoyable					
Frustrating					
Helpful to my own learning					
Too time-consuming					
Effective in making progress on the case					
Working in a group to discuss findings and share research was Enjoyable					
Frustrating					
Helpful to my own learning					
Too time-consuming					
Effective in making progress on the case					

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
Dawn Lander's case, compared to other seminar examples was more realistic					
was more confusing					
was more complex					
tried to cover too much					
required more preparatory work for each session					
led to overly superficial study of the legal issues					
did not cover general issues of landlord and tenant law					
	Very confident	Confident	Neither confident nor unconfident	Unconfident	Very Unconfident
The experience of working on Dawn Lander's case has made me feel About researching the law through textbooks					
About researching the law through practitioner texts					
About researching the law through Halsburys					
About researching the law on the internet					
About knowledge of the law on disrepair					
About knowledge of the law on Security of tenure					
About knowledge of the law on Environmental Health Problems					
About applying all the aspects of the law to the case					
About identifying further legal research as the case progresses					
About identifying further factual research as the case progresses					
About integrating my own research with others in my firm					
About my level of understanding about procedural issues					
About my understanding of client relationships/ professional etiquette					
About my ability to tackle a similar problem in the future					
	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
It would be better if more of the law degree was delivered in this format					
I feel confident about working in the Student Law Office next year.					

Appendix E

The structure of the four year exempting law degree at Northumbria University.



*FOEEUL – Foundations of English and European Legal Systems

Clinical Practice Profile

It is intended that the Journal will provide a channel for communication between those involved and interested in clinical legal education across he world. Given the huge diversity of clinical projects, the aim of this section is to provide a place for descriptive pieces concentrating on the development and practice of law clinics in different countries, areas or institutions.

The role of [clinical] legal education in legal reform in the People's Republic of China: chicken, egg – or fox?

Jay Pottenger

China has a long and sophisticated "legal" history. This makes commenting upon it a daunting and humbling task, particularly for someone like me, who comes from a nation with only a fairly short and (relatively) straight-line story by comparison. Nonetheless, I shall begin by attempting both to describe the current situation in the People's Republic of China and to place it in some historical context.

China's current project of building a "rule of law" society began in earnest only about 25 years ago, after 20 years of what most have called a lawless society. Just how "lawless" was the PRC from the 1957 Anti-Rightist Campaign through the end of the Cultural Revolution? Most reports say that virtually no legal education took place, with the total number of lawyers in the country hovering between 2500 and 3000, and only two law schools even nominally "open" (albeit without active faculty or students). Even the Ministry of Justice was abolished for that whole twenty-year period. Some courts continued to operate for criminal law enforcement purposes, but there was no functioning "legal order" to speak of for two decades. In some ways, though, this period of a legal vacuum amidst social turmoil was not so unusual as westerners might suspect, for the dominant strand in historical Chinese tradition is itself deeply "negative" toward a formal ordering of society by means of law and legal process. For Confucians, the best way to achieve social order was not via "The FA" (a systematic set of laws, attaching standard rewards or, more commonly, punishments to particular behaviours) but through "The LI" (a set of rules of behaviour and rituals teaching propriety in social relations, usually shown by exemplary conduct of those duty-bound to set such examples for others).

Until the last two decades of Imperial rule, therefore, Chinese society managed rather well, thank you, without a formal legal profession and, thus, no system of legal education either. Even as a legal

**This Paper formed the basis for a presentation and discussion at the first International Conference on Clinical Legal Education. Jay Pottenger is the Nathan Baker Clinical Professor of Law at Yale University, USA and an attorney.*

profession began to develop in the late Qing Dynasty (circa the 1890's) and its successor Republic, however, there was a clear instrumentalist motive: to strengthen the ruling regimes hold on power by deploying "law" in support of authority (and power). This harked back to the ancient legalist philosophical tradition in China, which competed with Confucianism by arguing that positive laws of universal applicability and applied coercively were essential to the successful ordering of the Imperial State. The ongoing debate between these two philosophies still shapes and frames contemporary discussions about the ROLE of law in Chinese society on both popular and scholarly levels. Reduced to what is admittedly a rather simplistic example (and thus twisted so badly out-of-shape as perhaps to be useless), a key feature of this debate is about how *The Law* is to be applied at the highest level of the State: Is the ruler subject to the law? This is an issue my English audience will recognise as having arisen here fairly recently, in the context of the Queen's ambiguous role in the Paul Burrell Trial. It was also, of course, at the heart of the legal dimensions to both the Clinton and Nixon presidencies in the United States. So perhaps these deep doubts about the ROLE & RULE of law are not so unique to China after all.

Let me return to China's current efforts to build a stronger legal system, including one for legal education. As of 1978, there were about 2,500 practicing lawyers in the whole of the People's Republic of China; that number has been exploding at an almost geometric pace, such that there were about 11,000 in 1984; 45,000 by 1992; 90,000 by 1996, and well over 150,000 today. In February of last year 360,000 candidates sat the first "unified" bar exam in China; they were seeking entrance into either a legal or a judicial career. Most were disappointed though, as only about 25,000 (under 7%) passed. Despite such tough tests, China added more new lawyers during just the last half-decade of the 20th Century than comprise the total number of current law practitioners in Germany, France, Belgium, the Netherlands and Denmark – combined! Many people, even (or particularly?) in the United States, would not necessarily describe this as a positive development. But it represents China's recognition of the vital role that legally trained individuals have come to play in a modern economy – even a "socialist" market economy.

Here I will digress (briefly, I promise) to explore why this is so. I do so because the answer should shed light on the nature, purpose and function of legal education in such a modern, and especially in a modernising, socialist market economy. As China has been moving from a planned toward a more market-oriented economy, the need for individuals (and individual enterprises) to structure the terms and conditions on which they interact with others increases markedly. So, too, does their need for legal guidance and advice, particularly as the social and economic context in which they are acting is itself also changing; these needs are even more pronounced where, as in China, these changes are quite considerably loosening and opening up the scope for such varied economic activity, and rapidly so. To meet these sorts of challenges, legal personnel will need to be able to problem-solve on an entirely new scale, for they will have to apply and adapt a shifting set of legal directives in a dynamic, rapidly evolving factual context. Not only that, they will have to exercise these new skills in social roles which are themselves brand new and also undergoing dramatic, essentially constant change. Mastering the law, even if it (once) were possible, is simply not enough for success in such an environment. Rather, legal training needs to equip its students, whether at university or an on-the-job stage, *both* to "think like a lawyer" and to "*act*" like one too.

It is this dual function of legal education, the mixing of theory and practice, the combination of action and reflection in (and on) role, which clinical methodology most effectively meets. Because clinical legal education requires teachers and students to solve real client problems together, by

developing facts, applying (or, often, creating) theory, exercising judgment and learning from these efforts, it has a great deal of promise in a society like China today. But how realistic are the prospects for its adoption? What are the opportunities and obstacles?

To answer these questions we need first to know where Chinese legal education is today and where it has been. Barely a century old, formal legal education has already been through several wrenching changes, and so combines an interesting mix of influences and styles. Against the backdrop of two millennia of debate between the Confucian and Legalist traditions, China's earliest efforts at developing "western style" systems of law and legal education drew most heavily on Japan's adaptation of Continental (especially German) civil law models. Although these were supplemented with some (mostly American) common law influences during the Republican period, most of this was swept away and replaced with Soviet-style legal arrangements between the 1949 revolution and the two decades of legal chaos that began fewer than ten years later. During the early 1950's, however, China did establish a handful of new legal training schools, the "Institutes of Law and Politics", which were founded (at least in design) to combine theory with practice in building a socialist legal system, which would serve the State's interests by furthering the economic and social development of the masses. Since 1978 the goals for legal education have expanded alongside the enhanced role envisioned for law itself. From setting a minimal framework for the maintenance of social order, the duties expected of "THE LAW" have grown to include facilitating the construction of a socialist market economy and, even, to the awesome responsibility of actually "governing the country" according to its dictates.

Not surprisingly, therefore, the legal and legal educational systems have changed as dramatically as they have grown. From two only nominally operating law schools and at most about sixty even potentially qualified law professors in the entire nation (circa 1978), the legal education sector today includes roughly 300 institutions, enrolling well over 150,000 students a year and staffed by over 3,500 professors (and another 8–10 thousand lecturers). A majority of these students are candidates for degrees, but there are also tens of thousands of additional trainees – many holding government jobs in the courts, procurate (prosecution) or ministries – who attend part-time or in-service programs designed to strengthen their legal knowledge and abilities. This is not surprising, since the ranks of these law-related institutions have swollen at least as rapidly as have the profession and its educational sector, and many of these staffers (or cadres) were recruited into their jobs despite having little, usually no, legal training whatsoever. As of 1985, for example, fewer than 8% of the nearly 50,000 judges even had a college degree. Their workloads have, of course, also expanded geometrically. For example, between 1990 and 1997 the number of civil lawsuits nearly doubled (to three and a quarter million dispositions annually), while the subset which included "economic cases" (mostly contract disputes) rose by 150%, to 1.5 million each year. The criminal law docket also increased apace; by now the annual number of formal dispositions well exceeds two million, pushed through by a large (and still growing) procurate, which employs perhaps 250,00 staff as lawyers, investigators, and administrative personnel.

It is into this huge, and still rapidly expanding, maw of law that clinical legal education is now beginning to venture. And only beginning it is, since barely a dozen university-based law schools are experimenting with clinical methodology, and the total number of students who have been taught in this way during the three years of clinical programs has not quite reached one thousand. But what a wonderful thousand they are! Let me turn now to describing this experimental effort by setting forth both its brief history and current state.

The source of Clinical Legal Education in China must be identified as the Committee on Legal Education Exchange with China (CLEEC). Operating with Ford Foundation support from the early 1980's to the late 1990's, CLEEC brought 219 Chinese scholars to the U.S; about one-third of them were degree candidates. Over two-thirds of these scholars returned to China, which is a high yield relative to other academic fields and considering the turbulent times involved; half of these returnees (i.e. over a hundred) remained in legal education. CLEEC also trained hundreds of legal educators and government officials through its in-country summer programs. CLEEC alumni have gone on to become the Deans at several top Chinese law schools (currently Qinghua, Fudan and Wuhan); top University administrators at Beida, Huadong and Jilin Universities; and several currently serve as Vice-Presidents of The Supreme People's Court. Others have highly responsible posts at the Chinese Academy of Social Sciences Law Institute, as well as in several ministries and local, regional and national legislatures.

One of these CLEEC alumni (from Yale Law School, of course) returned home to Wuhan, where he established the first Legal Aid Centre in the People's Republic. Although he is now in Beijing (on the Supreme People's Court), his Centre for the Protection of the Rights of the Disadvantaged celebrated its tenth anniversary last year. During that decade the Centre has advised over 30,000 clients; responded to over 20,000 letters and 30,000 phone calls; and handled over 1,500 cases. It has also presented scores of "Street Law" advice sessions and involved over 500 law student volunteers in its endeavours. The Centre has grown to where it now boasts over a dozen staff, many of whom are also faculty at Wuhan's famous law school. Although there were no formal curricular links between the Centre and the Law School until recently, when Wuhan became one of the first Chinese law schools to award academic credit for casework performed at the Centre (in conjunction with a new faculty-taught clinical course), there is no doubt that Wuhan was the pioneer for clinical methodology in China.

The formal Clinical Initiative was not launched until 1999, however, when the Ford Foundation began to work with students at Fudan and Huadong Universities (both in Shanghai) who had set up volunteer, extra-curricular legal aid organisations. The project gathered speed with a lecture tour to six University Law schools that Fall; at each school a presentation on clinical methodology was made to interested faculty and administrators, with extensive follow up by Ford's in-China staff. By the spring of 2000, seven law schools (three in Beijing and two each in Shanghai and Wuhan) had agreed to launch clinics the following academic year (on Ford's RMB, of course). A ten-day training program was held at the Yale Law School, followed by an extended August conference in Wuhan (one of the famous "furnace cities" of China).

That Fall saw all seven schools begin their experiment with Clinical Legal Education. Each school developed its own design, reflecting the interests and aspirations of the faculty who had decided to participate. Thus, Qinghua began with a mediation clinic focused on consumer complaints, while Renda chose to make criminal work the top priority for its faculty and students, although they have been willing to handle civil matters as well. Wuhan chose to deepen and strengthen the school's ties to the existing Centre, while Zhongnan decided to do civil tort cases. Fudan, Beida and Huadong decided to accept a variety of general legal aid cases. Ford required at a minimum, that at least two of a school's regular teaching law faculty commit to at least a full year's pilot project with a clinic (albeit always on only a part-time basis because of their other teaching duties). In the end several schools had three or four regular faculty involved from the outset; Renda also enlisted a handful of local judges. Several schools even put their senior faculty with decanal rank on this

exciting new clinical project, while Beida instead assigned the project to a young administrator with no faculty rank or other teaching duties. Student enrolments that first year ranged from twenty at Qinghua up to thirty each term (sixty in all) at Renda. While several schools (notably Renda) enrolled mostly undergraduate students, others sought a mix that that included many seeking advanced degrees.

In its second year of operations, the Clinical Initiative expanded to ten schools funded with Ford money as Zhongshan, Xibei and Chuanda began programs in Guangzhou, Xian, and Chengdu, respectively. Each of these new schools had its own focus: Labour Rights at Zhongshan; Elder Law (especially legislative work) at Xibei; and Criminal Defence in Chengdu. Enrollments stabilised at the existing programs, with Wuhan joining Renda at thirty new students each term while the others ranged from twenty up to forty new students a year. Each school also decided for itself how the new Clinic would fit into its overall curriculum, so that Qinghua and several other schools tilted their selection process toward students pursuing graduate degrees, while Renda and Zhongnan particularly aimed at third-year undergraduates. Qinghua also opened a new Labour Rights Clinic (adding a fourth faculty member in the process), while Zhongnan and Beida both redesigned their initial plans. Beida added additional part-time, adjunct teachers to its "general" legal aid clinic, and created a "Community Law Clinic" designed to work with village authorities to popularise the rule of law in Qianxi town of Hebei Province. Zhongnan restructured into several "clinics" and "units", reflecting its decision to accept a more diverse range of civil matters. By the end of year two, therefore, the ten schools boasted over 400 enrolled students and well over 50 faculty participating for between a quarter and two-thirds of their teaching loads.

Today the Initiative is in the process of adding additional schools and new clinics at existing programs, as well as establishing its independence, both structural and financial, from the Ford Foundation. Yunda (in Kunmin) has opened a clinic and will be added to Ford's funding list for next year. Jungfa may join as the fourth Beijing law school, and, thereby bring its existing Centre for the Protection of the Environment into the school's mainstream, clinical curriculum. Further, Hwnam Normal (in Guangzhou) and law schools in Shandong and Hunan also have begun experimenting with faculty-supervised legal aid clinics. Both the Ministries of Justice and Education have been following these clinical experiments with interest, particularly as they offer some promise as a supplement to the growing (but still woefully inadequate to meet demand) number and capacity of legal aid programs around the country. Several schools with existing Clinical Programs also are expanding their range of offerings, their capacity, or both. Qinghua, for example, began a Civil Rights Clinic this year; it is specialising in Administrative Litigation cases referred by the "China Reform" organisation and a local Beijing TV station. Xibei (in Xian) is adding both Elderly Litigation and general Civil Clinics to its existing legislative clinic; with four new faculty also being added, the school expects to double its enrollment to over 150 clinic students per year.

Perhaps most significantly, however, clinical faculty from the participating schools met and formed their own new organisation at last summer's training conference in Zhuhai. Now formally known as the China Clinical Legal Education Committee (CCLEC), and set up under the auspices of the Legal Education Institute (part of the prestigious Chinese Academy of Social Sciences), the CCLEC will be funded by a lump sum transfer of about one million U.S dollars from the Ford Foundation, and thereafter it will take over funding of all training, travel, "foreign expert" and new initiatives grants. The individual school's direct budgets for clinical work (of about $50,000 (U.S)

apiece, including primarily faculty salaries and administrative expenses) will continue to be funded directly by Ford for another two years, however. [ASIDE: These figures seem a bit paltry when contrasted to the multi-million dollar sums Ford allocated to the Council for Legal Education in Professional Responsibility (CLEPER), and the ten-year time frame on which it operated, at the time clinical legal education was launched in the U.S.A. over thirty years ago]. The new committee's assumption of financial responsibility also marks the transfer of project oversight responsibilities from Ford to the Chinese clinicians themselves. Already they have hired an administrator of their own to replace the Ford staff.

One further piece of this still-unfolding story should be mentioned: the role of so-called "foreign experts". We have been quite fortunate in having assembled a superb group of U.S clinical teachers and law schools to work on this exciting project. Experienced clinical teachers from Columbia, Georgetown, NYU, CUNY and George Washington Universities have joined me and my Yale colleagues in helping to design and implement a series of training conferences and extended site visits on both sides of the Pacific. Four series of "spring visits" have been held in the U.S, with Chinese clinical teachers staying for about a week at their "partner school's" clinical program, followed by a two-day wrapup conference for participants from all the U.S and Chinese schools. Alternate-year summer conferences have been held in the PRC for both groups, featuring a mix of teaching and lawyering training, leavened with the inevitable combo of practice and theory. The U.S partner schools have also visited their Chinese counterparts on one or more occasions, to get a better sense of how the new clinics are actually functioning. Opportunities to observe clinic students "perform" in court, at an arbitration or mediation, and with clients (and one another) have been an important part of these site visits. Although Ford has paid the lion's share of project expenses (including translation for these exchanges), the U.S faculty have all donated their time, and the U.S schools have themselves picked up the tabs for portions of the inevitable travel, hosting and administrative expenses. There has also been another aspect of these exchanges, because the Yale-China Association has established a Law Teaching Fellowship program, and these Fellows have played important roles in launching (and assisting) the nascent clinical programs at their host law schools. Now entering its fourth year, this Fellowship has sent six fellows to four different schools, where each has combined academic and clinical teaching.

Now for the fun part: a few cases. This discussion will be briefer than I would have liked, however, because any extended discussion of cases would demand so much context that my talk might never end...

First, the 'criminal defence' clinics at Renda and Chuanda have taken quite different routes. Almost all of the Renda cases have been efforts to reopen old cases in an attempt to overturn convictions. Although "new evidence" is allowed in these proceedings, it generally must be documentary in nature; this means that most of the work is put into investigating, shaping and drafting the petitioning party's statements which are submitted with these appeals. One successful appeal (and unusually so, since they usually lose these cases) concerned the conviction over fifteen years before of three brothers who were fishermen in Wa City. After serving their multi-year sentences for stealing fish and equipment, the brothers sought the clinic's help in establishing they had been framed by the local Public Security Bureau and their competitors, and that their "confessions" had been extracted by means of police brutality. Evidence (on paper) was presented, including pictures of broken facial bones, bloodied (apparently) by the local police chief, with whom the brothers already had an extended history of conflicts and disputes. Even though that

policemen had since been promoted, and the court personnel accordingly tried to dissuade the students from taking this case, the students nonetheless persisted and located a witness who claimed actually to have observed the police beatings. The court issued a not guilty verdict for the three brothers over 17 years after the events in question, and the brothers also obtained state compensation for their wrongful imprisonment.

In Sichuan, by contrast, the clinical teachers have been able to persuade three local courts to refer an occasional pending criminal case to the clinic. The judges have been reluctant to do so, however, because it means much more work for them if the defendant actually exercises his or her right to counsel. Nonetheless, the students and teachers handled more than a dozen such cases last year, including several robberies and larcenies and a number of sentence-reduction applications. Most of the clients have been convicted nonetheless, but the clinic's presence has had the salutary effect of forcing the courts actually to follow their own, official procedures – which are said to be often ignored. One ongoing obstacle has been the difficulty in the students gaining permission to visit the clients while they are in custody. But the local court and public security bureau have now agreed to allow such access, provided the supervising lawyer also goes along.

On the civil side, a couple of the labour law and administrative litigation cases will illustrate the sorts of matters students have been handling, as will the home repair cases which have cropped up in clinics in several different cities. One case involved a minivan driver whose van was seized by a state-owned taxi company because they claimed he had been operating illegally (i.e. without a taxi license). The client claimed he had been tricked and beaten into signing an untrue confession to such unlicensed taxi operations. In fact, he said all he really did was drive for a delivery company, handling materials and packages – not people! The students succeeded in persuading the local city Bureau charged with overseeing this industry that the records "showing" such taxi work were falsified, and that the driver's confession had been coerced. As a result, his 10,000-YUAN (about $1,250.00 U.S, or £800) penalty was purged and his minivan ordered to be returned by the taxi company (which had confiscated it until the penalty was paid). One interesting feature of this case was that it was "won" at the Administrative Bureau, without filing suit, but only after favourable coverage of the case in the local media, and (even then) nearly two months after the minivan had been confiscated.

Labour cases involving unpaid wages were likewise usually won at the arbitration tribunal stage. One, though, went to the District Court, where the students won due to what they described (in a surprised tone!) as a "wonderful" and "very capable" judge. Perhaps significantly, the press had been called in to generate publicity (and pressure) in this case as well.

Finally, several schools' new clinics handled cases involving defective home repairs. In virtually every case, there were factual disputes between the parties as well as fundamental disagreements about the terms of contracts they had all supposedly agreed upon. These cases tested the students' understanding of contract law and their ability to interpret real contracts, as well as their "negotiation" skills—even though the cases often arose with the students supposedly acting in the mediator role. Nearly all these cases ended up in a compromise agreement, usually weighted in favour of the contractors; in the so-called Consumer Mediation Clinic, in fact, the students sometimes found themselves trying to persuade the consumers to accept an offer well below what had been their stated objectives for the mediation process. These mediation clinic students exhibited some rather deep confusion over their role in these cases: Were they "representing" or "assisting" the consumer/complaints? Were they helping the consumer protection agency (out of

whose offices they were working) to resolve cases brought to it? Was their "success" measured by achieving an agreement? In similar home repair cases in "litigation" clinics in other cities, although there was less role confusion, the students still found themselves "judging their clients'" versions of events and then pressuring them to accept a compromise settlement. Just like an American lawyer operating in the ethical grey zone...

Now for a little analysis. But only a bit because I want to leave time for discussion and *your* analysis. First, to answer some of the questions posed in the CALL for the international conference: YES! In other words, I believe that the unfolding story of clinical legal education in the People's Republic of China shows why several of the central questions posed must be answered in the affirmative – certainly, this experience has persuaded me that law teachers *do* have a role in global legal education, and that exporting clinics can be a key part of that role. My discussions with Chinese students and faculty about their clinical experiences have repeatedly turned to the impact this work is having on both of their views about justice, law and legal education. Almost universally they have credited their clinical work with strengthening their own (and the others in their clinic's) "spirit of justice" and "sense of social duty". This has happened partly because of the *service* nature of lawyering on behalf of a real client, and even more significantly because their clients have taught them new and important lessons about the social reality of life in the New China. Again and again, students report that their clients' and their own exposure to officialdom and bureaucracy have enabled them "to see the truth" about Chinese society and its legal system. Their teachers have said the same thing too. So I think there can be little doubt that "justice" can be furthered through such clinical legal education, and not just for the client or her individual case.

Indeed, the experiences of several schools' clinics demonstrate that valuable synergies with local courts, procurators and other governmental agencies can be built at the local, grass-roots level as part of starting up a new clinical program. Such developments may serve to "open up" otherwise (or usually) closed (even, "secret") processes and settings to what Americans sometimes call the disinfecting powers of sunlight. Surely the pressure and participation of students and faculty at least improve the quality of the process that our clinics' clients are subjected to, even if the actual outcomes change less frequently. In fact, our clinics have been getting official cooperation at the highest levels; if only the U.N. weapons inspectors had been treated as well, there might have been no intervention in Iraq.

The mention of military power takes me to my penultimate point: the 'rule of law' can only be truly achieved when words have power. China has made great progress toward this goal in the past quarter century, for power in the PRC today does not only come from the barrel of a gun. Too often, however, power now flows instead from the size of one's wallet. One way to measure how close a society, a legal system have come toward the 'rule of law' is to see what that society truly thinks about the 'role of law'. It is for this reason, then, that education and scholarship about Professional Responsibility, about the roles of legal actors, is so crucial. The Ford Foundation launched clinical methodology in the U.S. in large measure to try to foster and improve teaching and learning in this vital subject. Yet it is also here that international expertise, that foreign experts, must tread most carefully. One lesson that my Chinese colleagues have driven home politely, but quite clearly, is that the addition of "Chinese Characteristics" to clinical methodology is most crucial, most delicate in the area of Legal Ethics and Professional Responsibility. None of them gainsays its importance, its centrality to the mission of clinical education. But all emphasise that they must find their own path through this extensive minefield.

It will not be a short, nor an easy, path. After all, while it may take ten years to grow a tree, it takes a hundred to rear a person. I remain convinced, though, that Confucius had it right when he praised clinical legal education:

What I hear, I forget.

What I hear and see, I remember a little.

What I hear, see and do, I acquire some knowledge and skill.

What I hear, see, do and discuss with another, I begin to understand.

Thank you for your patience.

The Clinical Initiative: Developing A Context for Teaching Professional Responsibility in China.

It is well accepted within the clinical legal education movement in the United States that teaching and learning "professional responsibility" is at the very heart of our mission. That was what the Ford Foundation set out to achieve, and it has remained front and centre to this day. Even those who espouse the gospels of "skills training" or "justice education" would agree with me on this point. (Indeed, each might claim that their special focus is actually a subset of the broader field of Professional Responsibility).

Our core commitment to teaching professional responsibility, however, does not eliminate curricular and pedagogical choice – far from it. Rather, because the topic is so rich, the problems and issues so varied, it really only begins the processes of clinic design and course planning. At least four broad pedagogical goals may be balanced:

- Fostering Professional Values
- Clarifying Role Duties
- Raising Level of Practice
- Critique of Reality and Reform

This is true of any clinical course involving the representation of real clients in actual cases. No matter how narrowly focussed or intensively staffed the clinic may be, there is more "professional responsibility" to be taught than time allows. So it is essential to understand the contexts in which the clinic will operate in order to select, sharpen and maximise the learning opportunities.

This need to contextualise is, if anything, even more crucial in a trans-national setting. Certainly, it is more difficult. So I plan to put all of you to work, helping me get outside of my "American skin", and working together to develop some strategies for instruction in professional responsibility in the People's Republic of China. Of course, you'll need some context yourselves, even to essay this task, so I have provided a short piece on the Clinical Initiative. More helpful, perhaps, I've also created a brief (under 5 pages) Appendix, which includes (a) 15 key sections of the "Lawyers Law" of the PRC, and (b) 25 "Questions about professional responsibility" posed by clinic students at Renmin (People's) University in Beijing. The 25 questions were developed at the end of the students' (mostly undergraduates completing their third year) clinical course, for possible use at an international training conference. (Don't worry that I've left out sections of the

Lawyers Law that would answer several of the students questions; this is not a graded assessment.) I am more interested in your reactions to the questions, and to the "Lawyer's Law" itself, because both tell us a great deal about the current climate in Chinese legal and legal educational circles.

What are those messages? Several of the most important, in my view, concern their deeply ambivalent sense (at least in translation) of the legal system, and the lawyer's role in it. The Lawyers Law states that a "lawyer" is someone who "provides legal services to the public" (Article 2) – but who does so "subject to the supervision of the state, society and the parties concerned". (Article 3) The very idea that lawyers serve the public (i.e. private individuals and entities) is new to China. After all, the previous version of the Lawyers Law, promulgated a few years after the end of the Cultural Revolution, defined lawyers as "legal workers for the State". In fact, the vast majority of law-trained persons in China today are still State employees. So are most of those holding law licenses, and nearly all who work regularly in the legal system. Moreover, most of the 38 sections of the Lawyers Law I have not provided to you set forth the extensive web of continued State regulation over the legal profession, through constraints on licensing, practice organisations, bar associations and discipline.

So even a "lawyer" in private practice in today's China is in an odd sort of legal limbo, partly a private-sector, economic and social actor but partly still a servant of society – and The State. Although this dual set of responsibilities also exists in the U.S. (and U.K) – indeed, is inherent in the lawyer's role – the relative novelty of the private, independent dimension in China has important, and oddly contradictory, consequences. It has bred, on the one hand, a strongly private, commercial (i.e. money-oriented) ethos, which is quite consistent with the general society's "get-rich-quick" spirit so widely observed and reported at home and abroad. To law students at top Chinese Universities, private law practice is all about making money – a great deal of money – and little else. On the other hand, the ongoing active involvement of the State in the affairs of the legal profession (again, as is the case throughout society) generates a continuing circumspection among many lawyers about "public law" activities, including those involving challenges to governmental authority (particularly criminal defence work) or, even, building professional independence.

Both the Lawyers Law and the students' questions also highlight the still-undefined nature of the private lawyer's role. As the questions confirm, the general, hortatory language in the Law (not at all atypical of such sets of rules in any land or language) raises more questions than it resolves. How does one "base himself on facts" while taking "law as the criterion" (Article 3)? What are the practical implications of the lawyers duty "to play a positive role" in developing "the socialist legal system" (Article 1)? (Emphasis added.) But the students' concerns illustrate how much seems still to be open and unsettled – at least in their admittedly somewhat naive eyes. The tensions within the lawyer's role are illustrated by their concern over both the "high risks" of some criminal defence work (Question 9), and the "illegal or immoral" aspects of the duty to represent "clients' private interests" (Questions 16 & 17, among others).

Perhaps most worrying, both documents also illustrate what observers agree is the biggest problem in China's legal system: corruption. Article 35 of the Lawyers Law explicitly forbids bribery, entertainment, and gift-giving to officials (subsection 4) or from opponents (subsection 2); it also restricts such payments from one's own client (subsection 1). Yet a third (or more) of the student questions involve the propriety of just such activities. Why? Because they are rampant – and the students know they are. This becomes even more of a problem when "improper" influence –

particularly of Party or local officials – is added to the mix. How can one teach Professional Responsibility in such a climate? How should (and do) you handle this problem in cases (and with clients) in the course of your clinical work? One of the goals of late 19th Century bar associations in the U.S was to combat corruption and improper influence peddling in the courts and councils of government. Perhaps an independent bar, if one evolves in China, could serve a similar social function. But that day has not yet dawned.

This leads to the last – I promise – of my points about Professional Responsibility teaching in the context of the new Chinese Clinical programs: the intriguing relationships they are evolving with the media. This fits into place here because their use of the media is part of the answer to the two questions posed above: by bringing the glare of publicity onto a clinic case, the risks of an adverse outcome due to corruption or misconduct is substantially diminished. Interestingly, the Lawyers Law makes no explicit reference to the media, or its relationship to the legal and judicial systems. This omission stands in sharp contrast to the substantial (albeit rather ineffectual) attention paid to the "free press/fair trial" tensions in lawyers' codes of conduct in the U.S. and Britain. But the Chinese rule forbidding a lawyer "to disrupt" a court "or interfere with" how litigation usually proceeds (Article 35 (b)) might be read to extend to a lawyer's contacts with the media. Or the State's "supervision" could cover – and restrict, or ban – such activities. So the links several schools' new legal clinics have developed with the media could turn out to be more risky than they have been heretofore. What these links demonstrate, though, is the widespread perception that the media possess the power to influence (and oversee) the legal system, at least to a limited extent. In a way, therefore, the clinics actually possess an advantage in the current legal and social climate, because they often have an ability to stimulate media attention not possessed by run-of-the-mill practitioners. While there are, of course, also quite substantial constraints (both economic and political) operating on the media, too, this partnership does offer one possible, albeit partial, "solution" to the twin spectres of corruption and improper influence – at least in some cases.

Now I'll stop talking and start listening. I hope that these brief remarks, together with the Appendix, will help stimulate a dialog among us about ways to approach the problems of teaching Professional Responsibility in these new clinical programs in China.

Thank you in advance for your help.

APPENDIX

Questions About Professional Responsibility from Chinese Clinical Students:

1. Should a lawyer perform her duty on the base of facts and in conformity with the law strictly as a judge does?
2. What is the proper choice for a lawyer if there are conflicts between clients' interests and ethical principles?
3. Must a lawyer be honest in the process of offering legal aid to her clients? Can she produce lies in good faith?
4. Is it possible for a lawyer to fulfil the entire client's due requirements? If not, how should the lawyer do?
5. Is it possible for a lawyer to employ special or unfair means to compete with other lawyers or with other legal service providers?
6. Can a lawyer receive presents when she practices law? In what condition a lawyer is regarded as being disinterested and self disciplined?
7. Should a lawyer work hard on all the expertise and service skills necessary for her practice? If the lawyer enhances her expertise through case by case method, does this mean she is not dedicated to her career?
8. Can a lawyer enter into a client retainer agreement in her own name and without informing her law firm?
9. Can a lawyer refuse legal aid to who is assigned by her law firm but cannot afford the fee?
10. Can a lawyer refuse to defend for a defendant assigned by the court because of high risks?
11. If there are few cases in hand, can a lawyer privately enter into a retainer agreement in a case that has interest conflicts with cases in which she formally is acting or acted as attorney?
12. Can a lawyer ask for or receive additional rewards or presents with remuneration nature (except normal lawyer's fee) from her clients or anyone that has interests in the present case?
13. Can a lawyer embezzle or usurp the law firm's business fees?
14. Can a lawyer bribe judges, prosecutors, police arbitrators or other related official staff? Can a lawyer induce or require her clients to do that? Can she invite the above mentioned people to dinner or reimburse their bills?
15. Can a lawyer bring the defendant's relatives with her when she interviews with the defendant in a detention place? Can the lawyer deliver letters, money or articles to the defendant at that time? Or can she convey any information related to the instant case to the defendant at that time?
16. Can a lawyer enter into a retainer agreement and provide service to her client, knowing that the client's motive and behaviours are illegal or immoral or involved fraud?
17. Can a lawyer make concessions without insisting on her principles just because of clients' private interests? Can she misinterpret the law so as to adjust the law to the client's undue requirements? Or can she teach her client the way to circumvent the law and prejudice the state's interests and other citizen's legal interests?

18. During the process of handling a case, can the lawyer delay her work or shrink her duties because of personal reasons?
19. Can a lawyer, for the convenience of case handling, divulge her client's information obtained during her service? (The information includes the client's privacy or any facts and materials that the client does not want to reveal to the public).
20. Can a lawyer exceed her delegated authority or utilise this authority to engage in activities unrelated to the case where her authority comes from, on the condition that she regards it as necessary but does not have any consent from the client?
21. When the opposite party and her lawyer carry out proper activities so as to perform their duties and defend their legal interests, can a lawyer interfere with or stop these activities if she feels they would do harm to her case?
22. When dealing with relationship with other lawyers, can a lawyer refuse to work with other lawyers in the same case, or even obstruct her client from retaining any other lawyer to work as a partner?
23. If there is any disagreement between lawyers in one case, can a lawyer or lawyers make decisions without notifying the client in advance?
24. Can a lawyer utilise unfair means to compete in the legal practice market? Such unfair means involve slandering other lawyers and law firms, providing free service with low price or even for free, offering commission to clients, presenting money or articles to clients, publicising oneself and repelling others by advertisement through mass media, boasting of her special relationship with the judicial agencies and so on.
25. Can a lawyer help a non lawyer citizen to engage in legal practice under the title of lawyer?

LAWYERS LAW OF THE PEOPLE'S REPUBLIC OF CHINA

Promulgation date: 2001 12 29

Effective date: 2001 12 29

Promulgation body: The Standing Committee of the National People's Congress

Status: Effective

Adopted by the 19th Session of the Standing Committee of the Eighth National People's Congress Promulgated by: Order No 67 of the President of the People's Republic of China; revised by the 25th Session of the Standing Committee of the Ninth National People's Congress on 29th December 2001

Chapter 21 General Principles

Article 1

In order to improve the system governing lawyers, to ensure that lawyers practice according to the law, to standardise acts of lawyers, to safeguard the lawful rights and interests of parties, to ensure the correct implementation of law, and to enable lawyers to play a positive role in the development of the socialist legal system, this Law is hereby enacted.

Article 2

The term 'lawyer' as referred to herein means a practitioner who has acquired a lawyer's practice certificate pursuant to law and provides legal services to the public.

Article 3

In his practice, a lawyer must abide by the Constitution and the law, and strictly observe lawyers' professional ethics and practice discipline.

In his practice, a lawyer must base himself of facts and take law as the criterion.

Practice by lawyers shall be subject to the supervision of the State, society and the parties concerned.

Lawful practice by lawyers shall be protected by law.

Article 4

The administrative department in charge of justice under the State Council shall supervise and guide lawyers, law firms and bar associations in accordance with this Law.

Chapter 4 Business, Rights, and Obligations of Practising Lawyers

Article 25

A Lawyer may engage in the following business:

(1) To accept engagement by the citizens, legal persons or other organisations to act as legal counsel;

(2) To accept authorisation by a party in a civil or administrative case to act as agent ad litem and participate in the proceedings;

(3) To accept engagement by a criminal suspect in a criminal case to provide him with legal advice and represent him in filing a petition or charge or obtaining a guarantor pending trial; to accept authorisation by a criminal suspect or defendant or accept appointment by a people's court to act for the defence; and to accept authorisation by a private prosecutor in a case of private prosecution or by the victim or his close relatives in case of publican prosecution to act as agent ad litem and participate in the proceedings;

(4) To represent clients in filing petition in all types of litigation;

(5) To accept authorisation by a party to participate in meditation and arbitration activities;

(6) To accept authorisation by a party involved in non litigation legal matters to provide legal services; and

(7) To answer inquiries regarding law and to represent clients in writing litigation documents and other documents regarding legal matters.

Article 26

A lawyer acting as a legal counsel shall provide opinions regarding legal issues to the person who has engaged him, draft and review legal documents, act as agent to participate in litigation, mediation or arbitration activities, handle other legal matters authorised by the person who has engaged him, and protect the lawful rights and interests of the person who has engaged him.

Article 27

A lawyer acting as agent in litigation or non litigation legal matters shall, within the limits of authorisation, protect the lawful rights and interests of the client.

Article 28

A lawyer representing a defendant in a criminal case shall present, on the basis of facts and law, materials and arguments to prove that a criminal suspect is innocent or is less guilty than charged, or that his criminal responsibility should be reduced or relieved, in order to protect the lawful rights and interests of the criminal suspect or defendant.

Article 29

A client may refuse to be further defended or represented by a lawyer, and may authorise another lawyer to act in his defence or to represent him. After accepting authorisation, a lawyer shall not, without good reason, refuse to defend or represent a client However, if the matter authorised violates law, the client uses the service provided by the lawyer to engage in illegal activities or the client conceals facts, the lawyer shall have the right to refuse to defend or to represent the client.

Article 30

A lawyer participating in the litigation activities may, according to the provisions of procedure laws, collect and consult the materials pertaining to the case he is undertaking, meet and correspond with the person whose personal freedom is restricted, appear in court, participate in litigation, and enjoy other rights provided for in the procedure laws.

When a lawyer acts as agent as litem or defend clients, his right to argue or present a defence shall be protected in accordance with the law.

Article 31

When undertaking legal matters, a lawyer may, with the consent of the relevant units or individuals, address inquiries to such units or individuals .

Article 32

In practice activities, a lawyer's personal rights shall not be infringed.

Article 33

A lawyer shall keep confidential secrets of the State and commercial secrets of the parties concerned that he comes to know during his practice activities and shall not divulge the private affairs of the parties concerned.

Article 34

A lawyer shall not represent both parties involved in the same case.

Article 35

A lawyer shall not commit any of the following acts in his practice activities:

(1) To accept authorisation privately, charge fees to the client privately, or accept money or things of value from the client;

(2) To seek the disputed rights and interest of a party or accept money or things of value from the opposing party by taking advantage of providing legal services;

(3) To meet with a judge, prosecutor, or arbitrator in violation of regulations;

(4) To entertain and give gifts to a judge, prosecutor, arbitrator or other relevant working personnel or bribe them, or instigate or induce a party to bribe them.

(5) To provide false evidence, conceal facts or intimidate or induce another with promise of gain to provide false evidence, conceal facts, or obstruct the opposing party's lawful obtaining of evidence; or

(6) To disrupt the order of a court or an arbitration tribunal, or interfere with the normal conduct of litigation or arbitration activities.

ABA/CEELI's[1] clinical legal education programme in Serbia

Professor Emilija Stankovic Karajovic[2]

The goal of the CEELI Legal Education Reform Program in Serbia has been to assist Serbian law faculties in reforming the curriculum so that law students become lawyers who can contribute to the development of the rule of law and the transition to a market economy. As a country in transition, Serbia must prepare future lawyers who are capable of absorbing and implementing the breadth of changes underway in the legal system. Unfortunately, in both its pedagogical methodology and its resources, the education predominantly provided to law students in Serbia is woefully inadequate. Education is typically based on memorisation of code provisions, with little opportunity for practice-based learning or creative thinking, and many of the textbooks used by law students date back to the socialist era.

CEELI introduced legal education reform through the concept of the development of practical skills in legal education and legal clinics for students in the law faculties in Belgrade, Nis, Kragujevac and Novi Sad. The Novi Sad and Belgrade Law Faculties teach classes on legal ethics and document drafting. The Nis and Kragujevac Law Faculties offer classes on legal ethics, counselling and interviewing skills. The Belgrade Law Faculty plans to begin a live client clinic focusing on family law issues in fall 2003. The Nis Law Faculty is also planning to develop a live client clinic.

CEELI provided advice, advocacy grants and technical assistance to all four law faculties (the law faculties are not being funded by Soros[3]):

- In December 2000, CEELI organised a week long visit by Professor Carrie Hempel, a clinical law professor from University of Southern California. Ms Hempel spoke at several law faculties about the concept of clinical legal education and the advantages of practical teaching methodologies. At the time of her visit, clinical legal education was completely unknown to Serbia.
- CEELI' s next effort in introducing clinical legal education in Serbia was a workshop in May 2001 in Rousse, Bulgaria, for professors and students from three Serbian law faculties who expressed the greatest interest in promoting clinical legal education at their respective universities. The workshop provided valuable information about how an actual family law clinic based at a law faculty operates.

1 *ABA / CEELI – The American Bar Association / Central East European Law Initiative*

2 *Professor Emilija Stankovic Karakovic is the Legal clinics co-ordinator at the Faculty of Law at Kragjevac University*

3 *The Soros Foundation*

– CEELI brought three law professors to Serbia to work with the law professors at the law faculties who were interested in starting clinical legal education programs. Larry Albrecht, former CEELI liaison and former law professor, visited Serbia in November 2001 and lectured on clinical methodologies and worked with the Nis, Belgrade and Novi Sad Law Faculties on the development of their practical skills programs. In March 2002, Professor Peter Hoffman, University of Houston Law School presented a workshop for all the law faculties in Nis on teaching methodologies for practical skills education. Sixteen law professors participated. Professor Lee Schinasi, University of Miami Law Schools came in May 2002 and gave demonstrations of modern teaching methodologies and worked on program development at all four law faculties.
– In November 2002, CEELI held a round table discussion with law professors from all four law faculties in Nis to share lessons learned and discuss common problems and how to overcome them. One of the outcomes of the meeting was to organise a meeting with the Minister of Education. Later that month the meeting was held and the Minister of Education (a former law professor) expressed strong support for the concept of clinical legal education, but gave little hope of financial support.

The legal clinics continued to exist at the law faculties in Serbia mostly thanks to a number of enthusiastic professors.

Legal education in Serbia

There are five law faculties in Serbia: the University of Belgrade, University of Novi Sad, University of Nis, University of Kragujevac and University of Pristina. Belgrade is the capital city of Serbia, while the other university cities are the capitals of Serbian main regions and provinces. In a way, every law faculty bears and reflects the characteristics of its own region. Despite these minor differences, all law faculties work under common regime of studies prescribed by the Ministry of Education. In order to enroll in the faculty students must have a high school diploma and pass the admission exam. The largest enrolment is in the University of Belgrade which admits 2000 new students every year (compared to 800 enrolled in the University of Kragujevac). Only the best ranked students are financed by the government while all the others pay the tuition fee which is still relatively low compared to those at other European universities. Very few students complete the four year study-course within this time; their studies last much longer. This is mostly due to lack of motivation among the students since they know that even if they finish their studies in time, it will be very difficult to find a job.

Teaching methods are exclusively old-fashioned. Professors mechanically present their lessons in front of a large number of students and give them the list of literature for future reference. The class participation, if there is any, is almost negligible. Teachers rarely allow time for students' questions and discussions.

Most of the professors have expertise in theoretical matters and lack practical knowledge since they have never worked in practice. Only during the so called exercises do students get the opportunity for more active participation in the educational process. Students very rarely go to courts for practical training and, thus, they lack immediate contact with future vocation. The exams are in the oral form which is also considered to be one major deficiency.

The legal clinic Kragujevac

Kragujevac is the capital of Jumadija region covering the central part of Serbia. It is located 120 km south from Belgrade. After the Turkish liberation, during the reign of Prince Milo (Obrenovi), Kragujevac was the capital of Serbia. The first Serbian Parliament proclaimed the first Serbian Constitution, the so called Sretenjski Ustav, in Kragujevac on January 15, 1804 (next year will be its 200th anniversary). Also the first major state institutions such as the first court, theatre, high school and Lyceum (the first institution of higher education) were founded in Kragujevac. When Belgrade became the capital all these institutions were moved there.

The law clinics, as a form of students' practical education, was brought to the Faculty of Law in Kragujevac by ABA/CEELI, thanks to Mrs. Terry Ann Rogers who is the Director of the Association for Serbia. Generous aid for completion of the law clinic was given by the association office in Nis including Mrs. Mirjana Golubovic, Mrs. Mirjana Stankovic and Ms. Jelena Jiri.

The Law Clinic at the Faculty of Law in Kragujevac would not have been put into effect without Professor Emilija Karajovic who is meritorious as the coordinator. The first generation of students during the 2002/2003 school year could learn and accomplish practical knowledge following the introduction of the new methodology thanks to Professor Karajovic. This is was a special pioneer project in innovative teaching at the faculties of law in Serbia, besides the Faculty of Law in Kragujevac, similar programs are underway at the law faculties in Novi Sad, Nis and Belgrade.

It would be superfluous to indulge in explaining the need for these changes in teaching and emphasise the benefits for the students who will be lawyers after completing their studies, whether they work in administration of justice or as judges, prosecutors and attorneys or in any other field which requires legal knowledge. We are familiar with the fact that graduate law students could acquire practical knowledge after completing their studies at their first places of work. This, so called, practical training of students who have just graduated, depended on their teachers' (experienced colleagues) will and free time at the work place. In addition let us not forget that experienced colleagues are not experts in transmitting their knowledge, no matter how good they are in their work.

Law clinics represent something new and a step further in teaching at the Faculty of Law in Kragujevac and at another three law faculties in Serbia. Professors engaged in clinical work were introduced to numerous educational programs either through the visit of American clinical professors which lasted for several days or Serbian professors attending conferences in Riga, Sarajevo, Skopje, Budva, Warsaw, Moscow, Timisoar, etc. The Faculty of Law in Kragujevac maintains a good co-operation with Law Center in Houston. The two faculties organised the exchange of students and professors so one professor and two students from each faculty were on study visits in the USA and Serbia respectively.

Practical education of prospective lawyers is not a novelty. Law clinics originated in the USA, but even Romans were, in fact, acquainted with that kind of education. They were introduced into American Law Schools almost 30 years ago and have continued to develop internationally with Russia and the rest of the former Soviet Union countries participating at the beginning of the last decade of the 20th Century. Today there are more than 5000 law faculties which include legal clinic training. Law clinics have developed also in other parts of the world: in Macedonia, Bulgaria, Bosnia and Herzegovina, Lithuania, Poland, Romania, etc. Serbia is joining that great family now. It is necessary to mention that legal clinics are also widespread on the African and Asian

continents. A step towards the integration of law clinics was performed in 1999 in India when the world organisation GAJE (Global Alliance for Justice Education) was established. There are law clinics in more than 2000 countries all around the world.

This paper presents the methodology and program review of the law clinic implemented at the Faculty of Law in Kragujevac. I hope that it may contribute to further studies in this field because new generations of students seem to be enthusiastic about it. They are aware of the benefits for their future which result from it. Let us quote some students and their opinions:

- 'I am glad because someone has the courage, and this is courage indeed, to start with this kind of work in such a conservative society'.
- 'I did not like law when I enrolled in the Faculty of Law in Kragujevac, but the law clinic is something rare and I have really become interested in it. They should have introduced them earlier'.
- 'This kind of conducting instruction is exceptional and should become part of the regular program as soon as possible'.

What has been done at the Faculty of Law in Kragujevac

The program included four thematic wholes:

- introduction to new methods: playing different roles, simulation, brainstorming, the case study analysis,
- ethics: general course, judicial ethics, lawyer ethics,
- client interviewing: psychological elements of the interview, preparation for the interview, simulation,
- preparing legal documents: agreements, legal suits, appeals, wills including witnesses, criminal charges, (requests for bringing charges against drug dealing, producing and handling, etc.)

Methods

As we already mentioned, the standard educational process mostly included teaching where the students are merely passive observers and the teachers present their lessons without their active participation. Legal clinics change such behaviour. The students are no longer passive observers but very active participants and that is why these methods are called interactive methods.

The next characteristic is work in small groups. Legal clinics do not accept teaching in large classrooms (amphitheatres) before the audience of a few hundred students. They require smaller groups up to 10–15 students.

It is also important to note that the method allows the students to reach independent opinions and conclusions without intervention.

The advantage of this work (interactive methods and small groups) is that the students are very motivated by the active participation since it appears that their opinion finally matters, which an excellent starting point for future successful work. Besides acquiring specialised professional knowledge, the students develop other legal skills. They practice rhetoric, argumentative

presentation of their opinions, defending their standpoints and fighting for them, as well as accepting other people's opinion through a democratic and constructive discussion.

Among the methods which proved to be the most successful are:

– role playing

– simulation

– brainstorming

– case study.

We should not neglect the panel discussion, the Socrates' method, round table discussions, presentations, database, etc.

Role Playing

What characterises this method is that the teacher assigns a role to the student and he is supposed to act it out. This method provides many possibilities to the teacher. He can stress different aspects himself or use the student who is acting out the role. It is possible to emphasise good sides of somebody's behaviour, or maybe his weaknesses. This method enables students to practice different skills.

Simulation

The core of this method is to assign to students different tasks from the subject matter which is being practiced and then to perform the simulation of that subject. The subject matter can be imaginary. It can be prepared in advance or simulated on the spot. The imaginary subject matter allows the teacher to create a situation he wishes to have in working with students and to cover all vital elements of training. Its weakness is that the teacher is not always in a position to have the concrete answer since he cannot anticipate all possible situations. But from this weakness the teacher can draw the advantage since he is in the position to teach his students how to do their work in the highest professional way. Where the subject matter is prepared in advance this allows the teacher to have a situation set according to his wishes and prevents time being wasted when the simulation is conducted on the spot. Short discussions with students and taking notes on their comments can help teacher before assigning the roles. Even better results can be achieved if the subject is handed out to students before the simulation so that they can have enough time for preparation. Each student receives a role for simulation with guidelines as to which aspects should be emphasised. If a civil law case is in question, then the students are assigned the roles of the parties, judge, lawyers, witnesses, court experts etc. Then the students simulate the case. In this whole process the teacher is not a passive observer but someone who conducts the simulation setting out its objectives.

It is not necessary that all the students from the group participate in the simulation. Those who do not participate can analyse the simulation process.

When the simulation is completed, then follows its analysis. It can help if the simulation is video recorded so that this recorded form can be used to facilitate the discussion on the simulation. A check list prepared in advance, listing necessary topics to be discussed, can also help. It is highly advisable that the actors themselves analyse their performance in order to have an insight in what

they have achieved. When performing the analysis it is important to start with positive things. The teacher can start the analysis by bringing out his opinion on the parts of simulation which were well performed.

Brainstorming

This is the method in which a group of students focuses their attention to a certain topic(s) and work towards problem solving through a joint process of brainstorming. The topic for discussion can be assigned in advance, but it is not mandatory. It is also optional to assign it in written or oral form. The blackboard is a helpful tool in this process because, firstly, the ideas written on it are obvious and, secondly, the teacher can ask a student to do it instead of him. This method represents a quick way for collecting ideas on a certain subject or issue.

It is important to note that in this method there are no good or bad ideas, correct or false answers provided they are within the previously set boundaries. In this method the teacher also plays an important role in streaming the discussion towards certain aspects, but he is someone who only directs and not influences the discussion by bringing out his personal opinion. The teacher should always bear in mind that the students are different individuals and that there are some students who have difficulties in expressing themselves. It is important that the teacher should include such students into discussion as well.

Upon completing the list of ideas it is useful to go over them once again and make a short summary, that is, to narrow the list through a constructive discussion. This final list should include different opinions of students and not only the standpoint of the majority of students where the arguments of individuals are exempted.

The advantages of this method are that it allows creative, unlimited and always new possibilities and that gives the students the opportunity to obtain a realistic view of other people's opinion on their ideas.

Case study

This method is similar to the role playing method since it uses specific situations or specific scenario as a teaching material. However, this method also resembles the brainstorming method since it is very important to encourage the students to enter discussion and to make a list of ideas which will help in the analysis of a particular case. The subject matter of a particular case study should be prepared in advance and handed out to students in the printed form. The teacher should also prepare the questions in advance in order to facilitate assigning of a concrete tasks such as problem identification, choosing the priorities... This method allows different combinations. It is possible to divide students even into smaller groups and then to assign to such groups different, similar, or even the same tasks.

The advantage of this method is that it can be used for building up students awareness of the challenges and problems without assigning direct blame or guilt to any particular individual from the group.

Ethics

The General Course

The general course represents an introduction into the entire course in ethics at legal clinics. The general course lectures include basic terms such as: professionalism, moral, ethics. The method used in the introductory part of the lecture is brainstorming.

Judicial ethics

Students are introduced to problems of judicial ethics. They are asked to describe the role of judges in a society or, for instance, to give their own description of positive characteristics of a judge.

Then, the topic is related to the perception of the judiciary by the public and is discussed with the special emphasis placed on the role of judges in creating the general public opinion on judiciary in a society.

This topic on judicial ethics is also treated in an interactive way where the students are encouraged to seek the answers independently. Again the brainstorming method is used along with other techniques such as: video presentation, work in small groups, discussions on hypothetical situations and case study.

Lawyer ethics

General public opinion on lawyer ethics is not positive, that is, it is widely considered that they are not always guided by ethical principles. Even as early as in the 17th Century clients complained about their legal representatives. The following passage reflects generally accepted opinion about this profession:

November 26, 1686

I had dinner with my colleagues, Lord Chancellors, which was also attended by three legal representatives. After the dinner they were in good mood and loosened themselves revealing some parts of their legal experience, for example how they had dragged some processes to exhaustion using various tricks. They resembled a gang of bandits telling each other how many wallets they had stolen just for the sake of mocking. However, you can not mock the God.

John Evelyn (1620–1706).

Preparing legal documents

This was the easiest part of the program for the professors included in the work of these clinics. Since the students worked in small groups of a maximum of 10 students and the professors were well trained and experienced in this field, success was easily attainable.

As an example of the work in the legal clinic at the Faculty of Law in Kragujevac, I think it would be a good idea to enclose the letter of two law students from the University of Houston, Texas who spent some time at the Faculty of Law in Kragujevac as exchange students:

Dear Clinical Professors,

On behalf of my fellow exchange student Heather and Professor Beassie in Houston, allow me to say that it has been a great privilege and honour to have taken part in your classes for the past month. Our time here is winding down and I must bid you all farewell. I hope our paths cross again very soon because I enjoyed my experience here and I learned quite a bit from you and your colleagues. You asked me to compose a short e-mail with my thoughts on what I observed in our class. It is a pleasure to reflect on this issue.

First of all, I would like to say that the level of enthusiasm and participation in the clinic classes is very impressive. I think that the class is a great forum to develop ideas and convey them in a classroom setting. From what I understand, it is very unusual to be allowed this freedom at the Pravni Pakultet. The subject matter was very useful from a clinical legal education standpoint, too. Judicial and lawyer ethics are practical things to study and the classes on preparing legal documents were also informative. I think the best way to approach any comments would be to emphasise the difference between your class and the one I experienced at the University of Houston.

An overview of our clinical education can be found on the website www.lah.uh.edu. We have a civil, juvenile, immigration, mediation, transactional, and consumer clinics. Furthermore, we have judicial externship where Professor Beassie places students in courts to do some work there. My own clinic was the immigration clinic. We had a week-long orientation where, for several hours a day, we would learn about the statutes we would be working with, clinic procedures, strategies for interviewing clients, and courtroom decorum and advocacy.

We started meeting with our clients from the first week that classes started. For cases that can not be resolved in one semester, it is a student' s responsibility to prepare transfer memoranda to the student who takes over a case. We helped indigent clients with, for example, obtaining a status that the law allowed for them, obtaining work permits, obtaining permanent residence cards, and representing in court those clients who were facing involuntary removal from the country. Our physical set-up is also very useful to note in understanding how we operate. Students have their own desks all in one location specifically designated for clinic business. Phones and computers were available to each student as well. Weekly meetings on case strategy would take place between a student and professor. There are also classes once a week to discuss the case law that is relevant to the subject matter of the specific clients problems.

Mainly, I think the differences between your clinic and ours is that the classroom aspect of the program is conducted at the same time as the students represent clients. Students are required to work on their clients' cases for a certain number of hours per week and keep accurate notes of everything they do, including every phone call.

I think that further discussion is necessary between American faculty and their Serbian counterparts because they can all learn from each other. Overall, I am impressed with the level of teaching at the Kragujevac Law Faculty and the only thing that I would have liked better is to observe some actual interactions between clients and students.

Thank you for your attention and for being wonderful hosts as we visited your country.

Sincerely,

Bruce Godzina

Conclusion

If we take into account that this is a new working method and new way of approaching the problem and legal education in the Serbian Law Faculties, I can say that I am very much satisfied with the results achieved. Of course we encountered many difficulties: some colleagues were unprepared for this kind of work, lawyers were not used to working with students, etc. However, I was fascinated with the enthusiasm of professors and the great interest the students expressed for this kind of work which, along with their natural intelligence and passively acquired knowledge enabled their more active participation in the class. I sincerely hope that we shall find the way to financially support our legal clinic in the following academic year. We have already prepared the program for a new group of students and planned to involve the previous group of students in the work with clients.

'You're such a friendly group of people!' Reflections on the 7th Australian Clinical Legal Education Conference

*Associate Professor Jeff Giddings**

From July 9 to 11 2003, clinical legal education teachers and supporters from around the globe gathered at Caloundra on the Sunshine Coast of Queensland for the 7th Australian Clinical Legal Education Conference. The Law School of Griffith University hosted the conference. While the objectivity of this conference report is open to question (I was the principal organiser), the program worked very well. Almost without exception, participants commented on the friendly nature of the group and the value of the sessions they attended.

The title of the conference was *Strengthening Links Between Learning, Service, Research and Practice*. Conference sessions were designed to encourage participants to more clearly articulate these links and to identify how the tensions between educational objectives, scholarship and community service can be as healthy as possible rather than problematic.

We welcomed the strongest international contingent at any Australian clinical conference which added greatly to the discussions. Professor Hugh Brayne (University of Sunderland), Virginia Grainer (Victoria University of Wellington), Professor Minna Kotkin (Brooklyn University), Professor Ved Kumari (Delhi University), Fred Rooney (City University of New York) and Professor Liz Ryan Cole (Vermont Law School) all either presented sessions or participated in panel discussions. Pepe Clarke, a former Griffith Law graduate, also made a presentation on behalf of the Centre of Human Rights and Environment, Argentina and Ted Hill (University of the South Pacific, Vanuatu) also joined us. While contexts vary, there are clearly strong common threads binding together the work of clinical legal educators.

Conference participants heard two outstanding keynote presentations. Simon Rice, well known to many international clinicians from his time as Director of Kingsford Legal Centre, spoke of the genesis of clinical legal education as an 'add-on' – "more a back verandah than a new wing – to the Langdellian castle of legal education method". Simon suggested that as advocates for clinical legal

**School of Law, Griffith University*

education, we "will forever be defensive, propping up the verandah on the back of the castle" if we "cannot establish the core legitimacy of clinical method within the law school's own reason for being".

The second keynote paper, presented by Judith Dickson from La Trobe, explored the role of clinic in linking law & justice. She challenged us to question our practices and emphasised the importance of looking outside our own programs and our own discipline and to collaborate as we reflect on our work and practices. Judith expressed her strongly held view "that the only legitimate purpose for the continuance of clinical legal education programs in Australian law schools is the integration of law and justice into the legal education curriculum. The role of clinic in legal education therefore is to be the means by which students and academics make the link between law and justice *in practice*."

The friendly environment of the conference tended to foster rather than stifle active discussion of the issues raised in the sessions. Conference sessions addressed issues including future directions for clinics and clinicians, different models of clinic teaching, international developments in clinical teaching and learning, how clinical experiences influence students and teachers and the capacity of clinics to meet particular student and community needs.

The future directions session included an interactive display of the technology used to deliver one of the Griffith clinics and a discussion session on (the lack of) career paths for clinicians with input from Minna Kotkin and Hugh Brayne. There were also 3 presentations on developments in linking clinics and *pro bono* service providers, including a detailed paper from Les McCrimmon (Sydney). A session on different clinical methods saw a range of contributions from experienced clinicians designed with the aim of informing less experienced teachers.

Two extended workshops were conducted on the second morning. Adrian Evans (Monash) and Kieran Tranter (Griffith) put participants on the spot in a series of hypothetical scenarios designed to explore the values clinic teachers bring to their work. A supervision skills workshop identified the range of student-focussed and client-focussed purposes people seek to achieve through their supervision. The tensions between serving the best interests of clients and students were very clear here.

Australian clinical law programs have been very effective in serving a range of communities. The delivery of community services has tended to receive greater priority than the development of research opportunities. The conference provided the opportunity for presenters to receive feedback on work-in-progress and to identify issues ripe for further research and writing. A session on fostering the involvement of indigenous students in clinical programs has led to work exploring links between indigenous and clinic-based ways of learning.

Griffith Law School also ran 2 post-conference events. On July 14, 30 people attended a 4-hour workshop on Developing Human Rights Agendas Through Clinical Programs. The workshop considered how community organisations and interested individuals can work with law schools towards the development of stronger community understanding of the importance of the law in fostering respect for human rights.

The workshop focussed on efforts designed to protect and extend the human rights of refugees in Australia. Anna Copeland (Murdoch) and Kirsten Hagon (Refugee Advice, Information and Legal Service) provided a range of suggestions for how law schools can best work with other

organisations committed to supporting refugees. Anna's account of her experiences working with refugees at the Murdoch clinic and Kirsten's overview of working with a wide range of community organisations combined very effectively.

On July 15, Hugh Brayne and Fred Rooney spoke at a seminar, *Pro Bono Service Delivery: International Developments*, providing quite different perspectives on the potential for increased *pro bono* legal service contributions. Fred outlined the 'low bono' network of local lawyers supported by the City University of New York while Hugh expressed concerns at the ability of small English law firms to make significant *pro bono* contributions.

Organising the conference, workshop and seminar involved a great deal of work but was particularly useful for the Griffith clinical program, informing the development of our strategic plan for 2004–2007. The strong and supportive Australian clinical network was reinforced by the experiences shared and contacts made and important international links were also developed. Monash Law School will host the next Australian clinical conference, probably in 2005.

Announcement

Second Conference of the International Journal of Clinical Legal Education 14th and 15th July 2004, Edinburgh, UK.

The second IJCLE conference is taking place in Edinburgh this year (14th and 15th July) with the usual wide range of speakers from all the major clinical jurisditions. The theme of this year's conference – Clinical Education: Who Benefits? – is proving broad enough to encompass papers on the teaching of lawyering skills to our students, the sustainability of clinics, and reviews of clinical education in jurisdictions as diverse as South Africa and the South Pacific. Details of the conference are up on the conference website: http://northumbria.ac.uk/sd/academic/law/conferences/cleconf/.

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