

# “Clinic and the wider law curriculum”:

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## Introduction

We have always been quite proud of this student feedback about our clinical programme and still use it in publicity material:

*“The SLO transformed what seemed like an academic subject into a practical one with very real consequences that I felt that I could shape. My perceptions of employment law changed drastically as did my view of the law in general. It reminded me of why I wanted to study law initially.”<sup>1</sup>*

Looking at it more carefully while writing this piece it did not seem so impressive. What had we done in the first three years of this student’s legal education that made her forget why she wanted to study law in the first place? We had provided clinic as the capstone on what was, in many respects, a programme of study that focused on legal rules and legal theory.<sup>2</sup> Although this student had eventually benefited significantly from the reality that clinic provided, her comment reflects a growing debate about whether these benefits could be introduced at an earlier stage. We have become uncomfortable with the isolation of the substantive aspects of the programme from the clinical aspects and are currently grappling with how we can integrate doctrinal knowledge with a fuller clinical experience throughout the student journey.<sup>3</sup>

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<sup>1</sup> Anonymous student feedback in Student Law Office questionnaire for graduating students, 2005.

<sup>2</sup> This is a somewhat over-simplistic description of the Exempting law degree at Northumbria. In fact the programme does seek to integrate practical skills and understanding with legal knowledge throughout and for many years was the only law degree to combine the “academic” stage of legal education with the “vocational” stage. However, the live clinical course has been available only towards the end of the programme with little real experience prior to this.

<sup>3</sup> This is by no means a novel insight. Commentators have for some time advocated the idea that clinical methodology may be able to play a more central

role within legal education and that in this sense the clinical project remains a work in progress. As early as 1933 Jerome Frank was arguing, Why not a clinical lawyer school? 81 U. Pa. L. Rev. 907. Although in a somewhat different context to the modern debate he clearly had in mind the use of clinical methodology as a significant aspect of legal education: “The law student should be taught to see the inter-actions of the conduct of society and the work of the courts and lawyers. The usual law school curriculum largely omits such teaching. It relies on prelegal courses in the so-called social sciences. The result is that the law student is graduated with the vaguest recollections of his pre-legal work, an insufficient feeling of the inter-relation between law and the phenomena of daily living, and an artificial attitude towards “Law” as something totally distinct and apart from the facts.” (at page 921-922). More recently it has been addressed for example by Barry et al in Clinical

Hence, the problem this paper addresses is that although there is general consensus as to the value of clinic and recognition that it has enhanced creativity and vitality in legal education, there is still a tendency to see it as something apart from the regular law curriculum. We want to explore the viability of making the key benefits of clinical education pervade the whole of the student's time learning the law. We draw some encouragement from official reports from the US and the UK which, although not concerned primarily with the place of clinical legal education, do provide general support for an approach which combines theory and practice.

The Carnegie Report from the United States recently sought to convince the legal academy of the value of integrating the learning of legal rules with the learning of legal realities:

*“How then can we best combine the elements of legal professionalism – conceptual knowledge, skill, and moral discernment – into the capacity for judgment guided by a sense of professional responsibility? We are convinced that this is a propitious moment for uniting, in a single educational framework, the two sides of legal knowledge: (1) formal knowledge and (2) the experience of practice. We therefore attempt in this report to imagine a more capacious, yet more integrated, legal education.” Carnegie Report, 2007, page 12.<sup>4</sup>*

Just over ten years earlier, the ACLEC report in the United Kingdom offered similar guidance on the combining of these two facets of legal understanding:

*“A liberal and humane legal education implies that students are engaged in active rather than passive learning, and are enabled to develop intellectually by means of significant study in depth of issues and problems as part of a coherent and integrated course, and that the teaching of appropriate and defined skills is undertaken in a way which combines practical knowledge with theoretical understanding ... the rigid demarcation between the “academic” and “vocational” stages needs to disappear; what is required is a new partnership between the universities and the professional bodies at all stages of legal education and training.”<sup>5</sup>*

With rare exceptions,<sup>6</sup> law schools in the United Kingdom have so far largely resisted this exhortation. Even where legal practice is addressed it tends to be in isolation from the core business of teaching students substantive legal knowledge. It remains to be seen whether the

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Education for this Millenium: The Third Wave, Clinical L. Rev. 1 2000-2001. We agree with their proposition at page 33 that “The dichotomy between doctrinal analysis and theoretical considerations on the one hand and practice on the other is unfortunate, since each has an important role to play in a sound legal education”.

<sup>4</sup> Educating Lawyers – Preparation for the Profession of Law, William M. Sullivan et al, The Carnegie Foundation for the Advancement of Teaching, Jossey-Bass, 2007.

<sup>5</sup> Lord Chancellor's Advisory Committee on Legal Education and Conduct 1st Report, April 1996, paragraph 2.2.

<sup>6</sup> At the time of the ACLEC report Northumbria had recently introduced its Exempting Law Degree and the report acknowledged this development: “We have extolled the virtues of integrated education

and training ... as exemplified at present by the Northumbria exempting degree.” ACLEC 1st Report paragraph 5.19. This programme integrated the first two stages of legal education (academic and vocational) but did not at that stage seek to address the training / practice stage and did not see clinic as a pervasive teaching methodology. Further exempting law degrees have since been introduced at other institutions but we are aware of no programme which utilises clinical education as a pervasive vehicle for delivery of the core curriculum.

Carnegie report makes a more immediate impact in the United States. In any event both jurisdictions currently show a clear tendency to keep traditional and clinical teaching separate.<sup>7</sup> Although clinical legal education often thrives in law schools it does so with a distinct identity, purpose and values so that a psychological (and sometimes physical) barrier is erected between regular learning and clinical learning. In most institutions clinic is seen as an optional course or extra-curricular activity rather than a core vehicle for delivering knowledge and skills.<sup>8</sup>

This paper argues that separateness of clinic from the mainstream learning methods leads to disadvantages for students, for the clinic and for the wider law school. It suggests that real legal experience, broadly conceived, can not only enhance student appreciation of professional skills but also benefit their understanding of key legal knowledge and principles. Further Integration of clinical methodology into the regular curriculum has the potential to make the student learning experience more engaging, more challenging and ultimately more valuable. We think it might be time for clinic to emerge from the margins and come to centre stage in legal education.

This is not uncontroversial. There are clearly risks with trying to synthesise the doctrinal study of law with an exposure to the practical realities of the law. However, we think that there are ways in which it can be done which enhances student appreciation of substantive law while engaging student enthusiasm and developing an essential early exposure to law in its natural setting.

**Cart before the horse? Must basic substantive legal knowledge of any legal area come prior to clinical experience?**

Stefan Kreiger has argued<sup>9</sup>

*“Basic knowledge of substantive legal doctrine is a necessary pre-requisite to learning effective legal practice.”*<sup>10</sup>

He rests his arguments partly on research carried out in the medical school context by Vilma Patel and others<sup>11</sup> which compared students who had studied basic science prior to clinical training (a traditional clinical curriculum) with those who had been trained in a Problem Based Learning

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<sup>7</sup> See Barry et al Clinical Education for this Millenium: The Third Wave, Clinical L. Rev. 1 2000-2001: “As we enter the new millennium, the movement beyond the casebook method to the wider integration of clinical methodology throughout the curriculum stands on a solid intellectual foundation. Yet, although clinical legal education is a permanent feature in legal education, too often clinical teaching and clinical programmes remain at the periphery of law school curricula.”

<sup>8</sup> We think that this development would help us move towards Twining’s Holy Grail of the law school as a House of Intellect: “... an institution which purports to be the practising profession’s House of Intellect, providing not only basic education and training, but also specialist training, continuing education, basic and applied research and high level consultancy and information service. The nearest analogy is the medical school attached to a teaching hospital which, inter alia, gives a high priority to clinical experience with live patients as part of an integrated process of professional

formation and development. In no western country has this model been realised in law.” Twining, Blackstone’s Tower: the English law school (1994, Sweet and Maxwell, London) at p.52.

<sup>9</sup> Domain Knowledge and the Teaching of Creative Legal Problem Solving, 11 Clinical L Rev 2004-5.

<sup>10</sup> Ibid. p.149.

<sup>11</sup> Extensive references to this research can be found in footnote 10 of Kreiger’s above mentioned article.

method involving brainstorming and dealing with clinical problems involving both basic science and clinical application from the start of their education:

*“With law school skills training courses, if students are asked to brainstorm or use other problem-solving techniques in doctrinal areas in which they have limited exposure and in which they must perform extensive legal research, these studies [i.e. by Patel et al] suggest that the burden on their mental processes may actually obstruct learning both the doctrine and the techniques.”<sup>12</sup>*

Part of his argument, as we understand it, is essentially that teaching using clinical methodology prior to a sound basic understanding of substantive law in the area will:

- Lead to an unsound grasp of the substantive law
- Result in ineffective problem solving because the student has an insufficient grasp of the substantive law
- Involve teaching a method of problem solving which is not one which experts use to solve problems and may hinder the acquisition of expert problem solving skills

*“students should not be expected in a single semester course to acquire basic knowledge of the substance and procedure of a complex legal area concurrently with their handling of cases in that area. At the very least, such courses should have rigorous prerequisites in the relevant doctrine and procedural law. Ideally they should be capstones to other doctrinal courses in the area all organized with the intent of training students to apply their knowledge in practice.”<sup>13</sup>*

In his response Mark Aaronson argues that Kreiger overstates the ability of any substantive law course to teach more than the basics of that course:

*“What we provide students at the end of three years is a learning permit. Their development of substantive expertise occurs over time once they are in practice and have repetitive exposure to similar problem situations.”<sup>15</sup>*

However, Aaronson also agrees that substantive legal training should first be undergone. His school places this training immediately before the clinic module takes place and during it.

Kreiger raises legitimate concerns about the limits of clinical methodology. We add that to attempt to teach the entire syllabus using clinical or problem based learning methods would:

- Be excessively time consuming for staff and students
- Result in wasted effort pursuing avenues which the tutor knows will be fruitless but which the students do not
- Result in incomplete understanding of subject areas in which the “problem” dominates the students’ learning objectives and other crucial areas of the substantive law subject are ignored because they are not raised by the “problem” at hand

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<sup>12</sup> Ibid. p.182.

<sup>15</sup> Ibid. p.487.

<sup>13</sup> Ibid. p.202.

<sup>14</sup> Teaching Problem Solving Lawyering: An Exchange of Ideas, 11 *Clinical L Rev* 2004-5 at p.485.

However, we have reflected on the conclusions of the overwhelming majority of research on learning and motivation points to the conclusion that education should always involve variety (see for example, Hattie, 2004<sup>16</sup>; Apter, 2001<sup>17</sup>; Moseley, *et al*, 2005<sup>18</sup>). A model that proposes substantive legal education to be focused solely on didactic teaching in strictly compartmentalised subject areas where the curriculum and learning is solely set by the teacher is no more likely to succeed than one in which only PBL is used. To accept only one monolithic method at any particular stage is to deny to the student those opportunities that each offers to broaden their repertoire and increase their intellectual flexibility. We do not suggest that this is Kreiger’s proposal, but it has been the reality of many law programmes in the UK in the past. Our aim is not to limit the early years of undergraduate education, nor to confuse students: the ideal should not be the case method, learning through problems, problem based learning or simulated/real clinical experience but experience of all of the methods, with the role of the lecturers to make explicit both to themselves and to students the marriage of content and process which is designed to maximise depth and breadth of learning. Different students will respond more positively or negatively to each different method and lecturers can make use of the strengths within teams to build a cadre of future professionals who know both how to model good practice and how to ask for help.

We do not accept that by occasionally or even regularly asking students to set their own research objectives in a supportive learning environment that that learning will necessarily be at a lower level than on a traditional substantive law course.<sup>19</sup> We also reject the assertion that learning how to deal with unfamiliar areas of law will hinder the ability of students to learn to problem solve when they already have a body of knowledge to work from. Kreiger’s use of studies from the medical school field involved a comparison of a programme that offered no problem based learning with a school where problem based learning was the only or dominant method of teaching. We do not advocate that students learn from clinical problems exclusively. Simply that they sometimes do. There is currently no empirical research that we are aware of that would suggest some exposure would hinder the development of problem solving abilities. More fundamentally, we are working towards an understanding of expertise which focuses on the distinction between the ‘experienced’ professional whose knowledge and skills are extensive but also *crystallised* and the ‘expert’ professional whose knowledge and skills are fluid and constantly evolving.<sup>20</sup> As legal educators we have a duty to students to best prepare them for lifelong practice and a duty to the profession to equip them with the flexibility to adapt to a future we cannot predict.

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<sup>16</sup> Factors that influence students’ learning: results from a study involving 500 meta-analyses. Paper presented at The ESRC seminar ‘Effective Educational Interventions’, University of Newcastle upon Tyne, July 8th 2004.

<sup>17</sup> Motivational Styles in Everyday Life: a guide to reversal theory Washington, DC: American Psychological Association.

<sup>18</sup> Frameworks for Thinking: a handbook for teachers and learners Cambridge: Cambridge University Press.

<sup>19</sup> Indeed our experience on a second year public law course using Problem Based Learning, has been that

students developed a far stronger grasp of the legal issues than was formerly the case using a traditional method of teaching. See the summary of this project below in the section on integration of simulated activities.

<sup>20</sup> See Berliner, Learning about and learning from expert teachers *International Journal of Educational Research*, (2001) 35, 463-482.

## **The benefits of integration**

Integration of clinical legal education with the core law curriculum has the potential to benefit the School as a whole. This section sketches some of the wider advantages we suggest can flow from a clearer focus on clinical methods across the curriculum. More specific issues are dealt with in the next section where we consider practical examples of clinical activities.

*Inclusivity* – integration can help to break down some of the barriers between academic and clinical faculty that sometimes exist. This would address the feeling that clinicians sometimes have of being marginalised or undervalued and the reaction of some non-clinical teachers of being excluded from clinical activities. Tactics such as the use of “consulting professors” whereby academic lawyers provide legal guidance to clinical students provides real assistance to the provision of the legal service and goes some way to making academics feel valued as part of the clinic’s case work but is still very much an arm’s length collaboration. Moreover, it goes only one way. It fails to take advantage of the clinical professor’s knowledge and expertise in the context of students’ study of legal doctrine. We envisage a more intensive, mutual and fruitful partnership which should ultimately break down the distinction between clinical and traditional teaching sessions.

*Enhancing the personal development and expertise of the academy* – we do not advocate that all academics become clinicians or practising lawyers. However, the more engaged those academics become in practical issues experienced by clients, the richer their own knowledge of the interaction between their specific subject expertise and the current legal system. There is an opportunity for the academic themselves to learn new insights. In one sense much of substantive law teaching is based on reality through use of real case precedents to illustrate legal principles and the development of the law. Nevertheless, the inevitable focus on appellate decisions provides an artificial perspective of how the legal system routinely operates. Knowledge of “coal face” issues can prove a catalyst for reflection, critique and renewal of perspectives.

*Sustainability* – While clinical legal education remains a separate enterprise from the core teaching of law it is vulnerable to being undermined due to ideological opposition, changing educational fashions or resource cuts. In many jurisdictions clinical legal education survives (if at all) due to the personal dedication of those involved rather than deep-rooted institutional support. There are numerous examples of clinics that have emerged due to the availability of external funding or the interest of key faculty members only to fall away once the funding ends or faculty move on. That which makes clinical education distinctive is also that which makes it expendable if an institution is looking to make cuts or to go “back to basics”. Integration of clinic with the core curriculum reveals its value as a teaching methodology and enhances its prospects of surviving and prospering in the long-term.

*Student engagement* – As noted above, pedagogic research confirms that which intuitively makes sense: learners respond positively to variety.<sup>21</sup> Clinical legal education provides a different perspective on the meaning, operation and consequences of legal rules and doctrines. As part of a legal education that includes instruction, dialogue and critique, clinical activities can provide students with a richer tapestry for their learning. Moreover, as will be argued below, some forms of clinical legal education – those which involve real legal consequences – have the potential to engage student imagination and enthusiasm in a way that no other methodology can achieve. By

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<sup>21</sup> See the sources cited at footnotes 14-16, above.

harnessing some of this energy within the regular law curriculum it is possible to lift the whole experience.

### **Mechanisms for clinicalising the curriculum**

If the principle of integrating clinic is accepted we must address how best to achieve this. There are various approaches that can be adopted. We wish to outline two approaches: (i) integration of simulated activities and (ii) integration of real legal experience. Our Law School has made significant strides towards the implementation of the first but we now think the time has come to be more radical and seek to achieve a fuller integration of reality into the law curriculum.

#### *Integration of simulated activities*

The obvious means for programme designers seeking to bring in more clinical methodology is to draw upon simulated experiential activities. These are often more resource friendly and almost always more predictable and manageable than real experience. We have done this to a significant extent in recent programme re-design at Northumbria. The new degree programmes contain a much more obvious clinical flavour than previously.

At a definitional level we have adopted a broad and flexible spectrum of “clinical and experiential learning” meaning “learning that requires students to engage with and reflect upon the practice of law.”<sup>22</sup> This encapsulates modest skills-based and simulation activity at one end and full blown live client representation at the other. We encourage faculty to incorporate clinical and experiential learning within their modules in a way that enhances the delivery of their core syllabus rather than detracting from it or supplementing it.

On a structural level we have ensured a minimum guaranteed clinical and experiential content by agreeing to implement a clinical “stream” within all compulsory subjects in the first three years. Thus compulsory modules each have responsibility for delivering the clinical stream activities for a significant but not dominant period throughout the year. For example, there are four core modules in year one: Contract, Property, English and EU Legal Systems and Crime, Litigation and Evidence. Each takes responsibility for the clinical stream for a period of approximately 4 weeks during the year which gives the students 4 months of exposure to clinical activities across the year in a variety of substantive contexts.

Examples of experiential activities are as follows:

*Criminal case study* – In Crime, Litigation and Evidence year one students are provided with a bundle of realistic prosecution and defence statements and exhibits regarding an alleged sexual assault. This forms the basis of numerous small and large group sessions to examine in detail issues relating to the parameters of sexual assault, police powers and court procedure, the role of prosecution and defence lawyers and the principles of admissibility of evidence. Exercises include case analysis, drafting defence disclosure, bail applications, and challenges to indictments and evidence. It culminates in a mock trial.

*Cross-module<sup>23</sup> problem based learning project* - Students studying on separate second year modules

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<sup>22</sup> Northumbria University M Law Teaching and Learning Strategy, 2008.

<sup>23</sup> Barry et al note that while teaching doctrine in distinct areas such as tort and contract is useful: “teaching law without giving students a feel for the

of public law and tort/civil litigation interviewed an actor client wrongfully arrested by the police – thus involving both public law, tort and litigation issues. Students were not lectured on the areas of law. Instead, students set their own research objectives using PBL methodology<sup>24</sup> and researched the facts and the law in order to come to reasoned conclusions on advice to give to the client. Outcomes included: greater levels of student motivation and preparation; enhanced performance in examination on the areas studied; students expressed the belief that their ability to research had been enhanced and several commented that they felt able to work far more independently and with more self confidence

*Integrated mootng programme* – Rather than a traditional Socratic seminar discussion students are required to prepare a fictitious appellate case relating to the area of law being studied in a particular subject. They are required to exchange authorities and then in class perform the roles of appellate bench and senior and junior counsel for each party. In this type of role play exercise they develop deeper research skills and enhance their experience of oral communication in a structured environment.<sup>25</sup>

*Simulated interview with an actor* - we have used this activity in conjunction with problem based learning projects. Students interview an actor in order to obtain instructions about the legal problem. The advantage of presenting the problem in this way is that students are highly motivated by the opportunity to begin to practise lawyering skills. They work harder than would usually be the case to obtain the factual information and analyse it. This provides a powerful boost to the problem based learning study.<sup>26</sup>

*Mock transactional file* – Students studying property law and practice are divided into teams representing the vendor and purchaser of a fictitious property. They open up dummy files and correspond with each other, negotiating a deal, drafting contracts, raising queries about title, requesting relevant searches, arranging completion and transfer of monies etc. The tutor is able to intervene to inject complications or to resolve problems. In this way the students begin to understand the procedural framework within which land law operates and appreciate how disputes can arise.

The key to the success of these activities in the context of a programme that seeks to provide a fully rounded legal education is ensuring that they aid the students' understanding of the law and legal system at a level appropriate to their abilities and motivations. They are delivered alongside

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confluence of these categories in addressing client interests instills a fractured understanding of how to approach legal problems that is hard to overcome," Clinical Education for this Millenium: The Third Wave, Barry et al, Clinical L Rev 1 2000-2001, 35.

<sup>24</sup> For an enlightening account of Problem Based Learning in legal education see: The Problem-Based Education Approach At The Maastricht Law School Jos Moust, The Law Teacher 31-32 1997-98

<sup>25</sup> See Gillespie and Watt, Mooting for Learning project Interim Report, a UKCLE research project, <<http://www.ukcle.ac.uk/research/projects/gillespie2.html>> research (accessed 14th January 2009). This study found that 93% of responding institutions

undertook mootng activity, 59% within the curriculum. It is evidence that some forms of experiential methodology are already embraced within academic programmes.

<sup>26</sup> In some environments the use of actors for interviewing has been taken a significant stage further so that the simulated client becomes involved in the assessment of the student interviewing skills. See Barton et al, Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence, 13 Clinical L. Rev. 1 (2006-2007). In the present context we are contemplating the use of an actor to add realism and urgency to the learning of legal rules within the context of a doctrinal law class.

more traditional methods of teaching law and need to be seen as part of the core teaching programme rather than a supplementary skills-oriented / vocational stage. They should therefore be seen as part of the varied repertoire for delivering core knowledge and skills.

To these could be added significant innovative experiential modules which involve students in role playing not only (or perhaps not even) the lawyers but also the clients and other roles that play out in the real world. For example at CUNY school of law in New York, Professor John Cicero taught labour law through turning his classroom into the shop floor, utilising the parallels of the power imbalance between employers and workers and teachers and students to enable the students to feel some of the effects of that imbalance<sup>27</sup>. Other examples include Barbara Woodhouse’s course at University of Pennsylvania Law School where students in a “Child, Parent and State” module explored family policy and state intervention from theoretical, doctrinal and practical perspectives involving simulated role playing of not only the lawyers for all parties but also the parents. The module involved the playing out of these roles through simulated negotiation, and hearings if negotiation failed, using realistic case documents together with practical insight from experienced practitioners and exploration of theory including conversations with policy makers.

*Integration of real experience*

Simulated activities, if they are well designed and implemented intelligently as part of an integrated learning package, can go a long way to breaking down the artificial distinction between the theory and practice of law. We think they have an important place in the encouragement of a more holistic view of the study of law. They will remain a substantial part of our move towards clinicalising the curriculum. However, our aim is to go beyond this and provide students with increased exposure to the operation of law in its real setting. Part of the spectrum of learning opportunities permeating a law degree programme should be actual experience of law in context. This has rarely been attempted to our knowledge – though Barry et al cite several isolated examples<sup>29</sup>. We should emphasise that we are not attempting to teach the whole of the law curriculum via this methodology – merely to add to the variety of current techniques.

There are three main reasons for our focus on real experience. First, real law operates in ways that cannot be predicted by manufactured case studies. By creating problems the teacher deliberately closes off blind alleys and predetermines the outcome. At worst, students will wait for the answer from the teacher. At best, they will attempt to take the predetermined facts and conduct basic research and then apply it to the problem.<sup>30</sup>

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<sup>27</sup> The Classroom as Shop Floor: Images of Work and the Study of Labor Law C. John Cicero, 20 VT. L. Re. 117 1995-1996 as cited in *Clinical Education for this Millenium: The Third Wave* *ibid*. We confess that the extent to which Professor Cicero was prepared to role play and potentially lose control through “firing” one of the students and prompting a student walk out, would prove too challenging for most law teachers.

<sup>28</sup> *Mad Midwifery: Bringing Theory, Doctrine, And Practice to Life*, Barabara Bennett Woodhouse 91 Mich. L. Rev. 1977 1992-1993

<sup>29</sup> *Clinical Education for this Millenium: The Third Wave*, Barry et al, *Clinical L Rev* 1 2000-2001.

<sup>30</sup> *Teaching Legal Research and Writing With Actual Legal Work: Extending Clinical Legal Education into the First Year* Michael A. Millemann and Steven D Schwinn, 459, 441, 12 *Clinical L. Rev* 2005-2006.

Real problems have an organic property giving truth to the saying, “you couldn’t make it up.” As Jane Aitken has commented in the context of client representation:

*“Once they encounter a client, the blind faith that there is a ‘truth’ or a ‘law’ that can be applied must give way to a more sophisticated understanding. Clients’ cases rarely present simple facts that lend themselves to right and wrong answers. It is the complexity and unpredictability of working with real people that makes clinical legal education so rich.”*<sup>31</sup>

A second and linked notion is that real cases enable students to scratch beneath the surface of the legal system and explore the hinterland of expectations, promises and fears engendered by the legal process. As Stuckey has argued:

*“Even the best simulation-based courses, however, provide make believe experiences with no real consequences on the line. As early as possible in law school, preferably in the first semester, law students should be exposed to the actual practice of law. Exposure to law practice may be the only way through which students can really begin to understand the written and unwritten standards of law practice and the degree to which those standards are followed. Students need to observe and experience the demands, constraints, and methods of analysing and dealing with unstructured situations in which the issues have not been identified in advance. Otherwise their problem-solving skills and judgment cannot mature.”*<sup>32</sup>

Thirdly, students generally respond positively to real experience. They sit up and take notice. Reality engenders a motivation that is not possible to create with an artificial scenario. This graduating student feedback is representative of many:

*“Over the past four years I have participated in theoretical cases which are supposed to increase my understanding as to how the law operates in practice, but in reality I subconsciously know that they are false representations and thus there is no incentive to want to understand things quickly. If the degree focused more quickly on working with actual clients with real cases I would definitely suggest that there would be an improvement in the work ethic.”*<sup>33</sup>

The passion for acting in the best interests of a client, particularly clients who are disadvantaged or oppressed by the legal and social system provides a strong motivation to work and a key opportunity to learn:

*“imparting passion for the law may be the most critical aspect of legal education, for with that passion will come the desire to achieve whatever else is needed. For some students – those most like the typical law professor – passion may be derived from the inherent intellectual challenge of the issues presented by the law. For many other students, however, that intellectual challenge is too abstract. For these students motivation must come from other sources.”*<sup>34</sup>

<sup>31</sup> Provocateurs for Justice, 7 Clin L. Rev. 287 at page 292.

<sup>32</sup> Stuckey, Roy, Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses (2006-7) 13 Clinical L. Rev. 807-838.

<sup>33</sup> Anonymous graduating student feedback, Northumbria university, 2006. See also: Angela Campbell’s conclusions as to the need for students studying legal writing to feel that their writing is

taken seriously and that it matters – a recommendation for teaching legal writing, a compulsory course in the United States, through real clinical work: Teaching Advanced Legal Writing in a Law School Clinic Angela J. Campbell, 24 Seton Hall L. Rev. 653, 659-60 (1993).

<sup>34</sup> Maranville, Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences, 7 Clinical L. Rev. 126 2000-2001.

Nevertheless, we are not suggesting that students should be thrown in at the deep end of performing the role of a lawyer right from the outset of their legal studies. In the United Kingdom this would be far too early as students typically commence their law degree immediately upon leaving school at the age of 18. It is important for students to develop maturity, knowledge, understanding and experience in a progressive manner throughout their studies. The experience they have should be commensurate with the stage of their development. But this is most certainly not an argument for leaving the real experience until the end of their studies. Rather, it is a reason for being more flexible and sophisticated about the choice of real experience. Full client representation is only one facet of law in practice. There is a multitude of other activities that students can undertake in order to build their appreciation of legal rules and legal practice short of actual client representation. Ideally such experience will culminate in client representation but the transition will be smoother due to the progressive development of real experience in the context of the core curriculum throughout their legal studies.

*Progression through levels of experience*

We have identified four levels of real experience that we suggest may coincide with the typical four years of university study for students who undertake the academic and vocational stages of legal education for the legal profession in England and Wales. Our argument is that these levels should be added to the panoply of existing methods of educating law students. They should be seen not as part of a purely skills-based agenda or as an eccentric but unnecessary luxury but as part of the routine means of delivering the curriculum. For each level we have given one brief example and we go on to provide a more detailed example below. We are aware that a large proportion of law graduates do not progress to the vocational stage. However, these levels of experience are, we feel, equally valid for a law graduate who does not go into legal practice. The justification for exposing students to real legal experience is to enhance their understanding of the subject they are studying, not to train them to be practitioners.

*Level 1 – Observational experience* – at an early stage of their studies students should be able to observe the law in practice without having any responsibility for performing tasks. By observing the law in practice they can make connections with their classroom discussions and begin to understand the context within which the legal rules operate. Our example is a first year court visit requirement whereby our students are required to make arrangements to visit a local court for a day to observe legal proceedings and then to write a reflective commentary about their experience. The key to making this effective within a substantive class is ensuring that students attend hearings where they can observe the practical application of the legal rules and principles they are studying.<sup>35</sup>

*Level 2 – Collective participation* – as students progress in their understanding of legal rules they can be challenged to participate in activities that have real consequences. Collective participation shares the burden of responsibility thereby reducing the individual pressure students might feel but raising other dynamics such as the need to work as a team and to begin to understand the

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<sup>35</sup> We recognise that court observation is hardly an entirely new idea: “Is it not absurd that during his law-school career a student should not be encouraged frequently to visit court rooms?” Why Not a Clinical Lawyer School? Jerome Frank 81 U.

Pa. L. Rev. 917, 907 1932-1933. It is a matter of concern that there is still so little use made within degree programmes of the excellent free resource of the courts. Learning law without observing courts is like learning music without attending concerts.

responsibility involved when working on behalf of “client”. An ideal method of helping students to understand legal rules is to require them to articulate those rules to people or organisations likely to be affected by them. Students can plan, prepare and deliver a legal presentation in accordance with a brief they have agreed with the prospective audience. Student participation in public legal education projects like Streetlaw schemes has the potential to provide a valuable service to the community while at the same time pushing students to explain often complex provisions and appreciating the difficulty lay people have in understanding legal rules.<sup>36</sup>

*Level 3 – Individual participation* – Students can become involved in clinical case work without necessarily having full responsibility for the progress of a case. Early exposure to the discipline of meeting and dealing with real clients is an ideal way of inducting students into a professional organisation. Alternatively, students can be required to work on part of a clinical case even though they will not have personal ownership of the file. One example is our third year interview and referral module whereby students prepare to conduct an initial interview with a potential client of the fourth year Student Law Office programme. It can involve any area of law and so the students are only able to perform a basic fact finding function. Following the interview, the students prepare an attendance note and refer the case to fourth year students. The third year students continue to work on the case, however. Working in small groups with a tutor over a series of seminars, they focus on one of the cases they interviewed clients on to identify research objectives and research the legal issues surrounding the case. Within a matter of a few weeks they produce a research report for the fourth year students and meet with them to discuss how the case has developed and their view of the legal issues.

It appears that in the United States there is a movement in the Legal Research and Writing (LRW) sphere towards using real cases<sup>37</sup>, sometimes in first year (though in the US this is of course postgraduate) classes. This appears to us to be a good example of an attempt to achieve outcomes via integration of traditional and clinical methodology.<sup>38</sup>

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<sup>36</sup> It has been argued that Street law and other community engagement activism can fact produce deeper and more long lasting benefits to the community than individual client representation: “community education reaches under-served populations, provides opportunities for clients to have their voices heard, responds to concerns that cannot be adequately addressed by the legal system, encourages individuals to solve their own problems, and develops leadership skills in community members.” Eagly, *Community Education: Creating a New Vision of Legal Services Practice*, 4 *Clinical L. Rev.* 433 (1997-1998).

<sup>37</sup> For details of the extent of collaboration between clinical and LRW faculty see Comment: *Survey of Cooperation Among Clinical, Pro Bono, Externship, and Legal Writing Faculty* Sarah E. Ricks and Susan C. Wawrose 4 *J. Ass’n Legal Writing Directors* 56 2007 and for the 2007 survey by the US Legal Writing Institute: *Collaboration Between Clinical, Externship, Pro Bono and LRW Programs Results of 2007 Survey* by LWI Committee on Cooperation Among Clinical, Pro

Bono, and Legal Writing Faculty see <http://www.lwionline.org/surveys.html> last accessed 23.12.09

<sup>38</sup> Millemann and Schwinn have presented an inspiring study of a first year class in LRW. (*Teaching Legal Research and Writing With Actual Legal Work: Extending Clinical Legal Education into the First Year* Michael A. Millemann and Steven D Schwinn, 459, 441, 12 *Clinical L. Rev.* 2005-2006). Two different models were used, one of which utilised a criminal appeal case being conducted by more experienced upper year students in the school’s clinic. The upper year students took responsibility for the client’s case overall, gathering the facts and briefing the LRW students. The LRW students had to evaluate the legal issues, understand the criminal process as it stood at the time of the appellant’s trial and brief on and argue the points in class. Their conclusions were that actual legal work motivates students to learn the basic skills of LRW and begin to develop the use of facts and construction of legal arguments in response to indeterminate legal issues. Professor

*Level 4 – Personal professional responsibility* – As students mature and develop their understanding of law and legal process they can be expected and trusted to take more responsibility for the handling of client affairs. This is particularly, though not exclusively applicable to students who clearly intend to practice law as a career. Student participation in in-house clinical courses or externship programmes place the student in the position of prototype lawyer. They will be closely supervised but they will have ownership of the case and will feel the weight of professional responsibility and commitment to a client’s case. It provides an opportunity for the student to see the pieces of the learning jigsaw finally fit together. Their substantive knowledge, intellectual and legal skills should combine to produce an experience that is similar to real life practice. As previously stated this may still be seen as the capstone on earlier experience but the difference with existing practice is that it will not be such a shock to the system because the student will have encountered real law and its implications throughout their studies. A further development could be that the full clinical experience will be part of or sit alongside the students’ substantive law study so that there is integration of doctrinal and practice-oriented learning.<sup>39</sup>

## Conclusion

We accept that clinical legal education has its limits. We do not suggest it is the best methodology for achieving all objectives of the law school. However, we argue that its integration with other techniques can provide students with a more complete legal education. It has value not only in developing skills competencies but in deepening understanding of the substance of the law. We think that careful, progressive use of simulated and real experience in the core modules will help to achieve the hopes for the future expressed by Barry et al that:

*“In the new millennium, law school clinics cannot continue to be the repository for the many aspects of lawyering that are excluded from substantive law courses taught with the casebook method. The aim ... should be to incorporate clinical teaching methodology into non clinical courses to teach lessons that will be further developed and re-inforced by in-house clinic and externship experiences.”<sup>40</sup>*

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Tracy Bach of University of Vermont Law School describes a LRW class for first year postgraduate students whereby they researched and wrote memoranda concerning a civil action relating to lead poisoning of a child. The case was to be brought by a public interest lawyer who needed research assistance (Cooperation, Not Collision: A Response to When Worlds Collide Tracy Bach, 4 J. Ass’n Legal Writing Directors, 62 2007). Others examples from the US include an attempt to involve undergraduate students in experiential learning using either an active capital case being conducted by external lawyers or reviewing previous erroneous convictions. (It’s not just for law school anymore: clinical education for on the death penalty for undergraduates Jon Gould 53 J. Legal Educ. 174 2003). In the case review class, students

researched through news reports and the internet to find suitable miscarriage cases and finally investigated 3 such cases. Students obtained both written material and sought information from the subjects involved in the cases. A report was produced and students presented their recommendations for reform to both justice officials and a former US Attorney General. Students were as likely to praise the course for its emphasis on critical analysis as they were to praise it for a first hand experience of the justice system.

<sup>39</sup> See Mitchell et al, And then suddenly Seattle University was on Its way to a parallel, integrative curriculum, 2 Clinical L. Rev. 1 (1995-1996) which describes a shift to combined doctrinal / clinical classes.

<sup>40</sup> Barry et al op. cit. at p.38.