

Teaching Law and Legal Practice in a Live Client Clinic

John Boersig, James Marshall, Georgia Seaton*

Introduction

When Anthony Amsterdam spoke about Clinical Education in the 21st Century, looking at that time 16 years into the future, he foresaw an increasingly important role for this aspect of legal education. He predicted that by the mid-nineties, the clinical method, although still used only on a small scale, would nonetheless have an established place in legal education. Amsterdam postulates a number of reasons for this trend. He identifies the fundamental difficulty for legal educators as being the increasing complexity of our society leading to the law becoming far more complex and specialised. This has implications for legal practice, and consequently for the curriculum of law schools, in that given the substantive proliferation, complexity, and fast paced growth of modern law, it had been impossible to teach students the *corpus juris* in any meaningful sense, long before the 1980's. At best, the law schools could convey to students a very small and rapidly outdated portion of all the substantive law there was, or even that any one lawyer was likely to need.¹

It is in this context that clinical legal education comes into its own as an essential part of a law student's education. As Amsterdam notes, the move of all law schools must be towards a broader range of legal analytical methods and skills, which in turn would allow a student, and ultimately a legal practitioner, to learn and use the substantive law as and when it is needed.

An examination of the status of clinical legal education in Australia clearly reveals Amsterdam's predictions to be true. Keen interest is now

* Senior Lecturer and Director, University of Newcastle Legal Centre, Associate Lecturer and formerly Associate Lecturer, School of Law, The University of Newcastle.

¹ A G Amsterdam, "Clinical Legal Education "A 21st Century Perspective", (1984) 3 *J Legal Ed* 612, at 618.

expressed by a majority of law schools in developing clinical legal education. By 1998 Clinical Legal Education Programs were offered in 13 Australian universities, and of these 8 had 'live client' programs.²

It is in the field of clinical legal education that many of the newer law schools have provided leadership.³

In the more established law schools the need to offer a professional legal education has been recognised, and practical legal training programs, some with clinical components, are now being offered to law students from their respective universities and have been open generally to students of other universities.⁴ Skills training is even more broadly accepted and is now offered through the University of Sydney.

Clinical Legal Education may be defined as the teaching of law and legal practice, procedures and skills through experiential learning. Experiential learning involves the interaction between law faculty staff, students and actual clients in real legal matters. A live client clinic is generally operated by a law faculty, and is effectively the undertaking of a legal practice by law faculty staff with the assistance of law students who are involved in the conduct of the legal practice. This teaching method relies significantly on a clinical model, and in particular, the supervised involvement of students in the conduct of a legal practice.

This paper will examine the role of a "live" client clinic within a law program, and test Amsterdam's prediction that clinical legal education has an integral role in legal education in the new millennium. It is suggested that clinical legal education rests on a continuum of continuing legal education for law students and legal practitioners, and finds its place on this continuum with substantive law teaching, practical legal training and continuing legal education for legal practitioners. A full and rounded legal education for lawyers would include all these aspects, and in particular practical legal training and clinical legal education should be combined with the teaching of substantive legal principles at law schools.

² J Giddings, "A Circle Game: Issues in Australian Clinical Legal Education" (1999) 10 *Legal Ed Review* 33, 35.

³ The University of Newcastle, The University of Western Sydney and Flinders University being examples.

⁴ Monash University, Griffiths University, and The University of Queensland.

⁵ The issue has prompted considerable research. See, for example, Leonard Baird, "A survey of the relevance of legal training to law school graduates", (1978) 29 *Journal of Legal Education* 264; also Noel Jackling, "Academic and Practical Legal Education: Where Next", (1978) 5 *Journal of Professional Legal Education*.

A 'Live Client Clinic'

The term 'Live Client Clinic' has been adopted in Australia to describe the academic delivery of legal practice knowledge, skills and attitudes. The phrase has its origins in the United States of America experience. The history of Clinical Legal Education in America goes back, at least in terms of the debate about its place in law schools, to the 1960's⁵. In fact the introduction of live client teaching within an academic curriculum found considerable resistance from the academy which itself had moved the teaching of law away from an apprenticeship model into traditional university settings as part of an intellectualisation of legal education.⁶

In Australia clinical legal education (CLE) gained momentum in the early part of the 1990's. Initially only a few universities undertook CLE,⁷ although law students and faculty have historically played a role in the community legal centre movement⁸.

The role of students in the provision of legal services is found in the history of numerous community legal centres and remains an important aspect of the provision of those services.⁹ The goals of community legal centres and law faculties should be mutually inclusive. Whilst community legal centres focus on the delivery of service to their clientele, law schools must focus on the educational needs of their students. In a properly supervised environment, a clinic that involves the provision of services with the assistance of law students, can maximise the delivery of services. The main aim of any law school is to ensure that the correct legal teaching is provided, both in terms of principles of law and in its practical application. In that sense there is a vested interest in ensuring that proper legal advice is provided and that no inappropriate activity or information is mediated through law students. In addition, the practical utility of involving law students, who are able to undertake many hours of work both with clients and in research, should ensure that the limited resources available to community legal centres are maximised.

There are, however, significant differences between a university based clinical legal program and the provision of legal services with the assistance of students. A university based legal system must ensure that educational standards and outcomes are articulated throughout the program and in particular in its design. In the latter case, where educational goals may not be a priority, students are merely able to provide

⁶ Quigley, W "Introduction to Clinical Teaching for the New Law Professor, A View from the First Floor", (1996) 28 *Akron Law Review* 463.

⁷ Notably Monash University at Springvale Legal Centre and University of NSW (UNSW) at Kingsford Legal Centre.

⁸ For example, the Macquarie Legal Centre was assisted by students and faculty of Macquarie University Law School. Garth Nettheim notes that the Aboriginal Legal Service was initially supported by the Faculty of Law at the UNSW, Sir Ninian Stephen Lecture, Newcastle, 23 March 2001.

⁹ Legal Centres at Fitzroy, Redfern, Caxton and Macquarie are examples.

valuable assistance in the provision of those services. Consequently university based programs have a duty to ensure that the clinical program sits within the educational framework of the law faculty to which it is attached. In the result CLE will include assessment, the award of grades and ultimately be judged against academic standards which govern the provision of legal education.¹⁰

In addition legal education at university is increasingly being seen as a primary site for the development of legal ethics. Professional attitudes, as well as legal skills and knowledge, are now core requirements within law faculties, and ethics must be studied before entry into the legal profession. It is clear that CLE is a primary mode for delivering ethics as part of legal education, and through the development of public interest work they can play a significant role in the education of future practitioners in appropriate attitudes.¹¹

The University of Newcastle Legal Centre (UNLC) provides a leading example of clinical legal education in Australia. UNLC is central to the unique provision of legal education at Newcastle University and an essential aspect of the Professional Program. In the latter two years of the LLB degree students may elect to undertake a Diploma of Legal Practice concurrently with their academic studies over this period by entering the Professional Program. The Diploma provides a professional qualification, allowing the student to be admitted to practice upon graduation from university. The UNLC legal practice is not run independently from the educational needs of the students.

The use of the live client model for teaching has been a central factor in the Professional Program offered by the University since the inception of the UNLC itself in 1995. The live client experience, and in that sense the UNLC itself, has provided a centrepiece for the delivery of the Professional Program by the Faculty of Law.¹²

Conducting a 'Live Client' clinic at the UNLC

The foundation of a live client clinic is, of course, the establishment of an appropriate teaching environment. This is done either by the creation of a

¹⁰ The Priestly Eleven in terms of academic components must be consistent with benchmark standards as for example set out by the Australian Practical Legal Education Council.

¹¹ I Styles and Zarski, "Law Clinics and the Promotion of Public Interest Lawyering" in C Arup and K Laster (eds), *Law in Context 65: For the Public Good: Pro Bono and the Legal Profession in Australia*, Sydney: The Federation Press, 2001. See also Giddings, J "Teaching the Ethics of Criminal Law: A Springboard for Pervasive Ethics Teaching", (2001) 35 (25) *Law Teacher* 161.

¹² J Boersig, "Clinical Legal Education - the Newcastle Model", conference paper presented at Australian Professional Legal Education Council International Conference, Sydney, 1996, and more recently a conference paper presented by C Abela, J Marshall and G Seaton, "The Newcastle Experience: Integrated Clinical Legal Education at the University of Newcastle Law School", Australian Practical Legal Education Conference, Perth, 10-12 November 2000.

legal practice by Law School staff, or by integrating law staff into existing legal practices within a community legal centre. What is fundamentally required is the conduct of an actual legal practice. This involves opening the doors to members of the public who wish to obtain legal advice and a program that allows students an integral role in the provision of this service. The provision of a service by law students to the community must always meet rigorous professional and ethical standards.¹³ Crucial to the success of a CLE program is recognition from the Law School that there are vital educational as well as community goals that can be achieved by implementing such a legal practice. Community service, through the development of Law School based legal services, should be an integral part of the training of law students, and can certainly be expected as part of the role of a law school.

In Newcastle, the UNLC is part of the School of Law, and shares a mission with the traditional academics of the School to develop ethics, skills and competence in law students through the provision of a community based legal service. There is a commitment at both the clinical and the academic level to provide high quality legal education and high quality legal services concurrently. These goals are mutually important in an *integrated* undergraduate program.

The UNLC had developed a legal practice that implements these goals and promotes a clinical legal education philosophy. The legal practice is structured so that students engage in a broad range of legal work, including Criminal, Family and Civil Law matters. The case mix of the legal practice reflects the specialist interests of those who supervise the students together with general casework and large public interest cases. It also reflects the legal demands of the community.

Clients who come to the UNLC are aware that it is a teaching institution as well as a community legal centre and have agreed to the involvement of law students in the conduct of their matters. Rather than being seen as an imposition, the involvement of students is regarded by the majority of clients as a positive experience, rewarding for both the client and for the student. This is the experience at other clinics around Australia, where involvement of students is not seen as an impediment to the successful conduct of matters.¹⁴

The legal practice maintained by a clinic is driven by two key factors. The first is the educational needs of the students, and the second is the particular needs of the clients who attend for legal assistance. Blending these two goals together is a complex art that requires a clear vision from those who supervise the clinics. From an educational perspective, the clinic should accept casework that requires the application of the skills, knowledge and

¹³ Judith Dickson makes this point strongly when discussing the role of student advocates in "Students in Court: Competent and Ethical Advocates", (1998) 6 (2) *Journal of Professional Legal Education* 155.

¹⁴ Campbell, S (1991) 9 *Journal of Professional Legal Education* 121.

attitudes necessary for the development of a professional legal practitioner. These features can be found in virtually every interaction between the client, the student and Law School member, and is at the essence of the provision of the service. CLE offered through Newcastle is experientially based, and grounded in a problem-solving approach to education.

The Link Between PLT and CLE

There are, of course, strong links between the provision of clinical legal education and those of practical legal training (PLT). On the one hand CLE, through live client clinics focuses upon the use of actual client experience and real legal problems in training of law students in both law and legal practice skills. On the other hand, PLT relies on the development of simulated exercises within a classroom environment.

In the main, the teaching objectives of CLE and PLT are similar. As part of an undergraduate degree at Newcastle CLE also seeks to create a synergy between live client work and the teaching of substantive law.

Similar objectives can be seen in the clinical subjects offered by Monash through its clinics at Springvale Legal Centre and the University of New South Wales through Kingsford Legal Centre. The difference is that Newcastle offers a clinical experience both within its own clinical site at the UNLC but also placements with other legal service providers through a two year period, whereas the other universities offer the clinical experience as part of a semester or two semester subject. The synergies developed through the Newcastle experiential model provide ongoing opportunity for interaction with traditional subjects, such as family law and evidence, throughout this period as well as providing an opportunity for reflection upon that experience and practicing of the skills through the PLT components. Obviously a semester course would not hold this extent of opportunity, particularly where it is not linked to a PLT program. The link between PLT and CLE is crucial in that students have an opportunity to practice those skills and refine their knowledge, whereby the clinical experience becomes the high point for the educational outcomes – there is no doubt that a live client experience would provide the highest impact of a student's learning experience.

The similarity in the professional goals of the two programs can be seen quite clearly in the development of the Nottingham Legal Practice Course in the United Kingdom. There the aims of the program were identified as enabling 'students to prepare for practice by learning (a) how to solve clients' legal problems; and (b) to adopt attitudes which encourage professionalism'.¹⁵

Gold talks about these kinds of aims in terms of a formation program in

¹⁵ Nathanson, S and Slorach, "Design and Build: The Legal Practice Course at Nottingham Law School" (1996) 30(2) *The Law Teacher* 187 at 191

which law students are properly prepared for the professional roles which will be expected of them once they enter the legal profession¹⁶. Clearly we are speaking here in terms of competence¹⁷. The learning objectives of CLE have been definitely located within this notion of competence, at both a professional and an academic level. Lundy suggests there are a number of key objectives guiding student education. These are:

- Increase their knowledge of Social Welfare Law
- Enhance their legal skills, and in particular the ability to
 - identify and analyse relevant facts;
 - identify potential legal issues;
 - undertake research using original sources;
 - apply the Law to the facts and give a clear, written analysis of the issues;
 - identify potential courses of action and assess their relative merits;
 - develop a critical awareness of the Law as it operates in practice;
 - draw lessons from the experience.¹⁸

No less an aim has been accepted in the MacCrate Report.¹⁹ A full and well rounded education is clearly one which ensures that a professional graduate has an ability to comprehend the law, and develop the skills and attitudes essential to professional practice. Knowledge, skills and attitudes are at the heart of clinical legal education.

Legal practitioners recognise the need for a shift in the paradigms of legal education.²⁰ The considerable momentum for change is driven by on-going criticism of the traditional approach taken by many law schools, documented in the Pearce Report in 1987²¹ and the MacCrate Report.²² It is clear that the new paradigm which links theory and practice has an important role in legal education, and it is in this context that this paper reviews the role of live client clinics within the CLE model.

CLE must always be delivered in tandem with PLT. As Nathanson notes, the development of simulations within the classroom is an

¹⁶ Neil Gold: "The Role of the University Law Schools in Professional Formation in Law", (1986) 4 *Journal of Professional Legal Education* 15.

¹⁷ Ronwyn Ayling and Margo Costanzo: "Towards a Model of Education for Competent Practice" (1984) 2 *Journal of Professional Legal Education* 94.

¹⁸ Laura Lundy, "The Assessment of Clinical Legal Education: An Illustration", (1995-1996) 29-30 *The Law Teacher* 311, 313.

¹⁹ Legal Education and Professional Development "An Educational Continuum Report of the Task Force on Law Schools and the Profession: Narrowing the Gap" American Bar Association, July 1992.

²⁰ The issue is relevant in Australia: John Wade, "Legal Education in Australia - Anomie, Angst, and Excellence", (1989) 39 *Journal of Legal Education* 189; and internationally: Maureen Fitzgerald, "Determining the content of Professional Legal Education", (1998) 16 (1) *Journal of Professional Legal Education* 69.

²¹ *Australian Law Schools: A Discipline Assessment for The Commonwealth Tertiary Education Commission 1987*

²² MacCrate Report, above, at n 19.

endeavour to capture real life experience. Clearly this is 'easier' to achieve in a problem-solving method adopted in a PLT program. He says,

The difference between formal education and real life experience is that formal education is systematic and coherent, while learning from office experience is irregular and unpredictable. Formal education uses theory to systematise learning and make it more intelligible. Where formal education, such as skills learning, involves learning through planned experience, theory is indispensable.²³

Typically in simulated exercises the 'client' will be a fellow student, pressed to act out the role. Given the general background of most law students, their ability to provide adequate role play in these instances is variable. The issue of lack of control of the teaching environment within a clinic, often raised in the context of educational design, also exists in the creation of the simulated exercise. The simulated exercise will only be as 'realistic' as those who conduct the exercise can make it. Conversely live clients will always present challenges to students without the need to manufacture the requisite problems that they face.

The need for formal strategies, however, is not limited to a PLT program. It is even more compelling to develop a strategy for the delivery of legal education within the kind of clinic environment that produces numerous problems based on multiple legal issues. After all, the educational goals are in many respects the same. The challenge for legal educators within the clinic is to ensure that there is a real link between the theory and practice²⁴. In this context CLE captures the vibrant nature of an actual legal practice.

Essentially, this is a question of design. What must not be lost in the design process is the knowledge, skills and attitudes that theory cannot deliver. PLT simulation, as discussed above, is essentially an artificial construct of real client or advocacy experience. Despite delivering a measure of control, simulations cannot replicate the human element that arises in the real world interaction of client and student, or student and court. While

²³ Nathanson, S "Designing a Powerful PLT Program", (1998) 16 (2) *Journal of Professional Legal Education* 229, 230. Another difference between formal education and real life experience in a clinic such as UNLC is that the student is exposed to the more vulnerable sections of the community and their legal needs in a way not possible through formal education. It is one thing to teach students about the provision of legal aid and access to legal services to those who cannot otherwise afford those services, and that legal aid funding does not stretch far enough in many instances to assist those in need; it is another thing for students to meet clients who have been refused legal aid and are seeking assistance from the clinic. Students are thereby exposed to this problem first hand; many of them will take this experience into their professional life, creating practitioners with a greater awareness of social welfare issues and hopefully a greater interest in pro bono and legal aid work. A further difference is that in live client litigation in which students are involved, students must take into account tactical considerations and questions of legal costs, which are more difficult to learn in simulated exercises.

²⁴ Elliot Burgh, "Clinic in the Classroom: A Step Toward Co-operation", (1987) 37 *Journal of Legal Education* 232, 248

not always an orderly process, live client experience, in conjunction with proper theory, provides an important element that simulated exercises, no matter how well constructed, cannot.

One can draw an analogy between the simulated and the live experience in medical training. No matter how many hours that a medical student may log in a class, exposed to all manner of predetermined crises, there will always be a need for intensive training at the hospital under the supervision of an experienced medical practitioner. It would be unthinkable on the one hand for a medical student to treat a patient with no experience in a simulation of the many possible life or death scenarios that they may face. On the other hand it is also unthinkable for a student to go directly from the simulator to the control of an aircraft without the guidance of a teacher to allow them to gain experience in real world conditions. While the teacher does not have the ability to control random factors any experience at the hospital with a person able to correct errors and provide direction is essential. Such is the interaction between the simulated and the live experience in relation to legal education. We suggest that neither CLE or PLT can reach its full potential without the other.

Designing a Curriculum for a 'Live Client' Clinic

As Twining has pointed out, there is far too little theory about practical legal training.²⁵ On the other hand, since that comment there has been a lot more work in the area of clinical legal education over recent years. Part of the reason for this is that CLE is claiming a larger, more significant share of the work being undertaken by law schools, particularly the newer and arguably more progressive schools. This position was underlined in a recent survey of undergraduate legal education conducted in the United Kingdom. There it is said,

The Survey also revealed interesting developments on the clinical education front. Whilst there is little or no available data on the growth of clinical programs, a significant proportion of institutions (mainly in the New University sector) are using this model and the value of live client work has been clearly recognised. The relationship between clinical programs and the learning of skills is clearly a close one.²⁶

This perspective also recognises that law schools must develop legal education in a way that responds to the needs of legal practice, but this must be done within the context of ensuring that the right attitudes are

²⁵ Twining, WJ "Taking Skill Seriously", in N Gold, K Mackie and W Twining (eds), *Learning Lawyer's Skills*, London: Butterworths, 1989.

²⁶ R Grimes, J Klaff and C Smith, "Legal Skills and Clinical Education - A Survey of Undergraduate Law School Practice", (1995-96) 29-30 *The Law Teacher* 444, 467.

developed in conjunction with legal knowledge and skills.²⁷ In that sense, clinics provide an excellent venue for ensuring that appropriate professional, particularly ethical, standards are passed on to law students. In the live client situation, students have the opportunity to both participate and observe the way actual legal issues are addressed, and this, of necessity, includes the application of legal advice and assistance within the context of the ethical responsibilities and duties of a lawyer.

The 'live' client clinic must set its structure in accord with the educational goals established by a law faculty. A failure to integrate the clinical experience with concurrent undergraduate teaching of the law dooms the clinical to 'poor cousin' status as a sophisticated form of vocational training. Clinical work must be integrated with the teaching of the substantive law to achieve balanced graduates who not only know legal principles but know how to apply them.

Beyond this, account must also be had of the aims of legal education as set out and expected by law schools generally, by those who set the admission requirements to practice and by the community at large in what they expect of legal practitioners. These issues were exhaustively considered in the *McCrate Report*.²⁸ The basis for the recommendations of that Report is the statement of fundamental lawyering skills and professional values. The Report identifies law schools as the best positioned institutions to provide the venue for bringing together the essential ingredients of a proper legal education, noting that, of course, legal education is a lifelong process for those who wish to stay in the profession. Rose, although critical of the Report, does identify it as a re-statement of legal education. He says,

Although the Report advocates that law schools continue to emphasise legal analysis and legal research, it underscores a school's unique ability and opportunity to expose students to the full range of practice skills. Law schools have developed the capacity to teach other lawyering skills. The Report concludes that law schools should increase skills and values instruction.²⁹

Significantly, Rose considers that the development of the capacity of legal education should extend beyond law school itself into the area of the post law school period. Whilst this point is indisputable in terms of the need to provide on-going education for lawyers, he does not give enough significance to the equally important role of preparing law students for practice. This task is specifically addressed in the *McCrate Report*.

Robert McCrate sums up the Report in this way,

²⁷ A Goldsmith, "Heroes or Technicians? The Moral Capacities of Tomorrow's Lawyers", (1996-97) 14-15 *Journal of Professional Legal Education* 1.

²⁸ McCrate Report, above n 19, at 552.

²⁹ J Rose, (1994) 44 *Journal of Legal Education* 548, 552.

The central message of the ABA Task Force Report, *Legal Education and Professional Development An Education Continuum*, is that legal educators, whatever their teaching speciality, and practicing lawyers, whatever their vocational setting, are engaged in a common enterprise: The education and professional development of the members of a great profession. At the heart of this common enterprise is the development of the skills and the values of competent and responsible lawyers along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer's professional career.³⁰

He goes on to comment,

The ideas have a common objective: To create a better profession. The essential quality for every professional is to inspire and to merit trust. If the profession of law is to continue as a respected public calling, each generation of lawyers must earn the public's trust by acquiring the learning, the skills and the values essential to fulfilling a lawyer's responsibility to the justice system and to those whom the profession serves.³¹

We suggest that these ideals are best addressed in CLE. There are a number of features that define the design of a live client clinic. These features will be familiar to all those who are involved in legal education. At the heart of the clinic is experience and reflection. In that sense, the teaching process undertaken during a live clinic experience must be placed in the context of appropriate preparation on the one hand and subsequently, a form of structured feedback. Live client clinics cannot be conducted outside the context of the full educational program for the student. This involves, within their mainstream courses, the teaching of substantive law and also, in terms of practical legal training, the development of appropriate simulations so that students are adequately prepared for the live client experience.

Theory and Practice – Going to Court

One example of this process is the teaching of skills involved in a divorce application, a useful exercise to introduce students to the taking of instructions, drafting of court documents, filing and serving those documents in accordance with court rules, and court appearance on the date of hearing.

In the first few months of the Professional Program, students learn the substantive law in relation to such matters, and at the same time learn family law practice skills through a simulated divorce application. Each

³⁰ R McCrate, "Preparing Lawyers to Participate Effectively in the Legal Profession" (1994) 44 *Journal of Legal Education* 89.

³¹ op cit at 94

student receives a set of hypothetical instructions, some receive copy-marriage certificates in relation to those instructions, others must apply to a simulated Registry of Births, Deaths and Marriages to obtain a certified copy, or obtain an affidavit of translation from a simulated accredited provider. The students, acting on behalf of their 'client', file documents with the simulated Registry of the Court, some are requisitioned as in practice for failing to submit required documentation or filing fees. Students must then attend to service of the sealed copy documents upon the 'respondent', taking into account the rules of court in relation to time limits and documentation required.

Ultimately, students then appear in the mock court room before a 'Federal Magistrate' upon hearing of their applications. Students learn quickly that the strength of their application lies in the careful preparation of documents; some learn, as in practice, the embarrassment which may arise when the bench draws attention to problems with their applications. Although these applications are uncontested, this is one of the first appearances in the mock court that the students undergo in the Professional Program and a great deal is learnt at the same time about court procedures and etiquette.

Having learnt in this simulated environment, students are then given the opportunity to represent a 'live client' under supervision of an experienced practitioner. The School of Law at Newcastle has arranged with the Family Court and the Federal Magistrates Court for students to have leave to appear, provided they are supervised during the hearing by a practitioner, under the 'Student Appearance Program' that has been devised between the Court and the Director of the Program. Leave to appear is granted not just in divorce applications, but also in other less complex matters such as the filing of Terms of Settlement and adjournment applications. In divorce applications, students may represent a client of the UNLC, having prepared the documents and attended to all necessary matters in order to have the matter ready for hearing.

The completion of a simulated and then a 'live client' divorce application is useful in terms of developing legal practice skills and understanding the law. It also meets the aim of developing a 'critical awareness of the law as it operates in practice' referred to by Lundy above.³² Students are exposed to this aspect of learning in terms of their studies in family law in later exercises involving both simulated exercises and exposure to children's matters, property and spousal maintenance matters that arise in the UNLC practice in which they are involved.³³

³² See above, at n 11.

³³ Students study substantive family law, as well as completing simulated practical exercises involving the drafting of consent orders in children's/property matters; drafting of documents and appearance on the first return date before a Federal Magistrate on a Form 3 Application (involving inter alia interim applications for residence, custody, specific issues, spousal maintenance, and injunctions in relation to disposal of property prior to final hearing) and appearance in a Family Court final hearing.

An Educational Continuum

Another example of the 'structured learning' approach whereby simulated exercises lead to 'live client' experience is the teaching of a module on children's law within the subject Trial Process, a compulsory subject in the final year of the Professional Program at Newcastle. The module calls for four components and would be undertaken as follows:

Lecturing

A lecture is given by clinical staff, outlining the essential features of the children's courts, including the provisions in relation to addressing the Court on a plea in mitigation. Factors included in the lecture include both law and legal practice issues.

Simulation

The students then participate in a simulation role-play. In the simulation one student plays the role of a young person charged with a criminal offence. Another student interviews them, and from that a plea of guilty is prepared. The students work in groups to develop an appropriate plea. The plea is then delivered in a mock courtroom exercise, with appropriate comment and feedback. The pleas are videotaped to assist in feedback.

Attendance at Court

Students then attend a local Children's Court and, over a period of a number of weeks, are involved in the taking of instructions and the preparation of pleas which are presented in the Court. The students work with legal practitioners and may present the pleas in Court.

Reflection

A final class is conducted in the module where students are asked to discuss their experience in Court. During this discussion students are able to dialogue and grapple with both legal and ethical issues relating to Criminal Law and Children's Court practice.

When looking at this exercise an appropriate evaluation of the Children's Law module will take into account that it is undertaken within the overall learning continuum provided by the subject Trial Process. The subject covers a range of legal areas relating to advocacy. The subject is also delivered in the context of a two year program. During the course of the two year program, students will undertake a range of learning activities from traditional law teaching through to specific clinical lectures on legal practice, simulated exercises, and live client interaction. The end point experience of the students taking instructions from a client and a plea being presented in Court has in it an element of an *ad hoc* nature. This is due to the fact that the ultimate 'exercise' will depend on the particular circumstances of the client. However there is clearly an overall structure

that provides a systemic approach to the development of knowledge, skills and attitudes. In other words, the final exercise occurs within the context of a program with specific goals and objectives.

In the model discussed above we see an example of curriculum design which takes into account both substantive law and legal practice applications of the law. Theory and practice are in a dialectic relationship and the learning in each area is enhanced by connection with the other. It is also an example of the problem-based method of teaching. Certainly, the final exercise is one where the particular facts are not controlled by the lecturer, as would be the case in a simulation. This does not, however, mean that the learning experience is depreciated; in a real sense there is an enhancement of the learning experience because of the way in which the student must interact with the client. This random component emphasises to the student that there is a fundamental individuality in the relationship between lawyer and client, and that the competent lawyer must be able to respond to the particular set of facts that arise in each case. It also shows that the application of the law is something that is fundamentally grounded in the facts of the particular case³⁴.

In terms of the educational outcomes of this process there are at least two aspects. For the student there is an increase in knowledge and understanding of the application of the law in practice. They have learned and exercised new skills, and this has taken place in the context of a lesson in their professional and ethical duty to the Court and the client. For the client there has been the provision of a professional service. The client has been given an answer to their legal problem and, ultimately, advice and representation within the legal system. Certainly, this requires significant supervision and mentoring by supervising staff. It is also an approach that clearly falls within the checklist of fundamental lawyering skills identified by the McCrate Report.

Looking back again at the divorce and children's court exercises referred to above, we can also see in each case that the student was required to undertake problem solving, apply legal analysis and research. There has been a factual investigation conducted, and these matters and conclusions were communicated to the client (and ultimately to the Court). The interaction between student and client requires negotiation (and often, as happens in real life, counselling). Furthermore, the student has been required to exercise those skills in a courtroom setting ensuring that the case is adequately prepared for litigation. Finally, the student has had to

³⁴ See *W Twining*, above, at n 25. Students in the first year of the Professional Program at Newcastle have commented upon this issue following their experiences in taking instructions from clients of the Legal Centre during the advice sessions. One student in her reflective journal (2001) said that she suddenly became aware during the taking of instructions from a client, seeking advice on breakdown of her marriage, that the issues raised involved a myriad of legal and other problems, and how this was far more complex and wide ranging than those more limited issues encountered in simulated problems in various law courses throughout her studies which were generally limited to one area of the law.

consider the simulation initially, but more particularly the live client exercise, within the context of the professional and ethical duties expected of lawyers in legal practice.³⁵

Cole identifies similar outcomes in her experience in '*A Semester in Practice*'.³⁶ In this paper she describes the interaction between what is being taught and what the students learn within a clinical subject. Significantly, she identifies curriculum goals which include the objective of students developing their knowledge of substantive law as well as law skills.³⁷

Furthermore, the clinical experience should enhance the student's understanding of the 'material and skills taught in the classroom'. In discussing the positive outcomes which arose during the semester Cole concludes,

As these stories illustrate, practicum-based clinical instruction can provide an incredibly rich background upon which to build lessons in legal education. In the days when law students were trained in law offices and not just in the classroom, we learned more than doctrinal analysis, persuasive writing and techniques of trial advocacy. We also learned listening, decision making, counselling, and how to offer a professional service without making clients feel belittled or overcharged. Our heroes included not only Philadelphia lawyers, but also judges and other public servants.³⁸

Cole goes on to suggest that a primary lesson for the students is that law is practiced in a human dimension, that is we generally act for people, and that this has particular consequences both for the student and for the client. She says,

The Semester in Practice Program attempts to recapture that human dimension by finding role models for students, providing a culture that encourages discussion and reflection, encouraging students to understand and challenge the practices they observe, and providing a forum for supervising attorneys and judges to come together to discuss teaching and supervision and to improve their own abilities as mentors. The program seeks to weave together the strengths of a centuries-honoured tradition of learning at a mentor's side without abandoning those advantages which a dedicated faculty, in an academic setting, can bring to the study of law.³⁹

³⁵ McCrate Report, above n 19, at 138-140.

³⁶ Liz Cole, "Lessons from a Semester in Practice", (1994) 1 (1) *Clinical Law Review*, 173.

³⁷ Above, at 175. A number of students have commented on this issue in their reflective journals in 2001. One student wrote "Advice sessions and file work at UNLC makes it easier to understand substantive law, it all starts to make sense!" A lecturer in the subject Trial Process, observing students appearing in a simulated family court hearing before Judges of the Family Court, notes that she "watches the penny drop" as students grapple with substantive law, advocacy, law of evidence and court procedure, "pulling together everything they have learnt over the last four and a half years".

³⁸ Above n 19, at 185.

³⁹ Above.

Clinic as Site for Client-Centred Teaching

In Australia we have seen similar endeavours to unite the academy and practice. The support from legal educators for a client-centred approach to teaching further underlines the value of this approach⁴⁰. One of the major failings that have been identified of lawyers in legal practice is poor communication and client management. Some argue that the current emphasis on appellate-based teaching means that the impact on the client is not properly considered.⁴¹

There are limits to the problem method of learning taught in a classroom. One issue is that the student is only required to consider specific, identifiable legal issues in a particular context of the topic taught. For example, the principles of a problem based on Family Law within the context of parental contact would not deal with issues which a client generally would also bring, that is, property settlement, counselling issues and ongoing support. In consequence, it is suggested, students are shocked when they finally enter legal practice. It is in practice, of course, that the student now faces a client and the client's problems. This is a problem of context. Handley and Considine express the dilemma well,

Students should understand that the client's focus on a problem may be very different from that of the lawyer. Commonly, the client will not distinguish between those facts that are material or relevant to the legal issues involved and those that are not. From the client's perspective, there may not be any apparent need to do so, given that the client's focus is on resolving the matter whether the law is involved or not.⁴²

The result for a student practitioner, and indeed for legal practitioners, is that they must listen to what the client wants and determine what are the client's goals. This, of course, is the fundamental lesson of legal practice and the ultimate basis for a lawyer's retainer.

We suggest that not only does the 'live' client clinical experience provide law students with a better understanding of client's specific needs, but also provides for an understanding of broader social justice issues at a crucial stage in their development as professionals. On the whole the clients who attend the live clinics or are accepted as clients at the UNLC are drawn from the more vulnerable groups in society. This provides law students with powerful insights into the broader social issues that face the law, and makes them better practitioners, whatever the area of law in which they may ultimately practice. This is an important argument for both live client clinical experience and undergraduate programs.

⁴⁰ R Handley and D Considine, "Introducing Clients into the Law School Curriculum", paper given at APLEC Conference Paper, 2 November 1995.

⁴¹ Above, at 6.

⁴² Above, n 40.

It is arguably too late to leave clinical experience to postgraduate legal practice. As Paul D. Carrington suggests,

Our students generally bring to law study a profound misconception of the nature of the law. It is their original sin to suppose that one who assimilates a sufficient number of legal rules or principles is thereby made a lawyer⁴³ (and) ... it is chiefly wisdom and moral judgment, or prudence as Anthony T. Kronman would have it, that makes a lawyer competent to render service valuable to paying clients. Effectively to endow students with that insight and to elevate their professional judgment is, in a sense, to lead them on a pursuit of truth.⁴⁴

PLT, which relies on a simulated program, lacks the ability without CLE to meet the moral or professional judgement mooted by Carrington. It is not a coincidence that the word 'clinical' is taken from the medical experience and literally translates as 'at the bed'. Whether it is medical students accompanying a specialist on his or her rounds or law students working on a live file under the direction of a supervising legal practitioner, the educational aims are the same. That is, that through the dynamic of live client interaction the students are not only able to learn the procedural aspects of their profession but also understand and resolve the ethical and moral concerns that arise in legal practice.

Conclusion

There can be no doubt, as predicted by Amsterdam, that Clinical Legal Education has found a firm place as an integral part of the preparation of law students for legal practice. It is increasingly being recognised as a foundational process in the formation in law students of the knowledge, skills and attitudes expected of professionals. These are standards demanded by the community, recognised by professional associations, and best fostered by an academy that accepts the obligation to deliver legal education with both theoretical and practical components.

A balanced and complete legal education is one which provides law students with live client experience in addition to legal theory and simulated practical exercises. The education provided to law students at university must be seen as part of the continuum of education that instils lifelong learning patterns. CLE promotes an environment in which legal skills and procedures are learnt, in the live client experience, and when properly conducted within a framework of measured goals and objectives, provides enhanced learning of the substantive law and a deeper

⁴³ Paul Carrington "Teaching Civil Procedure: A Retrospective View", (1999) 49 (3) *Journal Of Legal Education* 311, 312.

⁴⁴ Above, n 43 at 312.

understanding of social justice and ethical issues.

The law ceases to be a purely academic learning exercise, and becomes a very real means by which human problems are resolved. It is the human aspect that provides the most important element in the live client clinic, and with proper care the issues of control and management of experiential learning which arise in undergraduate CLE programs can be fully addressed. The live client model elevates the clinical area of legal education from mere vocational training for a professional group, to proper preparation of lawyers for their role in society, which includes the provision of community service and the development of professional and ethical attitudes.