

COMPILING EACH NEW ISSUE OF THE DIGEST

As subscribers are aware, every three months the Centre publishes a new issue of the Legal Education Digest. Occasionally we are asked about the procedures we follow in assembling the Digest. Here is how it is done.

The first step is to perform a number of electronic database searches. With the assistance of the University of Sydney Law Library, our research assistant, Tim Marshall, carries out searches in three principal legal and education databases, originating from Australia (AUSTROM; sub-databases: Australian Education Index; Attorney General's Information Service), the United States (WILSONDISK) and the United Kingdom (LEGALTRAC). These provide a comprehensive coverage of the articles, books and other publications on legal education issues emanating from the common law world.

As would be expected, the four major journals on legal education, each with a different focus, namely the Journal of Legal Education, Legal Education Review, the Journal of Professional Legal Education and Law Teacher, are bound to be the sources from which we draw many of the articles we digest. However, through database searching we are able to keep more than 200 other journals under review, a list of which can be obtained from the Centre at no charge.

Additional materials often come into the Centre's possession in its role as an information clearing-house on legal education, such as reports from around the world on research projects, policy development etc. Sometimes we also receive requests from authors to consider articles for digesting.

Tim Marshall's next task, once he has tracked down the articles, is to copy them and to prepare the working drafts of the Digest entries. At the

same time, I am writing the more substantial review articles, which have now been a feature of the Digest since Vol.3 No.3, of the books and reports identified as being especially significant contributions.

Once Tim has finished his working drafts, he passes them on to me on disk for consideration as to whether they are worthy of inclusion. In my quality control function as editor, I also read all the articles and edit Tim's drafts before writing the editorial.

The materials for the issue are then supplied on disk to Kate Massy-Greene, the Centre's Administrator, who lays out the Digest according to a standard format and gives it to me for proofing and final approval, before dispatching it to the printer.

Our aim is for each issue to contain about 20 digested articles plus two review articles. In order to maximise topic coverage, our intention is to abstract a wide range of articles falling under as many subject headings as practicable. We are also concerned that a Digest entry should contain a sufficient account of the article to enable readers to make a fully informed decision as to whether or not to take the trouble to obtain a copy with a view to reading it in full.

Editor

CLINICAL LEGAL EDUCATION

REVIEW ARTICLE

A guide to implementing clinical teaching method in the law school curriculum

S Rice (with G Coss)

Centre for Legal Education 1996

This small book, published by the Centre for Legal Education in early 1996, is an invaluable guide to the use of the clinical method in law schools.

It provides a comparative examination of the range of clinical models available in Australia, North America and England and concrete advice for curriculum development purposes on which methods are appropriate for different educational aims at each separate stage of the law degree. As the intended audience is primarily Australian, suggestions are made about which of the models are suitable for the Australian law school environment. However, the messages contained in the book are of wider application and there is bound to be a market for it wherever the introduction of the clinical method is being contemplated by law schools.

The aim as stated in the book is to provide a 'Guide...that is intended to be an accessible and useful document. The Guide should be useful to those who are planning or managing a law degree course, and who want to consider the feasibility of introducing a clinical element into the curriculum'. It is the culmination of a long-term research project, conducted by the author, who at the time was the Director of the Law Faculty of the University of New South Wales' clinical program at the Kingsford Legal Centre¹. As such, it draws upon the extensive academic literature and the author's considerable experience of the clinical method in action. However, as he points out, whereas much of the debate in the literature deals with the educational viability of clinical programs, 'the real difficulty faced by the law school, after accepting the worth of the clinical method in broad principle, is the design and implementation of an appropriate form of clinical teaching'.

Chapter 2 contains a potted history of the clinical method, necessarily short in a small guidebook focusing on issues of practical implementation. The formative factors in its

¹ Simon Rice is now the Director of the Law Foundation of New South Wales.

dissemination are identified as community legal service, educational theory and the desire to provide practical legal training, particularly in skills. However, the author is at pains to establish a clear demarcation line between clinical legal education and practical legal education and claims that this distinction is blurring because of the increasingly loose usage of the term 'clinical'. He identifies the defining features the former as five-fold:

- students participating in the 'lawyer/client dynamic' through the use of real clients. Hence, 'legal education that is client-focused but which does not create a relationship between students and real clients, such as problem-based learning and simulations, is not strictly clinical'.
- the fact that it goes beyond skills training and simulations.
- legal service to the community, specifically to poor people, which facilitates some of the enunciated educational goals. The author contends that 'The challenges presented by dealing directly with legal need that arise from social, economic and cultural considerations enhance opportunities for the analysis of law, of legal systems and structures, of lawyers' roles, and of policy and reform issues'.
- student responsibility, namely a significant degree of responsibility being cast upon the student for the conduct of the client's matter and its successful outcome, thereby intensifying the learning process.
- a supervisory teaching relationship. Here the author has a few words to say on the role conflict that afflicts the teacher both in clinical and practical legal training programs, specifically the difficulty resolving the competing demands of being academic teacher/practising lawyer and possibly also 'pretend' employer. The adoption of valid and reliable assessment methods has always bedevilled clinical programs and the author acknowledges that the day to day management of client matters implies a lack of homogeneity about

the students' work, thereby frustrating the usual graded assessment regime. The author offers no practical alternatives to the common pass/fail method. One is left wondering whether there really is any point to trying to rank students in clinical programs, so that 'a proven willingness to consider and reflect on issues' should be accepted as a satisfactory outcome in itself, rather than measurement against a pre-determined standard.

The main purpose of the book, defining the boundaries for the proper domain of the clinical method in legal education, is the subject of chapter 3. The teaching goals that can be addressed when using the clinical method are categorised as: (1) professional ethics; (2) skills; (3) substantive law and jurisprudence; (4) policy reform and community service; (5) personal development; (6) interdisciplinary work; (7) university profile and funding; (8) student motivation; and (9) subject assessment. Each of these nine instructional goals is examined with reference to the application of a number of suitable clinical models, field placement, client clinic, namely integration and simulation. The overall picture is conveyed in a table at page 22 and suggested further readings are provided with respect to the use of different clinical methods in each area. Thus we find that, for the goal of policy reform and community service, three out of the range of clinical models, namely integrated subjects, client clinics and field placements, are the recommended vehicles for achieving these aims. The role of clinical programs as a supplement to the conventional teaching techniques of lectures, tutorials and the case method is persuasively argued. The point is made that legal problems do not present themselves in practice in neatly labelled boxes, so the advantage of the clinical method will be to require 'a student to sift through a number of legal categories, testing

knowledge of each, before being able to resolve the problem', as well as to 'give legal rules an immediacy and relevance which will reinforce them in students' minds in the course of learning'.

However, it is in chapter 4 that the author gets down to the nitty-gritty of the book, providing practical advice as to the advantages and disadvantages of each of the clinical models in different situations and how they can be best implemented. The treatment is very thorough. For example, the client clinic is lauded as 'the most intense model of clinical legal education, with the greatest scope for a broad range of teaching goals, student activity and community service'. Nonetheless, the reasons why it may sometimes be inappropriate are explained. The considerations that must be borne in mind in establishing a clinic are listed as expense, staff qualifications, administration (for separate and in-house clinics), balance of community service with education, site and space requirements, supervision, clinical classes, student time, holiday operation, obtaining clients and assessment. Precise advice is then presented as to how these issues bear on the means of setting up a small in-house clinic and a general community legal service, as well as the hybrid solution, grafting a clinic onto an existing community legal service.

It is in these areas that curriculum designers, contemplating the injection of clinical methods into new or existing courses, will gain the most practical benefit from the book. Not only are the most workable clinical models matched with the relevant teaching goals, but they are also presented with a range of the most important issues bearing upon actual implementation and how the sorts of problems that are likely to arise can be tackled, all based upon the experience of those who have preceded them down what can be a difficult path.

The author notes that there is a vast body of academic description, discussion and analysis of clinical legal education deriving from the United States, England and, to a much lesser extent, Australia. However, it is doubtful whether amongst that wealth of literature there is to be found such a set of practical guidelines which overview the range of methods and provide down-to-earth advice upon how they can best be implemented. Should that prove to be the case, this small book will go a long way toward filling the void.

Editor

Introduction to clinical teaching for the new clinical law professor: a view from the first floor

W P Quigley

28 *Akron Law Review* 3, 1995, pp 463-496.

The mission of clinical education has two goals: to educate students in a new way of learning; and to provide legal services to the indigent. Clinic students learn law by providing quality representation to poor people.

Clinical education is essentially a process of learning how to learn from experience. If the student's experience in the clinic results in merely the transmission of skills from teacher to student in the course of representing people in legal matters, it is not actually clinical education. The most critical element of clinical education is that it is experience-based learning.

Clinical teachers engage students in variations of four stages of supervision: 1. planning by student for activity; 2. conference between teacher and student reviewing student's activity plan; 3. performance of activity by student with observation by teacher; and 4. post-activity analysis and evaluation by students and teacher.

It is important that the initial planning for all clinic activity and all subsequent planning be first conducted by the student alone. The teacher should only become involved once the student has developed a plan of action. The student is assuming the role of attorney and must accept the responsibility that comes with that independence. The review of the activity plan is done by the teacher and student together, discussing the contents of the student's plan, how it was developed, how the teacher reacts to the student's ideas and the amount of teacher direction and control that goes into planning. Finally, there should be some form of practice, simulation or walk-through of the activity planned by the student with the teacher's participation. The student's plan must be competent and contain realistic expectations for achievement and the student must be able to articulate the goals the activity is attempting to achieve.

In the performance, the teacher must become an active observer. The substance of the issues addressed, the skills utilised, the student's adherence to his/her plan and reaction to the unplanned must be recorded by the teacher in detailed notes. Feedback and evaluation are central to the self-directed experiential learning method of clinical education. The role of the teacher is not primarily to review the good or bad of a student's performance but to assist the student in honestly and realistically reviewing the performance. The teacher's first responsibility is to help the student accurately reconstruct the activity; the second is to guide the student towards honest evaluation of what specifically occurred. When the teacher gives her own observations, the same rules of honesty and accuracy apply. Then teacher and student can discuss where they go from there.

New teachers are immediately confronted with the dilemma of determining how far their clinical students are to be allowed to become

counsel for their client. Different clinics have different approaches. Some students may not thrive well in a 'sink or swim' environment and need the assistance of the clinic teacher to avoid being overwhelmed, particularly in the initial stages of the clinic. Determining the appropriate levels of control and freedom is an ongoing challenge. Because the clinic teacher directly supervises only a few students and because there is a great variety of talent at a clinic, the high level of motivation and the intensity of the relationship mean that he or she is more than a dispenser of principles and analysis. The teacher is a role model, a mentor, a trusted co-worker, a judge and a friend. These relationships are more important at the beginning of the clinic but, in each instance, supervisors must be aware of the need to take sufficient time to allow development in these relationships with students.

Clinic teachers have ethical and moral duties to the clients of the clinic and respect must be the fundamental premise of all interaction between the students and the client. The teacher must ensure that both know the basics of clinical representation. It is a good idea to have the client give written consent to representation by a student. While direct contact with people in need can have a transformative effect upon clinical law students, students need to be aware that indigent clients who are not paying for their services are not merely clinical cadavers to be poked, prodded and examined for the student's educational benefit.

CURRICULUM

Curriculum—a judicial perspective

The Hon. Mr Justice W.P.M. Zeeman
13 *J Prof L Ed* 2 1995 pp 215-226

Educating lawyers by means of successive courses of academic and practical instruction with a clear dividing line between the two is