

Legal Education Through Community Service
at the University of KwaZulu-Natal in South Africa

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for

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The South African Legal Profession

South Africa's apartheid-based constitutional system, as it existed before it was restructured in the early 1990s, functioned to advance unjust policies of inequality that the authoritarian government sought to advance. It did not reflect the social and cultural values of most South Africans, but was used as a means of control. The government controlled all guilds and licensing organizations and regulated the medical, engineering, mechanical, technical, educational, and legal professions. Post-apartheid reforms reversing these policies have made great progress, but traces of the apartheid system have been left behind. This is apparent in the attitude of the legal profession which has been slow to evolve from an agent of apartheid policies to a dynamic conduit of democratic values¹.

The legal system in South Africa is a product of several cultural influences. Before the introduction of white settlers, people in the region we now call South Africa lived according to an indigenous legal system.² In 1651, the Dutch government requested that Jan van Riebeeck undertake the command of the initial Dutch settlement in the South Africa. In April of 1652, van Riebeeck arrived in Cape Town.³ His arrival is cited as the point that Roman-Dutch Law was introduced to the region.⁴ The British takeover of the administration of South Africa led to the influence and application of English law in the country. The British influence on the South African legal system is perhaps the most pronounced due to the lengthy colonization of South Africa by the British.⁵ Thus, South Africa's legal profession is adversarial in nature and is

¹ Tony Axam Jr., *A Model for Learning and Teaching - Rights and Responsibilities in the New Legal Order*, 17 S. Afr. J. on Hum. Rts. 3, 406, 405 (2001).

² See Philip F. Iya, *Legal System and Legal Education in Southern Africa: An Overview of Past Influences and Current Challenges* (2000)

³ Id.

⁴ Id.

⁵ See Philip F. Iya, *Legal System and Legal Education in Southern Africa: An Overview of Past Influences and Current Challenges* (2000). The South African legal system is often referred to as plural or dual because more than one cultural or religious group observes its own legal system in the area. Legal dualism presents issues regarding which body of law, if any, serves as the primary source for enforcement and

divided into two kinds of practitioners—attorneys and advocates. The vast majority of practitioners are designated as attorneys.

Attorneys, a majority of the bar, work with clients directly and are most like attorneys in the United States. Candidate attorneys must attend an accredited post-graduate practical training school or complete two years of “articles of clerkship”⁶, similar to an apprenticeship, after law school and pass a national attorneys admission examination⁷. The Law Society of South Africa regulates the profession and every attorney must be a member of one of the provincial law societies in the area where they are practicing⁸. There are four provincial law societies: Cape Law Society, Free State Law Society, Law Society of the Northern Provinces, Kwazulu-Natal Law Society⁹. Only certain attorneys may plead cases in the high courts¹⁰, while advocates may litigate before any court except the small claims court¹¹ and traditional customary law courts¹².

The advocates’ profession does not deal directly with clients but relies on clients to seek out an attorney who may then refer them to an advocate¹³. Before entering the advocate’s profession the advocate must complete pupillage (an apprenticeship) with a practicing advocate and pass an examination administered by the Bar Council¹⁴. The General Council of the Bar, a federal organization, and local societies of advocates regulate professional conduct. However, advocates are not required to be members of a professional society unlike attorneys¹⁵. Both attorneys and advocates are required to obtain an L.L.B. degree and are separately admitted to the profession by the High Court¹⁶.

Despite a long history of a divided bar in the legal profession, South Africa is beginning to see the two branches merge together¹⁷. Beginning in 1995, attorneys with three years

regulation. (Iya). Legal dualism is not to be confused with what is referred to as the country’s dual legal system, which refers to the separation of legal practitioners into attorneys and advocates.

⁶ Unless they attended a full-time four month practical training school in which case they need on complete one year’s articles (Attorneys Act 53 of 1979 s. 3.).

⁷ Maisel, *supra* note 4, at 983.

⁸ Admission requirements for attorneys are detailed in the Attorneys Act 53 of 1979, as amended.

⁹ WILLIAM DE KLERK, CLINICAL LAW IN SOUTH AFRICA 13 (2d ed. 2006).

¹⁰ The Right of Appearance in Courts Act 62 of 1995.

¹¹ Small Claims Court Act 61 of 1984.

¹² McQuoid-Mason , *supra* note 9, at 244.

¹³ General Council of the Bar of South Africa, <http://www.sabar.co.za/legal-system.html>.

¹⁴ Maisel, *supra* note 4, at 983.

¹⁵ General Council of the Bar of South Africa, <http://www.sabar.co.za/legal-system.html>. The requirements for admission as an advocate are specified in the Admission of Advocates Act, 74 of 1964 and include that the person be at least twenty-one years old, duly qualified, a South African citizen or lawfully admitted to the Republic, and is previously an attorney has had his or her name removed from the roll.

¹⁶ In terms of the Attorneys Act No 53 of 1979 and the Admission of Advocates Act No 74 of 1964 respectively.

¹⁷ Maisel, *supra* note 4, at 979. The Right of Appearance in Court Act No.62.

experience were able to apply for the right to appear before the high and Constitutional Courts¹⁸. The impact of abolishing a divided bar remains to be seen, but concerns include increased competition for attorneys, the loss of freedom of association and independence for the bar, and increased regulation of advocates¹⁹.

South African Legal Education

History of Legal Education

A key component of the apartheid regime in South Africa was complete control of educational institutions to propagate an inequitable social and economic system. The government mandated the substance and the methods used to educate in primary and secondary schools²⁰. As a result, students learned to accept authority and the substance of what was taught without discussion or debate. Although universities had the freedom to decide the substance and methods of what they taught they were not free to admit whom they liked as students²¹. Furthermore, law students who had emerged from a passive, authoritarian school system learned to accept the legal order's status quo and did not view the role of the profession as instrumental in changing laws or societal conditions.

Apartheid society was organized to accept and reward only those who benefited from the apartheid system or acquiesced to the legal structure through segregated law schools²² and article requirements²³. Apartheid policies generated a passive approach to legal education where students accepted black letter law and interpreted the system's role as one of applying parliamentary mandates, as opposed to analyzing and arguing legal principles. Consequently, a legal community without a culture of social responsibility was established²⁴. This was a result of acquiescence by the law schools which could have done more to protect human rights if they had not been cowed by the apartheid state²⁵.

Several pieces of legislation institutionalized racism with regard to education. The Bantu Education Act of 1953 officially segregated all education in the country along ethnic lines.²⁶ In 1959, racially segregated universities were established by additional legislation.²⁷ After 1959,

¹⁸ The Right of Appearance in Courts Act 62 of 1995.

¹⁹ DE KLERK *supra* note 13, at 26.

²⁰P. KALLAWAY (ED), *APARTHEID AND EDUCATION* (1984).

²¹ Extension of University Education Act No of 1959

²² DJ McQuoid-Mason & C. Loots, *Truth and Reconciliation Commissions by the Society of University Teachers of Law and Certain Law Schools* 116 *SALJ* 101-106 (1998).

²³ Axam, *supra* note 6 at 407.

²⁴ J. Dugard, *The Judicial Process, Positivism and Civil Liberty*, 88 *SALJ* 181 (1971).

²⁵ McQuoid-Mason & C. Loots, *supra* note 26 at 101-106.

²⁶ *Id.* (Act No. 47) This law was to establish a Black Education Department of Natives which was functioned to prevent Africans from receiving education for jobs they would not likely obtain. It served as a mechanism to create a pipeline for Africans to receive training for jobs that whites did not want.

²⁷ The Extension of University Education Act prevented black students from attending white universities and created separate institutions for different racial groups.

admission to colleges and universities was limited on the basis of race and black applicants admitted to white universities had to obtain documentation that no black university offered an equivalent program. Eventually, several universities were established in areas with high minority populations to compensate for this restricted access to education²⁸.

The end of apartheid in 1994 marked the beginning of efforts to desegregate the legal educational system in South Africa. The journey toward equity in higher education was an articulated goal of the new government.²⁹ In 1996, the President established the Council of Higher Education. In 1997, the government introduced the *White Paper on Higher Education*³⁰, which announced that higher education, “must be transformed to redress past inequalities, to serve a new social order, to meet pressing national needs and to respond to new realities and opportunities.³¹” These steps demonstrate a genuine desire of the government to restructure the educational system in South Africa to reflect the needs of the people. As a result, the Qualification of Legal Practitioners Amendment Act (the “Act”) was enacted and implemented in 1997, which amended all apartheid laws to equalize requirements for admission to legal practice³².

Despite legislative efforts to desegregate, South Africa, like the United States, suffers from de facto segregation between Historically White Universities (HWUs) and Historically Black Universities (HBUs).³³ As one would imagine HWUs enjoyed superior prestige and resources during apartheid and that remains true, even in the face of progress in the country³⁴. Now that laws mandating segregation have been repealed, some HBU and HWU law schools in South Africa have merged. For example, the University of KwaZulu Natal is the product of a merger between the University of Natal Durban, a HWU, and the University of Durban-Westville, a HBU that was originally established for South African Indian students.³⁵

In addition to the creation of new law schools through mergers, the requirements for entry to the profession have changed. The Qualification of Legal Practitioners Amendment Act required all law schools in South Africa to introduce a four-year undergraduate LLB degree

²⁸ I need another source other than DMM article

²⁹ In 1994 the Minister of Justice held a National Consultative forum regarding initiating progress in institutions of justice, which included legal education.

³⁰ “A Programme for the Transformation of Higher Education (Education Draft White Paper 3), General Notice 1196 of 1997, Department of Education, Pretoria, July 24, 1997, <http://www.info.gov.za/whitepapers/1997/education3.htm>

³¹ Id.

³² Need authority for this.

³³ The United States is the home of several universities designated as Historically Black Colleges and Universities (HBCU’s) which were also formed as a result of governmentally sanctioned segregation. HBCU’s are especially prominent in the southern states of the country and are almost entirely populated with African-American students. African-American students often occupy a disproportionately low percentage of the population in historically white colleges and universities in America. See also

³⁴ See generally, PF Iya, NS Rembe, J Baloro (eds) *Transforming South African Universities: Capacity Building for Historically Black Universities* (2000)

³⁵ University of KwaZulu-Natal website.

program for admission to all branches of the legal profession.³⁶ Before the Act's enactment in 1998, the law program was characterized by a system which provided for: (1) a three-year Bachelor of Law (B.Juris) degree for those wishing to qualify for limited practice as prosecutors or magistrates; (2) a four-year undergraduate Baccalaureus Procuratoris (B.Proc) degree, for those who wished to qualify to practice as attorneys in the higher courts; and (3) a three-year Bachelor of Laws (LL.B.) degree, for those who wish to practice as advocates in lower courts.³⁷ From 1998 on, this three-part system of requisites was replaced by a universal four-year undergraduate LL.B.³⁸ While each law school creates its own curricula under the system articulated by the Act, the South African Qualifications Authority (SAQA) has the final authority to approve all law and curricula.³⁹

After 1994, student enrollment in HWUs increased by 94%, while enrollment in HBUs sharply decreased.⁴⁰ This shift is reflected in law school enrollment, as well. Some speculation attributes this move of black students from HBUs to HWUs to the perceived reality that law programs in HWUs enjoy superior resources and faculty, while HBUs suffer from the long-standing effects of discrimination during the apartheid era.⁴¹

In 1998, The Council of Higher Education cited that 80% of the academic staff at universities were white and that males account for 78% of associate professors and 67% of senior lecturers. Minority groups account for only 3% of faculty at HWUs and 49% of faculty in HBUs.⁴²

Typical LL.B. students in South African law schools are admitted based on their performance on a matriculation exam obtained after high school.⁴³ In addition to graduation from law school and examinations, South Africa requires the completion of a two-year period of hands on experience which is called "articles of clerkship."⁴⁴ This period serves as an apprenticeship during which a practicing attorney with at least three years of experience prepares the law school graduate for practice. Both the attorney and the apprentice sign agreements articulating their responsibilities during the apprenticeship.⁴⁵ Women and minorities have traditionally found difficulty, even after apartheid, finding attorneys or firms who would agree to do articles with them. As a recent development to address this disparity, law graduates are now provided with alternatives to traditional articles. They may complete articles by working full-time at a law clinic certified by the council of the law society in the province in which they will practice⁴⁶, or they may complete a four-month course at an approved practical training school

³⁶ Id.

³⁷ See Attorneys Act No. 53 of 1979 and Advocate's Admission Act No. 74 of 1964.

³⁸ Qualification of Legal Practitioners Amendment Act No ? of 1997.

³⁹ The South African Qualifications Authority Act No ? of ?

⁴⁰ Iya, n13

⁴¹ Id., n14

⁴² Id. n15. From 1993 to 1998, the percentage of black faculty at HBUs rapidly increased from 17% to 49%, a likely result of the fall of apartheid.

⁴³ McQuoid-Mason, *An Outline of Legal Education in South Africa*, 1982.

⁴⁴ Id.

⁴⁵ Authority.

⁴⁶ Authority.

and one year of community service at an approved law clinic.⁴⁷ By providing law graduates with these alternatives, students from traditionally disenfranchised groups face fewer impediments to admission to practice.

Clinical Legal Education in South Africa

The Introduction of Law Clinics

Efforts to reverse these indoctrinated concepts were propelled by opponents to apartheid within the legal profession who recognized the importance of reforming legal education in ways that would challenge the status quo and promote social justice⁴⁸. Legal aid clinics, one such initiative, were established by progressive law students and faculty members as early as 1971⁴⁹. The clinical method makes use of actual experiences as its educational core, integrating substantive knowledge, practical skills, and values into a single educational exercise⁵⁰. Law teachers and law school administrators realized that clinical education is not only a type of community service but an opportunity for students to develop important skills, better preparing them for practice. The legal community continued utilizing legal aid clinics to establish a more socially conscious legal culture throughout the 1970s and 80s⁵¹.

Dean Tony Mathews, together with David McQuoid-Mason, then a lecturer at the Faculty of Law at the University of Natal in Durban,⁵² was instrumental in facilitating this transition and organized the first national conference on legal aid in South Africa in July 1973.⁵³ The conference became the catalyst for the introduction of clinical legal education in Southern Africa⁵⁴. At the time of the conference there were only two clinics in South Africa, at the

⁴⁷ Peggy Maisel *An Alternative Model to United States Bar Examinations: The South African Community Service Experience in Licensing Attorneys*, 20 GA. ST. U. L. REV. 977 (2004).

⁴⁸ Peggy Maisel, *Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn From South Africa*, 30 Fordham Int'l L.J. 374 (2007); DJ McQuoid-Mason, *Access to Justice and the Role of Law Schools in Developing Countries: Some Lessons from South Africa: Pre-1970 until 1990: Part 1*, 29 Journal for Juridical Science 28-51 (2004).

⁴⁹ The first legal aid clinic was established in 1971 at the University of Cape Town and was run by law students and volunteer attorneys. Association of University Legal Aid Institutions, Open Society Justice Initiative, http://www.justiceinitiative.org/activities/lcd/cle/durban2003/durban_report_doc.doc.

⁵⁰ DE KLERK, *supra* note 13, at 265.

⁵¹ McQuoid-Mason, *supra* note 30, at 33-36.

⁵² <http://www.ukzn.ac.za/law/fachistory.html>

⁵³ David McQuoid-Mason, *Legal Aid and Street Law Clinics in South Africa*, http://snap.archivum.ws/dspace/bitstream/10039/6560/9/David_McQuoid+-+legal+Aid+and+Street+Law.pdf, 1 (2002).

⁵⁴ See generally, DJ McQuoid-Mason (ed), *Legal Aid and Law Clinics in South Africa* (1985), School of Law, Howard College, University of Natal, Durban.

University of Witwatersrand and the University of Cape Town⁵⁵. . The third clinic was set up at the University of Natal, Durban later in 1973, and thereafter there was a proliferation of legal aid clinics. By 1982 sixteen of the twenty one law schools in South Africa had clinics. In 1987 an Association of University Legal Aid Institutions was set up, and by 1988 the Attorneys' Fidelity Fund had been convinced of the educational value of legal aid clinics. Thus the latter agreed to fund, on an annual basis and provided funds were available, the salary of a director at those university clinics that were affiliated to the Association and had been accredited by the local law society in their area of operation.

During the struggle against Apartheid many of the clinics at the progressive universities were involved with civil rights cases involving pass laws, police brutality, forced removals, detention without trial and other breaches of fundamental human rights. With the advent of democracy in South African in April 1994 the legal aid clinics are still dealing with poverty law problems, some of which such as housing, the quality of police services and social security have continued to result from non-delivery by the new Government, partly due to inefficiencies and obstruction by bureaucrats employed by the old regime, many of whom retained their jobs as part of the political settlement. One or two clinics have moved from general practice to more specialized constitutional issues. However, the majority of clinics continue to engage in general practice and fewer restrictions have now been imposed on the law societies. Furthermore, the latter also allows candidate attorneys to do their mandatory internships in accredited clinics. As yet, law students do not have the right to appear in the lower courts on behalf of indigent litigants, although it is hoped that student practice rules will be introduced in the near future.

University of Kwazulu, Natal, Durban

Curriculum

The core curriculum at the University of KwaZulu Natal, Durban (UKZN) for the LLB degree is separated into four categories of coursework called modules. The four categories of modules are: (1) non-legal studies, (2) compulsory, (3) community service/public interest & (4) elective.⁵⁶ In total, students accumulate 520 credit points in completion of these modules. Individual courses within modules range from 8 credit points to 24 credit points. Non-legal studies module constitutes approximately 21% of coursework, with 28% of those courses being taught in English⁵⁷. The compulsory modules constitute over 70% of all coursework and include thirty legal courses covering a broad range of subject-matter⁵⁸. The Community Service/Public

⁵⁵ Id. David McQuoid-Mason established the University of Natal, Durban law clinic immediately after the conference in August 1973 initially using his office as the administration centre.

⁵⁶ University of Natal *Faculty of Law Handbook: Volume 1 Undergraduate Studies* (2006-2007) L 7-8.

⁵⁷ Id. These non-legal credits may be similar to the coursework taken by undergraduates in the United States. Because there are _ languages spoken in South Africa, _____.

⁵⁸ Id. The required courses at UKZN are Administrative Law; Accounting for Legal Practice; Civil Procedure; Constitutional Law; Contract; Corporate Law; Criminal Law; Criminal Procedure; Delict; Evidence; Family Law; Foundations of South African Law; Human Rights; Insurance and Agency; Interpretation of Law; International Law;

Interest module constitutes around 3% of total coursework and must be completed in one of three ways: (1) Campus Law Clinic; (2) Street Law; or (3) Teaching Legal Skills. Lastly, the elective modules constitutes around 5% of coursework.⁵⁹ It should be noted that UKZN prescribes a general order in which the curriculum should be completed.⁶⁰

The following components of this paper explore two of the community service courses at the UKND. First, Tiffany Williams will examine whether participation Campus Law Clinic course encourages students to perceive professional responsibility and community service as necessary components of their professional lives. Then, Nichole DeVries will explore the role of the Street law program in imparting skills and ethical training on young people entering the profession.

Beyond Practical Skills: Does Compulsory Community Service in Law Clinics Promote Professional and Ethical Standards in South African Law Students?

Tiffany Williams

The air of intense competition is pervasive in America's law schools. Indeed, the Carnegie report cites the fierce mental and emotional battlefields in America's law schools as an impediment to professional development among students, "...so powerful is the method and the ethos of competition that an instructor must make a deliberate effort to ensure that the bigger question of 'Who is right and why?' is not neglected or overshadowed by competitive zeal."¹⁶ First year students are often fully aware that they are competing with one another, in a very concrete way, not only for grades⁶², but also for jobs.⁶³ In many schools, invitations to join Law Review, Moot Court and Mock Trial organizations are highly sought-after resume enhancers, which only a minority of first-year students obtain⁶⁴. These accolades and high academic

Introduction to Law; Jurisprudence, Labour Law; Law of Persons; Legal Diversity; Legal Research; Writing and Reasoning; Negotiable Instruments; Property Law; Professional Training 1; Professional Training 2; Sale, Lease and Credit Agreements; Security and Insolvency; Special Offences; and Succession.

⁵⁹ Id. The options available for the Elective Modules are: Bio-ethics, Constitutional Litigation; Environmental Law; Gender and the Law; Income Tax; Intellectual Property Law; Maritime Law; Medical Jurisprudence; Research Project; and Sentencing.

⁶⁰ See Table 1

⁶¹ William Sullivan, et al, Educating Lawyers: Preparation for the Profession of Law, (2007), 56, 57

⁶² Sullivan, 31 "The ubiquitous practice of grading on the curve ensures that, no matter how talented or hard-working the students are, only a predetermined number will receive A's. Such a context is unlikely to suggest solidarity with one's students or much straying from a single-minded focus on competitive achievement."

⁶³ Law School Confidential, 2004, A best-seller guide to law school dedicates more than one chapter to job searching for law students. In the chapter dedicated to first-year students, the author recommends that students take on job searching while their colleagues are engrossed in their studies. Robert H. Miller, Law School Confidential, A Complete Guide to the Law School Experience: By Students, for Students (2004)

⁶⁴ See Planet Law School, LSSSE Survey

performance frequently serve as the primary stepping stones to positions in prestigious law firms and federal clerkships⁶⁵. Given the competitive atmosphere, students who become “high achievers” in law school may be more inclined to seek jobs in the corporate sphere than their peers with less compelling resumes.⁶⁶ Students who do not end up practicing in firms are sometimes inclined to consider practicing in the public sector.⁶⁷ With the salaries of first-year associates on the rise⁶⁸ and funding for public programs steadily declining⁶⁹, many law students view public service as a last resort, not as a civic duty.⁷⁰ This is true even though many first-year law students may hear some variation of the saying, “Lawyers are the glue that holds society together.”⁷¹ Perhaps, then, American legal education should do more to ensure that students, regardless of their chosen career, have a greater understanding of the needs of the society they will hold together.

The gatekeeper to the legal job market in most of America’s law schools is the school’s Career Services office (CSO).⁷² This office has the responsibility of providing students with information about summer and permanent employment. The CSO job search process often progresses in phases.⁷³ Large national firms, which are extremely selective employers, are usually the most visible during recruitment periods organized by the CSO. Students who receive interviews for these esteemed jobs are frequently at the top of their classes or are students at very highly ranked schools.⁷⁴ Once these firms have had their pick from the student bodies, smaller firms and public interest agencies typically begin recruiting.⁷⁵ It is no wonder, then, why American law students may measure their potential not by any demonstrated ability to serve

⁶⁵ Miller, 166. See also William Sullivan, et al, Educating Lawyers: Preparation for the Profession of Law, (2007),

⁶⁶ The Carnegie Report cites authority finding that there exists, “an inverse relationship between the achievement of conventionally defined ‘success’ in highly paid, large-firm work and overall professional satisfaction, at least at the social level.” The Report goes on to state that the “praise and reverence bestowed on ‘power track’ careers often dominate the lore in the schools. . . especially at the more selective schools.” Sullivan, 137

⁶⁷ Miller, 166

⁶⁸ See, Ellen Rosen, “For New Lawyers, The Going Rate has Gone Up” New York Times, September 1, 2006.

<http://www.nytimes.com/2006/09/01/business/01legal.html>

⁶⁹ See Alan W. Houseman, Civil Legal Aid in the United States: An Update for 2007, Center for Law and Social Policy, http://www.clasp.org/publications/civil_legal_aid_2007.pdf

⁷⁰ LSSE SURVEY

⁷¹ The Report note that the American Bar Association Model Rules of Professional Conduct state, “A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Carnegie Report, 126 quoting American Bar Association Model Rules “Preamble.”

⁷² See e.g. Georgia State University College of Law Career Services Home Page, <http://law.gsu.edu/careers/>.

⁷³ Id.

⁷⁴ Law School Confidential...

⁷⁵ Georgia State University College of Law Career Services Home Page

clients⁷⁶, but by how desirable they are to prestigious firms. A substantial amount of success as an attorney presumptively rests on a practitioner's ability to act competently, both ethically and professionally. Thus, legal education as a whole could benefit from a system that turns away from focusing so heavily on earning potential and teaches students the importance of their role as a part of one cohesive profession, and not merely as money-minded practitioners. The Carnegie report suggests that one way to do this is by incorporating more live client experience into law school curricula.⁷⁷

In contrast to the American legal educational system which has been somewhat static for the past years, those reforming the legal education system in South Africa must shape legal practice for very rapid social change.⁷⁸ Having only achieved democracy in 1994, South African citizens are in the position of reexamining their place in their country. Lawyers have a substantial role in guiding citizens through this new system. Aggressive affirmative action programs have helped disadvantaged groups gain greater access to legal education.⁷⁹ Law schools like the University of KwaZulu Natal in Durban are working to create lawyers who are equipped to represent citizens while maintaining a sense of social responsibility.⁸⁰ The Campus Law Clinic at UKZN is one example of the ethical and professional value added to law students when they are required to serve their community through legal aid work.

Part I of this section will examine the possible purpose of the Community Service Project in the context of the Carnegie Report. Part II of section will describe the structure and operations of the Campus Law Clinic at UKZN. apprenticeships. Part III will distinguish the CLC from the majority of clinical programs in the U.S

I. What is the Purpose of the Community Service Requirement at UKZN Other than Practical Skill Building?

A professional participant in a 1953 study conducted by Albert J. Harno on American legal education observed that law clinics go beyond teaching the "science of law" and begins to teach the "art of practice."⁸¹ This common analysis of the value of clinical education focuses on its expert practice apprenticeship component. And, while the lack of practical training is certainly a weakness noted by the Carnegie Report and others in legal education in the United States⁸², the community service/public interest module at UKZN would not be necessary if practical training was the faculty's the sole objective because South Africa already requires candidate attorneys to complete two years of practical training through articles of clerkship. By looking beneath the face value of clinical education at UKZN, we may learn that the community service requirement develops much more than practical skills. It is quite possible that UKZN

⁷⁶ LSSSE shows that the majority of law schools require no clinical experience.

⁷⁷ Carnegie, 57

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⁷⁹ Law No ___ of ___.

⁸⁰ CLC Handbook.

⁸¹ Albert J. Harno, Legal Education in the United States: A Report Prepared for the Survey of the Legal Profession, p. 173 (1953).

⁸² See generally, Carnegie Report

may already be promoting the kind of positive professional identity development which the Carnegie Report finds American law schools do not⁸³.

The Carnegie Report Apprenticeship Designations

One central observation of the Carnegie study is that American legal education does not create a sense of professional identity in students.⁸⁴ More explicitly, the Carnegie Report suggests that unlike professional education for fields such as medicine, legal education in the United States does very little to instill professional and ethical responsibilities inherent in the practice of law.⁸⁵ This failure is largely attributed to the overemphasized focus on the case method as the signature pedagogy of law school, which falls short of “building bridges between thought and action.”⁸⁶

The Report describes three apprenticeships which are necessary for ideal professional education:

- (1) Intellectual/Cognitive Apprenticeship-focuses the student on the knowledge and way of thinking of the profession;
- (2) Expert Practice Apprenticeship-practice-based learning with competent practitioners through simulated practice situations or actual clinical experience with real clients; and
- (3) Identity and Purpose Apprenticeship-introduces students to the purposes and attitudes that are guided by the values and attitudes that are guided by the values for which the professional community is responsible.⁷⁸

Both the expert practice and identity and purpose apprenticeships may be taught through simulation, observation of professionals in practice, and interaction with clients, among other methods.⁸⁸ However, perhaps because the implications of the identity and purpose apprenticeship are often more subtle, its importance may be overlooked when evaluating the effectiveness of clinical programs.⁸⁹ The *Carnegie Report* suggests that the “essential goal” of identity and purpose apprenticeship is to “teach the skills and inclinations, along with the ethical standards, social roles, and responsibilities that mark the professional.”⁹⁰ In other words, understanding the many implicit and explicit dimensions of the legal profession should enable students to become better attorneys.⁹¹ The Report asserts, “[p]rofessional education is...inherently ethical education in the deep and broad sense. The distillation of the abilities and values that define a way of life is the original meaning of the term *ethics*.²⁹

⁸³ William Sullivan, et al, Educating Lawyers: Preparation for the Profession of Law, (2007), 132.

⁸⁴ Id. at 126

⁸⁵ Id.

⁸⁶ Id. at 23

⁸⁷ Sullivan p. 28

⁸⁸ Id. at 32

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Sullivan at 32.

⁹² Sullivan at 30.

Required coursework in any curriculum is generally considered the bare minimum - the indispensable foundation of a particular field. When comparing UKZN to American law schools, the question becomes whether the curriculum at UKZN communicates anything significant to its students that American legal education does not. Similar to law schools in the United States, much of the UKZN curriculum focuses on the intellectual/cognitive apprenticeship through traditional lecture-based courses.⁹³ However, through the compulsory⁹⁴ community service/public interest module, law students at UKZN must give back to the community before receiving their LLB degree⁹⁵. In essence, the UKZN curriculum seems to communicate to students that first-hand experience serving the needs of the community teaches a foundational element of legal practice. This understanding may contribute to a heightened sense of professional identity by connecting students through an experience outside of the traditional classroom environment which requires students not only to apply knowledge but also to interact morally and ethically with real people.⁹⁶ Unlike the UKZN program, clinical education in America often operates in the background of the traditional curriculum. In fact, many students complete law school in America without any universal experience exposing them to actual practice in the community.⁹⁷

II. Description of the UKZN Clinical Law Course

Goals. Aside from legal study in South Africa being an undergraduate program, several other distinctions can be made between the curriculum at UKZN and that at traditional American law schools. Some examples are the broad range in subject-matter of required coursework at UKZN, the requirement of non-legal courses and the community/public interest requirement.⁹⁸ This paper will focus on the possible benefits of the community/public interest requirement through examining the Clinical Law course offered to complete that requirement. The Clinical Law course allows students to work with the Campus Law Clinic at UKZN (CLC). The University website states, “students [in the CLC] are able to practice the legal skills they have learned in the lecture theatre in ‘real life’ situations.”⁹⁹

The CLC has five stated primary goals: (1) to provide practical legal training to law students to enable them to serve clients in an effective, efficient, ethical, business minded and socially conscious manner; (2) to provide training to law graduates from historically disadvantaged backgrounds to ensure that they are able to manage an effective, efficient, productive, ethical and socially conscious practice once they qualify; (3) to provide legal services to indigent people who cannot afford to pay a private practitioner, thereby increasing access to justice to the poorest of the poor and creating a greater respect for the rule of law; (4) to promote and advocate for the public interest; and (5) to instill a level of social responsibility

⁹³ See Table 1.

⁹⁴ *Handbook*.

⁹⁵ *Id.*

⁹⁶ Students at the CLC do not directly represent clients, but do work with supervising attorneys and clerks at the clinic. Through this experience, they are able to witness the different ways practitioners deal with attorney-client interaction.

⁹⁷ LSSSE Survey results here

⁹⁸ See Table 1.

⁹⁹ See description of the CLC on the UKZN website at <http://www.ukzn.ac.za/law/pmblawclinic.html>.

among students who choose to enter the private sector and to develop a cadre of public interest lawyers.¹⁰⁰ Further, the objectives of the legal education component of the CLC are to: “(1) develop lawyering skills, both litigation and non-litigation, that are necessary in the practice of law; (2) increase awareness of the problems facing low-income communities and develop skills and strategies to meet those challenges; and (3) develop reflective and self-critiquing skills that will enable continued growth as a public interest lawyer.”¹⁰¹ The program aims to achieve these objectives through developing basic skills such as interviewing, counseling, fact investigation, case analysis and planning, negotiation, legal drafting, litigation and advocacy. These skills are taught in the classroom through simulation and problem-solving in small groups.¹⁰² Once the classroom component is completed, students work with live clients under the close supervision of an attorney.

Structure. The CLC is managed by a management committee and the director¹⁰³. The management committee has representatives from the Law School Faculty, including the Head of School and Dean, and a staff member from the CLC, and sets the policy for the clinic and monitors its operations. The director is responsible for the day-to-day operations of the CLC, and is accountable to the management committee. The director’s office is on site. The CLC is staffed by three candidate attorneys¹⁰⁴, two attorneys, and at least one supervising attorney.¹⁰⁵ Students and candidate attorneys in the clinic are divided into small groups called firms that are allocated to different units dealing with family law, HIV/AIDS, and social justice¹⁰⁶. An attorney is assigned to supervise students and candidate attorneys.

Activities. All student activities in the clinic with live clients are monitored by a supervising attorney. Student responsibilities include conducting interviews, taking instructions from clients, giving advice, drafting documents and correspondence, managing their own files and conducting their own research.¹⁰⁷ Students must also participate in file consultation sessions with their project managers to discuss current files. They must come prepared to engage their manager in discussion about the files. Students are graded on their performance in the clinic.¹⁰⁸

Students must sign up and be present for “duty sessions,” during which they consult with walk-in clients. During consultations, students determine client needs and fill out an initial client contact form. Students also assist the client in completing a means test form, which is used to assess whether the client qualifies for free legal services¹⁰⁹. Before giving any advice,

¹⁰⁰ UKZN Campus Law Clinic Student Operating Manual at p. 1

¹⁰¹ Id. at p. 2

¹⁰² Id.

¹⁰³ Observation of CLC by Tiffany Williams on August 10, 2007.

¹⁰⁴ Candidate attorneys are law school graduates who are completing their articles of clerkship requirement before being admitted to practice law.

¹⁰⁵ Observations by Tiffany Williams at CLC on August 10, 2007.

¹⁰⁶ Campus Law Clinic *Campus Law Clinic Operating Manual* (2007) at p. 2.

¹⁰⁷ Id. at p. 2.

¹⁰⁸ Students are graded according to the quality of their work and not based on any predetermined curve.

¹⁰⁹ Generally, clients whose monthly income does not exceed the Legal Aid Board’s means test of an income of R2 000 (\$294) for a single person or R2 500 (\$368) for a married person (Legal Aid Board *Legal Aid Guide* 11 ed (2005) 69-70 qualify for legal assistance from the clinic - although the CLC will exercise its discretion in needy cases.

students consult with the supervising attorney about the client's case. Students are also required to conduct their own research on issues they are unfamiliar with¹¹⁰. During this time, the attorney is also evaluating the student's ability to pick up on client needs. Supervising attorneys ensure sure that students are able to identify issues and think critically. After this attorney/student meeting, the client is either called into the office with the student and attorney or the student returns to the client with the attorney's advice. Often, after the client leaves, the supervising attorney will give the students feedback¹¹¹.

The CLC provides students with extensive guidelines regarding client consultations which focus not only on mechanical skills, but also ethical and professional responsibilities.

The final component of the clinical education course is research, which is done in the second semester of the program.¹¹² Students conduct research according to their units. The research topics are allocated by the unit supervisors and are compiled and kept at the office to be used as reference materials¹¹³.

III. Distinguishing the CLC from American Programs

At first glance, the CLC does not appear to be extremely different from the many law clinics at law schools across America. The key distinction between UKZN's approach and traditional clinical education in the United States is that the participation in the CLC through the Clinical Law course satisfies a mandatory requirement.¹¹⁴

Generally, law students in the United States are not required to complete community service or public interest work to qualify for graduation.¹¹⁵ Further, the structure of the CLC differs from traditional law clinics in the United States because: (1) it is managed by a practicing attorney; (2) it is staffed by candidate attorneys completing their articles of clerkship; and (3) the course is graded and incorporates lectures and practical experience into legal education.

In short, the CLC students are in constant contact with practicing attorneys and not merely one or two adjunct faculty members as is the case in most legal aid clinics in the United States. The Carnegie Report suggests that observation of professionals in practice is crucial to professional development among students.¹¹⁶ CLC students are fortunate enough to become acquainted with not only seasoned attorneys, but also recent graduates of law school.¹¹⁷ This unique composition promotes both the expert practice

¹¹⁰ *Campus Law Clinic Operating Manual* at p. 3, Rule 5.

¹¹¹ Interview by Tiffany Williams with two clinic student in August 2007.

¹¹² Interviews with students at the CLC on ____.

¹¹³ *Id.*

¹¹⁴ See *Handbook*

¹¹⁵ Many law schools in America offer special recognition to students who perform community service while enrolled in law school. For example, the Georgia State University College of Law has a Pro Bono Distinction program, which allows students to record their hours of community service online in order to receive a special distinction upon receiving their degree. This recognition program is extra-curricular and has no relationship with the students academic record. See also LSSSE survey.

¹¹⁶ William Sullivan, et al, *Educating Lawyers: Preparation for the Profession of Law*, (2007), 59

¹¹⁷ Articled Clerks at the CLC are no more than two years removed from graduating from law school.

and the identity and purpose apprenticeships. Students are able to see real attorneys in action and begin to model their behavior when interacting with live clients. The Carnegie Report suggests that, “[t]he values that lie at the heart of apprenticeship of professionalism and purpose also include the conceptions of the personal meaning that legal work has for practicing attorneys and their sense of responsibility toward the profession.”

Examining the Success of Street Law Programs in South Africa Nichole DeVries

1. Introduction

This section examines the Street Law program, a method of clinical legal education, at the University of KwaZulu-Natal in Durban, South Africa to determine if that University’s experience can provide a model for law schools in the United States concerned with producing skillful professionals committed to ethical integrity, civility, and social responsibility.

The Street Law program at the University of KwaZulu-Natal is a preventative legal education program in South Africa which demands that students integrate their understanding of legal principles with the practical demands of the profession¹¹⁸. Initially, this paper will discuss the history of the South African legal profession and education to provide context for discussion of the Street Law program. The paper will then explore how the University of KwaZulu-Natal has utilized the program to complement the traditional curriculum. Finally, the paper will explore the benefits associated with integrating a Street Law program into legal education in the United States.

The Introduction of Street Law

In 1985 Professor McQuoid-Mason, then Dean of the Law Faculty, with assistance from Edward O’Brien of the National Institute for Citizen Education under the Law (NICEL)¹¹⁹, was instrumental in developing South Africa’s first Street Law program, another clinical approach to assisting marginalized sectors of society while developing socially conscious legal professionals. Administrators recognized that law schools could play an important role in increasing access to justice by providing a resource for the average citizen regarding legal rights and responsibilities. In 1986, a six month pilot program, based on the Georgetown University Law Centre model, was instituted at the University of Natal, Durban’s Centre for Socio-Legal Studies. It was converted into a full time program in 1987.¹²⁰

¹¹⁸ DJ McQuoid-Mason, *Teaching Social Justice to Law Students through Community Service: the South African Experience*, in TRANSFORMING SOUTH AFRICAN UNIVERSITIES: CAPACITY BUILDING FOR HISTORICALLY BLACK UNIVERSITIES, 89-103 (PF Iya, NS Rembe & J Baloro eds., 2000).

¹¹⁹ Now known as Street Law Incorporated.

¹²⁰ David McQuoid-Mason, *Reducing Violence in South Africa Through "Street Law"* in INTERNATIONAL DEBATES OF VICTIMOLOGY 350 (G.F. KIRCHOFF, E. KOSOVSKI & H.J. SCHNEIDER EDS., 1994).

Meaning of Street Law

Street Law is a preventative legal education program which utilizes the skills of law students to educate lay people about how the law works and the best approach to utilizing the law for protection and assistance¹²¹. The primary emphasis of the program is to teach average citizens practical law as it impacts them daily¹²². The program is applicable and implemented in a variety of institutions including schools, prisons, drug rehabilitation centers, and community centers¹²³.

Street Law as a concept can be applied in numerous ways depending on the needs of the teachers and the learners. There are three main models used by Street Law programs internationally. The first is a volunteer centered model where law students, volunteer lawyers, and other people in the community participate primarily as a service to the community. The second model is usually a variable credit hour unaccompanied by a classroom component for the law students and primarily service oriented. The final model, followed by UKN is a bilateral arrangement where law students participate in a Street Law course designed as a skills training module while concurrently providing a service to the community¹²⁴.

The first program was developed in 1972 by Edward O'Brien at Georgetown University Law Centre in the United States and follows the third model. Students taught practical law lessons at inner city high schools where many teenagers felt disconnected from the legal system. Similarly in South Africa, law student-instructors teach lessons to high school students, community organizations, and prisoners. Initially, a series of simple books were used which focused on introducing the public to the South African legal system and democracy¹²⁵, criminal law and juvenile justice¹²⁶, consumer law¹²⁷, family law¹²⁸, welfare and housing law¹²⁹. The separate booklets were later amalgamated into

¹²¹ David McQuoid-Mason & L. Lotz, *Using Street Law to Teach Social Justice to Law Students in South Africa* 47 Human Rights and Non State Actors 51 (2005).

¹²² ALEXANDRIA ASHBROOK, *LAWYERS AND LAW STUDENTS: TEACHING IN THE COMMUNITY* 1 (2005).

¹²³ McQuoid-Mason & Lotz, *supra* note 43, at 47.

¹²⁴ Generally on Street Law models, see FELISA TIBBITTS, *MANUAL ON STREET LAW-TYPE TEACHING CLINICS AT LAW FACULTIES* (2001).

¹²⁵ DAVID MCQUOID-MASON, *STREET LAW: PRACTICAL LAW FOR SOUTH AFRICAN STUDENTS: BOOK 1 INTRODUCTION TO SOUTH AFRICAN LAW AND THE LEGAL SYSTEM* (1987).

¹²⁶ DAVID MCQUOID- MASON, *STREET LAW: PRACTICAL LAW FOR SOUTH AFRICAN STUDENTS: BOOK 2 CRIMINAL LAW AND JUVENILE JUSTICE* (1987).

¹²⁷ DAVID MCQUOID- MASON, *STREET LAW: PRACTICAL LAW FOR SOUTH AFRICAN STUDENTS: BOOK 3 CONSUMER LAW* (1988).

¹²⁸ DAVID MCQUOID- MASON, *STREET LAW: PRACTICAL LAW FOR SOUTH AFRICAN STUDENTS: BOOK 4 FAMILY LAW* (1990).

¹²⁹ DAVID MCQUOID- MASON, *STREET LAW: PRACTICAL LAW FOR SOUTH AFRICAN STUDENTS: BOOK 5 WELFARE AND HOUSING LAW* (1990).

one text.¹³⁰ Subsequently books were also produced on human rights¹³¹, democracy¹³² and HIV/Aids and its relation to human rights¹³³. The books are designed to encourage participants to draw on personal experiences during the learning process.

In addition to conveying information, the program encourages tolerance in the community by creating a venue for discussion and debate and encourages learners to think critically about the democratic process. Under USAID funding 17 out of 21 law schools in South Africa had a version of a Street Law program or its companion program Democracy for All¹³⁴. After funding from USAID ceased, nine of the programs were taken over by universities, some of them for credit¹³⁵. While some programs, like that at the University of KwaZulu-Natal, offer Street Law as a full year clinical course, others offer the program as part of a broader public interest course or as an optional program¹³⁶.

At the heart of the Street Law program is the principle that citizens need to be aware of legal principles in order to assume an active role in community discourse essential to a thriving democracy¹³⁷. This ideology directly conflicts with lingering values from the apartheid era. Where students were once taught not to question the law, the Street Law program demands they facilitate learning through discourse and class participation. Likewise those being taught begin to rewire their conception that the legal system is inherently unavailable to them and that injustice is an unavoidable, natural consequence of existence.

Although there were widespread injustices during the apartheid era, few attempts were made by universities to assist victims or inform them of their rights. Professors and students that did act were often subject to retribution by the government and institutional disapproval, discouraging others to promote access to justice¹³⁸. The Street Law program provided an opportunity to provide access to justice in line with the values of the new democratic Constitution¹³⁹.

Although the South African Constitution provides a general right to access courts and the right to have representation if arrested, true access to the judicial system

¹³⁰ DAVID MCQUOID-MASON, L. LOTZ, L COETZEE, U. JIVAN, S. KHOZA & T. COHEN, STREET LAW 'LEARNER'S MANUAL' OP CIT. and DAVID MCQUOID-MASON, L. LOTZ, L. COETZEE, U. JIVAN, S. KHOZA, & T. COHEN, STREET LAW SOUTH AFRICA: PRACTICAL LAW FOR SOUTH AFRICANS 'EDUCATOR'S MANUAL' (2005).

¹³¹ DAVID MCQUOID-MASON, EDWARD L O'BRIEN & ELEANOR GREENE, HUMAN RIGHTS FOR ALL: EDUCATION TOWARDS A RIGHTS CULTURE (1991).

¹³² DAVID MCQUOID-MASON, MANDLA MCHUNU, KARTHY GOVENDER, EDWARD L O'BRIEN & MARY CURD LARKIN, DEMOCRACY FOR ALL (1994).

¹³³ ISABELLE DE GRANDPRE (ED), HIV/AIDS THE LAW AND HUMAN RIGHTS RESOURCE MANUAL (2002).

¹³⁴ David McQuoid-Mason, *Access to Justice in South Africa*, 17 Windsor Y.B. Access Just. 230, 249 (1999). Democracy for All is a program designed to educate high school students and community organizations about human rights and democracy (DAVID MCQUOID-MASON, ET AL., DEMOCRACY FOR ALL: EDUCATION TOWARDS A DEMOCRATIC CULTURE (1994)).

¹³⁵ David McQuoid-Mason, *Legal Aid Services and Human Rights in South Africa*, <http://www.pili.org/en/content/view/155/26/>.

¹³⁶ McQuoid-Mason & Lotz, *supra* note 43, at 49.

¹³⁷ Axam, *supra* note 6, at 414.

¹³⁸ McQuoid-Mason, *supra* note 30, at 29 and McQuoid-Mason and Loots, *supra* note 26, at 101.

¹³⁹ Constitution of the Republic of South Africa Act No 108 of 1996.

continues to be a challenge¹⁴⁰. The legal inequities of the system under apartheid did not prepare the country to provide legal representation for the country's forty-seven million people¹⁴¹, half of whom live in rural areas, are ignorant of their rights, or are unable to afford representation. The Street Law program serves as a proactive approach to the relieving the pressure on the system by educating citizens about their rights and duties and empowering them to avoid legal problems.

The Program at The University of Kwazulu-Natal

Students at the University of KwaZulu-Natal are required to participate in one of three clinical options in their fourth year of study, one of which is the Street Law program¹⁴². Approximately one hundred students participate in the year long Street Law course which features two weekly seminars; the delivery of 25 lessons to high schools, prisons or community organizations; a reflective journal (that includes 25 lesson plans, 25 reflective essays, 25 teacher, prison or other official's reports and a student designed mock trial package); and an examination at the conclusion of each semester¹⁴³.

Bi-weekly seminars introduce students to the origins and rationale behind Street Law, expose them to lesson plans which cover various teaching techniques, and substantively prepare them to teach lessons from Street Law texts. Student-instructors quickly obtain knowledge of a wide range of legal concepts which affect the general public including basic concepts of democracy, criminal law, consumer law, family law, socio-economic rights, employment law, and human rights. Ideally the seminars would incorporate many small group and discussion based activities. Due to the large number of students in the seminar, the class is currently structured as a lecture with opportunities for discussion¹⁴⁴. At the conclusion of the first semester student-instructors must demonstrate through a written exam that they understand how to teach legal concepts to the public, write lesson plans, and to prepare a list of questions and the opening and closing address for one side of the mock trial¹⁴⁵. The students are tested again at the conclusion of the course.

The mock trial package that students are required to prepare involves as many as twenty-four participants and demands that student-instructors have a firm command of trial advocacy and practical procedural knowledge. Each trial must include:

- a. A list of participants required for the Prosecution and Defense.
- b. Stipulated Facts.
- c. An Indictment.
- d. A Summary of Substantial Facts.
- e. A list of witnesses.
- f. The applicable law (on both sides and accurately stated).
- g. Statements by three Prosecution witnesses (or Plaintiff's witnesses).

¹⁴⁰ McQuoid-Mason, *supra* note 56, at 230.

¹⁴¹ World Bank Statistics, <http://web.worldbank.org> (2005), http://devdata.worldbank.org/AAG/zaf_aag.pdf.

¹⁴² The other options available to law students are the legal aid clinic or teaching legal skills to first year students.

¹⁴³ Interview with Lloyd Lotz, Street Law program director at UKND (Aug. 9, 2007).

¹⁴⁴ *Id.*

¹⁴⁵ McQuoid-Mason & Lotz, *supra* note 43, at 50.

- h. Statements by three Defense witnesses.
- i. The witness statements in 2 (h) and (i) above must:
 - (a) Contain sufficient evidence to establish the necessary elements for the relevant party to prove his or her case.
 - (b) Contain at least one contradiction (preferably more) which can be used by the other side in cross-examination¹⁴⁶.

Ideally the class completes a mock trial which provides the professor an opportunity to offer feedback and the students an opportunity to correct weaknesses before completing a trial at their community service site¹⁴⁷.

Each student in the program is required to prepare and teach twenty-five lessons in schools or prisons. If the students visit multiple sites the lesson may be used more than once, but they must prepare a new lesson plan adapted toward the specific audience. The lesson plans include the objectives for the session, content, time allocation for each activity, nature of each activity, and the resources used. The students may use their Street Law manuals to guide their planning. At the conclusion of a session, the students must have a report signed by the student, the teacher, and the Street Law coordinator. Additionally students are asked to journal their experiences, including the following observations:

- a. Did your lesson plan work in terms of content? Did the students achieve the Learning Outcomes?
- b. What were your teaching methods? How did they work? Did you experience any particular problems with the class?
- c. What patterns are beginning to emerge in the course of your teaching experience? What are you observing about the legal problems faced by your students and their families?
- d. How do you feel about the preparation and teaching experience?
- e. What is your relationship with the regular class teacher?
- f. Are you getting the support you need from the Faculty of Law, the Street Law Office and the high school or Institution where you are teaching?¹⁴⁸

At the completion of the course students compile a portfolio which includes their lesson plans, community service reports, and reflections. These exercises develop a number of skills valuable to the legal profession including the ability to think critically, convey legal principles simply, write clearly and concisely, interact with and understand challenges in the community, speak publicly, respond to questions quickly and accurately, and acquire insight into their personal development¹⁴⁹.

Formative assessment is critical to the skills training process. Students are assessed by the law professor in the classroom and by random site visits. The examinations, as in most courses, comprise the most assessment points, 60%, of the final

¹⁴⁶ Lloyd Lotz, 2007 course syllabus.

¹⁴⁷ Interview with Lloyd Lotz, Street Law program director at UKND (Aug. 9, 2007).

¹⁴⁸ Lloyd Lotz, 2007 course syllabus

¹⁴⁹ McQuoid-Mason & Lotz, *supra* note 43, at 49.

grade, while the practical component, including the mock trial and portfolio, comprise the remaining 40% of the grade. While periodic site visits from law faculty provide a valuable form of feedback for the students, the portfolio is an opportunity for students to digest their experience and track their progress. It is also a tool that the law faculty is able to use to monitor the progress of the student¹⁵⁰.

The managing contact at each particular site also evaluates the law student in the form of a questionnaire. The managing contact is asked to rank the students on a scale from “very poor” to “very good” in terms of the following:

- a. Ability to explain clearly.
- b. Understanding of content.
- c. Ability to simulate interest and discussion.
- d. Respect for differences in group.
- e. Ability to create a self and open learning environment (e.g. for expressing opinions and ideas)
- f. Ability to engage participants in discussion.
- g. Availability during the course of the year.¹⁵¹

They are also asked to explain the most effective and least effective aspects of the student’s time in the classroom as well as the strengths and weaknesses of the program itself. In instances where the teacher is not observing the lessons taught by the student-instructor, an evaluation is completed by the learners¹⁵².

The Street Law program distinguishes itself from other clinical programs in a variety of ways. Most noticeably, it does not reflect the traditional client-attorney relationship experienced in legal aid clinics. However, students in the Street Law program continuously engage learners who challenge them with legal issues in a similar way. Further, students, physically meet “clients” in their own communities, giving students an intimate understanding of their clients’ social context¹⁵³.

A promising characteristic of the Street Law program is that it does not require the student to faculty ratio that many clinical programs require but still provides a valuable clinical experience. Therefore Street Law is an attractive option for law schools concerned with the operating costs of clinical education. The legal aid clinic at the University of Kwazulu-Natal requires one advisor for every twenty students (i.e. three attorneys for 60 students) while the entire Street Law program is managed by one professor¹⁵⁴.

Street Law programs in South Africa face ongoing challenges, despite recent growth. One such challenge is consistent and dependable funding. Funding for clinical education has largely come from sources outside of the universities¹⁵⁵. As has been mentioned, Street Law was originally funded by the Association of Law Societies with

¹⁵⁰ Interview with Lloyd Lotz, Street Law program director at UKND (Aug. 9, 2007).

¹⁵¹ University of Kwazulu-Natal Street Law Evaluation Tool (2007).

¹⁵² University of Kwazulu-Natal Street Law Evaluation Tool (2007).

¹⁵³ TIBBITTS, *supra* note 46, at 14.

¹⁵⁴ Interview by Nichole DeVries with David McQuoid- Mason (Aug. 3, 2007).

¹⁵⁵ Maisel, *supra* note, at 400.

money from the Attorney's Fidelity Fund, followed by the United States Agency for International Development (USAID). USAID funding projects were specifically aimed at increasing awareness of human rights and democracy coinciding with the political events in South Africa during the fall of apartheid. Once that transition occurred, Street Law programs were compelled to turn to other funding sources¹⁵⁶.

Many law schools recognized that the stability of the program was dependent on funding and chose to institutionalize Street Law, funding it independently. The University of KwaZulu-Natal chose to dedicate a permanent faculty position to the program, thereby decreasing the chance that the program would be threatened by inconsistencies of funding¹⁵⁷.

Clinical Street Law programs in South Africa, like those in the United States, are also challenged by a resistance to accept Street Law programs as institutional equals to traditional legal aid clinics and legal education course work¹⁵⁸. Some faculty and prospective employers do not appreciate the lawyering skills that Street Law students acquire during the program¹⁵⁹. Many employers continue to prefer students with clinical legal aid experience because they do not realize what types of skills students acquire in the Street Law program. It is true that students do not get the administrative experience they would if they were in a legal aid setting, but Street Law provides advanced development of core communication skills that are invaluable to the profession. It is also important for law schools to provide a clinical core skills option for the many students who will not practice law traditionally¹⁶⁰.

The Impact of the Street Law Program

“In Street Law you learn how to communicate with people better. Students ask interesting questions that really make you think about the law and apply your knowledge¹⁶¹.”

Students who enter the Street Law program have varied expectations and take away lessons tailored to their experience, despite theoretical calculations determining what students should take away. The following section examines what students at the University of Kwazulu-Natal feel are the strengths and weaknesses of the program.

In addition to interviews and experiences detailed in reflective journals, this section is based upon a survey administered to students in all three of the community service offerings at The University of Kwazulu-Natal. One hundred and eight students responded to the survey, sixty-eight of which were in their final semester of the Street

¹⁵⁶ Interview with Professor Alan Rycroft, Law Faculty, University of Kwazulu-Natal (Aug. 10, 2007).

¹⁵⁷ *Id.*

¹⁵⁸ Maisel, *supra* note 30, at 400.

¹⁵⁹ McQuoid-Mason and Lotz, *supra* note 43, at 48.

¹⁶⁰ Interview with David McQuoid-Mason (Aug.3, 2007) and a group of six law students at The University of Kwazulu-Natal (Aug. 8, 2007).

¹⁶¹ Survey compiled by Nichole DeVries and Tiffany Williams and distributed to students at The University of Kwazulu-Natal (Fall, 2007) (on file with author).

Law program. The remaining students who answered the survey were either enrolled in the legal aid clinic or the teaching legal skills program. The survey was compiled by Nichole DeVries and Tiffany Williams and administered to students by faculty at The University of Kwazulu-Natal in November, 2007.

Every student at the University of Kwazulu-Natal participates in a clinical program during their final year of study. Most students participate in either the legal aid clinic or the Street Law program, but there does not seem to be a single reason why students choose a particular option. Some students register for the class because they have a genuine interest in the work they will be doing. Thirty three percent of students surveyed enrolled because they like to teach, while twenty four percent thought they would acquire more skills training and would encounter more clients than those enrolled in the legal aid clinic. Others, thirty one percent, felt that it was going to be the easier of the options¹⁶². One student remarked, “Initially the Street Law programme was thought to be a burdensome task by me and my peers. However, in the end, the program proved to be fun, enjoyable, and very rewarding¹⁶³.” Another reason could be that those students taking the course were predisposed to community service work. Seventy percent of the students responded that there were interested in public service before taking the course.

Street Law also seems to be attractive because teaching times and locations are self-determined whereas the legal aid clinic has predetermined hours. However, many students who taught at schools ultimately found finding times to teach that fit in their schedule was a difficult task¹⁶⁴. Despite the various reasons for choosing Street Law, the six students who agreed to stay after class to discuss the program seemed to agree that Street Law was demanding and taught them about communication and social consciousness¹⁶⁵.

Street Law asserts that students are forced to have a firm command of legal principles in order to teach them to others, thereby turning classroom lessons into practical experiences¹⁶⁶. As one student remarked, “The boys...challenged me in such a way that this wealth of knowledge, obviously stored in some special cabinet in my subconscious, came to the fore and I was able to answer questions, thinking on my feet and engage the boys in serious debates¹⁶⁷.” Thirty four percent of students surveyed believe that a better understanding of the subject matter is the most useful tool that they acquired while participating in the program. The majority of students also felt that substantive material was the focus of the weekly seminars¹⁶⁸.

As mentioned earlier, critics of Street Law programs note that the skills learned in Street Law are not the same practice skills that a student would learn in a typical legal aid

¹⁶² Survey compiled by Nichole DeVries and Tiffany Williams and distributed to students at The University of Kwazulu-Natal (fall, 2007) (on file with author).

¹⁶³ Reflective Essay written by a student at UKND in 2006.

¹⁶⁴ Survey compiled by Nichole DeVries and Tiffany Williams and distributed to students at The University of Kwazulu-Natal (fall, 2007) (on file with author).

¹⁶⁵ Interview with six law students in the Street Law course at the University of Kwazulu-Natal Durban (Aug. 8, 2007).

¹⁶⁶ McQuoid-Mason & Lotz, *supra* note 43, at 47.

¹⁶⁷ Reflective Essay written by a student at UKND in 2004.

¹⁶⁸ Students surveyed estimated that thirty seven percent of seminar time was spent on substantive material.

clinic. However, students surveyed overwhelmingly agreed that the skills they acquired during the program would be useful when they entered practice¹⁶⁹. Students felt that there were many skills they learned in Street Law that they would not have learned in the other community service courses. Among the skills cited were communicating effectively to large groups of people, patience, applying teaching methods to legal concepts, public speaking, and general confidence. One Student replied, “You learn how to communicate the knowledge you've acquired on a grass roots level and you manage to pinpoint specific areas of the law pertinent to those you're teaching¹⁷⁰.” Another student’s perspective was, “You teach different areas of the law never knowing what your pupils’ personal situation is and how applicable the info could be to them. This teaches you humility, care, and empathy.”

Twelve different skills were presented to the students and they were asked to respond to the most useful of the twelve skills¹⁷¹. Most students responded that communicating legal principles is the most useful skill learned, followed by the ability to think on your feet and understanding the perceptions lay people have of the law.¹⁷²

Students are responsible for arranging their own community service sites. Therefore, the level of difficulty and the skills that are acquired vary from student to student. For example, one interviewee decided to teach at a non-English speaking community center and translated all of the lessons from English to Zulu¹⁷³. Another student spent his time at a local prison and felt ethically challenged more often than the students who taught in middle schools. In general, students felt they all gained better communication, research, interviewing, time management, quick thinking, and substantive application skills¹⁷⁴.

The students felt very strongly about a sense of purpose that they acquired while engaged in Street Law. Eighty three percent of Street Law students surveyed found that their desire to help the indigent increased during the course¹⁷⁵. Twenty one students responded that they were interested in a career in the public interest before participating and are now even more excited about their career. Although the students felt that they were much more aware of social injustice as a result of the program, few of them said that Street Law affected their desire to work in the private sector. Forty two percent

¹⁶⁹ Seventy-seven percent of the sixty-six students who responded felt that the skills learned in Street Law would be useful in practice.

¹⁷⁰ Survey compiled by Nichole DeVries and Tiffany Williams and distributed to students at The University of Kwazulu-Natal (Fall, 2007) (on file with author).

¹⁷¹ The skills listed include better understanding of the subject matter, writing skills, trial advocacy, communicating legal principles to lay people, ability to think on your feet, perceptions of the law by lay people, analytical capability, problem solving, confidence in public speaking, ability to interact with the public, understanding of the types of legal problems the public faces, and ability to teach various areas of the law,

¹⁷² Seven of the sixty-six students in the Street Law course did not believe the skills they learned would help them in practice. One of those students commented that he felt there were no real legal skills conveyed. The student did note, however, that public speaking skills were learned.

¹⁷³ Interview with a law student in the Street Law course at the University of Kwazulu-Natal, Durban (Aug. 8, 2007).

¹⁷⁴ Interview by Nichole DeVries with six law students in the Street Law course at the University of Kwazulu-Natal Durban who volunteered to stay after class and speak with me.

¹⁷⁵ Survey compiled by Nichole DeVries and Tiffany Williams and distributed to students at The University of Kwazulu-Natal (Fall, 2007) (on file with author).

responded that they did not want to pursue a career in public interest, but that they are now excited about volunteering their time. Most of them cited the necessity of a decent salary, but noted that the class made them recognize their responsibility to society. “Before I started this course I don’t think I would have done any community service work. Now I definitely will. The kids we teach are dynamic and really need role models¹⁷⁶.”

Students responded that they believe in a lawyer’s professional responsibility to volunteer time to the community¹⁷⁷ and seventy seven percent felt it should be a requirement of the profession. However, only seven out of eighty three students felt an attorney should commit to fifty hours or more of community service per year. Fifty five percent felt ten to twenty hours per year was adequate¹⁷⁸.

Students were generally satisfied with their decision to participate in Street Law.¹⁷⁹ Eighty six percent of students responded that they were glad they took Street Law over the other community service options¹⁸⁰. One student noted that “It helps students reflect on everything they have learned and teaches the importance of going out and helping the community.” When asked what this student would say to a dean seeking to justify the expense of the program, a student commented “There are people in the country who can’t afford legal assistance and these are the people who need to know about their rights the most.”

Replicating Success in the United States

The Carnegie Foundation’s report on American legal education calls for fundamental changes in both the structure and content of legal education in the United States¹⁸¹. The report challenges educators to produce lawyers who are responsible professionals committed to clients and aware of a greater social responsibility by integrating realistic experiences into the curriculum. These suggestions are not new to legal educators. In 1992, the MacCrate Report suggested law schools create opportunities for law students to practice legal skills in an environment that includes reflective

¹⁷⁶ Interview by Nichole DeVries with a law student in the Street Law course at the University of Kwazulu-Natal Durban on August 8, 2007 who volunteered to stay after class and speak with me.

¹⁷⁷ Seventy nine percent or fifty four students responded that lawyers have a responsibility to serve the indigent.

¹⁷⁸ Survey compiled by Nichole DeVries and Tiffany Williams and distributed to students at The University of Kwazulu-Natal (Fall, 2007) (on file with author).

¹⁷⁹ There was some dissatisfaction with the extent and quality of assessment. While thirty six students felt they had been given feedback throughout the course which allowed them to improve, twenty four students did not. Most students felt that the mid-year exam was the only feedback that they received, but twelve students reported that a lesson plan was reviewed before teaching. The reflective journals also received mixed reviews. Out of the sixty students who responded, almost half found the journals only somewhat useful. While some students found the journals gave them time to reflect on their experiences, others felt that the exercise did not help them grow. One student responded, "It's done at the end of the course so you can't actually discuss your experience with fellow colleagues and get their advice." Another student commented, "They [reflective journals] show how we have grown and matured to deal with controversial issues in a professional and sensitive manner."

¹⁸⁰ Survey compiled by Nichole DeVries and Tiffany Williams and distributed to students at The University of Kwazulu-Natal (Fall, 2007) (on file with author).

¹⁸¹ SULLIVAN ET AL., *supra* note 2, at 189.

evaluations¹⁸². With little exposure to the demands of practice students are ill-equipped to distinguish between the demands of actual practice and the law school exercise.

Formal legal education is essentially the only way to gain entry into a profession that affects the social economy dramatically¹⁸³. Therefore, a general expectation of formal legal education should be to prepare students to practice law¹⁸⁴. Yet most students and practitioners would agree that law graduates, even though they have passed the bar and are licensed to serve clients, know little about the logistical and professional responsibilities of being a lawyer. The responsibility of law schools is not simply to teach legal skills in a vacuum, but to impart the expertise crucial to the performance of a responsible professional¹⁸⁵. In order to accomplish this goal, educators will have to combine the knowledge and analytical skills that law schools are excellent at providing with practical and value based experiences¹⁸⁶.

Approximately seventy law schools in the United States have some version of a Street Law program, half of which offer a credit bearing option, although not all of them have a classroom component¹⁸⁷. The South African Street Law model, based on the original Georgetown experience, provides a distinctive clinical solution to the Carnegie Report's recommendations which can be broken down into four categories; (1) skills training (2) assessment (3) ethics and (4) social consciousness. Although the Street Law program serves a community need, the primary beneficiary is the law student¹⁸⁸.

As previously illustrated, the Street Law program in at the University of KwaZulu-Natal requires that student-instructors have a firm command of the legal substance they teach. The bi-weekly seminars reinforce theoretical legal analysis and provide instruction on student-centered teaching methods. The community service portion of the course teaches students how to convey legal principles so that anyone can understand them, answer questions quickly and accurately, and think creatively. Communication skills are not intuitive to law students and are imperative to the profession. Although the Street Law program does not mirror traditional client/attorney relationships, student-instructors spend at least 25 hours interfacing and interacting with learners and the mock trial requirement demands that students understand trial procedures.

The Carnegie Report suggests that American law schools should consider formative assessment as opposed to summative assessment adopted from Harvard, thereby giving students the opportunity to improve. Current assessment models are centered on inter-student competition by grading on a curve and assessing by a single exam, propelling the idea that not all students can succeed¹⁸⁹. This system defeats the purpose of assessment, to determine if the material is being adequately conveyed to

¹⁸² BOYD, *supra* note 1, at 122.

¹⁸³ F. ZEMANS & V. ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* 123 (1984).

¹⁸⁴ ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP* 16 (2007).

¹⁸⁵ *Id.* at 17.

¹⁸⁶ SULLIVAN ET AL., *supra* note 2, at 81.

¹⁸⁷ The number of programs varies on the year, especially with the volunteer based programs. The above numbers are from Lee Arbetman, director of US programs at Street Law, Inc.

¹⁸⁸ TIBBITTS, *supra* note 46, at 14.

¹⁸⁹ SULLIVAN ET AL., *supra* note 2, at 163.

students and which students have mastered the learning objectives of the course¹⁹⁰. The University of KwaZulu-Natal has constructed course assessment to give active feedback to students throughout the year.¹⁹¹ Students are required to keep a portfolio that tracks the progress of their lesson plans, reports from the community service sites, and contains a reflective journal. An in-class mock trial gives the professor an opportunity to give students feedback before they compile their own package. While examinations are still part of the assessment package, the model breaks away from the traditional model of examinations without room for feedback or correction.

A third consideration is the program's ability to reinforce the importance of ethical decision making.. The Carnegie Foundation suggests that ethics education should be integrated throughout a student's coursework and must be applied to actual situations¹⁹². At best, ethics would be consciously integrated into each course to reinforce its practical and essential value. Law clinics give students the best opportunity for ethics training because there are direct consequences for both the client and the student. Students learn to process real world issues such as competing interests of parties, attitudes, values, biases, and emotional encounters while facing important decisions. Successful students learn to interpret rules, form personal opinions about the responsibility of lawyers to the community, and evaluate how their personal values affect the quality of their representation¹⁹³. The Street Law program has the capability and flexibility to develop the value of ethics, not only by integrating ethical dilemmas into classroom simulations, but sending students into the community where they face ethical questions.¹⁹⁴.

The legal profession is unique because once a student becomes a lawyer, he or she not only becomes a member of the profession, but assumes an official public role. Lawyers have a profound impact on business, government, and civic affairs. Life in the United States continues to center itself around lawyers, leading the world in the number of lawyers per capita¹⁹⁵. It is not difficult then to imagine why it is important for law schools to produce professionals who understand their duty to the public. Unlike other clinical models, the Street Law program sends student-instructors to their "clients." They observe the broad spectrum of challenges and legal issues that indigent persons face on a daily bases.

Applying the Street Law program to legal education in the United States is not without challenges. A primary concern for all clinical programs is funding. Clinical programs are historically more expensive than traditional curriculum courses because the faculty to student ratio is lower and more resources are required. While Street Law is more resource intensive than a non-clinical course, it requires fewer resources than legal aid clinics which serve clients at the law school¹⁹⁶. Faculty to oversee the program is

¹⁹⁰ ROY STUCKEY ET AL, *supra* note 92, at 235.

¹⁹¹ *But see* concerns discussed *supra* note 179.

¹⁹² SULLIVAN ET AL., *supra* note 2, at 187.

¹⁹³ DE KLERK, *supra* note 13, at 267.

¹⁹⁴ Interview by Nichole DeVries with Lloyd Lotz, director of Street Law at the University of Kwazulu-Natal, on August 9, 2007.

¹⁹⁵ SULLIVAN ET AL., *supra* note 2, at 1.

¹⁹⁶ Interview by Nichole DeVries with David McQuoid-Mason on August 3, 2007.

required, while additional space for students to meet with clients is not. Many schools cite access to funding as a major obstacle to implementing the Carnegie recommendations. Street Law is an effective program which can operate with fewer resources than traditional clinics.

Another challenge to the program is implementation. There is no universally accepted model for Street Law programs. As of 2000, approximately 40 law schools in the United States and over 30 international entities had some form of Street Law program¹⁹⁷. Some programs were accredited by law schools, some were run by entirely separate organizations, and others were run by student organizations. Although various models give law schools latitude in formulating a program which is tailored to the needs to the student body, they also must be careful to provide students with the instruction and feedback necessary for a successful clinical program. Law schools should be prepared to provide the program with a director who has been trained to teach the program, admit only students who have completed the necessary coursework to benefit from a clinical program, require that the educator observe student-instructors at various points or provide a useful evaluation method, and engage community participation¹⁹⁸.

Conclusion

The role of legal educators is to prepare future lawyers with the skills, ethics, and social consciousness required to sustain a free and democratic society worthy of its citizens' support. Traditionally, Law schools in the United States have failed to provide the preparation law students need to fulfill this public responsibility. However, they are beginning to recognize the need for change and have begun to embrace innovative experiential learning models like Street Law. In order to achieve a more active learning experience which builds skills training and ethical education into knowledge acquisition and analytical processing, law schools must show commitment to improving the preparation of their students to practice through consistent and innovative programming.

The Street Law program at the University of KwaZulu- Natal offers a model for clinical education which provides legal skills training that reinforces theoretical legal principles while challenging the student-instructor's ethical and social conceptions. By the time students complete the program, they have developed professional expertise and values which will help guide them as they enter the practice of law.

Law schools are in a unique position to fundamentally shift the way the public and lawyers approach the profession. By institutionalizing the importance of knowledge and skills training tandem to social responsibility, the profession will facilitate the maintenance of a robust and vibrant democracy.

¹⁹⁷ TIBBITTS, *supra* note 46, at 26.

¹⁹⁸ *Id.* at 30.

Table 1. Normal Order of LLB Modules at UKZN

<u>Semesters 1 & 2</u>	<u>Credit Points</u>
Non-legal	16
Non-legal	16
Language	16
Non-legal	16
Non-legal	16
Language	16
Foundations of SA Law	16
Introduction to Law	16
TOTAL CREDITS	128
<u>Semesters 3&4</u>	<u>Credit Points</u>
Non-legal	16
Constitutional Law	16
Delict	16
Family Law	16
Law of Persons	8
Legal Research, Writing and Reasoning	8
Criminal Law	16
Human Rights	8
Interpretation of Law	8
Property	16
TOTAL CREDITS	128
<u>Semesters 5 & 6</u>	<u>Credit Points</u>
Accounting for Legal Practice	8
Contract	16
Criminal Procedure	12
Evidence	12
International Law	12
Jurisprudence	16
Labour Law	16
Legal Diversity	8
Professional Training 1	8
Specific Offences	8
Succession	12
Total Credits	128
<u>Semesters 7 & 8</u>	<u>Credit Points</u>
Administrative Law	16
Civil Procedure	16
Corporate Law	16
Insurance and Agency	8
Negotiable Instruments	8
Public Interest Law	16
Professional Training 2	8
Sale and Lease and Credit Agreements	16
Security and Insolvency	8
Elective x 3	24
Total Credits	136