multiculturalism, as they are not only a focus of discussion in a given class or case but can be reinforced through a constant dialogue among multiple participants. Diversity can also serve a prophylactic function of protecting against discrimination. This includes protection from discrimination in the institutional or academic environment as well as protection against discrimination in the legal system at large. Non-discrimination is a skill or value of the profession. Faculty diversity is also central to the goals of non-discrimination and non-discrimination instruction.

Faculty of colour deserve important social roles within a law school and university. In the clinical teaching context, faculty diversity is also important to serve the unique professional development needs of students who will likely confront invidious discrimination in the legal system. Faculty that have confronted marginalisation, stereotyping, and dignitary assaults as lawyers can draw on these experiences to mentor and model lawyering against personal subordination to students.

Below are some suggestions and recommendations for commencing a process to address the lack of clinical faculty diversity in the vast majority of American law schools. First, because denial is often a major obstacle to recovery, the academy as a whole and clinical faculty must unambiguously and openly acknowledge that there is a problem. Second, the academy should urge vigorous enforcement of AALS Bylaw section 6-4c, which provides that '[a] member school shall seek to have a faculty, staff and student body which are diverse with respect to race, colour and sex.' Faculty participating on site inspection teams for accreditation reviews should ensure that this standard is applied and enforced with respect to clinical diversity. Third, pursuant to AALS Bylaw section 6-4c, member schools should be encouraged to adopt diversity plans, describing the steps they are taking and plan to take to produce diversity throughout their ranks, including their clinical programs, within specified time periods.

Fourth, law schools should consider the adoption of fellowship and graduate law programs, which take affirmative steps to provide entry-level experience and exposure to potential clinical faculty of colour. Fifth, the AALS Clinical Section and Minority Section should sponsor a joint session designed to promote the entry of lawyers of colour into the clinical teaching field by providing opportunities for information exchange, mentoring, advice and informal networking. Seventh, the AALS Clinical Section's Clinical Directors' Conference should sponsor sessions on creating and managing diversity in clinical programs and on increasing diversity in clinical managerial positions.

Unwritten laws and customs, local legal cultures and clinical legal education

A Seielstad

6 *Clinical L Rev*, Fall 2000, pp127-216

Informed by a law school education that emphasises the litigation process and the study of the written law, including certain areas of substantive law derived from written judicial opinions and the formal written rules that govern the litigation process, most students have come to expect certain things about American legal systems and what it means to represent clients within these systems. Upon entering the law clinic, for instance, the majority of students can hardly wait to get into court, however brief or unimportant the appearance. While some genuinely look forward to their first court appearance, even those for whom the prospect of appearing in court is one of trepidation fully expect their cases to culminate in a hearing or trial before a judicial tribunal.

As the clinical semester progresses, though, and students begin appearing before the local judicial tribunals on behalf of clients, many of these students experience a fundamental crisis - a clash between what they expected the practice of law to be like and what they find the actual practice to be like. In addition to realising how nebulous and evasive the factual truth can often be, many students are genuinely shocked by the extent to which unwritten rules and local customs – including relationship, power dynamics and shared understanding between certain participants in the legal process – play a role in American judicial systems. This is particularly the case if the students have not been adequately prepared in advance for the reality of law in action.

The challenges posed by local legal culture and its unwritten rules and preferred forms of practice may be especially acute for outsider practitioners, particularly those who represent individuals or organisations naturally excluded from access to unwritten rules, customs, and other shared understanding about how the legal system works in reality. Depending on the values, motives and characteristics of their members, local legal cultures can be exclusive associations, their unwritten rules often elusive and discriminatory. Although capable of acquiring the force of law through consistent and regular application and enforcement over time, such rules may challenge fundamental rights, benefits and processes that may be guaranteed by constitutional and statutory sources of law as well as other written rules. And some people may be more disproportionately impacted by the unwritten rules than others.

Even where written codes, rules, precedent and other sources of positive law purport to prescribe the way in which a dispute will be adjudicated or otherwise resolved, unwritten rules and customs are an important component of both substantive and procedural law and in some contexts within the United States even more important than the written law. Ascertaining unwritten laws and local legal culture and then advocating effectively for clients within a legal system that is governed by them requires the practitioner to use skills and realise values – even thinking and reasoning processes – different from the ones typically addressed in law school and different even from those recommended for emphasis in law school curricula by the American Bar Association and legal scholars who have written about the appropriate scope of law school education. Finally, clinical law teachers can and should play

an integral role in preparing students to account for local legal culture and unwritten systems of rules and laws in their future law practices.

The conclusion that local legal culture and its unwritten rules may exert a powerful influence over legal systems may alter the way clinical teachers and other legal educators effectively prepare students for the practice of law. With respect to the unwritten rules and local legal culture, this process requires divining what skills are necessary effectively to discern and then to navigate within formal legal systems comprised of or influenced by unwritten systems of rules and local legal custom.

With respect to clinical teaching the question arises: does anything about the nature of these rules demand different skills, analytical approaches, or lawyering techniques? To the extent clinical legal education teaches students to learn from experience, it naturally lends itself to cultivating within students an awareness of much that is unwritten within a legal system and an ability to develop effective (and ethical) strategies on behalf of clients that appropriately take into account such unwritten rules and systems.

Clinical teachers should explicitly integrate discussions about the local legal culture and unwritten rules in the planning and reflection/evaluation phases of each legal proceeding, as well as in the classroom portion of the clinical course. In addition, certain skills should be accorded greater emphasis in clinical training programs in order to prepare students adequately for a practice of law in which they may encounter procedures, rules of etiquette and professionalism and even substantive rules not ascertainable through the traditional means of legal research.

Actual experience or learning by doing is one of the most salient features of clinical methodology. In terms of understanding local legal culture and its unwritten customs and practices, it is especially essential since by definition the process is one of ascertaining and responding to important information that generally deviates from written rules and standard prototypes. Clinical programs should consider challenging unwritten customs and practices that disadvantage some more than others. Another strategy is to codify unwritten systems and rules so that all persons have equal access to them.

Without sufficient exposure to the concept of local legal culture, clinical law students may become cynical about the legal system in which they are about to enter as lawyers. They are at risk, moreover, of succumbing unwittingly to the pressures imposed by local legal cultures, thereby diminishing their ability to represent clients effectively in such contexts and/or subjecting themselves to sanctions for violating unwritten rules of local custom and practice or committing other ethical violations.

Clinical teachers can and, indeed, must prepare students to recognise, read, and participate effectively in diverse local legal cultures. Through classroom exercises and discussions about local legal culture and unwritten rules, integration of interdisciplinary empirical studies and methodologies, such as the ethnographic method, introduction to the different theoretical models of law and express integration of the topic into case planning and reflection, students may be better prepared to ascertain and manipulate and/or navigate in systems where unwritten rules, customs and practices exert influence. Such activities also enhance students' ability to challenge unwritten rules, particularly those that produce unjust procedural processes or results and disadvantage and discriminate against certain groups of people more than others in violation of rights guaranteed by written constitutions, legislation and precedent.

CONTINUING EDUCATION

Continuing legal education in the Commonwealth: how does it fare?

C Roper

Commonwealth Legal Education Association Newsletter 82, pp 23-31

Continuing legal education (CLE) is really something that has developed since the beginning of the 1970s. It is now very much part of the life of most legal professions in the British Commonwealth. In some of them it is a very sophisticated undertaking. Unlike university-based undergraduate legal education, CLE has largely been a *laissez-faire* phenomenon. The profession has initiated it and largely left it to develop, as it will. It has thus been largely a market-driven activity.

The last 25 years has been a period, in most Commonwealth countries, of a very rapid growth in legislative activity. There have been many new laws affecting all aspects of society. It has therefore been a golden age for CLE as the professions have used CLE to keep abreast of these developments.

Obviously the principal benefit of CLE is that it provides a continuous opportunity for lawyers to continue to educate themselves. Education and training unquestionably speed up that process, avoid errors at the expense of the client and ensure some consistency and minimum standards.

Another benefit is that CLE has proved to be a very effective means of maintaining the professional life of the legal professions. The legal professions have realised that, if they are to retain the loyalty of their members, they need to be more than a regulatory body; they need to be providing services to their members.

Those initiating CLE in Commonwealth countries often believe that it will be a major source of income for the law society or bar association. They use this often as an argument for introducing CLE. The reason generally is that, the more CLE there is, the more it becomes sophisticated, useful and generally well presented. All of that costs money and, as a result, much of the money which CLE generates is spent on providing better quality CLE.

Generally the initiators of CLE in Commonwealth countries have been the law societies and bar associations. Most of them continue to do that. In some of the larger Commonwealth countries there are separate organisations responsible for continuing education. A monopolistic situation (which some consider is both de-