

## **THE LEGAL EDUCATION DIGEST: its mission, method of production and future directions**

The next issue of the Digest (July 2003) will be the start of a new volume, our 12th. This has provided us with a useful opportunity, for the benefit of subscribers, to reflect upon the mission of the Digest, the way we produce it and the directions in which we propose to take this quarterly publication over the next 12 months.

First, let us provide a little bit of history. The Digest commenced life with the appearance of the first issue in July 1992. It was published by the Centre for Legal Education, which was at the time an initiative of the Law Foundation of New South Wales (Australia), and under the direction of Christopher Roper. Since early 2003 the Centre has resided within the University of Technology Sydney, which has therefore assumed responsibility for its publication. Dr John Nelson has been the editor since 1995.

From its inception the mission of the Digest has been to provide to subscribers and other readers digested versions of recent articles and brief reviews of books and other monographs published on legal education topics. Its aim has been the dissemination of information within a convenient format to all readers, whether they be law teachers, practical legal trainers, researchers, educational administrators or other users of this sort of information. The focus is on all relevant publications throughout the common law world, most notably from the United States, United Kingdom and Australia, as well as from other similar jurisdictions.

The proper domain for the Digest is the theory and practice of legal education, whether it be related to law school, practical legal training, continuing legal education or judicial edu-

cation. It is not concerned, for example, with actual teaching and learning materials, which are considered too specific to subject areas. Rather, the Digest seeks to cover the educational theory and reflections on its practical application across the wide field of legal education. It is particularly interested in research reports and teaching innovations which demonstrate how theory has been used to guide practice.

As a consequence, the Editor keeps a large number of journals under constant review. These are published by a range of organisations, including legal publishers, universities and law societies and bar associations. Relevant legal and educational databases are regularly searched prior to the production of each quarterly issue. Specialist legal education periodicals, such as the *Journal of Legal Education*, *Law Teacher* and *Legal Education Review*, are a prime source. In addition, we attempt to identify recent monographs or other publications on significant legal education topics, which are then reviewed by the Editor and appear as a review article. The intention with these review articles is not to provide an exhaustive assessment but to give a brief account of the contents of the publication, while offering an opinion on its quality and usefulness for readers.

We aim to provide sufficient content coverage in each digested item to enable the reader to decide whether it is of enough interest to justify obtaining a full copy of the article or to acquire the book. However, we are also mindful that often the condensed version we provide will be used by our readers as a substitute for accessing the full article. All digested items are also conveniently categorised under appropriate headings for ease of reference.

For the past two years the Centre for Legal Education has greatly benefited in the publication of the Digest from the sponsorship of the Association of American Law Schools. AALS distributes copies of the Digest to all

its member law schools in the United States. We are delighted to advise that it has agreed to renew this sponsorship for another 12 months and therefore we continue to be extremely grateful to AALS for this ongoing support.

From the start of the next volume, the Digest will also be distributed to all members of the Australasian Law Teachers Association in the confidence that it will be a valuable addition to the tools for improving the quality of law teaching in Australia and New Zealand.

We also wish to announce that the next issue will have a new layout and format, designed to give the Digest a more contemporary appearance and make it more readable. It is high time that a new layout was adopted because this will be the first significant makeover for the Digest since its original publication.

At the same time we are working towards making the Digest available online. When this is done, we aim to provide access to the contents of all previous issues from the 11 years of publication, as well as to enable searches to be undertaken under topic headings and key words.

Finally, in our opinion, the Digest makes a significant contribution to legal education scholarship and practice by acting as a clearing house of relevant articles and other publications for a wide community of users. However, there are limitations to the value of databases in covering the entire field of published materials which should properly be considered for digesting.

We encourage all readers of the Digest to take an active role in shaping the Digest. If you yourself have published an article or book worthy of consideration which you would like to draw to the attention of the wider readership which the Digest provides, please correspond with Dr Nelson and if possible provide a copy. Similarly, if you become aware of an article writ-

ten by someone else which you consider has something worthwhile to say, please pass on your recommendation, plus a copy if possible, to Dr Nelson. In this way we will be better empowered to produce a Digest which will be of significant value and use to our readers.

When corresponding with the Editor, please note that Dr Nelson's email address is LED@law.uts.edu.au

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## CLINICAL LEGAL EDUCATION

### An ethics critique of interference in law school clinics

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Working as lawyers on behalf of clients, student-lawyers and law clinic faculty experience the legal ethics issues lawyers face every day, such as client confidentiality, conflict of interest and competency issues. In addition, the work of student-lawyers and faculty in clinical programs sometimes brings them into contact with ethical issues often faced by lawyers representing poor and unpopular clients, such as interference in case and client selection and restrictions on the means of representing a client. The interests of politicians and of university alumni and donors add an additional level of outside interest and potential interference in law school clinic activities.

Although there is a history of outside interference in law school clinic case and client decisions, there is a dearth of scholarship examining these matters. Some of the analysis of the ethical issues arising from interference in law school clinical programs also serves as a useful framework for analysing these restrictions on or interference with the legal services provided

by lawyers and private practitioners representing poor or unpopular clients and causes.

An initial ethics consideration in law clinic case and client selection is the independence of the law clinic supervising attorney to choose cases and clients that meet the clinic's educational and public service goals. Scarce clinical program resources and pedagogical objectives require some limits on who may be represented or what cases may be handled. A recurring ethical issue is the propriety of politically, economically, or ideologically-motivated efforts by persons and organisations outside the law school clinic to limit the clinic's choice of clients and cases. While rules of professional responsibility strictly prohibit interference with an attorney's exercise of professional judgment once a case has been accepted, the independence of a law clinic attorney's choice of clients and cases is less clearly safeguarded.

Clinic lawyers, like all lawyers, are customarily free to choose clients and cases, but rules of professional conduct and anti-discrimination laws may impose limits on this traditional freedom. In most instances, law school clinic attorneys not only have the freedom to choose cases and clients but also to solicit potential clients. Efforts to influence law clinic case and client selection decisions threaten the ethical duty of a clinic attorney to exercise independent professional judgment on behalf of the client.

Law school clinic programs may face interference not just with whom they may represent or what kinds of cases they may handle, but also limitations on how they may represent a client. These practice restrictions on what can be done for a client may be imposed as a condition of receiving public funds, imposed by the law school or university to avoid political or funding controversies, or voluntarily imposed by the law clinic as ways to avoid possible controversies, allocate scarce

clinic resources or advance educational goals. Regardless of the source or motivation, limitations on the means of representation a law clinic provides to the client raise case and client selection ethical concerns.

Some law student practice rules prohibit law clinics from seeking statutory attorney's fees. At least one state student practice rule prevents student attorneys from lobbying on behalf of clients before state or federal legislatures. Both of these court-imposed student practice rule restrictions may limit the legal representation that a clinic client would otherwise receive from an attorney. In addition, clinic funding sources may also impose restrictions.

In limiting the way an attorney can represent a client, the client may be losing an important advantage in a case. For example, where an attorney is prevented from seeking statutory attorney's fees from the opposing party, that party may be more inclined to drag out the lawsuit and less inclined to settle. By increasing the costs of non-compliance with the law, the availability of attorney's fees to prevailing parties also serves to deter future law breaking and may deter meritless lawsuits against clinic clients. By not requesting fees, the attorney may also be giving up the opportunity to structure a settlement whereby the client would receive a higher monetary payment or greater equitable relief from the defendant in exchange for the attorney waiving some part of her statutory attorney's fees.

Harm may also result to the client by prohibiting a lawyer from lobbying. In some circumstances, lobbying a legislature or an executive branch agency for a change in the law or regulations may be the lawyer's most effective, or only, way to address the client's need.

The result, therefore, of limitations on the legal methods that a law clinic attorney may employ is that the client may receive less representation and less effective representation than the client