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TEACHING NOTE

Clinical Legal Education in a Developing Island Jurisdiction – A Unique Environment

EDWARD R HILL*

OVERVIEW

This article provides an insight into the environment and background of the Law Clinic, a clinical legal education course offered on a placement basis by the University of the South Pacific (USP) School of Law based in Port Vila, Vanuatu. The article briefly examines the structure of the course before focussing on some of its unique features. By providing a description of the course and identifying some important issues, it is hoped that the article will provide a different perspective of clinical legal education.

BACKGROUND

The Social and Legal Landscape of Vanuatu

Vanuatu is a Melanesian country that gained its independence from Britain and France in 1980. It is a developing country with a small legal profession.

There are three official languages: English, French and Bislama. Bislama is a type of pidgin which is spoken by most ni Vanuatu people.¹ Many also speak English or French, which are the languages of most expatriates. In addition, there are approximately 110 indigenous languages spoken in the country.

The country is small, but comprises 83 islands. The population is approximately 200,000. Port Vila, the capital and largest city, is said to have a population of about 30,000.²

Commercially, the country is a tax haven and offshore banking

centre. The private legal profession services mainly the commercial and financial interests of residents and offshore clients. The private profession is predominantly expatriate, mostly from Australia and New Zealand.

The countries of the South Pacific have formal legal systems that are similar. These similarities arise out of their colonial legacies. While there are differences, they all share a common law tradition that either comes directly from the United Kingdom or indirectly through New Zealand (Cook Islands, Samoa) or Australia (Nauru). All have written constitutions. One country, the Marshall Islands, was a dependency of the United States before independence and therefore has a legal system that is quite American in nature.

The Law Council (comprising the Chief Justice, the Solicitor General and an appointed private practitioner) has statutory responsibility for the admission of lawyers to practice in the country.³ There is a growing proportion of ni-Vanuatu Lawyers. Until recently most were graduates of the University of Papua New Guinea law school. Now, however, most new lawyers are graduates of the USP program.

The legal profession is nevertheless tiny by Western standards. There are about 15 private lawyers in the country and a similar number of lawyers in the public service. The largest private firms have three lawyers. There are several government law offices including the State Law Office (the Attorney General) but these too are small. The State Law Office has four lawyers including an expatriate legislative drafter working on a consultancy arrangement. The Public Solicitor has only two lawyers.

The country is served by a Public Solicitor who is a constitutional office holder appointed by the President.⁴ His mandate is to provide legal assistance to needy persons or any person when so directed by the Supreme Court.⁵ The fact that the Public Solicitor has a support staff of one lawyer and two secretaries effectively narrows the definition of needy persons to be those in custody in respect of criminal cases and the occasional civil case. There is a serious backlog of civil cases at the office of the Public Solicitor. There is no system of legal aid referrals to members of the private profession.

Vanuatu has no statutory law society. The Port Vila Law Society is a largely informal association of private lawyers. Its

primary function has been as a convenor of social events without a significant role in the regulation of the profession.⁶

There is no code of professional conduct for lawyers in Vanuatu. The level of consumer awareness in relation to legal services among the local population is very low; lawyers are seldom if ever subject to an official complaint in relation to services rendered to a client, and none has successfully been sued for any form of malpractice.

The University of the South Pacific

The University is controlled by 12 countries in the South Pacific region.⁷ The USP School of Law is relatively new. It grew out of a Department of Law which was part of the School of Social and Economic Development at USP. Beginning in 1985, the Department of Law began to offer sub degree courses, mostly by extension.

Although the main campus of the USP is in Suva, Fiji, there are extension centres and campuses in other countries throughout the region. The School of Law was built in Vanuatu and completed in 1996. There are presently approximately 200 full time students studying law on the campus. A number of students take courses (particularly 1st year courses) in Suva, and by extension, a mode of learning which is an area of increasing importance at the USP Law School.⁸

The LLB program is of four years duration and is broadly similar in content and structure to that of Australian or New Zealand Universities.⁹ The first class graduated with LLBs in 1997.

Students come to the School of Law (as they do for all the USP programs) from the 12 countries of the South Pacific that control the University. The main countries represented at the School of Law are Fiji, Solomon Islands, Tonga, Samoa, Vanuatu and Kiribati. The rest are tiny jurisdictions, not all of which are represented in each year. The student population comprises a number of languages, ethnic groups and cultural backgrounds. For many students, English is a second or even a third language. These diverse backgrounds must be taken into account in the provision of clinical learning opportunities. All instruction at USP is in English.

ESTABLISHMENT OF THE LAW CLINIC

The Law Clinic course was approved by USP in 1996 and was launched in second semester 1997, in time to allow some students of the first graduating class to take the course before the completion of their LLB studies. A unique position, that of Law Clinic Supervisor, was created. This position was divided equally between the Law School in Port Vila, Vanuatu, and the Institute of Justice and Applied Legal Studies in Suva. After one year, this arrangement proved to be unworkable with the result that the IJALS portion of the contract was “bought out” by the Law School. Much of the initial momentum behind clinical education was generated by the Coordinator of Clinical Education who came to USP on secondment from Sheffield Hallam University in the UK. He had experience in autonomous live client clinics in the UK and tended to favour such a model for USP – both in the LLB course and the professional practice diploma program offered by IJALS.

A live client clinic, as originally envisaged, would have adhered to the model of a law practice with an admitted lawyer supervising law students who would provide legal information and advice to clients from the community.¹⁰ Although academic approval had been granted, no steps had been taken to prepare for such a clinic before April 1997.

The writer arrived in Port Vila as the newly appointed Law Clinic Supervisor. It was clear that, in the time available before the beginning of second semester, a live client clinic based on an autonomous law practice could not be established. Instead, a clinic based on the placement (or externship) model was planned for the beginning of second semester, 1997.¹¹ The Law Clinic course has continued to operate on this model since its inception.

When the Law Clinic course was being introduced, there was a detectable reluctance (or at least hesitation) on the part of the profession and even the judiciary to embrace the USP Law School – which had suddenly appeared in its midst. Apart from one lawyer who worked part time at the Law School, there was little cross over between the university and the legal or judicial community. They existed in separate worlds. This separation has now diminished somewhat due in part to the existence of the Law Clinic course.¹²

Enrolment in the course is restricted to maintain a staff/student ratio of approximately 12 to one although this has been slightly

exceeded each year. When more students apply than there are places, the selection is conducted on a random basis. Most students coming into the course have had little or no experience with practical legal skills.

STRUCTURE OF THE COURSE

The Law Clinic course has been offered on a placement basis during second semester each year. It is divided into two parts: the placements themselves, and a weekly, on-campus workshop. These parts are assessed equally. There is no final examination.

Placements

One part is the placement of students with law offices in Vanuatu. Students are required to work a minimum of five hours each week at their placement office. To the extent possible, they choose their placement from among a range of public and private law offices in Vanuatu. They then arrange their work schedule individually with the office in which they are placed.

Recruiting suitable placement offices was a challenge and required a degree of trust (and risk) as, apart from some word of mouth guidance regarding several private practitioners, the options were very much unknown quantities in respect of quality of practice and ability to supervise law students. A great deal of personal contact, promotion and explanation was required in order to bring many potential placements into a state of willingness to participate. During the first year of the course, one private law firm, six government departments employing lawyers and one non government organisation were selected as placements.¹³ All placements have been willing to accept students in subsequent years with the exception of the State Law Office which has recently experienced office space constraints. Two of the original placements have been dropped due to concerns about quality of supervision. Two other private firms have been added and some other public law offices have increased the number of students they are prepared to take. The Supreme Court now accepts two students. The maximum number of students who have been placed at any one placement is three. Overall however, there has been little variation in the placement offices during the three years that the Law Clinic course has run.

Students from each placement office meet once each week with the Law Clinic Supervisor to discuss progress, practice issues and any other concerns that arise in relation to placements. This is separate from the weekly workshop where all students meet together. This weekly meeting is an opportunity to monitor the students' progress at their placements in a confidential atmosphere and to deal with any concerns which arise.

Assessment of students' performances at their placements is based on a major case report and a detailed journal. These are both submitted at the end of the semester.

Weekly Skills Workshop

This is a two hour weekly session held on campus. The entire class meets together. The workshop is intended, in part, to provide some uniformity to the students' experiences and, to the extent that it is possible to do so, to practise those skills that are common to all placements. This is a challenge given the wide range of experiences of students. For instance, drafting, interviewing, negotiation and advocacy, are each featured in some placements. However, none is common to all placements. What *is* common to all placements is a concern about professional ethics and practice standards. These have therefore become an area of concentration in the weekly on-campus workshops. The examination of these issues combines nicely with other more generic skills such as public speaking and debating. These take place in the context of classroom presentations, discussions and debates of hypothetical fact scenarios based on real cases. Moot court exercises have also been included in the weekly skills workshops. These however have not been included in the current year.¹⁴ Interviewing, which is the most common skill used in placements and which is useful in a number of contexts, is the only other major skill which is currently included.

SOME UNIQUE ISSUES

What Lawyers? What Standards?

It is important in any placement-based clinical program, just as it is in any professional practice, that practice standards be identified and adhered to. This is not only for obvious educational

reasons but also to preserve the image of the clinical program and the University. These include ethical standards, competency standards and general standards relating to file management and client relations.

In the Law Clinic program in Vanuatu, where students come from a variety of jurisdictions and anticipate returning to them to practise law, a question arises as to what professional standards should apply to the clinical work of the students. In other words, should they be the standards of Vanuatu, Fiji, the Solomon Islands, Tonga, Australia, or some other real or hypothetical jurisdiction? This question does not exist (or does not exist to the same extent) in a larger jurisdiction that has a more homogeneous and established profession, disciplinary proceedings, continuing legal education, etc, and where most if not all students anticipate remaining in that jurisdiction to practise.

This issue presents itself in a real way in relation to the Law Clinic. For instance, in some jurisdictions, appearing late for court without a very good excuse would be a matter approaching contempt. In other jurisdictions it is almost routine. In some jurisdictions acting for more than one party in a real estate transaction is controlled or forbidden. In others, it is neither. Varying standards apply to a range of other aspects of practice including conflict of interest, billing practices, preparation for court, file management and a range of ethical issues.

The issue of practice standards arises in relation to the Public Solicitor's Office. In it, there are files that have been unattended for longer than would be acceptable to a Law Society in a jurisdiction such as New Zealand or Australia. However, the operation of the Public Solicitor's Office takes place under severe resource constraints which are unlikely to exist in either Australia or New Zealand. These sorts of constraints are not uncommon in many parts of the Pacific. A similar clinical course, operated in a placement model in Australia might not accept a placement such as the Vanuatu Public Solicitor's Office as a suitable placement. The evaluation of such a placement therefore depends upon what yardstick is being used.¹⁵

It is platitudinous to say that the highest standards possible should be identified and encouraged in any clinical legal program. The difficulty arises when this, by implication, imputes sub-standard conduct to any placement. At the same time students must

not be permitted to regard standards that fall below international optimum as being the highest possible level of practice. A responsibility falls to a Law Clinic Supervisor to deal with this issue in a sensitive yet responsive manner. Significant attention must be given to providing students with a comparative and critical perspective on all placements. This is possible through the sharing of experiences and through examination of practice standards which take place during the weekly on-campus workshops. Students, presented with comparisons of standards of practice in various placements are, to a great extent, able to draw their own conclusions.

A significant number of placements are within the public service of Vanuatu. This parallels the general expectations of students within the Law Clinic in the sense that many of them expect to find future employment within the public service of their home country.¹⁶ The weekly workshops place a significant focus on ethical standards for lawyers in the public service. This aspect of professional conduct is not common to most clinical courses or texts on professional ethics and responsibility. However, the issues of professional conduct within the public service are common to all jurisdictions and especially applicable to the high proportion of South Pacific students.

Custom

Customary law exists alongside and, to some extent is integrated with, adopted law in many Pacific Island countries. In Vanuatu, customary law is recognised in the Constitution. Section 95 (3) states: "Customary law shall continue to have effect as part of the law of the Republic of Vanuatu."

Further, all land in Vanuatu is held by customary owners. Legislation provides for a system of island courts within the country. These courts have exclusive jurisdiction and are mandated to deal, at a trial level, with customary disputes and customary land matters. However, these courts are moribund at present and, in any event, the rules of procedure do not permit lawyers to represent clients in the island courts. This aspect of customary law is therefore beyond the reach of the Law Clinic.

Customary law also has a place in the societies and the constitutions of most other Pacific Island countries. However, it is

difficult to find a practising lawyer who incorporates customary law into his or her practice. Custom seldom arises within the professional practice of law probably for a range of reasons. Arguably lawyers are not familiar with how it can be used in the service of their clients. They are not familiar with it because they perceive that the interests of their clients are best served by the application of substantive and procedural laws which adhere to the adopted “western” laws found in the legal systems of each country. Much custom that is applied is outside the formal legal and judicial structures of the countries in the region.

The Law Clinic experience at USP does not include a significant component of customary law. Whether it should and, if so, how it could be done remains moot. In any event, it is clear that, during a one-semester course, the inclusion of a significant customary legal component would displace other experiences to an extent that would significantly change the nature of the course.

Diversity

Diversity, in a number of respects, pervades the Law Clinic course. Students bring to the course a variety of cultural, ethnic, linguistic and educational backgrounds. Some have a career background and are at law school to upgrade their qualifications. Others are young and have no working experience. Nearly all are expatriates living in Vanuatu.¹⁷ The writer’s background as a lawyer comes from outside the countries of the region.¹⁸

The range of law offices into which students are placed also presents a picture of diversity. The private firms tend not to be specialised but provide legal services across a broad spectrum of legal practice, including maritime law, offshore banking, and trusts.

The range of public service placements is also diversified. It includes the Public Prosecutor, the Public Solicitor, the Attorney General, the Financial Service Commission (which is charged with the incorporation and regulation of offshore banking, companies and trusts, among other things) and the Ombudsman.¹⁹

From the outset of the USP Law Clinic, it was recognised that this diversity could not be eliminated. The challenge was to find a way to turn it into a strength. The key to this was the realisation that the placements and the students’ collective experiences in them cut across the entire legal and judicial systems of the country.

Together, they have a unique picture of the entire legal and judicial system of a country. This feature provides significant learning opportunities.

The method for capitalising on this range of practices is the use of exercises in the weekly on-campus workshops that allow students to share their insights. This takes the form of oral reports to the class. The first, called an Orientation Report, is presented during the first three or four weeks of the semester. Students are expected to include some or all of the following matters in their report:

- mandate of the placement office
- the organisation and personnel of the placement office
- any constraints and limitations which affect the operation of the placement office
- the student's expected duties at the placement office and how those duties assist the placement office and/or the student's learning.

None of these topics requires students to report on the particulars of any specific file and therefore the exercise avoids an issue of confidentiality. Delivery of the orientation reports takes between two and three weeks of the semester. Questions and class discussion follow each presentation as time allows.

In the final weeks of the semester, students are required to present a Final Placement Report. This is similar to the Orientation Report but allows a greater opportunity for reflection and evaluation of the placement after a semester's worth of exposure.

Both the Orientation and Final Placement Reports are videotaped, critiqued and assessed for content and delivery. Students who share a placement with another student are permitted to co-operate in their presentations as they wish.

These exercises combine a number of objectives. Firstly, they provide a context for practising the skill of public speaking and a basis for being assessed on this skill. Students are provided with guidelines for their own presentation and for the evaluation of the reports of their fellow students. Secondly, they require students to reflect upon, structure and articulate their thoughts about their placement experience and, by doing so, gain further insights into their own placement experience. Thirdly, they allow students to learn about other students' placement experiences. Together the class acquires a broad appreciation of the entire legal system of the

country. In turn, this comparative perspective (learning about others' placements) allows students to gain further insights into their own experience. Another benefit is that any specific weakness in the quality or standards of a placement is revealed in a comparative way, in the overall context of both the placement and the legal community.

Confidentiality and Conflict of Interest

Not only are the issues of conflict of interest and confidentiality important in any private or public practice of law. They carry over and are integral to the operation of any clinical program operated on a placement model. It is therefore necessary, particularly when operating a clinic by placements in a small community, to implement procedures and rules that minimise the potential for conflict of interest or breach of confidentiality to occur.

In the USP Law Clinic, it is not uncommon for students in different placements to become involved in a specific case on behalf of different clients (or, in the case of students placed at the Supreme Court, to gain confidential insights from a judicial perspective). It is extremely important that all students appreciate the high importance of maintaining confidentiality.²⁰

The potential for conflict requires that, during weekly meetings to discuss placement matters, the clinic supervisor meet with students from different placements separately. This diminishes the potential for disclosure of confidential information relating to specific files and clients. Some instructive issues can later be raised in hypothetical form at a weekly workshop. Separate meetings with students from each placement increases the time burden on the clinic supervisor from what it would be if students from different placements could meet together in larger groups to discuss specific cases.

It is necessary for the Law Clinic Supervisor to maintain a particularly detached position with respect to client matters at all placements. During the weekly meetings, an attempt is made to deal with all issues in a hypothetical and anonymous manner. However, ongoing matters from different sides of a specific case do occasionally become apparent. This creates a potentially compromising position. While assisting students to isolate issues and explore options, the Law Clinic Supervisor must refrain from

giving anything that could be construed as legal advice, leaving that to the lawyers acting as placement supervisors. At the weekly meetings, there is still plenty of scope for discussion and guidance in relation to students' experiences at their placements without compromising confidentiality or creating conflict of interest.

CONCLUSION

The Law Clinic course at USP is now operating on a sound and sustainable basis using a placement model. The placements themselves are complemented by an on-campus skills and professional ethics workshop component. The course is flexible in that it could operate during one or both semesters and can easily be interrupted during semester breaks. The Law Clinic course has been structured to meet the educational goals of students and the unique environment represented by the Vanuatu legal and judicial systems. In future, the Law Clinic course is likely to evolve further and perhaps to adopt the model of an autonomous clinic serving clients directly. While this might be a natural progression, it would have been difficult to introduce such a model without first employing an intermediate placement model. The Law Clinic course has helped integrate the students and the university into the legal and judicial communities while at the same time helping make legal education more relevant for students from the South Pacific.

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¹ Ni Vanuatu is the expression by which indigenous people of Vanuatu refer to themselves. It is comparable to Fijian or Solomon Islander. Rather than diminishing in importance, Bislama appears to be providing a linguistic bridge between indigenous communities which have either a French or English background.

² Accurate population statistics are difficult to find in Vanuatu and several other Pacific Island states.

³ The writer and other members of the School of Law staff have repeatedly applied for admission to practise law in Vanuatu. In the case of the writer and a USP colleague, temporary admission was granted that contained a series of restrictions which effectively precluded either *pro bono* or paid legal services. No legal challenge has been brought in relation to this. It remains a constraining factor in the development of a law clinic program.

⁴ Article 56 of the Constitution of the Republic of Vanuatu.

⁵ Section 5(2) of the Public Solicitor's Act 1984 provides that the term "needy person" is to be "interpreted in relation to each particular case and, without limiting the generality of this expression, account shall be taken of the means of the person to meet the probable cost of obtaining alternative legal assistance, the availability of such assistance and the hardship which might result to the person

- if compelled to obtain legal assistance other than by the Public Solicitor".
- 6 There are recent signs that the Law Society is taking on a more significant role. Although, until now, membership has only been open to private practitioners, consideration is being given to opening membership up to all lawyers. Also, a committee of practitioners has formed a Rules Review Committee to advise the judiciary regarding possible revisions to the existing civil rules of court.
 - 7 The 12 countries of the USP region are Fiji, Tonga, Samoa, Solomon Islands, Kiribati, Tuvalu, Cook Islands, Vanuatu, Niue, Tokelau, Nauru, and Marshall Islands.
 - 8 This is understandable in view of the vast area (approximately 20 million square miles) and the isolated populations serviced by USP.
 - 9 One significant difference is that the law of up to 12 jurisdictions is covered in any one course. This is not as difficult as it sounds because the adopted laws of the various countries are quite similar in many respects. Most of the central concepts and principles are common if not identical in all of the countries represented. Students are encouraged to write assignments and answer examination questions taking into account the laws of their own jurisdiction.
 - 10 The Monash-Springvale Community Legal Service operated by Monash University is a highly evolved example of this type.
 - 11 Australian universities with similar models include the University of Newcastle and Griffith University.
 - 12 A non-credit moot program has also attracted lawyers as volunteer judges. Other social and formal connections between members of the Law School and the profession have also developed.
 - 13 The public law offices were the Attorney General's Office (now known as the State Law Office), Financial Services Commission, Ombudsman's Office, Public Prosecutor, Public Solicitor, and Reserve Bank of Vanuatu. The NGO was the Vanuatu Women's Centre.
 - 14 Mooting at USP is required in at least one compulsory course. It is also available on a non credit basis to students who wish to compete in a round of internal moots. Students may also apply for a place on the USP moot team which competes annually in the South Pacific International Moot Court Competition.
 - 15 In fact, the level of encouragement and responsibility given to the students and the range of experiences gained by students in the Public Solicitor's Office make it one of the better placements – provided students placed there are able to put their experience in a broader practice context. The weekly on-campus workshops serves this purpose.
 - 16 In fact, many students are sponsored by the governments of their home country and are bound to serve the government of that country for a minimum number of years after qualifying for practice.
 - 17 During the three semesters that the course has run only 2 ni Vanuatu students have been enrolled.
 - 18 Comprising 12 years of litigation practice in British Columbia. I am also admitted to the High Court of Fiji.
 - 19 In the South Pacific jurisdictions, a greater proportion of the legal profession is employed within the public service than in private practice capacities. This is in part attributable to the fact that, despite its small size, each country is obliged to maintain a full range of government legal services.
 - 20 This is a topic that receives particular emphasis at the beginning of the semester. It is the subject of a declaration that students sign before they begin work at their placements.