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Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn From South Africa

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Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn From South Africa

Peggy Maisel

Abstract

This Article reviews the development of clinical education in South Africa and the valuable lessons such an analysis provides for those seeking to promote clinical education elsewhere. This Article reviews the obstacles faced in South Africa and the creative ways clinicians have attempted to overcome them, some much more successful than others.

EXPANDING AND SUSTAINING CLINICAL LEGAL EDUCATION IN DEVELOPING COUNTRIES: WHAT WE CAN LEARN FROM SOUTH AFRICA

*Peggy Maisel**

INTRODUCTION

Spurred by desires to make the law school experience more educational and relevant for students and to promote equal justice and the rule of law, scholars have devoted considerable attention and resources to creating or expanding clinical legal education in developing countries in the last twenty years.¹ The introduction of more skills training into the curriculum has been related to this growth. One key country in which this type of growth has occurred is South Africa, where both the number and size of law school clinics have greatly expanded since the country's first democratic elections in 1994.² This movement has been part of South Africa's broad-based transformation away from the oppressive and segregated conditions under apartheid.³

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1. See Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 PENN ST. INT'L L. REV. 421, 422 (2004); see also Peggy Maisel, *International Cross-Cultural Collaboration in Clinical Education: The Role of U.S. Clinicians in Developing Countries*, http://www.law.ucla.edu/docs/maisel__peggy_-_role_of_us_clinicians.pdf (last visited Dec. 27, 2006). This Article uses data on clinicians working abroad. See Roy T. Stuckey, *Compilation of Clinical Law Teachers with International Teaching or Consulting Experience*, <http://www.law.sc.edu/clinic/docs/internationalsurvey2005.pdf> (last visited Dec. 27, 2006).

2. Law clinics now exist at each university in South Africa and, since apartheid, have grown in size as discussed later in this Article. See generally Symposium, *An Overview of Civil Legal Services Delivery Models*, 24 FORDHAM INT'L L.J. 225, 237 (2000).

3. The first democratically elected government in 1994 was faced with the enormous task of transforming every State institution, each of which had been shaped by apartheid. In the legal sphere, this required transformation of the courts, the criminal justice system, the judiciary, the Legal Aid Board ("LAB"), the legal profession, and legal education. In addition, new legislation needed to be enacted to both implement provisions of the new Constitution, Act 109 of 1996, and remove laws which violate it. In the twelve years since the end of apartheid in South Africa, the transformation of legal education began with the significant change in the student demographics. At historically white universities, there are now a majority or sizeable minority of black students that better reflect the population demographics in South Africa. Further, the

Those who support the expansion of clinical legal education in South Africa and elsewhere have sought to achieve up to five different objectives, three related to improving legal education for students and two related to providing assistance to disadvantaged groups. Education is enhanced first by having the law school experience better reflect the realities of the citizens within a country, such as South Africa where a majority of the people are economically disadvantaged.⁴ Thus, clinics instigate the introduction of poverty and development law issues into a curriculum that has traditionally ignored these subjects in favor of those related to commercial and middle class interests.⁵ Second, the creation of clinics and clinical courses helps to promote values important to the new order such as the need to provide equal justice to even the most disadvantaged in society, not just to those who, in the past, have been able to pay for legal services.

The third way clinics improve legal education is to provide an opportunity for students to actually practice such lawyering skills as interviewing, negotiating, and analyzing cases, and to confront ethical issues that arise in real cases.⁶ These topics had previously been absent from the traditional law school curriculum in developing countries that overwhelmingly utilized either a lecture and/or seminar discussion format to teach substantive law.⁷ Thus, law students from those institutions used to graduate

government has mandated the merger of some universities to try to overcome the legacy of inequality between historically black and white universities. More specific to the law schools, there has been a change in the degrees granted and the degree requirements in order to try to equalize preparation and entry into the legal profession. These changes are discussed in more detail later in this Article. See KENNETH S. BROUN, *BLACK LAWYERS, WHITE COURTS: THE SOUL OF SOUTH AFRICAN LAW* 235-43 (2000).

4. The Central Intelligence Agency World Factbook says that fifty percent of the South African population is living in poverty and twenty-five percent of the population is unemployed. See Central Intelligence Agency, *The World Factbook: South Africa*, <https://www.cia.gov/cia/publications/factbook/print/sf.html> (last visited Oct. 30, 2006) [hereinafter CIA World Factbook].

5. Black lawyers comprise a tiny minority of the legal profession as a result of apartheid. While the curriculum for white lawyers under apartheid prepared them with courses to uphold the commercial and property status quo, the few black attorneys were excluded from all work relating to property law and, for the most part, practiced only criminal law. Blacks were not allowed to buy property or own land outside of designated reserves or homelands, which constituted the least desirable thirteen percent of the land in South Africa. See BROUN, *supra* note 3, at 237.

6. See JOBST BODENSTEIN ET AL., *CLINICAL LAW IN SOUTH AFRICA* 2-3 (2004).

7. Legal education at South African law schools and in other former British colonies is based on the English style of university education. This is also true of legal education in many developing civil law countries. See Muna B. Ndulo, *Legal Education in*

with little if any practical experience. To complete the description of recent reforms, it should be noted that in addition to providing clinical education, some law schools are now also teaching legal skills and ethics courses outside of a clinic setting.

A fourth objective is to increase access to the legal profession for students from disadvantaged backgrounds in countries like South Africa that require candidate attorneys to serve a legal apprenticeship before attaining admission to the bar.⁸ In the past, it was often difficult for disadvantaged law school graduates to meet this requirement because they would be overlooked for positions in favor of those from more affluent classes.⁹ This situation was exacerbated in South Africa and elsewhere when issues of race and cultural background were added to the equation. Thus, many black law graduates never were able to gain formal admission to the bar.¹⁰ The expanded law school clinical program has helped to partially remedy that problem by providing increased opportunities for students from disadvantaged backgrounds to fulfill their apprenticeship requirement.¹¹

The final objective is to expand the resources for legal representation available to the disadvantaged. In virtually all countries, including the United States, there are insufficient resources to provide legal representation to low-income people, even on issues vital to their survival such as public benefits, shelter, family matters, and civil rights.¹² While law school clinics cannot meet this need by themselves, they often are the key pro-

Africa in the Era of Globalization and Structural Adjustment, 20 *PENN. ST. INT'L L. REV.* 487 (2000); Leah Wortham, *Aiding Clinical Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively*, 12 *CLINICAL L. REV.* 615, 666 (2006).

8. In South Africa and many other countries, there is a specific period of apprenticeship, usually one or two years, that must be completed before a law graduate can become a member of the bar. This requirement is called completing "articles" in South Africa. See *Attorneys Act 53 of 1979* (setting out the legal requirements for admission as an attorney).

9. See PEGGY MAISEL & LESLEY GREENBAUM, *FOUNDATIONS OF SOUTH AFRICAN LAW* 210 (2002).

10. See BROWN, *supra* note 3, at 239.

11. See David J. McQuoid-Mason, *The Delivery of Civil Legal Aid Services in South Africa*, 24 *FORDHAM INT'L L.J.* 111, 128 (2000).

12. The most recent LAB Annual Report in South Africa concludes that there is a dire unmet need for civil legal aid. "Whilst we understand the constitutional injunction on the Legal Aid Board to provide legal representation to criminal accused persons who cannot afford the costs of a private attorney, we have come to realize that the need for civil legal aid cannot be ignored much longer." LEGAL AID BOARD: REPORT OF THE CHAIRPERSON FOR THE YEAR ENDED 31 MARCH 2004, <http://www.legal-aid.co.za/about/>

vider of representation for poor people on civil matters in South Africa and elsewhere.

Despite its ability to help meet these vital objectives, the clinical law movement still lacks sufficient support in most countries. Among other factors, law school clinics continue to have to scrounge for financial resources, often from soft money and overseas funders, and clinical faculty do not enjoy the same compensation, status, or job security as those who teach traditional courses.¹³ All these factors exist in South Africa, which has the most developed economy in Africa and is governed by one of the most progressive political parties in the world.¹⁴

This Article reviews the development of clinical education in South Africa and the valuable lessons such an analysis provides for those seeking to promote clinical education elsewhere. The author hopes that a review of the obstacles faced there and the creative ways clinicians have attempted to overcome them, some much more successful than others, will be especially useful.

I. DEFINITIONS

A few terms about South African clinical legal education should be clarified. The clinics that currently exist as a part of each South African law faculty are called by different names, including legal aid clinics, law school clinics, and university-based law clinics. All refer to the law school offices in each university in which final year law students work with clients while enrolled in a course for credit. In this Article, the attorneys who teach in these clinics are sometimes called clinical law faculty and sometimes clinicians.¹⁵

report2004/chairperson.htm (last visited Dec. 27, 2006) [hereinafter LEGAL AID BOARD REPORT].

13. See Marjorie Anne McDiarmid, *What's Going on Down There in the Basement: In-House Clinics Expand Their Beachhead*, 35 N.Y.L. SCH. L. REV. 239, 245-46 (1990). See generally M. Shanara Gilbert, *Report on the Status of University Law Clinics in South Africa* (Nov. 15, 1993) (unpublished report, on file with The Ford Foundation, South Africa-Nambia office and with the author).

14. Since 1994, the African National Congress has run South Africa. Nelson Mandela was the first President, and blacks dominate the national Parliament and the parliaments of most of the provinces. See BROWN, *supra* note 3, at 246.

15. One of the problems discussed in this Article is the lack of integration of clinical law faculty within most of the law schools. Clinical law faculty frequently teach other law school substantive and skills courses. For example, the former clinic director at the University of Cape Town ("UCT"), Lee Anne de la Hunt, taught Refugee Law,

Clinical legal education implies a method of teaching that, in most instances, has a social justice dimension.¹⁶ In its broadest definition, it includes in-house live client clinics, externships,¹⁷ community education projects,¹⁸ simulation courses,¹⁹ other skills training courses,²⁰ and interactive teaching

and the clinic attorneys at the University of KwaZulu-Natal ("UKZN") teach the third year Interviewing, Counseling, and Transactional Skills course.

16. See Margaret Barry, Jon Dubin & Peter Joy, *Clinical Education for this Millennium: The Third Wave*, 7 *CLINICAL L. REV.* 1, 12 (2000). In regards to the social justice dimension, law clinics in the United States do not always involve the representation of indigent clients. For instance, there are mediation clinics, legislative advocacy clinics, and intellectual property clinics where students either do not directly represent clients, but learn other skills, or are involved with legal issues that do not always directly impact on poor communities. In South Africa, all current law clinics either represent indigent clients or involve projects such as community education or project-based law reform activities on behalf of the disadvantaged.

17. Currently, South Africa does not have externship programs where students receive credit for working with public interest legal organizations or government legal institutions under the supervision of attorneys. This is a wide-spread form of clinical education in the United States, partly to make more opportunities for clinics available with less faculty resources, partly to give students experience in actual offices to see what the legal profession is like, and partly to help students focus on where they may want to eventually work. See James P. Ogilvy, *Guidelines with Commentary for the Evaluation of Legal Externship Programs*, 38 *GONZ. L. REV.* 155, 159 (2003). In South Africa students are required to work for one or two years as candidate attorneys after law school graduation. This apprenticeship experience provides some of the benefits of externships. South African law students could do externships during their school vacation periods and there have been some programs to help black students find vacation work opportunities particularly with large law firms where they have been traditionally excluded because of race. However, there are not enough placements available for students with public interest organizations or government since these legal offices are limited in size and supervision, and space is not always available. See MAISEL & GREENBAUM, *supra* note 9, at 209.

18. See the description of the Street Law Program *infra* p. 384 and note 52.

19. In developing countries, what is called clinical education sometimes only consists of theoretical or simulation courses taught in the classroom. This is true, for example, in Kenya where the University of Nairobi clinical legal education program was in the form of theoretical courses before 2001. Since then, the faculty of law has introduced a legal practice course into the second year with a court attachment program. Simulation is a powerful teaching methodology but does not have all of the complexities or difficulties of representing an actual client. See Innocent Anaba, *Using Clinical Legal Education to Serve Society: A Challenge to African States*, http://www.justiceinitiative.org/db/resource2?res_id=102601 (last visited Dec. 27, 2006).

20. The University of Natal, Durban ("UND"), developed one of the most extensive skills curricula in 2000 as part of its LLB degree. The students take at least one skills course each semester. In the first year, there are two courses, Introduction to Law and Legal Skills, and Foundations of South African Law, that teach the skills of legal research, writing, legal analysis, and problem solving. In the second year, the curriculum teaches computer skills and research, numeracy, and legal drafting. In the third year, students learn interviewing, counseling, negotiation, and transactional skills. In

methodology.²¹ In this Article, clinical legal education refers to law students receiving course credit for the combination of their practical work on clients' cases at a university-based clinic, and their participation in a classroom component or tutorial.²² This definition does not include courses that solely require students to engage in community education activities, nor ones that teach legal skills in the classroom such as legal research and writing. The former in South Africa are called Street Law courses and the latter are referred to in this Article as skills courses.

II. HISTORY OF CLINICAL EDUCATION IN SOUTH AFRICA DURING THE APARTHEID ERA

Law school clinics are currently being established or are expanding in developing countries with a range of forms of governance, from emerging democracies to the more autocratic regime in China.²³ Because law school clinics at South African universities were founded during the apartheid era,²⁴ analyzing the South African experience should help to identify some of the factors that can facilitate the creation of clinical education even under an oppressive regime. The four most important factors in South Africa were: (i) the desire of law students and key members of the faculty and administration to be involved in the struggle for social justice, (ii) private bar support, (iii) exposure to clinical education in other countries, and (iv) international assistance.

The South African legal system was one of the pillars of apartheid and was utilized to enforce State mandated inequality.²⁵ While wholesale reform was impossible without a regime change, apartheid's opponents within the legal profession re-

the fourth year, students enroll in the clinical legal education program with a choice between the legal clinic, Street Law, or a course called Teaching Legal Skills.

21. See Barry, *supra* note 16 and accompanying text.

22. See BODENSTEIN, ET AL., *supra* note 6, at v.

23. See Wilson, *supra* note 1, at 422.

24. See DAVID J. McQUOID-MASON, AN OUTLINE OF LEGAL AID IN SOUTH AFRICA 27 (1982).

25. See *Brink v. Kitshoff* 1996 (4) SA 197 (CC) at 220-21 (S. Afr.). The South African legal system was a combination of Roman-Dutch civil law and English Common law handed down by the two colonial powers, the English and Dutch. African customary law was predominant among eighty percent of the indigenous population, but under apartheid it was not the criminal or civil law of the land. There was a well developed English-modeled court system, with judges and magistrates, but no jury trials. Legal education prepared university graduates to practice law in this apartheid State.

sisted in various ways, such as trying to keep protesters out of jail.²⁶ At the same time, they tried to increase the resources available to the oppressed majority and to reform traditional legal education in ways that would critique the status-quo and promote social justice.²⁷ To achieve the latter, both progressive law students and a few faculty members promoted the concept of legal aid clinics within law schools.²⁸

Because there was no institutional support for such reform, the first law school clinic, founded at the University of Cape Town ("UCT") in March 1971, was run entirely on a voluntary basis by law students, supervised by private attorneys who agreed to be on a rotating roster.²⁹ Students were not awarded course credit or other official recognition, and their attorney supervisors did not receive compensation.³⁰ The birth of this clinic likely was related to the increased resistance to the apartheid government within the country in the early 1970s and the impo-

26. There were a number of political trials, such as the Rivonia Trial in 1963, at which Nelson Mandela and eight others were sentenced to life imprisonment. *See* BROUN, *supra* note 3 (telling stories of twenty-seven black lawyers). Many white lawyers and judges also actively opposed the apartheid regime. Bram Fischer was one of those lawyers who died in the struggle. *See generally* STEPHEN CLINGMAN, BRAM FISCHER: AFRIKANER REVOLUTIONARY (1998).

27. Some new resources to defend those accused of crimes became available through passage of the Legal Aid Act. *See* Legal Aid Act, 22 of 1969. The Act established the first LAB in South Africa to provide legal aid for "indigent persons" in both criminal and civil matters. Legal Aid Act, 22 of 1969 s.3. Legal Aid was implemented in South Africa on March 29, 1971 and South West Africa/Namibia on June 16, 1971. The Board was composed of five representatives from the State, five from the profession, and the Chairman, who was a judge. Because the Minister of Justice had the authority to terminate any Board member, the Board lacked true independence from the apartheid regime. *See* McQUOID-MASON, *supra* note 24, at 13.

28. The legal aid clinics established at universities began to inform citizens who could not afford attorneys of the availability of legal aid. Students could not represent clients in court, but they gave advice and helped with administrative problems. Most of the case load was civil and concerned such issues as divorce, maintenance (child and spousal support), housing, and other family problems. The students distributed pamphlets informing the public about both the legal aid clinics and the national legal aid scheme. *See* McQUOID-MASON, *supra* note 24, at 139-61.

29. The UCT clinic was financed through the students' representative council by a student levy, and the management committee operated as a subcommittee of the law students' council. The budget was about 3000 rands a year, paying for a part-time secretary. *See id.* at 141.

30. The number of cases handled by the students and volunteer attorneys increased rapidly over the years as students went off-campus to new sites such as the community halls, a domestic workers employment project, and a student health and welfare office. In 1972, the clinic handled 200 cases; in 1973, 350 cases; in 1974, 500 cases; and, by 1980, 2,638 cases each year. *See id.* at 140.

sition of one state of emergency after another.³¹

Among law faculty, Professor David McQuoid-Mason, the Dean of the Law Faculty at the University of Natal at Durban ("UND"), was the chief architect of the clinical legal education movement in South Africa during the 1970s and 1980s.³² As such, he organized the first national conference on legal aid to introduce the idea to law faculties and attorneys in other locations.³³ Held in June 1973, this conference was hosted by UND and funded by the Ford Foundation. Professor McQuoid-Mason invited law professors from other South African universities, published the proceedings for those who could not attend, and invited speakers from the United States, the United Kingdom, and other countries, to speak about clinical law topics. The speakers included attorneys from the Lawyers Committee on Civil Rights and from clinical programs at several U.S. law schools.³⁴ Other topics included legal education in South Africa, legal aid in political trials, and the lawyer's role in the twentieth century.³⁵

The impact this conference had on the development of law

31. The Soweto student revolt took place in 1976. Hundreds of students were arrested. See BROUN, *supra* note 3, at 98. The legal clinics were a place where law students could try to help those oppressed under the legal system.

32. Professor David McQuoid-Mason has continued with his leadership post-apartheid. He was Dean of the Faculty of Law for thirteen years and founded the South African Street Law Program. He is President of the Commonwealth Legal Education Association and a Vice-President of the International Bar Association's Academics Forum. In 2004, he was awarded Special Mention of the United Nations Educational, Scientific and Cultural Organization ("UNESCO") Prize for Human Rights. See University of Kwazulu-Natal: Profile of Professor David McQuoid-Mason, <http://www.nu.ac.za/law/staff/dmm.html> (last visited Nov. 6, 2006).

33. The conference was attended by advocates, attorneys, university teachers of law, and law students from all parts of southern Africa. Official delegates from law societies, bar councils, and several governments (Lesotho and Swaziland) were officially represented. The Department of Justice and the LAB declined invitations to attend. See MCQUOID-MASON, *supra* note 24, at 113.

34. The Conference proceedings were published in LEGAL AID AND LAW CLINICS IN SOUTH AFRICA, *see infra* note 42, and were sent, along with proposals for the implementation of recommendations arising from the conference, to each of the different government, professional and university bodies "who were (or should have been) concerned with legal aid in southern Africa." See MCQUOID-MASON, *supra* note 24, at 115.

35. Additional topics were legal aid in South Africa (including an evaluation of the progress of the new LAB), basic values of the South African system of criminal procedure, and problems of legal aid and African civil law. See MCQUOID-MASON, *supra* note 24, at 113.

clinics in South Africa was clear and immediate.³⁶ five new law school clinics were established by mid-1975,³⁷ and an additional six between 1975 and 1981.³⁸ These law clinics exposed law students to the legal, political, and economic realities faced by members of oppressed groups, and helped prepare them to assist poor communities. The law clinics also provided some legal services to unrepresented communities and made information available about the government-financed Legal Aid system.

In 1984, Professor McQuoid-Mason assessed the attitudes of three key role players in the development of the clinics. First, he noted that after its initial skepticism, the legal profession's attitude toward law clinics had improved to such an extent by 1976 that an editorial in the *Journal of the Legal Professions* argued that "the clinics deserved 'the support and co-operation of the organized profession' as they could play a valuable educational role and supplement the national scheme in administrative and criminal matters."³⁹ Second, Professor McQuoid-Mason noted that most universities had not opposed the establishment of clinics, and, in fact, a growing number were either giving or considering giving academic credit for clinical work.⁴⁰ Finally, Professor McQuoid-Mason noted that while the LAB had not sent a representative to the conference, the participants nevertheless suggested to the Board that it should make more use of law students to assist in legal aid offices, and should endorse the concept of student practice rules.⁴¹

In July 1983, exactly a decade after the first conference on law clinics, Professor McQuoid-Mason, the UND Department of Adjectival and Clinical Law, and the Law Students' Council organized the second national conference that addressed the broad issue of Legal Aid in South Africa. Its primary focus with

36. During the next decade, new law clinics were established at eleven South African law schools. *See id.* at 139.

37. Universities of Port Elizabeth, Stellenbosch, Western Cape, and Natal at both the Durban and Pietermaritzburg campuses. *See generally* PATRICK ELLUM, *LEGAL AID DEVELOPMENTS IN SOUTH AFRICA JULY 1973 – JUNE 1975* (1975). Funded by the Ford Foundation, Mr. Ellum conducted a research project to follow-up on the 1973 Legal Aid Conference. He surveyed eleven South African universities as part of the project.

38. These were at the Universities of Zululand (1978), Durban-Westville (1978), Rhodes (1979), Pretoria (1980), the North (1980) and the Rand Afrikaans University (1981). *See* McQUOID-MASON, *supra* note 24, at 139.

39. *Id.* at 164 (quoting an editorial 1976 *De Rebus Proc.*, 108).

40. *See id.* at 166.

41. *See id.* at 169-70.

regard to the university law clinics was the role they could play in providing representation to the disadvantaged and how to increase the resources available to assist them.⁴² Discussions begun at that conference were instrumental in the 1987 formation of The Association of University Legal Aid Institutions ("AULAI") that has been instrumental in improving the performance and increasing the resources for the university clinics.⁴³

This conference also examined the role of paralegals in providing advice to poor people in areas, often rural, where lawyers were unavailable. This form of assistance, sometimes referred to as "palm tree justice,"⁴⁴ has always been important in South Africa,⁴⁵ especially during the apartheid era when there were few attorneys, black or otherwise, who could speak indigenous languages.⁴⁶ Community-based paralegals therefore provided virtually the only access to justice for poor people in these areas.⁴⁷ Being aware of this role, which is different from the one paralegals play in most developed countries, is crucial in the South African context⁴⁸ and demonstrates the need to understand the system for legal services delivery in each particular country prior to establishing effective law clinics and clinical education pro-

42. See LEGAL AID AND LAW CLINICS IN SOUTH AFRICA viii (David J. McQuoid-Mason ed., 1985) [hereinafter LAW CLINICS IN SOUTH AFRICA].

43. See Willem de Klerk, *University Law Clinics in South Africa*, 122 S. AFR. L.J. 929, 930 (2005).

44. See LAW CLINICS IN SOUTH AFRICA, *supra* note 42, at vii.

45. See STEVEN GOLUB, MANY ROADS TO JUSTICE: THE LAW RELATED WORK OF THE FORD FOUNDATION GRANTEES AROUND THE WORLD, NONLAWYERS AS LEGAL RESOURCES FOR THEIR COMMUNITIES 297 (2000); see also David McQuoid-Mason, *National Legal Aid Forum Kempton Park, 15-17 January 1998: Working Commission Recommendations*, 12 S. AFR. J. CRIM. JUST. 48, 49 (1999).

46. In 2000, there were approximately 1,000 black lawyers in South Africa, although the population was seventy percent black. See BROWN, *supra* note 3, at 236.

47. See McQuoid-Mason, *supra* note 11, at 125.

48. South Africa presents a useful model to the United States and other developed countries in its development of a strong community-based paralegal program that creates greater access to justice. Indigent people and poor communities in the United States, for instance, have serious problems with access to attorneys. The American Bar Association ("ABA") estimates that only one out of five low-income persons with a legal problem obtains assistance from either legal aid or pro bono attorneys. See American Bar Association: Assuring Equal Justice for All, <http://www.abanet.org/publiced/lawday/talking/ejlegalpoor.html> (last visited Nov. 6, 2006). Many individual States have also done legal needs studies that document the lack of free legal resources for the poor. See National Legal Aid & Defender Association, <http://www.nlada.org/> (last visited Nov. 6, 2006). This Article does not discuss the topic of paralegals contributing to access to justice, but it would be useful to explore the South African model in future research.

grams there. Indeed, one way South African university clinics are funded today is by providing legal advice and representation, when possible, for paralegal advice centers.⁴⁹

During apartheid, Professor McQuoid-Mason involved students in clinical work in two ways within his own institution. First, as an activist lawyer, he enlisted the aid of students by running a law school clinic from his office.⁵⁰ Later, the clinic secured offices in the student union building and eventually in the law faculty building. Second, he helped create an alternative type of assistance by founding the South African Street Law Program in the mid-1980s.⁵¹ Street Law students learned how to teach lay people about legal rights and responsibilities, and then went to high schools and jails to teach ordinary citizens about their rights in criminal, juvenile, consumer, housing, welfare law, and human rights matters. The teaching methods the students used included holding mock trials and other interactive learning experiences.⁵² They also wrote and distributed pamphlets dealing with common legal problems such as arrest, and housing and credit issues. In effect, the students engaged in preventive legal education.

Another factor that contributed to the start of law school clinics in South Africa was an infusion of personnel and financial support from outside the country. A key example of this was the six-month visit by Professor Clinton Bamberger in the mid-1970s to the University of the Witwatersrand ("WITS") Law Faculty in Johannesburg that helped build that University's clinical program.⁵³ The Ford Foundation also became a key supporter of

49. See discussion of the cooperative agreement with the National Community Based Paralegal Association ("NCBPA") *infra* page 394.

50. See Asha Ramgobin, *Justice For All? Law Clinics in South Africa and in Sweden?* 39 (2004) (unpublished LLM Thesis, Lund University) (on file with author).

51. See 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 (2001).

52. Professor McQuoid-Mason taught the first Street Law class at the UND, helped to foster similar classes at many other South African law schools, and published a series of eight Street Law books with Teacher's Manuals. See DAVID MCQUOID-MASON, *STREET LAW: PRACTICAL LAW FOR SOUTH AFRICAN STUDENTS: BOOK 1 INTRODUCTION TO SOUTH AFRICAN LAW AND THE LEGAL SYSTEM* (1987); see also EDWARD L. O'BRIEN, ELEANOR GREENE & DAVID MCQUOID-MASON, *HUMAN RIGHTS FOR ALL* (1996).

53. Professor Clint Bamberger, former director of the Office of Economic Opportunity ("OEO") in the United States and former Dean of the Columbus School of Law at Catholic University in Washington D.C., spent six months at the University of the Witwatersrand ("WITS") helping to set up a clinical program in the mid-1970s.

clinical education in South Africa during this period.⁵⁴

III. THE STATUS OF CLINICAL EDUCATION IN THE POST-APARTHEID ERA

At the culmination of four years of negotiations, Nelson Mandela was elected the first President of the newly democratic Republic of South Africa in April 1994, and the African National Congress ("ANC") took firm control of the government.⁵⁵ One of the ANC's first priorities was to reform the educational system that had helped institutionalize the inferior status of black people.⁵⁶ Under apartheid, all education was segregated by race, including higher education.⁵⁷ In 1994, there were twenty-one law faculties, all publicly funded. One was designated for Indians, one for so-called "colored," seven for black Africans, and the rest for whites.⁵⁸ Of course, there were great economic disparities in

54. See discussion *infra* page 412; see also STEVEN GOLUB, MANY ROADS TO JUSTICE: THE LAW RELATED WORK OF THE FORD FOUNDATION AROUND THE WORLD, BATTLING APARTHEID, BUILDING A NEW SOUTH AFRICA 19-54 (2000).

55. See Peter N. Bouckaert, *The Negotiated Revolution: South Africa's Transition to a Multiracial Democracy*, 33 STAN. J. INT'L L. 375, 1298 (1999).

56. Under apartheid there were four racial classifications arranged in a hierarchical pattern with whites (mainly English and Afrikaners, i.e., descendants of the first Dutch settlers) in full control. Next were the so-called colored who were predominantly mixed race people, plus descendants of slaves from Indonesia and Malaysia and of the original Bushmen (Khoi and San) who were lighter skinned and were the first occupants in the area. Close in stature to the coloreds were Asian people, mainly those from India. (The Province of Kwa-Zulu Natal has the largest Indian population outside of India and was the place where Gandhi first arrived in South Africa and where he began his program of satyagraha, non-violent protest.). By far, the lowest in status were the dark skinned Africans who belonged to nine different communities, the largest being the Zulu, Sotho, and Tswana. Terminology remains tricky even today in South Africa. Some, including Mandela, use the term blacks to refer to all three of the oppressed groups. Others reserve that term for the indigenous African tribes. Similarly, some call the dark skinned people Africans while some members of the other classifications, even some whites, say they, too, are Africans. For a complete understanding of the origins and history of all of the South African people, see the excellent history of the country in ALLISTER SPARKS, THE MIND OF SOUTH AFRICA (1990).

57. See Joanne Fedler, *Legal Education in South Africa*, 72 OR. L. REV. 999, 1000 (1993).

58. There were six Afrikan speaking universities and law faculties with only white students and professors. There were four white universities, the UND had two campuses and two law schools, where English was spoken. These law faculties had some black students, admitted under exceptions to the apartheid laws, including Nelson Mandela, who studied law at WITS. There was one university designated for students of Indian origin, the University of Durban-Westville, and one established for so-called "coloured" students, the University of the Western Cape. In addition, each African (black) homeland had its own university for its tribal group, such as the University of Zululand,

resources between black and white institutions.

The end of apartheid resulted in the opening of South Africa's law schools to all race groups, and formerly white universities began to have significant numbers of black students and, gradually, black faculty.⁵⁹ There were other changes such as the replacement in 1998 of the two different law degrees and courses of study by one standard law degree, the LLB, and the creation of a national four-year law curriculum.⁶⁰ Another aspect of this transformation was the further development of clinical legal education, which is now firmly rooted in South Africa. The latter development was led by much of the same leadership, and it retained the goal of increasing legal resources for the disadvantaged. New priorities were added, however, such as educating and opening the legal profession to more black law graduates, educating law graduates for practice under the new Constitution, and meeting development and legal reform needs in the new democracy.⁶¹

Despite the advantage of having a supportive government and the commitment by some within the university establishment, there still were enormous barriers to the development of a viable system of clinical education within South African law schools in the post-apartheid era. Thus, when the final Constitution was adopted in 1996, there were legal clinics at each of the twenty-one law schools. However, there was a great disparity between those that were well developed, with several attorneys providing supervision and direction, and those that functioned in name only, with few resources, inexperienced directors, and lim-

the University of Transkei, and the University of Venda. These historically black universities ("HBUs") were restricted in the curriculum they could teach and were grossly under resourced. The University of South Africa ("UNISA") also had a law faculty where students studied through correspondence. See Thuli Mhlungu, *Educating and Licensing Attorneys in South Africa*, 20 GA. ST. U.L. REV. 1005, 1007 n.7 (2004).

59. Black lawyers in 2000 were a tiny minority of the profession: There were a total of approximately 1,000 black lawyers, mostly men. See BROWN, *supra* note 3, at 236; see also Mhlungu, *supra* note 58, at 1005-22 (discussing her experience as a black female becoming an attorney in South Africa).

60. See generally DAVID McQUOID-MASON, USING YOUR IMAGINATION TO LIGHT UP KNOWLEDGE, SKILLS AND VALUES FOR LLB STUDENTS: LESSONS FROM SOUTH AFRICA (2006), <http://www.ukcle.ac.uk/interact/lili/2006/papers/keynote2.html> (last visited Nov. 6, 2006).

61. See Lisa R. Pruitt, *No Black Names on the Letterhead? Efficient Discrimination and the South African Legal Profession*, 23 MICH. J. INT'L L. 545, 573 (2002); see also MAISEL, *supra* note 9.

ited support to fulfill the dual mission of student education and provision of legal services for the poor.⁶² As a result, some clinics focused mainly on legal representation with little or no attention paid to the education of students, and representation itself was sometimes minimal. It was not clear whether these clinics would survive. Further, while some clinics were functioning at a high level, they too faced daunting problems that hindered their effectiveness such as reliance on soft funding and marginalization within the overall law school community.

The remainder of this Article analyzes in greater depth the obstacles faced by both developed and underdeveloped clinics. A key part of that analysis focuses on the strategies utilized by clinical law practitioners and their supporters in their attempts to overcome those obstacles. Because some measure of success has been achieved, clinical practitioners in other countries may find it helpful to replicate these approaches. Unfortunately, however, the struggle is far from being won in South Africa: The clinics there must develop even more creative strategies to address the many problems they still face.

IV. *RECENT ATTEMPTS TO EXPAND AND SUSTAIN CLINICAL EDUCATION IN POST-APARTHEID SOUTH AFRICA*

In 2000, the author conducted a survey of the twenty-one university-based law clinics in South Africa to assess the then-current state of clinical legal education there. That survey documented both the extensive growth that had occurred and the problems the law school clinics still faced to sustain themselves.⁶³ This Article was born out of that survey, and a portion of the data gathered there is utilized to illustrate some of its conclusions.

The obstacles to the current development of clinical programs in South African law schools can be organized into four groups. The two most problematic are finding adequate financial resources and the resistance to change found in most major institutions, including legal academia. Two less significant, but nevertheless still substantial issues, are the lack of faculty with the skills, knowledge, and experience to run law school clinics,

62. See Gilbert, *supra* note 13, at 6.

63. See generally Peggy Maisel, *The Position of Clinicians in South African Law Schools* (July 2000) (unpublished paper, on file with author).

and the need to reconcile the inherent conflict between the two parts of a clinic's mission—serving as many clients as possible among the masses of indigent people in developing countries and creating the time and space to provide quality legal education to students. While the context for clinical education varies greatly between countries, and solutions to problems will necessarily vary, the challenges listed here for South Africa also exist in most other developing countries.⁶⁴ The history of the clinical education movement in South Africa, since 1994, has been an attempt to overcome these obstacles and bring law clinics into the mainstream of legal education.

A. *Obstacle 1: Lack of Resources*

1. The Problem

Underlying all of the obstacles to the growth and sustainability of clinical legal education in South Africa and elsewhere in developing countries is a lack of sufficient stable funding. The reality is that virtually all clinics rely to some degree on short-term grants. As a result, their staff must constantly engage in time-consuming fundraising, they suffer from rapid turnover as grants come and go, their case priorities are often set by the funders rather than community needs, and they have insufficient faculty to provide high quality education for their students.⁶⁵

The current situation in South Africa is that each clinic has a director on the law faculty, compensated at a senior lecturer level, who is funded through a grant to the law schools from the Attorney's Fidelity Fund ("AFF").⁶⁶ Since 2000, an endowment

64. In South Africa, these problems are exacerbated by the great inequalities between historically black and white university law faculties, including the comparative lack of facilities, faculty, books, and other supplies at HBUs. Further, there are significant logistical problems for law clinics, including the need to travel great distances, the lack of telephones or computers in many places, and a lack of transportation for law students. See Pruitt, *supra* note 61, at 563; see also Mhlungu, *supra* note 58, at 1008 n.8.

65. These resource limitations also exist in law school clinics in most developing countries. Even in the United States, grants usually require a focus on specific legal work for a specific population. They may also require a high volume of service that can run counter to the goal of educating students on a lower volume of cases that allows for the careful development of legal skills and reflection. See Mhlungu, *supra* note 58, at 1023 n.45.

66. The Attorney's Fidelity Fund ("AFF") subsidizes accredited clinics by providing funds to enable them to employ a practitioner, attorney, or advocate as director of the clinic. See McQuoid-Mason, *supra* note 11, at 129. AFF's funding comes from adminis-

set up by the Ford Foundation has supported the salary of an additional attorney at most clinics. Unfortunately, after six years, this endowment is running out of funds; thus, the positions it supports are in jeopardy.⁶⁷ Most clinics also employ one or more candidate attorneys who work on short term grants or for free as a way of completing their required articles of clerkship to be admitted to the profession.⁶⁸ Lastly, some clinics have been successful in hiring additional attorneys and paralegals by raising funds from outside donors or by undertaking special projects for other organizations, such as the government-financed Legal Aid Board ("LAB").⁶⁹

The core problem is that the clinics receive limited financial support, if any, from their universities. Virtually all of their funding comes from the outside and by nature is either temporary, unstable, or both. As seen in the 2000 survey data cited in the next section,⁷⁰ only the directors have permanent positions, and even these positions are reliant on continued funding from the

tering the interest on attorney's trust accounts much like INTEREST ON LAWYERS' TRUST ACCOUNTS ("IOLTA") here in the United States. Originally, those funds were to be used to provide recourse to clients who lost funds because of wrongdoing by attorneys. A portion of those funds now support the clinical movement in South Africa as part of AFF's "broader goal of promotion of ethical conduct among lawyers and training of law students in such ethics and values." See Ramgobin, *supra* note 50, at 40.

67. E-mail from Asha Ramgobin, former member of the Association of University Legal Aid Institutions ("AULAI") Board, to Peggy Maisel, Associate Professor and founding Director of the Clinical Program, College of Law at Florida International University (May 14, 2006, 07:16:00 AM) (on file with author); see also de Klerk, *supra* note 43, at 946.

68. See Attorneys Act 53 of 1979, as amended by Act 102 of 1991; see also Mhlungu, *supra* note 58, at 1012.

69. Asha Ramgobin, the former Director of the UND law school clinic, describes its staffing and funding in 2004 as follows:

The clinic is run exclusively on external funds, with the university providing free accommodation for its staff. The clinic has secured substantial funding and has expanded each year since 1996. All its funding is obtained from international donors and the private profession, *i.e.*, the Attorney's Fidelity Fund. The clinic is staffed with a director who is a qualified practicing advocate, three recently qualified attorneys, five candidate attorneys who are law graduates, one administrative assistant, and one part time financial consultant. In addition it uses the services of members of the private bar from time to time, at a reduced tariff. It is affiliated to the law faculty but is not an integrated component of the university structure although it uses the administrative and financial systems of the university.

Ramgobin, *supra* note 50, at 48.

70. See Chart *infra* pages 403-04, tbl.1.

AFF.⁷¹ In a few cases, their salaries are supplemented by their universities to provide for promotion opportunities. All the other attorneys, paralegals, and support staff have little or no job security, and their continued employment depends on outside funding.⁷²

In order for the universities to support the clinics, they would need either to raise additional funding from the government or other sources, or change their academic priorities to transfer current funds to the clinics. At present, none of the law schools in South Africa have chosen either of these alternatives, so the survival of the clinical programs continues to rest on their staff's ability to raise funds.

The method of teaching clinical and skills courses exacerbates this situation because it requires more faculty than the traditional method of teaching large numbers of students in a lecture format, known in South Africa as "chalk and talk." Currently, there are not enough faculty members at South African law schools to adequately supervise the large number of final year law students.⁷³ The same is true of skills courses in other

71. This funding is also provided on a yearly basis and is not guaranteed to continue. Universities are therefore reluctant to commit to permanent faculty positions for the directors. See McQuoid-Mason, *supra* note 11, at 132.

72. The 2000 survey found that nine of the clinics employed a second attorney with similar job responsibilities to the directors: all were responsible for legal representation, all of them supervised law students, and many also did classroom teaching and had delegated administrative or management functions, such as grant writing and reporting and fund-raising. Many of the attorneys took a lead in community outreach and education efforts. All of these attorneys were on short-term contracts with the exception of attorneys at WITS and UNISA. All of these contracts were funded from grants, with the exception of UNISA, WITS, Potchefstroom, and the University of the North, where the University pays part or all of an attorney's salary. One attorney has been employed by a clinic for three years. The other eight attorneys have worked for two years or less. As demonstrated in tables 3 and 4 of the 2000 survey, these attorneys have even less job security and fewer promotion opportunities than the clinic directors. They receive fewer employment benefits or opportunities for training, and less faculty recognition. The UNISA clinic is unlike that of any other university because UNISA is a distance education university. Therefore, there are typically no students in residence at the clinic. UNISA runs a law clinic on its central Pretoria campus, primarily for the purpose of providing legal services to the community, including staff of the university. The university pays for the second attorney to provide these services. The survey also showed the gross monthly salary of attorney clinicians. Ninety percent earn less than 10,000 rand per month and many work with few or no benefits. The need to earn a higher salary in the public or private sector has been the motivating factor cited by two attorneys recently leaving clinical jobs they enjoyed. See Maisel, *supra* note 63, at 15-18, tbls.3-4.

73. In the United States, the recommended range of student/faculty ratios for live

parts of the curriculum. It simply is more labor intensive to conduct these activities.⁷⁴

2. Strategies to Increase Resources

South African clinicians have pioneered several instructive ways of both stretching scarce resources, and also raising revenue to expand the law clinics.⁷⁵ The strategies they have used should provide useful ideas for law schools, particularly in developing countries trying to start clinical programs. One way resources were stretched is through the hiring of new law graduates who supervise students in their capacity as candidate attorneys at reduced salaries. As described elsewhere, this also helps these new graduates complete their requirements for articles of clerkship.⁷⁶ A second example of stretching resources is using final year and masters-level law students to tutor first years who are taking legal skills courses.⁷⁷ While such courses are not directly part of the clinic experience, they provide crucial preparation for students who later work in clinics and therefore impact on their success. Two of the most successful strategies to expand resources are the fundraising work of a national organization clinicians formed, the Association of University Legal Aid Institutions ("AULAI"), and the establishment of cooperative agreements with the LAB, and the National Community Based Paralegal Association ("NCBPA"). These strategies are described

client clinics is from 6:1 to 10:1. See John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and The Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 172 (1993). This contrasts with very high student/faculty ratios in clinics in South Africa.

74. In 1998, Professor Lesley Greenbaum and the author developed and taught a new course entitled "Teaching Legal Skills" to educate final year students to teach first year students in small tutorials for the courses entitled "Introduction to South African Law and Legal Skills" and "Foundations of South African Law." "Teaching Legal Skills" is a year long course for credit and each semester the students admitted to the class are selected based on personal interviews and applications. The final year students, acting as tutors for the first year students, stretch limited faculty resources for skills teaching. The final year students also improve their own legal skills through the teaching process. See Lesley A. Greenbaum, *Teaching Legal Writing At South African Law Faculties: A Review of the Current Position and Suggestions for the Incorporation of a Model Based on New Theoretical Perspectives*, 15 STELLENBOSCH L. REV. 1, 18-19 (2004).

75. Running a law clinic in a developing country where resources are scarce is very different from the experience at a relatively well-resourced clinic in the United States. In South Africa, scarce resources for education have been expanded by involving other law school faculty and private attorneys to help supervise students on cases on a volunteer basis. See Ramgobin, *supra* note 50, at 25.

76. See *supra* note 68 and accompanying text.

77. See *supra* note 74.

below along with other ideas that have not yet been as actively pursued.

a. The Association of University Legal Aid Institutions
("AULAI Trust")⁷⁸

By far, the most effective strategy clinical law practitioners and their supporters in South Africa have developed was the formation in the late 1980s of AULAI, whose members include all of the university law clinics.⁷⁹ The AULAI was established at the time when law clinics were being created at most of the universities in South Africa, but it did not really become active until the mid-1990s when it ran a national conference on clinical education funded by the Ford Foundation.⁸⁰ AULAI has had success not only with regards to fundraising, but also on policy and curriculum development, lobbying,⁸¹ and program support, including training.⁸² Specifically with regard to resource development, AULAI established a separate trust ("AULAI Trust" or "Trust") in 1998 to help fund and support the development of clinical education throughout South Africa.⁸³ Although established largely with foreign donations, the Trust is a South African institution controlled and directed by a Board that was selected when the Trust was formed because of the members' commitment to

78. In 1998, AULAI set up the Association of University Legal Aid Institutions Trust ("AULAI Trust") with an endowment from the Ford Foundation to strengthen the funding of the law school clinics. *See* McQuoid-Mason, *supra* note 11, at 129.

79. *See* Schalk Meyer, President of AULAI, Speech at the First All African Clinical Legal Education Colloquium, Durban South Africa: Legal Service Delivery through University Law Clinics at South African Universities (2003) (on file with author).

80. This was the third important national Ford Foundation funded conference. The first two were in 1973, *see supra* p. 8, and in 1983, *see supra* p. 10. (The 1995 conference proceedings were transcribed and are on file with Professor Robin Palmer at the UKZN Faculty of Law).

81. *See infra* pages 407-09.

82. *See infra* pages 411-13.

83. The AULAI Trust has the following objectives:

- [T]he promotion of legal aid in South Africa in particular through the coordination and promotion of the activities and interests of legal aid institutions attached to the universities in South Africa,
- [T]he encouragement and promotion of practical legal education of law students by members of the association,
- [T]he provision of programme support and capacity building to law clinics
- [T]he fostering, maintenance and extension of public confidence in the law and the administration of justice.

See Schalk Meyer, *supra* note 79. Mr. Meyer was the President of AULAI.

clinical education.⁸⁴

The AULAI Trust is a model of support for clinical education that specifically tries to address the problem of sustaining existing clinical legal education programs.⁸⁵ Such a trust does not exist in any other country. Rather than individual programs competing against each other for grants, the Trust provides a mechanism for donors to contribute to an umbrella organization that then shares the funds among the twenty-one university-based law clinics on a basis determined by the Board of the Trust in consultation with the AULAI members.⁸⁶

The Trust's first major fundraising efforts were directed toward the Ford Foundation⁸⁷ and the International Commission of Jurists ("ICOJ")—Swedish Section,⁸⁸ and both were successful.

84. The AULAI Trust was established through the leadership of Asha Ramgobin, the then-Director of the Campus Law Clinic at UND with the support of Professor McQuoid-Mason at UND. The author attended many of the meetings with Alice Brown from the Ford Foundation where the Trust was conceived. The Campus Law Clinic drafted documents for the Trust's creation and Ms. Ramgobin recruited the original Board members, consisting of law faculty, clinicians, and members of the legal profession, judges, and others who supported the development of clinical education.

85. This is an idea that deserves further research to closely examine how the Trust has operated, what it has accomplished, and where it has failed. This research must be done through interviews with key participants and from reviewing working papers of the Trust that are not easily accessible. The Trust has saved money by not setting up an office, but has been rather housed at the UKZN, formerly UND, that pays its accounts.

86. This form of financial cooperation among law schools is unusual. For example, in the United States, law school clinics have traditionally competed against each other for limited federal grants from the Department of Education. Law schools also vary greatly in their wealth and endowments. There is no mechanism for equalizing the resources for clinical legal education among wealthy and less endowed law schools.

87. The Ford Foundation was an obvious target since it had previously funded six law clinics at historically disadvantaged universities in South Africa from 1993 to 1999. Ford's goals were to support the development of these clinics, but it never intended to support the clinics on a permanent basis. *See* M. SHANARA GILBERT, REPORT ON THE STATUS OF UNIVERSITY LEGAL AID CLINICS IN SOUTH AFRICA 1-14 (Nov. 15, 1993) (on file with author). Ford announced its intention to stop funding the university-based law clinics, but the Ford Program Director in Johannesburg, Alice Brown, wanted to support the South African clinicians in sustaining the law clinics. In 1998, the author participated in several meetings and a retreat to discuss ways of sustaining the law school clinics when Ford stopped its funding.

88. The International Commission of Jurists had been funding some of the work of the UND Campus Law Clinic. The Director of the UND Clinic, Asha Ramgobin, worked with the Swedish Commission and the NCBPA, which the Swedish Jurists funded, to develop a cooperative model so that university law clinics would provide back up legal services for the NCBPA. The funds for these cooperative agreements were the basis of the International Commission of Jurists donation to the AULAI Trust. The author participated in some of these meetings held in Johannesburg and in the Eastern Cape during 1997 and 1998.

Thus, the Ford Foundation provided a one million dollar grant to create an endowment to help sustain the law clinics by increasing their staff. The ICOJ provided funds to enable the law clinics to support backup services for community-based paralegals. Unfortunately, undertaking a joint effort does not ensure continued success. As a result, after the Trust's Board made the decision to use the capital from the Ford grant, not just the interest, to support increased clinic staffing, those funds have been depleted to the point, as mentioned above, that they will soon run out if not replenished. Losing this source of staff funding will likely mean that most clinics will lose their second attorney positions.

On balance, the Trust model is an exciting innovation in the support of clinical education. The AULAI Trust has supported activities that have increased the capacity of all the clinics as discussed in the next sections of this Article. Having the Trust undertake the major fundraising efforts also allowed clinic directors and staff to focus on education and the provision of legal services rather than fund-raising. Nevertheless, sustaining both the Trust itself and the clinics it has funded remains a problem.

b. Cooperative Agreements

Since 1996, AULAI has also assisted many law school clinics in securing funds for hiring staff and candidate attorneys by entering into two different cooperative agreements.⁸⁹ The first is between the law clinics and the NCBPA, which provides funds to the law clinics who then provide back-up legal services to paralegals based in small advice offices. There are approximately 750 paralegals in South Africa working in 250 advice offices located mainly in communities, rural areas, and townships that are not accessible to the legal aid system.⁹⁰ Attorneys and students from the university law clinics that are geographically spread across the country are well situated to visit the advice offices and assist the staff there as needed.⁹¹

Similarly, additional funding to employ attorneys at the law

89. These partnerships support the education mission of the law clinics, because the attorneys are responsible for educating the law students and candidate attorneys who work under their supervision.

90. See Ramgobin, *supra* note 50, at 29.

91. For example, the law clinic at the UKZN has formal agreements with paralegal advice offices in the townships and rural areas. Students and supervisors travel up to

school clinics has come from cooperative agreements with the LAB, the body funded by the South African government to make legal services available to indigent people in both criminal and civil cases.⁹² The LAB has struggled to fulfill its responsibilities because of the increasing demands for legal representation under the new Constitution and the problems that have arisen during the transition from apartheid.⁹³ In recent years, however, the LAB has improved its record of providing access to legal services by opening a network of Justice Centres located throughout the country.⁹⁴ To supplement those services in communities located in rural areas and townships that are not able to access the Judicial Centres, the LAB entered into cooperative agreements with university law clinics close to those areas.⁹⁵

The cooperative agreements between the LAB and some of the law school clinics are the only government funding that such clinics presently receive.⁹⁶ One question for the future funding of clinical legal education is whether it will be possible to obtain

100 kilometers on Saturday mornings to a paralegal advice office where they interview clients needing full representation. See Ramgobin, *supra* note 50, at 47.

92. See Legal Aid Act, 22 of 1969 (1969), as amended by Legal Aid Amendment Act, 20 of 1996 (1996); see also Legal Aid Board of South Africa, <http://www.legal-aid.co.za/about/reference.htm> (last visited Nov. 6, 2006).

93. An example of the specific demands during the transition took place in 1996 during the trial of the former Minister of Defense Magnus Malan and other government officials, plus local tribesman accused of committing a particular apartheid era atrocity. Because they were entitled to representation at government expense as former government officials, the defense attorneys for Malan and his cohorts were paid for at great expense by the LAB. The tribesman, many of whom were likely indigent, may also have qualified for LAB representation. See McQuoid-Mason, *supra* note 11, at 116.

94. See LEGAL AID BOARD REPORT, *supra* note 12, at 2:

The 2003/04 financial year marked the successful completion of the strategic shift, initiated some three years ago, from the Judicare service delivery method to the direct service delivery method reliant on full time attorneys based in Justice Centres. Indeed the Legal Aid Board has profoundly reshaped the delivery of legal aid in this country through its national footprint of 58 Justice Centres, 13 High Court Units and 27 Satellite Offices. Through this network, the Legal Aid Board now covers a majority of Regional and District courts and all High courts. Those courts not covered through this network continue to be covered through Judicare.

95. See Ramgobin, *supra* note 50, at 55 (citing Ramgobin's interview with Judge Navsa, chair of the LAB, in 2000).

96. The LAB funded twenty law clinics in the 1990's through grants to universities, but these were not to educate law students. These clinics were for the high volume representation of the criminally accused by candidate attorneys. Most of these clinics subsequently separated from the law schools and are now incorporated into the Justice Centres. See Gilbert, *supra* note 13, at 124-25.

additional government funding.⁹⁷ Professor McQuoid-Mason observes:

The funding of law clinics is a critical and a limiting factor in the capability of clinics to train candidate attorneys and provide satisfactory legal services. The independent university law clinics play a valuable role in supplementing the work of the Board, and it has been suggested that they receive some funding from the Board for their services. This is under consideration by the Board as part of its plans to restructure its services.⁹⁸

c. International Resources

A number of international donors and governments have contributed to the growth of clinical education in South Africa and other developing countries. As described previously, the key supporter in South Africa from 1973 until 2000 was the Ford Foundation.⁹⁹ Since the end of apartheid, a number of other foundations and organizations have stepped in to support clinical education through various types of grants. These include, among others, the ICOJ—Swedish Section,¹⁰⁰ the Open Society Justice Initiative,¹⁰¹ and Community Aid Abroad (“Oxfam-Australia”).¹⁰² The United Nations High Commis-

97. Financial support for the law school clinics that educate law students is precarious, as they rely on annual grants from the AFF and the AULAI Trust.

Until such time as the valuable contribution made by the independent clinics is recognized as an integral part of the national legal aid scheme, their future will continue to be uncertain. . . . Hopefully, the restructured Board delivery model will be able to accommodate the independent law clinics so that they can receive a share of the state funding earmarked for legal aid. A strong law clinic network requires a secure financial base.

McQuoid-Mason, *supra* note 11, at 132.

98. *Id.* at 131.

99. *See supra* pages 389, 392, 394.

100. The Swedish Section of the International Commission of Jurists has funded the NCBPA since 1996. It also funded the UND Campus Law Clinic on a Child Defender Advocacy Project in 2001.

101. The Open Society Justice Initiative (“OSJI”) has supported South African clinicians attending international clinical conferences, such as the Global Alliance for Justice Education (“GAJE”) conferences held in India in 1999, in Durban in 2002, in Poland in 2004, and in Argentina in 2006, and the First and Second All African Clinical Legal Education Colloquiums in Durban in 2002 and in Nigeria in 2004.

102. Oxfam-Australia funded a project at UND to increase access to justice for people living with AIDS. The project included support for the training of final year law students and candidate attorneys to provide such legal services. *See* MUNIRAH OSMAN, PROVISION OF LEGAL SERVICES TO PLWHAS 2 (2002) (on file with author).

sioner on Refugees, the European Union, and the United States Agency for International Development have also provided resources for specific programs.¹⁰³

Grants from these funding sources are usually for a specific project and period of time, but have nevertheless been beneficial in several respects. First, they have all included money for attorney staff, and provided for the education of law students and candidate attorneys as part of the grant responsibilities. Second, they have allowed the law clinics to specialize in different areas of law to meet unmet legal needs. Because they are generally short term, there are downsides to these grants as well. A relatively minor one is the time needed to write and administer them, including extensive report writing. More significantly, because staff often cannot be retained when the grant ends, the expertise of project attorneys and other personnel is lost. In terms of education, it is impossible to plan for educating a specific number of students each semester when funding for the teaching positions is not ongoing.

d. The Private Bar

The AFF, a project of the private bar, has been the most consistent source of support for the law clinics by funding the salary of each clinic's director. Given that showing, it might make sense to approach the legal profession for further support, perhaps through yearly donations, especially from the large law firms, a common practice in many cities in the United States,¹⁰⁴ or through payment of a practice fee for all attorneys earning more than a certain amount of money each year. A related source would be to approach law school alumni who have partic-

103. The United Nations High Commissioner for Refugees funds the University of Cape Town Legal Aid Clinic and the WITS Law Clinic to provide legal assistance to refugees in South Africa. See UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES ("UNHCR") GLOBAL REPORT 2005, at 260, available at <http://www.unhcr.org/publ/PUBL/449267660.pdf>. The EU held grant writing workshops, and the United States Agency for International Development ("USAID") was a major funder of the Street Law programs.

104. The ABA and state bar associations drafted rules requiring lawyers to perform pro bono public legal services or make an annual donation to legal aid organizations. For example, the Florida Bar Association proposed a rule requiring its members to perform and report twenty hours of legal service each year or make a \$350 donation. Failure to report either the legal service or the donation could result in disciplinary action. See Richard W. Painter, *Rules Lawyers Play By*, 76 N.Y.U. L. REV. 665, 726-27 (2001).

ipated in the law clinics and believe in them.¹⁰⁵

e. The Government or Universities

As mentioned earlier, because the resources problem arises from the lack of institutional support, the primary solution beyond partial measures like the AFF must be for the universities, backed by the government, to provide sufficient ongoing funding to the law clinics. Since all universities are publicly funded in South Africa, the ultimate source of these funds is the same; the only question is at what level the decisions are made. Unfortunately, these institutions have failed to allocate substantial funds for clinics up to now. Reversing that choice is a political question, and strategies to bring that about are discussed in the next section.

B. *Obstacle 2: Lack of Acceptance for Clinical Legal Education within Universities*

The second major obstacle to sustaining clinical legal education is the lack of understanding and acceptance of it as a vital component of a law school curriculum. Under apartheid, South African law schools trained the elite, white attorneys, most of whom were expected to uphold the legal system as judges, government attorneys, prosecutors, law professors, corporate attorneys, or in other types of private practice. Law schools did not see the need to train students in lawyering skills, such as research, writing, and legal analysis as well as more advanced client and litigation skills such as interviewing, counseling, negotiating, and trial practice. Instead, they left this education to a system of articles, now supplemented by practical training schools.¹⁰⁶ Law

105. In the United States, many law schools hold public service auctions to raise money to support both law school clinics and law students working for public interest organizations. Also, many law schools solicit their alumni for specific contributions for law clinics and to support other public interest activities.

106. For an explanation of articles, see *supra* note 8. There are nine schools for practical legal training located throughout South Africa and approved by the provincial law societies. Every law school graduate must attend a five-week practical course at one of these schools in order to be admitted as an attorney. If a law graduate attends an additional five-month course, they are only required to serve one year of articles instead of two. This has helped to open up admission to the bar. However, the education at the Practical Training Schools has been criticized as being similar in teaching methodology to that used at the law schools. Thus, practicing attorneys used the "chalk and talk" model to lecture substantive law instead of teaching legal skills. See Mhlungu, *supra* note 58, at 1009-10.

schools were also discouraged from teaching about social justice.¹⁰⁷ In effect, because many faculty members have succeeded without having had a clinical law experience or taken skills courses while they were in law school, they may not see the need to add so extensive a new component to the curriculum.¹⁰⁸

Exacerbating this problem is the resistance to change found in most large institutions.¹⁰⁹ This is a complex issue that can manifest itself in many ways. In this context, it may simply be that senior faculty members and administrators view questions about what courses to teach and who should be hired as a “zero sum game.”¹¹⁰ They may believe that a decision to add clinical courses and devote more resources to employing clinical faculty is a threat to themselves or valued colleagues, since it would be necessary to subtract from somewhere else to make these changes. People who have devoted their careers to acquiring an expertise in a particular area of law and who have written extensively on the subject may resist a decision to cut back on the importance of teaching in that area. Further, even if clinical education were supported with new funds, the attention paid to it could be seen as a threat to the prestige of the traditional law school curriculum.

Whatever the reason, South African law schools have not yet adequately integrated law clinics and legal skills and values courses into the curriculum, even though they may have accepted the initial creation of law clinics. Similarly, they have also failed to sufficiently mainstream clinical law teachers as part of

107. In 1985, the faculty of law at UND first required students to take a course called “Race Legislation,” introducing them to an area of “law seldom mentioned in the normal LLB curriculum.” RACE AND THE LAW IN SOUTH AFRICA vii (A. Rycroft ed., 1987). Street Law was another form of social justice education that existed under the radar of the apartheid government.

108. See Greenbaum, *supra* note 74, at 4. Professor Greenbaum surveyed South African law school deans in 2001. She reports that deans, for example, responded that “writing is often regarded as ‘something we cannot teach,’ a skill that students should already have mastered elsewhere, prior to entering law school.” *Id.*

109. In the author’s experience at most South African law schools from 1996 to 2002, there was both resistance but also a greater degree of openness to change than is found in most law schools in the United States. This seemed to be because the faculty understood, and for the most part embraced, the need to transform the universities in the new democracy. See Kate O’Regan, *Producing Competent Graduates: The Primary Social Responsibility of Law Schools*, 119 S. AFR. L.J. 242, 248 (2002).

110. The zero sum concept is an aspect of game theory and negotiating theory. See ROBERT BASTRESS & JOSEPH HARBAUGH, *INTERVIEWING, COUNSELING AND NEGOTIATION* 393 (1990).

the regular faculty, particularly with regard to their being eligible for permanent, as opposed to contract, positions and being able to receive other benefits such as promotions and sabbaticals. Third, related to both of these problems, law school administrators and faculty have not allocated additional university funding to support the development of clinics and clinical courses. The resource issue was addressed in the previous section, and the consequences flowing from and strategies to combat the first two of these problems are discussed in greater depth below. Despite some progress on all of these issues, each remains a serious problem at all South African law schools.

1. Incorporation of Clinical Legal Education and Skills Courses

An essential element of growth and sustainability of law school clinics is the incorporation and support of clinical education by existing law faculties.¹¹¹ As in the United States, this is a major barrier in South Africa, where law schools have followed the English system of mostly lecture and examination with a set curriculum that contains numerous required courses. While such a system may have been effective in the past, there now are strong pressures for change. With the opening of legal education to significant numbers of persons from previously disadvantaged groups, more students are entering the law faculties with insufficient preparation from high schools.¹¹² The new LLB degree¹¹³ also requires fewer years to complete and such students

111. For an interesting discussion of the growth of clinical legal education in the United States, including the challenges in the past, see Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 *CLINICAL L. REV.* 1 (2000).

112. Since the end of apartheid, there has been rapid change in historically white universities and law faculties. For instance, the UND law faculty went from eighty-five percent white students to eighty-five percent black students between 1995 and 2000. Since many of these students were educated under the inferior system of Bantu education that carried over from the apartheid period, they were less prepared for law school than those coming from predominantly white schools. For example, some students come to university with English as a second or possibly third language (after their African tongue and Afrikaans) and limited secondary school training in courses such as mathematics, the teaching of which was banned under apartheid, but which is needed to complete the required course in legal accounting. See Fedler, *supra* note 57, at 1000-02.

113. Previously, five years were required for an LLB degree. This was changed in 1997, mostly so that black students, who could often not afford five years of university education, could compete with white students who had previously graduated with LLB degrees. See Mhlungu, *supra* note 58, at 1007.

continue to have limited opportunities for obtaining articles of clerkship in private firms.¹¹⁴ In this new educational context, the need for curriculum changes that include the benefits provided by clinical education has increased significantly. Nevertheless, ten years after the adoption of the new Constitution,¹¹⁵ clinical and skills courses generally remain outside the core curriculum: only a limited number are usually offered, and those that do make it into the syllabus are given insufficient course credit.¹¹⁶

The situation is not completely negative. For example, the formerly “white” law schools have recognized that the demographics of their students have changed,¹¹⁷ and that they now are part of a new democracy in a developing country where the majority of the population is disadvantaged. As a result, these schools have implemented limited changes to the curriculum that recognize the importance of teaching skills such as case analysis, problem solving, legal writing and research, and oral

114. In 1999, partners in large law firms in South Africa were 87.98 percent white males, 6.45 percent white females, 5.28 percent black males, and 0.29 percent black females. These demographics demonstrate the racial imbalance that has historically made it difficult for black lawyers to find articles with these firms. See MAISEL & GREENBAUM, *supra* note 9, at 210.

115. As described earlier, when law school based clinics were first started at South Africa universities during the 1970's, there was little resistance from the law schools. See *supra* notes 36-41 and accompanying text. On the other hand, there was not much institutional support. These first clinics were not seen as a threat to the mainstream curriculum since they did not seek course credit for their participants, were usually student run with the assistance of volunteer attorneys, and were either student funded or funded by donations. Professor McQuoid-Mason noted that by 1982, a few law schools had started to give credit for students' participation in law clinics, and students enrolled in law clinics today receive course credit. However, final year students usually take four or five substantive courses along with their clinical course, and they often are ill-prepared for clinical work because they have not had prior skills or social justice courses. See McQuoid-Mason, *supra* note 11.

116. Again, as described in the previous section, exacerbating this problem is the fact that clinical and skills courses are more labor intensive. See Costonis, *supra* note 73, at 172 (providing faculty ratios in the United States). In the author's clinic at UKZN, for example, the faculty-student ratio is about twenty students for each attorney.

117. The student demographics continue to change, fueled by a mandate by the national government to merge institutions of higher education to eradicate some of the inequalities of the apartheid era. For example, in 2005, UND, a former “white” designated university was merged with the University of Durban-Westville, a former “Indian” designated university, to become the UKZN. As part of the merger, the law clinics at both former universities have merged this year.

advocacy.¹¹⁸ The need for reform was reinforced by the curriculum change in 1998 that eliminated the old B Proc and LLB degrees in favor of a standard four year undergraduate LLB degree.¹¹⁹ Another encouraging development is that the South African government has adopted a standard legal qualification for all law schools, the refinement of which creates a new opportunity for reform.¹²⁰

2. Status and Retention of Clinical Faculty

Most educators would agree that the quality and retention of law faculty is central to the teaching, service, and research missions of law schools. Denying clinical teachers the benefits of regular faculty status, such as permanent positions, opportunities for promotion, time off for research and to attend conferences, and equal salaries and fringe benefits¹²¹ causes both the quality and retention of the clinical faculty to suffer. Indeed, the data provided below demonstrates that this unequal treatment has resulted in turn-over of law clinic faculty that negatively impacts on the quality of law students' education and the representation of clients.¹²² Further, because clinical teachers are often not integrated into regular faculty governance, such as serving on faculty committees, the law schools miss the different per-

118. See, e.g., PEGGY MAISEL & LESLEY GREENBAUM, *INTRODUCTION TO LAW AND LEGAL SKILLS* (2001).

119. The 1997 Qualifications of Legal Practitioners Amendment Act discontinued the B Proc degree. See Mhlungu, *supra* note 58, at 1007.

120. A national Standards Generating Body set standards for the LLB degree in 2000. As a result, each law faculty will be reviewed for its compliance with the standards. See South African Qualifications Authority, <http://www.saqqa.org.za/show.asp?main=/docs/legislation/notices/2000/not1006.html> (last visited Nov. 8, 2006). For an analysis of the listed educational outcomes, see de Klerk, *supra* note 43, at 939.

121. This problem is exacerbated in the case of black clinical law faculty because there are many fewer black South African lawyers and law professors as a result of apartheid and the fact that black lawyers and faculty are sought for higher paying government and other corporate positions.

122. The negative effects of having inexperienced faculty teach and supervise students is obvious. But turnover also undermines the continuity of knowledge and expertise gained about poverty law issues and the client communities, which increases the loss to clients. Examples of this problem occurred at the University of Durban Westville, which has lost two directors and three staff attorneys since 2000—the entire law clinic faculty—and at UND, where the director and three out of four senior attorneys left. These faculty members all either received offers from other public interest law organizations or moved to more permanent academic positions that paid higher salaries and provided greater security.

spectives of these potential colleagues who confront and teach about the problems of poverty and social justice every day.

From their inception, most clinical faculty positions in South Africa have been dependent on donor rather than university funding. The directors of the law clinics were hired as senior lecturers as the result of a grant to each law school from the AFF.¹²³ The 2000 survey mentioned earlier asked the type of positions held by the law clinic faculty and the number of years they had taught at their clinics. Their answers, which are summarized in the chart that follows, demonstrate that two-thirds of the directors had spent five years or less at their clinics, and five of those, one year or less. Only five had been there ten years or more. Starting in 2004, South Africa began to reform its university system through mergers. A few of the twenty-one university law clinics listed in the following chart have been recently merged and the names of some of the universities have been changed. The legal aid clinics in the following chart are listed under the province in which the university is located.

TABLE 1: LENGTH OF EMPLOYMENT AND TYPE OF EMPLOYMENT CONTRACTS HELD BY UNIVERSITY LEGAL AID CLINIC DIRECTORS AND THEIR SALARY SOURCES (2000)

UNIVERSITY	FACULTY TITLE	NUMBER OF YEARS AT THE CLINIC	EMPLOYED PERMANENTLY OR ON CONTRACT	PERIOD OF CONTRACT (YRS)	SOURCE OF SALARY
EASTERN CAPE PROVINCE					
University of Fort Hare	Sr. Lecturer	3	Contract	3	Fidelity Fund
University of Port Elizabeth ^a	Sr. Lecturer	7	Permanent		Fidelity Fund
Rhodes University	Sr. Lecturer	5	Permanent		Fidelity Fund
UNITRA ^b	Sr. Lecturer	4	Permanent		University
FREE STATE PROVINCE					
University of the Free State	Sr. Lecturer	4 months	Contract	6 months	Fidelity Fund
GAUTENG PROVINCE					
University of Pretoria	Prof. Emeritus	6 months	Contract	9 months	Fidelity Fund

123. See *supra* note 66; see also Attorneys Fidelity Fund: Application of Resources, http://www.fidfund.co.za/pages/resources_text.htm (last visited June 7, 2006).

UNIVERSITY	FACULTY TITLE	NUMBER OF YEARS AT THE CLINIC	EMPLOYED PERMANENTLY OR ON CONTRACT	PERIOD OF CONTRACT (YRS)	SOURCE OF SALARY
Rand Afrikaans University ^c	Sr. Lecturer	15	Permanent		University + Fidelity Fund
University of South Africa ("UNISA")	None	1	Permanent		University
Vista University ^d	Sr. Professional	4	Contract	1	Fidelity Fund
University of the Witwatersrand	Principal Tutor	10	Permanent		University
KWAZULU-NATAL PROVINCE					
University of Durban-Westville ^e	Sr. Lecturer	5	Contract	3	Fidelity Fund
University of Natal-Durban ^e	Sr. Lecturer	4	Contract	1	Fidelity Fund
University of Natal, Pietermaritzburg ^e	Sr. Lecturer	2 months	Contract	1	Fidelity Fund
University of Zululand	None	2	Contract	2	Fidelity Fund
NORTH WEST PROVINCE					
North-West University	Sr. Lecturer	10	Permanent		Fidelity Fund
Potchefstroom University ^f	Sr. Lecturer	10	Permanent		University + Fidelity Fund
LIMPOPO PROVINCE					
University of the North ^g	Sr. Lecturer	4	Permanent		University
University of Venda	Head: Legal Aid Clinic	5	Permanent		University LAB
CAPE PROVINCE					
University of Cape Town	Sr. Lecturer	10	Permanent		Fidelity Fund
University of Stellenbosch	Sr. Lecturer	1	Permanent		Fidelity Fund
University of the Western Cape	Sr. Lecturer	6	Permanent		University Fidelity Fund

^a Renamed the Nelson Mandela Metropolitan University in January 2005 after merger.

^b University of Transkei, now part of Walter Sisulu University for Technology and Science.

^c Rand Afrikaans University is now part of the University of Johannesburg.

^d Vista University was a multi-city campus university that has now merged with other universities.

^e The University of Durban-Westville and the two campuses of the University of Natal (Durban and Pietermaritzburg) were merged in January 2004 into the UKZN. The three law clinics have continued to operate separately on the three former campuses. In January 2007, the clinics at the former University of Durban-Westville and the former University of Natal, Durban campus merged and moved into a new office at UKZN in Durban.

^f Potchefstroom University for Christian Higher Education is now part of North-West University.

^g University of the North is now part of the University of Limpopo.

The directors are the key staff to enable stability and growth of the law clinics. This data demonstrates that most were inexperienced in 2000. The more serious implication is that many directors probably do not view their jobs as long term career options.¹²⁴ Assuming this pattern continues, many university clinics will have to recruit for these positions every five years or less, experience lost efficiency while new directors learn the job, and go through major transitions and changes in leadership styles.

The data also indicates that many of the clinical directors are not in permanent faculty positions. Eight out of twenty-one reported their employment was on a contract basis with contracts that range from six months to three years. These directors therefore have limited job security and often do not receive some of the other benefits of permanent positions. While thirteen of the directors reported that they have "permanent" positions, closer examination reveals in many cases that their continuation is dependent on the continued receipt of the grant from the AFF. If that funding were cut, it is far from clear that their universities would continue to employ them.¹²⁵

Most clinics also employ attorneys other than the director who are responsible for supervising the students' case work and often teach a classroom component. As the 2000 survey data indicates, most of these attorneys are on short term contracts;¹²⁶ and, not surprisingly, their rate of turnover is even higher than the directors, resulting in the need to constantly hire and train new clinical faculty.

Another factor affecting their retention was that clinical law teachers were not on the regular promotions ladder.¹²⁷ For instance, one director was still a senior lecturer despite having taught for fifteen years. The same is true of three directors who had taught for ten years. The director of the WITS clinic is called a tutor, despite ten years of experience. Six other clinic directors do not have academic titles, despite the fact that they

124. See *supra* note 122.

125. In 2000, the AFF reviewed its grants to law schools. At that time, AULAI was very concerned that designated grants for clinic directors might be eliminated and lobbied the chairperson of the AFF to make sure this would not happen. The AFF spends approximately fifteen million rand per year on law clinics and practical legal training schools. The amount available to the Fund, however, may fluctuate depending on the amount collected each year by the Fund. See Mhlungu, *supra* note 58, at 1010.

126. See Maisel, *supra* note 63, at 17.

127. See *id.* tbls.3-4.

teach courses; four are classified as administrators, and one as a temporary contractor.

All seven of the clinic directors with faculty titles are senior lecturers, i.e., still close to the bottom of the promotions ladder. This is true despite the fact that four have LLM degrees. The attainment of post graduate qualifications, either a Master's of Law ("LLM") or a Ph.D., is normally one criterion for law faculty promotion. The directors also indicated that even those with faculty status are not considered for normal promotion. Rather, their status as senior lecturers appears linked to the amount of money given by the AFF to pay for their salary, which is equal to a senior lecturer.¹²⁸

One factor which may count against these directors in terms of promotion is the difficulty they have in engaging in research and writing for publication, an activity permanent law faculty are normally encouraged and required to do. This expectation is supported for most faculty through opportunities for sabbaticals, research grants, and attendance at professional conferences. Those faculty also have breaks between semesters to engage in research and writing. The eligibility of clinic directors for sabbaticals and paid conferences, on the other hand, varies between the universities. Only three have taken sabbaticals and two of these directors had been employed in their positions full-time for ten years and one for fifteen years.¹²⁹ Further, clinic directors are usually required to work during university vacations because they are still responsible for the handling of client files throughout the year. It is therefore extremely difficult for clinicians to have time to engage in research and writing. An important issue for each university is the applicable promotion criteria for clinicians. In 2000, no promotion criteria existed for them, let alone position-appropriate criteria.

The issue of the status and retention of clinical law faculty was addressed at the 2000 South African Law Teacher's Conference with a plenary session devoted to clinical legal education.¹³⁰ Deans and faculty of all the law schools attended this conference, which takes place every eighteen months. After the 2000

128. *See id.*

129. *See id.* at 9.

130. *See* CONGRESS OF THE SOUTH AFRICAN LAW TEACHERS OF SOUTHERN AFRICA 3-6, JULY 2000, at 2 (conference program on file with author) (listing "Plenary Session Two: Clinical Legal Education" with "Convenor: P. Maisel (UND)").

Conference, the exclusion of clinicians from the mainstream faculty has been remedied at least to the extent that almost all clinic directors are now full members of their law faculties. Nevertheless, as one local activist has reported:

[W]hile this movement does go some way toward addressing the insecurity and staff turnover in clinics, it does not go far enough as the other staff members also need that kind of security to enable them to perform at optimal levels. This remains a challenge in the South African legal education system

.....¹³¹

3. Strategies to Increase Acceptance of Clinical Legal Education

The most useful strategy clinical law practitioners have developed to support efforts to improve their status is the same as the one to increase resources, i.e., the formation of AULAI.¹³² Specifically with regard to overcoming the resistance to change, AULAI has used its collective power to educate and influence law school decision makers. For example, representatives of AULAI were central to the inclusion of a plenary session on clinical legal education at the 2000 South African Law Teachers' Conference, which led to an upgrade in status to permanent positions for most clinical directors.¹³³ Through AULAI, clinicians have also participated in national meetings, recommending new policies and reforms of the legal profession, the judiciary, and legal aid.¹³⁴ Examples include the Law Reform Commission working on new legislative proposals¹³⁵ and the Standards Generating

131. See Ramgobin, *supra* note 50, at 50-51.

132. As is clear from both earlier and present discussions, a lot has been accomplished by the law clinics acting collectively rather than individual clinicians trying to influence the process alone. Clinics in other countries can take two lessons from this effort. One is the need to form a unified organization to represent their interests, and second is to instigate the creation of a national body to set curriculum standards if one does not already exist. The latter could be in either the executive or legislative branches of government. See *supra* notes 78, 120 and accompanying text.

133. See *supra* note 131 and accompanying text.

134. Examples of important national policy making conferences include the National Legal Aid Forum held in Kempton Park from January 15-17, 1998, and the LAB Stakeholders' Forum held in Kayalami, Johannesburg on July 23, 2003.

135. The South African Law Commission has been very active post-apartheid in proposing new legislation in almost every area of law. Clinical law faculty have worked on Project Committees on Juvenile Justice Reform and Criminal Law, Criminal Procedure and Sentencing, for example.

Body that developed the government-mandated learning objectives for all law schools.¹³⁶ Finally, membership in AULAI has encouraged clinicians to work with the deans of their law schools to change curricula. The sum of these efforts has been the inclusion of an increased number of clinical and skills courses in the standard law school curriculum.¹³⁷

A related strategy utilized in South Africa is for clinicians and their supporters to rise to leadership positions that can influence policy. A key example is Professor McQuoid-Mason's achievements at UND both during and after his tenure as the law school Dean. Further, as a member of the LAB, the organization charged with providing government-financed representation for the indigent, Professor McQuoid-Mason was able to influence that body to work with and support clinical legal education.¹³⁸ Other clinicians have been tapped for national policy posts.¹³⁹

South African clinicians have utilized overseas resources not just for funding, but also to help bring about internal reforms.¹⁴⁰ One obvious example is the influence Professor Bamberger's visit had on the early development of the clinical law movement.¹⁴¹ Another is the visits of Ed O'Brien, who helped launch

136. Beverly Franks, the clinic director at the University of the Western Cape, was appointed to and served on the South African Qualifications Authority Committee setting standards for law schools.

137. The Bachelor of Laws degree constitutes a qualification in terms of the South African Qualifications Authority Act. *See* South African Qualifications Authority Act, 58 of 1995. The qualification standards set broad learning outcomes for the LLB in the areas of knowledge, skills, and attitudes. The requirement that students demonstrate proficiency in legal skills, such as problem solving, means that law schools must provide for the development of these skills in the curriculum.

138. A concrete accomplishment is described in the section on resources. *See supra* § IV.A.

139. Lee Anne de la Hunt, the former director of the University of Cape Town Law Clinic, was appointed in 2004 as the legal advisor to the Minister of Home Affairs because of her expertise in refugee law. Yousuf Vawda, the former director of the Durban-Westville Law Clinic, and Thuli Mhlungu, the current director, are members of the National LAB.

140. During the author's tenure in South Africa, she used her experience with clinical education in the United States to help strengthen South African legal education. She worked with the director of the law clinic at UND to develop a new structure that facilitated an increase in the clinic's impact on its clients' lives. This restructuring continues to serve as a model for clinics elsewhere. She also worked with members of the faculty to revamp the curriculum for the introductory law courses, from a survey of South African law delivered in a lecture format to two skills course.

141. *See supra* note 26 and accompanying text.

the successful Street Law movement in South Africa.¹⁴² Thus, clinicians in other countries can also seek out overseas persons to visit them, so long as those persons are open to adapting their expertise to the local needs and context.¹⁴³

A final strategy to influence law school decision makers is to form coalitions with other progressive forces on-and-off campus. These could be activist student groups, even the student government; other progressive faculty, such as in the political science or economics department; or perhaps most importantly, community groups and non-governmental organizations working to promote the interests of the disadvantaged in society.¹⁴⁴ Clinicians in South Africa so far have not actively pursued this tactic, but it is one that could reap a substantial payoff. To the extent that clinicians must lobby decision makers to support the development of clinics, allies of this nature could exert considerable pressure on their behalf. In effect, the more people you have supporting your cause, the better.

C. Obstacle 3: Capacity Issues

A third and somewhat lesser obstacle to sustaining clinical legal education in South Africa has been the lack of capacity of law school faculty to conduct all of the needed functions to run clinics. While this remains a problem, especially in the universities that were created to serve previously disadvantaged groups, there has been significant progress in overcoming this obstacle. Now, clinical programs at most South African universities offer high quality education and legal services.¹⁴⁵

The lack of capacity stems initially from the fact that virtually none of South African law professors had the opportunity to

142. See *supra* note 52 and accompanying text.

143. See Maisel, *supra* note 1, at 64, 66-67, 72-75.

144. Examples of important legal NGO's include the Black Lawyers Association, Lawyers for Human Rights, the Legal Resources Centre, and the National Association of Democratic Lawyers. All worked during apartheid to challenge unjust activities and currently work to secure the rights and protections of the new Constitution. See Ramgobin, *supra* note 50, at 25.

145. There has been no formal evaluation in recent years of South African law school clinics. However, the author has visited the clinics at eight historically disadvantaged universities and has seen their growth in the past eight years. Also, the clinics must produce progress reports and document their education and legal services programs for the AULAI Trust in order to get renewed grant funding each year. This monitoring function is another benefit of the AULAI Trust.

participate in clinics themselves while in law school. Therefore, they were forced both to establish law clinics and to create a related curriculum without having had any personal experience of what a clinic looked like or how it operated.¹⁴⁶ Further, they had to acquire skills that faculty teaching traditional courses did not require. For example, while both types of faculty should be able classroom teachers and experts in their substantive law areas, clinical faculty must also be trained legal advocates and have the additional skills needed to supervise law students, enabling the students to reflect and learn from experience.¹⁴⁷

Like the other obstacles described above, this situation was exacerbated by South Africa's apartheid past. This could be seen most graphically in the historic disparity between resources of clinics at historically black and historically white universities in both staffing and facilities.¹⁴⁸ This legacy continues today as the clinics at historically black schools still struggle to match the capacity at the more affluent universities. A related issue is a shortage of black faculty members, including clinicians, since members of those groups were denied equal educational opportunities during apartheid.¹⁴⁹ A final issue affecting capacity is

146. The first clinical law textbook was recently published in South Africa. It is the product of a meeting of clinical law teachers in 2002 to produce a textbook for students in clinical law courses. It includes chapters on the theoretical components of various legal skills that can be used as a curriculum for the classroom component of a clinical law course. See generally BODENSTEIN ET AL., *supra* note 6.

147. See JAMES P. OGILVY ET AL., *LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL INTERNS* (1998) and *CLINICAL ANTHOLOGY READINGS FOR LIVE-CLIENT CLINICS* (Alex J. Hurder et al., eds., 1997), for descriptions of some of the roles, skills, and values required of clinical law teachers in the U.S. context.

148. Shanara Gilbert describes the conditions at HBUs in her 1993 report: Lack of adequate financial support has left libraries empty or outdated; work and classroom spaces crowded and ill-lighted, and has permitted the maintenance of curricular requirements such as Latin and Afrikaans, widely perceived as outmoded and irrelevant by younger generations of black students looking to a different, new future. For many black students, whose primary language may have been Zulu, Xhosa or Sotho, and who have been already studying the language of law in the language of English, these Roman-Dutch traditions have proven to be insurmountable.

Gilbert, *supra* note 13, at 1.

149. See Pruitt, *supra* note 61, at 563. A large number of current black law faculty members are from other countries in Africa. An early successful Constitutional Court case involved claims of discrimination by these faculty members who were being denied promotion opportunities because of their immigrant status. See *Larbi-Odam v. Members of the Executive Council for Education (North-West Province)* 1998 (12) BCLR 1 (CC) (S. Afr.). However, most potential law faculty members from outside South Africa are not admitted as attorneys in South Africa. Therefore, they are not eligible for employ-

the need to find faculty fluent in up to eleven official languages.¹⁵⁰

South African clinicians have pursued different strategies to build their own capacity to be litigators, supervisors, and teachers that may be useful models in other countries. Again, many of these initiatives have been organized through AULAI, with the Ford Foundation and international visitors also playing significant roles.

As noted earlier, AULAI did not really become active until the mid-1990s, when it conducted its first national conference on clinical education.¹⁵¹ After that conference, AULAI matured into an effective coordinating body for the clinical legal education movement as a whole,¹⁵² and its democratically-elected executive committee began to meet regularly to plan and implement important capacity-building activities. First, AULAI began to sponsor two national workshops each year for clinical law faculty to discuss policy issues and receive training.¹⁵³ AULAI has also organized a program of visits between schools with more

ment as clinicians. This further reduces the pool of potential black faculty in the clinics.

150. Section 6 of the Constitution of the Republic of South Africa, Act 108 of 1996, recognizes eleven official languages. All these languages must enjoy equal treatment and the state must take measures to elevate the status and advance the use of indigenous languages, which in the past have been neglected. *See* GEORGE DEVENISH, A COMMENTARY ON THE SOUTH AFRICAN CONSTITUTION 39 (1998).

151. *See supra* note 80.

152. Note that AULAI is not unique in being a coordinating body for clinical education. There are two national coordinating bodies in the United States: the Clinical Legal Education Association ("CLEA") and the Association of American Law Schools ("AALS") Clinical Legal Education section. Also, national coordinating organizations have been formed in other parts of the world, including Russia and China. All these organizations seek to support the growth of clinical legal education and to organize conferences and sometimes training sessions for clinicians. AULAI, however, is unique in its setting up a Trust to fund joint activities and share resources. There is another lesson for other countries from AULAI's work. AULAI had the same internal issues of racism to address as all South African institutions. As an observer, the author noted difficulties and struggles within the organization as clinical law faculty from different race groups and institutions tried to understand each other and work together. Issues of who should be in leadership and decision making positions for the organization (determined by elections) and anger over work not completed or unevenly shared, surfaced periodically. Personal relationships and trust may be more difficult across race groups because of the country's history. In building a strong clinical legal education organization, dealing with issues of diversity and building trust and understanding are essential. Examining how successful AULAI has been in these areas would be another useful research project.

153. Workshop topics have included: developing the clinical law course curricu-

experienced clinicians assisting newer programs and staff. A third form of capacity building has been to organize the writing of several joint publications by clinical faculty to help improve and standardize clinical practice, including the construction of a model curriculum for a clinical law course and production of a model clinic manual that can be adapted for students in a particular clinical program.¹⁵⁴

Beginning in the mid-1990s and culminating in 1998 with the creation of the AULAI Trust, AULAI adopted a particular focus on working to build capacity in the previously disadvantaged schools. These efforts included extensive visits between South African clinics as well as sponsorship of visits by HBU's staff to clinical programs in the United States.¹⁵⁵

The Ford Foundation has worked closely with AULAI on several of these initiatives. In the 1990s, the Ford Foundation provided grants to support six law clinics at historically disadvantaged law schools.¹⁵⁶ The Ford Foundation also sponsored the 1995 AULAI-run national clinical legal education conference. The timing of this conference so soon after the transition was crucial, because it enabled the staff at all the clinics to plan together for ways to consolidate recent gains and to set directions for the future.¹⁵⁷ Finally, in consultation with AULAI, the Ford Foundation funded eight South African clinicians to visit clinical programs in the United States in 1995 and 1996.¹⁵⁸

lum, how to write fundraising proposals, strategic planning, supervision skills, and teaching legal skills.

154. The model clinical curriculum resulted in a textbook. See *BODENSTEIN ET AL.*, *supra* note 6. The model clinic manual has not been published, but is available from Thuli Mhlungu at UKZN.

155. The AULAI Trust employed its President, Schalk Meyer, to visit clinics and provide technical assistance and help in forming cooperative agreements with the LAB starting in 2002. Other visits occurred regionally between law clinic directors and attorneys to exchange information on administrative issues, cases, and teaching. The Ford Foundation funded eight South African clinicians to visit clinics in the United States. See *BEVERLEY FRANKS ET AL.*, *FELLOWSHIP—CLINICAL LAW TEACHERS REPORT* (June 1996) (unpublished report) (on file with author).

156. The recommendations of Shanara Gilbert, a United States clinician, were the basis of funding six South Africa law school clinics between 1995 and 2000. See Gilbert, *supra* note 13.

157. See *supra* note 80.

158. See *FRANKS ET AL.*, *supra* note 155. Eight South African clinicians were selected to visit at the City University of New York ("CUNY") School of Law and the University of Maryland School of Law for four weeks, one group in 1995 and another in 1996. The second group also attended a CLEA Supervision Skills Workshop in New

In addition to the Ford Foundation's efforts, the end of apartheid meant an opening of South Africa internationally to other organizations such as the United States-based Fulbright program, foundations such as the Open Society Justice Initiative, and foreign law schools, which funded faculty to conduct research or teach.¹⁵⁹ These groups also helped build local capacity by, for example, sponsoring visits by clinicians from other countries who shared their ideas and expertise.¹⁶⁰ Local capacity has also improved as a result of the leadership role South African clinicians have taken in building the Global Alliance for Justice Education ("GAJE"), an international organization focusing on justice education that brings together clinical law faculty and others from around the globe.¹⁶¹ For example, the second international GAJE conference in Durban in December 2001 pro-

Hampshire from February 15-17, 1996. Priority was given to black attorneys in the selection process. The author discussed the experience with a number of the clinicians. Some of the most positive results were a shared experience and knowledge base that strengthened cooperation between clinics once the South African clinicians were back home. The trip also gave them the opportunity to reflect on their clinics in South Africa and see how the U.S. clinics differed. One reaction was that the U.S. models were too different because of the resource differences, and thus were not that useful to South Africa. Another problem was that shortly after these trips, three of the South African clinicians left teaching for other jobs and their new expertise was lost to the clinics.

159. Professor Kenneth Broun received support from the University of North Carolina School of Law for his book. See BROUN, *supra* note 3, at xix. Professor Brook Baker received several special grants from Northeastern University School of Law to support his multiple trips to help develop clinical and skills education at the University of Durban Westville. See Brook Baker, *Teaching Legal Skills in South Africa: A Transition from Cross-Cultural Collaboration to International HIV/AIDS Solidarity*, 9 LEGAL WRITING 145 (2003).

160. Professor Shanara Gilbert from the CUNY School of Law visited in 1993 under the auspices of the Ford Foundation. Professor Karen Cypansky from the University of Maryland visited at the University of Durban Westville in 1995 on a Fulbright grant. The author visited UND in 1996 on a Fulbright grant and stayed until 2002. Professor Baker from Northeastern University School of Law first visited the University of Durban Westville while on sabbatical in 1997 and has returned every year since then. Professor Karen Tokarz from Washington University School of Law has also worked with South African clinicians since 2001. In a parallel fashion, South African clinicians have gone to other countries to share their knowledge and experience. Professor McQuoid-Mason has traveled throughout the world teaching about Street Law and clinical education. Professor Palmer has taught in Mozambique and other African countries. Asha Ramgobin has been to countries throughout Africa and to Eastern Europe and Sweden.

161. Professors Palmer and McQuoid-Mason were two of the founders of the Global Alliance for Justice Education ("GAJE") and helped to organize the first international conference in India in 1999. Asha Ramgobin and Thuli Mhlungu, clinicians at UND, have both been elected to the International Steering Committee of GAJE. For

vided an opportunity for clinicians from most South African law schools to meet social justice educators from other countries, an opportunity that greatly contributed to building the expertise of South African clinicians.¹⁶²

Finally, law school clinics have built capacity for clinical education and for public interest law by hiring candidate attorneys and supervising their required articles of clerkship for admission to the legal profession.¹⁶³ This activity has been particularly beneficial to black attorneys, who continue to struggle to find traditional law firms willing to sponsor them as candidate attorneys.¹⁶⁴ In having become an important place for new black lawyers to complete their articles of clerkship, the law school clinics have reaped a benefit for themselves, since many of the lawyers they supervise then choose careers that focus on social justice issues, including becoming clinicians or seeking other faculty positions. Thus, by helping others, the clinics have been training and recruiting future faculty, particularly faculty of color.

D. *Obstacle 4: Balancing Service and Teaching Concerns*

As noted earlier, South Africa's law school clinics grew out of the struggle against apartheid as a means to provide access to justice for indigent people. It has only been since the end of that hated regime that all the clinics have also become teaching laboratories where students receive course credit towards their legal education. Given this history and the inherent tension between the service and teaching missions, a final problem delaying the development of clinical legal education in South Africa is the pressure on law school clinics to maximize the numbers of indigent persons they represent.¹⁶⁵ All legal clinics which pro-

information about GAJE, see Global Alliance for Justice Education, <http://www.gaje.org> (last visited Nov. 6, 2006).

162. The Second World Conference of the Global Alliance for Justice Education "Reconciliation, Transformation & Justice" was held in Durban, South Africa, December 5-14, 2001. One hundred and fifty-four delegates registered for the conference, including a delegation of eleven clinicians from China and many delegates from throughout Africa, Asia, and Eastern Europe. Clinical faculty from South African Law Schools assisted in planning the conference.

163. In 1991, the Attorneys Act was amended so that candidate attorneys could serve their articles at public interest law firms, including university law clinics. See Attorneys Act, 53 of 1979, as amended by Act 102 of 1991.

164. See BROWN, *supra* note 3; Pruitt, *supra* note 61.

165. The author's survey of South African clinicians in 2000 resulted in two reports. The first, on legal work, "Statistical Survey of Twenty-One South African Univer-

vide free representation to indigent persons face serious caseload pressures, but those are greatly magnified in developing countries, such as South Africa, where a majority of the population lives in poverty.¹⁶⁶

The issue again is mainly one of time and resources. First, it takes time to see so many persons, assess their cases, and make decisions on which ones to take. Then, there is the time it takes to actually provide representation. The more clients you see and the more cases you accept for representation, the less time there is available for some educational purposes, such as classes in poverty law or legal skills. The absence of student practice rules in South Africa makes matters worse for faculty because law students do not have the right of appearance in court.¹⁶⁷ Conversely, in the United States, law students who meet certain qualifications and participate in clinical programs may fully represent their clients, including in court proceedings, under student practice rules.¹⁶⁸ Because South African students cannot provide full representation to their clients, supervising attorneys must be the attorneys of record on all cases or refer cases to private counsel if they reach the trial stage. Clinical faculty members also have too many students to supervise, and, as an

sity Law School Clinics," reported on the type and number of cases handled by each law clinic. See Peggy Maisel, *Statistical Survey of Twenty-One South African University Law School Clinics* (July 2000) (unpublished paper on file with the author). In 1984, Professor McQuoid-Mason reported similar data on types and numbers of cases handled by law school clinics. See McQUOID-MASON, *supra* note 24, at 139-63.

166. See CIA World Factbook, *supra* note 4.

167. In South Africa, student practice rules were first drafted in 1985 to enable final-year law students enrolled in law clinics to appear in criminal cases representing indigent defendants in the district courts. Professor McQuoid-Mason, at the UND School of Law, drafted the rules based on the ABA Model Rules for Student Practice and submitted them in 1985 to the Association of Law Societies of South Africa for transmission to the Minister of Justice. All branches of the profession and the law schools approved the rules, but the Department of Justice blocked them. The rules have not been introduced by the current Minister of Justice. Professor McQuoid-Mason estimates that if each of the approximately 3,000 final-year law students participated in a law clinic and handled ten cases annually, mainly during the summer and winter vacations, they could provide representation for 30,000 criminal defendants each year. See David J. McQuoid-Mason, *Administration and Organization of Legal Aid in South Africa* (Aug. 26, 2003) (unpublished article, on file with Author).

168. Each state in the United States has its own student practice rule because all states set their own rules for bar admission. See, e.g., RULES REGULATING THE FLORIDA BAR Rule 11-1.4. The U.S. Judicial Conference adopted a model student practice rule in 1979. See George K. Walker, *A Model Rule for Student Practice in the United States Courts*, 37 WASH. & LEE L. REV. 1101 (1980).

ethical issue, client representation comes before student education when there is a time conflict.¹⁶⁹

An additional time pressure for students is that they have to take a great many required courses in each year of law school, leaving limited time for their clinical responsibilities.¹⁷⁰ Finally, the past educational inequalities have left a majority of students ill-prepared for the rigors of a law school education, requiring additional time to catch up to classmates from more privileged backgrounds.¹⁷¹ The positive news is that clinical programs can play a major role in remedying some of the students' deficiencies because of their capacity to teach important skills and values. Also, because they deal with legal issues from the same communities from which many of these students came, the students are better able to relate to the law and may be more motivated to succeed. All of this takes time, however, and means that fewer clients will be represented.

The solutions to these problems are both straightforward and difficult to achieve. In order to both successfully ensure the clinics' service/social justice mission and to provide high quality education, the changes recommended in previous sections of this Article must occur. Universities will have to allocate more resources to clinical and skills courses, and improve the integration of clinical curriculum and faculty into the mainstream of legal education. Because clinics require a lower student-faculty ratio, clinical faculty members also need to be added.¹⁷²

169. In South Africa there is no one source of professional legal ethics. There is a body of rules drawn from various sources such as regulations promulgated under the Attorneys Act, the rules of various courts, provincial law societies, and the bar council rules. In addition, the common law is important in terms of regulating the profession. See BODENSTEIN ET AL., *supra* note 6, at 27-29.

170. Asha Ramgobin, the former director of the UND clinic, states that: The clinic teaches at least half the final year law students. They receive full credit for the course, which is run over two semesters. However, the time spent and the credits allocated are disproportionate. Students spend almost double the time on clinical work as they should if they were to follow the credit system strictly. This has posed a problem to the clinic staff who, however, due to internal constraints, are unable to normalise the situation.

Ramgobin, *supra* note 50, at 48.

171. See Greenbaum, *supra* note 74. Professor Greenbaum surveyed South African law school deans in May 2001 to ask about the level of law students' writing skills. Twelve deans, with more than eleven thousand law students at their schools, responded that students entering law school generally have weak communicative skills. One dean classified fifty percent of the students in this category.

172. New clinical faculty can be paid attorneys, volunteer attorneys, international

A fairly simple and helpful first step would be to put more emphasis on skills and substantive law related to issues of poverty and development in the first three years of the curriculum, so that students are better prepared for their final year clinical courses.¹⁷³ Similarly, it would help to cut back on other course requirements in the final year so that students can commit an adequate amount of time to their clinical experiences. Medical schools have two years of clinical rotations.¹⁷⁴ Most law schools in the United States now award substantial credits for clinical courses or allow students to enroll in several courses while in law school.¹⁷⁵ Even though South African students will perform articles of clerkship after law school, their experiences vary greatly, and many candidate attorneys get little supervision or feedback during these apprenticeships.¹⁷⁶

Adoption of a student practice rule is another reform that can greatly enhance both the service and teaching missions. Proposals to allow clinical law students to practice in court have been made over the past twenty years, but the necessary legislation has not been enacted.¹⁷⁷ If students were allowed to practice in courts, more clients could be served, thereby helping to

visitors or candidate attorneys. However, there must be a sufficient core of permanent clinical faculty to sustain the quality of the clinical legal education program as previously discussed. See *supra* page 404.

173. Attempts to do this are discussed in previous sections. It is asking too much of clinics if they must teach basic skills in the final year as part of the clinic. Learning about poverty law and social justice issues should likewise not wait until the final year, but be integrated into all law school courses. See *supra* note 74.

174. See Judy McKimm & Carol Jollie, Medical Training and Education in South Africa (May 2004), available at <http://www.fcm.unl.pt/>.

175. The trend in clinical education in the United States has been to award more credits for students' participation in clinical courses. It is not unusual for students to have a full clinical semester during their third year of study. See, e.g., Georgetown University Law Center: Institute for Public Representation, <http://www.law.georgetown.edu/clinics/ipr> (last visited Nov. 6, 2006); Vermont Law School Semester in Practice, http://www.vermontlaw.edu/experiential/index.cfm?doc_id=149 (last visited Nov. 6, 2006). Law clinics at American University Washington College of Law are almost all at least half of a student's semester course load. See American University Washington College of Law: Clinical Program, <http://www.wcl.american.edu/clinical> (last visited Nov. 6, 2006).

176. See Mhlungu, *supra* note 58, at 1010-11.

177. Professor McQuoid-Mason notes that the African National Congress that led South African government post-apartheid has not been successful in enacting a student practice rule despite good intentions. He is not sure whether this is a bureaucratic problem or a lack of political will. See McQuoid-Mason, *supra* note 11, at 138.

fill the gap in legal services for the indigent.¹⁷⁸ The quality of the students' educational experience would also be enhanced, and the burden on clinical faculty to constantly represent clients in court would be eased. Of course, these gains can only be realized if the number of clinical faculty is sufficient to provide effective supervision of the students.

Clinic specialization is another strategy that can allow students to be more productive. By working on cases in only one problem area, such as land issues or domestic violence, students can spend less time learning substantive law and thereby have more time to master practice skills and values that are transferable to other types of practice. The same is true for the faculty supervisors, who can more easily become expert in limited areas of poverty law rather than having to keep up with developments across a broad range of subjects. The author's experience at the UND Law Clinic demonstrated that specialization also enhances service to clients, since it allows practitioners to greatly increase the impact of their work on the clients' behalf.¹⁷⁹ One example was the creation of the Development Law Unit at the clinic. This unit has represented land claimants and tenants since 1997 in enforcing rights under Acts passed pursuant to the new South African Constitution.¹⁸⁰ The clinic represented 2,500 applicants who lost their land during the apartheid era in an area called Cato Manor.¹⁸¹ These clients and others would have been unrepresented were it not for the clinic students because legal aid was not providing representation in most civil cases at the time, and this was a new area of law.¹⁸² The author believes that the

178. *See id.*

179. In 1996, the UND Legal Clinic did strategic planning including both an internal evaluation of the education program and external consultations of the clinic's role in providing legal services. This process showed a need for specialist services in such areas as domestic violence, police brutality, and access to land and housing. There was an internal debate about whether specialization would meet the educational needs of the students. The Law Clinic was reorganized into three specialized units: the Development Law Unit, the Gender and Children's Rights Unit, and the Administrative and Juvenile Justice Unit. *See* GOLUB, *supra* note 54, at 38-39.

180. *See* Restitution of Land Rights Act, 22 of 1994; Land Reform (Labour Tenants) Act, 3 of 1996; Extension of Security of Tenure Act, 62 of 1997.

181. *See* Asha Ramgobin, *Reflections on the Challenges Facing Public Interest Lawyers in Post-Apartheid South Africa*, 7 *WASH. U. J.L. & POL'Y* 77, 82 (2001).

182. Another example was the work of the new Gender and Children's Rights Unit. Specialization allowed the clinic to focus only on divorce cases where domestic violence was an issue. The UND law school clinic linked with a community-based organization in Newlands East formed by survivors of domestic violence in that commu-

students learned more and felt better about their practice because they were able to master an area of law.

All of these ideas are suggested to ease the tension between legal representation for the indigent and law student education. The pendulum in South Africa has already swung away from having law school clinics comprised solely of volunteer work by students and supervising attorneys with no academic credit or significant educational component. The key is to achieve an ongoing balance between these two missions.

CONCLUSION

Clinical legal education currently serves as a valuable tool in developing countries to help promote equal justice for the poor. It is also helping to make traditional legal education more relevant by educating students on the legal needs of the disadvantaged in society while providing them with better preparation in the practical skills and values they will need to practice law. Nowhere has this development been more apparent than in South Africa, as it struggles to overcome the legacy of its apartheid past.

Given that country's troubled history, the progress that the clinical education movement there has been able to achieve is remarkable. Its record of having a law clinic at every law school is perhaps unmatched in any other country in the world,¹⁸³ and the work of those clinics has demonstrated the positive impact clinical legal education can have in a developing country. To achieve its success thus far, South African clinicians have had to face such obstacles as a severe lack of resources, institutional inertia and resistance, a shortage of potential clinical faculty with the qualifications and training to run clinics, and extreme pressure to serve as many clients as possible. It has met these obstacles with a variety of strategies, some more successful than others. By far, the most important is the expansion and creative use of its membership organization, AULAI. Through AULAI it has fundraised collectively, shared resources, spread expertise to less experienced clinical faculty, developed overall policies and

nity. The students traveled to Newlands East every Saturday, met with clients, and helped them obtain interdicts (restraining orders), divorces, or other legal remedies.

183. In 2003, all South African law schools offered a year-long course in clinical legal education for academic credit using a live-client model. This course was compulsory at fifty-five percent of the law schools. This mandatory requirement of clinical legal education is also unmatched in other countries. See de Klerk, *supra* note 43, at 932.

plans for development, jointly lobbied for reforms, and cooperatively developed new curriculum.

Despite all it has achieved, questions remain as to whether clinical education in South Africa, supported to a large extent by international donors and visitors, can sustain itself and continue to serve the country's law students and indigent population. This Article has detailed the development of the clinical law movement in South Africa and has described its successes, its past and current challenges, and the strategies it has utilized to meet those challenges. In so doing, it is hoped that this Article can provide valuable lessons to those seeking to promote the development of clinical education both in South Africa and elsewhere in the developing world.