

# A RATIONALE AND ROADMAP FOR PARALEGAL CLINICS: ADVOCATING FOR DISABLED CHILDREN AND YOUTH\*

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## Introduction

Now and again legal educators need to re-examine the pedagogical machinery, reshape the curriculum, reflect on advice not taken, and reignite what U.S. law professor Dean Rivkin called the ‘insurgent movement for change’<sup>1</sup> in (clinical) legal education.

I propose a modest pedagogical retooling: A degree programme for nonlawyer advocates<sup>2</sup> that would take advantage of the many attributes that paralegals bring to the profession, with a strong clinical component. The curriculum would concentrate on non-costly and non-adversarial dispute resolution, sensitivity to human and cultural aspects of client rapport, and collaboration between paralegals or lay advocates and other members of the legal profession. I use the example of special education advocacy to show how trained paraprofessionals can be particularly effective in real-world scenarios. Whilst my exemplar is a lay advocate working on behalf of disabled students<sup>3</sup> in a school setting and their right to education, the value added by paralegals

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Keywords: Disability, Lay Advocates, Legal Clinics, Paralegals, Special Education Advocacy, Unauthorized Practice of Law

\* This chapter, in some sections, draws from the author’s open access work, Rosenbaum, S.A. (2008). The Juris Doctor Is In: Making Room at Law School for Paraprofessional Partners, *Tennessee Law Review* (75) 315. (Golden Gate University School of Law Digital Commons, Publications, Paper 709; <http://digitalcommons.law.ggu.edu/pubs/709> ).

<sup>1</sup> Panel Discussion (1987). Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future, *Catholic University Law Review* (36) 337, 340–41 (remarks of Professor Dean Hill Rivkin) [hereinafter Clinical Legal Education: Reflections].

<sup>2</sup> The terms *paralegal*, *lay advocate*, *nonlawyer*, *paraprofessional*, *lay practitioner*, and *legal assistant* are used interchangeably, although there are some real and perceived distinctions. Note that the United States preeminent attorneys’ organization no longer uses the term *legal assistant* ‘in order to reflect terminology that more accurately represents the type of substantive work that paralegals perform.’ American Bar Association (ABA), *Current ABA Definition of Paralegal*, [https://www.americanbar.org/groups/paralegals/profession-information/current\\_aba\\_definition\\_of\\_legal\\_assistant\\_paralegal/](https://www.americanbar.org/groups/paralegals/profession-information/current_aba_definition_of_legal_assistant_paralegal/). The National Federation of Paralegal Associations (NFPA) has discontinued the use of *non-lawyer* in favour of *legal paraprofessional*: ‘In no other industry is the term “non-[professional]” used as a descriptor for other types of service providers. We don’t call nurses or physician assistants “non-doctors”.’ See, NFPA Position Statement on Non-Lawyer Professionals (2022), [https://www.paralegals.org/files/AT\\_01\\_2022-07\\_LP\\_Position\\_Statement\(1\).pdf](https://www.paralegals.org/files/AT_01_2022-07_LP_Position_Statement(1).pdf).

<sup>3</sup> I am obliged to make a disclaimer about use of the term ‘disabled clients’ in lieu of ‘clients with a disability’. For some members of the disability community, it is important always to use ‘people first’ language to emphasize their humanity, not their disability; others prefer to accentuate the

is not limited to that field of law. I also suggest that would-be lawyers and paralegal professionals might share curricular content and physical space under one co-educational roof.

### **Clinical (Para-)Legal Education: Innovative, Interactive, and Applied**

Clinical legal education methodology and interactive teaching are no longer the exclusive domain of law faculties in North America, Europe, and Australasia. Great strides have also been made in Africa and Asia, where a number of homegrown legal aid clinics and curricular innovations are flourishing.<sup>4</sup> Global evidence suggests that clinical experience during legal studies imbues law students with practical lawyering skills, sensitizes them to the needs of marginalized and diverse communities, and engenders long-term commitment to rule of law, professional ethics, and public service.<sup>5</sup> The same experience could be applied to students pursuing *paralegal* degrees or certification.

Clinical education encompasses many meanings, ranging from in-house, live-client settings in law schools to field placements or externships.<sup>6</sup> According to one veteran global clinician:

‘. . . [A] law school can call its clinical legal education program by any name— live-client clinic, legal aid, field placement (externship or internship), street law, simulation or role-play, apprenticeship, or any other local name— so long as the focus is on student experiential learning — learning by doing . . .’<sup>7</sup>

‘Applied Legal Education’ may be a more accurate catchall term insofar as it describes ‘a reflective and experiential learning process without the economic and efficiency pressures of the workplace, to help students understand how the law works in action

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disability as a matter of identity or pride. See Massey, P.A. & Rosenbaum, S.A. (2005). Disability Matters: Toward a Law School Clinical Model for Serving Youth with Special Education Needs, *Clinical Law Review* (11) 271, 272 n.3, 286 n.78 (explaining reclaimed epithets and ‘disability first’ language). In more recent years, ‘identity first’ language seems to be prevailing.

<sup>4</sup> See generally, Bloch, F.S. (Ed.) (2011). *The Global Clinical Movement: Educating Lawyers for Social Justice* & Qafisheh, M. & Rosenbaum, S.A. (Eds.) (2016). *Experimental Legal Education in a Globalized World: The Middle East and Beyond*.

<sup>5</sup> See, The Myanmar CLE Programme Consortium, *The Global Path and Future of Clinical Legal Education in Myanmar* 24, 26, 41 (Apr. 2016).

<sup>6</sup> See, Bloch, F.S. & Noone, M.A. (2011). The Global Clinical Movement. In Bloch, *supra* note 4 at 159, (clinic could be located in community or within local legal aid organization) & Massey & Rosenbaum, *supra* note 3 at 299 (law faculties could form partnerships with local non-governmental organizations (NGOs) or consortium of law faculties for attorney-supervised ‘service-learning’ or externship placements).

<sup>7</sup> Wilson, R.J. (2009). Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education, *German Law Journal* (10) 823, 829. In Professor Wilson’s view, the learning must also be done ‘for academic credit’. *Id.*

while providing sorely needed *pro bono* representation to the poor.’<sup>8</sup> This scheme emphasizes teaching practical skills to students early in their education. Clinical legal education has also been defined simply as ‘a method of instruction in which students engage in varying degrees in the actual practice of the law’.<sup>9</sup>

Like future lawyers, prospective paralegals should learn to carefully attend to the interests of their clients, to be sensitive to their humanity and resolve disputes ‘by the least combative and expensive means available’.<sup>10</sup>

Paralegal preparatory programmes should take a page from the landmark *MacCrate Report*,<sup>11</sup> which has heavily influenced law schools, in urging that they ‘convey to the students a sense of what being a professional means’ from skills and knowledge to ethics, attitude, and ‘other dimensions of lawyering’.<sup>12</sup> Those fundamental skills include: familiarity with systems and procedures to ensure efficient allocation of time, resources, and effort; and development of systems and procedures for effectively working with others.<sup>13</sup>

Other sources of available guidance include legal education paths charted by Professors Roy Stuckey, Deborah Maranville and their co-authors.<sup>14</sup> An earlier Carnegie Foundation report embraced the French approach to education capsulated in the term *formation*,<sup>15</sup> or the ‘apprenticeship’ of professionalism and purpose.<sup>16</sup> The report authors viewed the intensive socialization, professionalization, and values-

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<sup>8</sup> Applied Legal Education: A Short History and Definition, Center for the Study of Applied Legal Education, <http://csale.org/appliedlegaleducation.html>). In Rabé S. & Rosenbaum, S.A. (2010). A ‘Sending Down’ Sabbatical: The Benefits of Lawyering in the Legal Services Trenches, *Journal of Legal Education* (60) 296, 297, n. 2.

<sup>9</sup> Ojienda, T.O. & Oduor, M. (June 2002). Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya, *International Journal of Clinical Legal Education* 49, 49 (citation omitted). See also, Rabé & Rosenbaum, *supra* note 8 at 297, n. 2 (‘legitimate pedagogical debate’ about best experiential model ‘sometimes manifested in a divisiveness and competitiveness’ between ‘live clinic’ and ‘skills’ clinicians and between those favouring in-house and externships).

<sup>10</sup> Black, J.P. & Wirtz, R.S. (1997). Training Advocates for the Future: The Clinic as the Capstone, *Tennessee Law Review* (64) 1011, 1011 (citations omitted).

<sup>11</sup> The report was issued by a task force on law schools and the profession, chaired by Attorney Robert MacCrate. American Bar Association (1992). *Legal Education and Professional Development—An Educational Continuum* [hereinafter *MacCrate Report*].

<sup>12</sup> Black & Wirtz, *supra* note 10, at 1014. See, e.g., *MacCrate Report*, *supra* note 11, at 135–41, 233–68 (describing ‘educational continuum’ through which law school students acquire professional skills and values).

<sup>13</sup> *Id.* at 199-203.

<sup>14</sup> See Stuckey, R. *et al.* (2007), *Best Practices in Legal Education: A Vision and a Road Map* and Maranville, D., Batt, C., Radtke Bliss, L., & Wilkes Kaas, C. (Eds.) (2015). *Building on Best Practices: Transforming Legal Education in a Changing World*.

<sup>15</sup> Sullivan, W.M., Colby, A., Welch Wegner, J., Bond, L. & Shulman, L.S. (Carnegie Foundation for the Advancement of Teaching, 2007). *Educating Lawyers: Preparation for the Profession of Law*, 84, 128-29.

<sup>16</sup> *Id.*, at 97.

shaping inherent in traditional law school pedagogy as one of its few positive features.<sup>17</sup>

Among other educational best practices, Stuckey and Maranville promote instruction that nurtures cross-professional collaboration, teamwork, effective communication with colleagues and other professionals, and the capacity to deal sensitively and effectively with persons from various backgrounds.<sup>18</sup>

Whilst these studies may bring a nuanced and renewed attention to longstanding concerns, the same criticisms have been voiced for seventy-five years in the vast literature on preparation of law students for practice<sup>19</sup> and could easily be adapted for students in paralegal studies.

An equally important component of clinical education is its dedication to social justice, or ‘access to justice’, whereby the prevailing philosophy is representation of, and advocacy for, the indigent, the marginalized, and the disenfranchised. From its inception, the ‘legal aid dimension became somehow embedded in the clinical program and has had a pervasive influence on the clinical curriculum’.<sup>20</sup>

### **Expansion of Paralegal Opportunities and *Formation***

Nonlawyer advocates have different functions. Sometimes they are paralegal technicians or researchers. At other times, they may be lay advisors or community organizers. In an attempt to define the role of the nonlawyer advocate, a trio of early poverty lawyer activists observed that it goes beyond representation at administrative hearings in its concern with legal rights and relationships.<sup>21</sup>

These activists called for the creation of lay advocate centres to complement the work of legal services attorneys,<sup>22</sup> describing them as ‘at once more independent of the attorneys and at the same time closely related to that of the attorney who represents the poor’:

‘The lay advocate teaches [their] clients to protest when [they have] been deprived of [their] most elementary rights, rather than suffer inwardly [and] sink further into despair...[and] to protest in such situations by going to an attorney—if there is an attorney available.

Frequently, the lay advocate’s protest can be effectively and properly made directly to the sources which have the authority to remedy the

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<sup>17</sup> *Id.*, at 185-86. See also, Natt Gantt, II, L.O. & Madison III, B.V. (2015). Teaching Knowledge, Skills, and Values of Professional Identity Formation and Cunningham, C.D., Learning Professional Responsibility. In Maranville *et al.*, *supra* note 14, at 253-70 & 280-96.

<sup>18</sup> See, Ambrose, K.D., Fernholz, W.H.D., Klein, C.F., Raigrodski, D., Rosenbaum, S.A., & Wortham, L. (2015). Cross-Border Teaching and Collaboration. In *id.* at 48-87.

<sup>19</sup> See, Elson, J.S. (1997). Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia, *Tennessee Law Review* (64) 1135, 1135.

<sup>20</sup> Bloch & Noone, *supra* note 4, at 157. See also, Bloch, F.S. & Menon, M.R.N. (2011). Legal Aid Origins of Clinical Legal Education. In *id.*, at 270.

<sup>21</sup> Sparer, E.V., Thorkelson, H., & Weiss, J. (1966). The Lay Advocate, *University of Detroit Law Journal* (43) 493, 505, 512.

<sup>22</sup> *Id.*, at 494.

grievance....The lay advocate is a source of education as to fundamental legal rights'.<sup>23</sup>

Practitioner and early clinical scholar Gary Bellow touted a system using paralegals, noting that they are 'long-term service providers capable of providing first class legal representation'.<sup>24</sup> From the United Kingdom to South Africa, efforts have been made to allow paralegals or 'legal executives' to attend police interviews of suspects, take statements from imprisoned defendants, and follow up with witness declarations. There have also been attempts to redefine 'legal practitioner' to include paralegals, even permitting them to represent clients in court.<sup>25</sup> The greater latitude accorded paralegals in some Global South nations is due in part to the United Nations General Assembly's adoption of UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems in 2012.<sup>26</sup>

If not an all-out endorsement of a paralegal degree, prominent ethicist Deborah Rhode made an appeal for law schools to offer a differentiated instruction. In her view, '[t]he diversity in America's legal needs demands corresponding diversity in its legal education' and noted that nonlawyers with legal training in other nations are able to provide routine services 'without demonstrable adverse effects', in areas such as bankruptcy, immigration, uncontested divorces, and landlord-tenant matters.<sup>27</sup>

Professor Bellow argued that aside from lowering the cost of advocacy, paralegals can be taught to 'do large amounts of legal services work as well as, and sometimes better than, their lawyer counterparts'.<sup>28</sup> He also suggested altering the two-to-one lawyer to paralegal ratio, in addition to 'developing a form of "free-standing" paralegalism much like nurse practitioners do in medicine'.<sup>29</sup>

Professor Rhode concurred, suggesting that law schools take a cue from other nations. That is, associate or baccalaureate degree programmes should offer training to

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<sup>23</sup> *Id.*, at 513.

<sup>24</sup> Bellow, G. (1994). Legal Services in Comparative Perspective, *Maryland Journal on Contemporary Legal Issues* (5) 371, 376.

<sup>25</sup> See, Stapleton, A. (2007). Introduction and Overview of Legal Aid in Africa, In Penal Reform International, *Access to Justice: Challenges, Models, and the Participation of Non-Lawyers in Justice Delivery in Access to Justice in Africa and Beyond: Making the Rule of Law a Reality* [hereinafter Penal Reform International] 3, 20; Geraghty, T.F. *et al.*, (2007). Access to Justice: Challenges, Models, and the Participation of Non-Lawyers in Justice Delivery, In *Id.*, at 53, 66.

<sup>26</sup> Under Guideline 14, Member States are urged to develop 'a nationwide scheme of paralegal services with standardised training curricula and accreditation schemes...' that specifies the types of legal services provided by paralegals and allows court-accredited and trained paralegals to participate in court proceedings and give advice to criminal defendants when no lawyers are available. UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012), [Report of the Third Committee (A/67/458)] [https://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf) (hereinafter UN Principles and Guidelines).

<sup>27</sup> Rhode, D.L. (2000). *In the Interests of Justice: Reforming the Legal Profession* 190.

<sup>28</sup> Bellow, *supra* note 24, at 376.

<sup>29</sup> *Id.*

paralegal specialists in areas of unmet legal needs and help design appropriate licensing structures for paralegals.<sup>30</sup>

Notwithstanding the various definitions, paraprofessionals can render competent, vigorous, and commonsense legal assistance in a range of legal or quasi-legal situations. Attorney Edward Sparer and his associates referred to these as “‘low-level’ legal problems’.<sup>31</sup> These include problems concerning education, housing, foster care, public benefits, immigration status, health care, consumer affairs, or employment. In some instances, paralegals cut costs for clients and law offices, as well as preserve attorney resources. Moreover, paralegals are sometimes better equipped than lawyers when communicating with, informing, advising, and generally assisting clients. Veteran clinician David McQuoid-Mason makes an even stronger case for the role that paralegals can play in dispensing legal advice, particularly in areas where the legal aid office is insufficiently staffed, or in low-level criminal courts where lawyers do not practise, or in informal justice forums.<sup>32</sup>

In a nuanced, but significant, variation on the advocate roles described above is another paradigm. The ‘community paralegal’ adopts a grassroots ‘legal empowerment’ approach to advocacy. The latter term, coined by international development scholar Stephen Golub, refers to ‘the use of legal services and related development activities to increase disadvantaged populations’ control over their lives’.<sup>33</sup> Rather than assist lawyers, community paralegals work directly with clients, and often have a background or experience in common with their clients. They may also work closely with lawyers in making referrals on complex cases and potential litigation. Their role is often to educate about the law and to guide, but also to advise

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<sup>30</sup> Rhode, *supra* note 27, at 190. *See also*, UN Principles and Guidelines, *supra* note 26, at Annex, Guideline 14, ¶68(d)(urging court accreditation and training of paralegals and to give advice where there is a dearth of criminal defence lawyers). In Kenya, the National Legal Aid Act (No. 6), 2016 allows accredited paralegals to offer advice and assistance. (<http://kenyalaw.org>). In the United States, the Institute for the Advancement of the American Legal System has been advocating for regulatory reform that expands the scope of what paralegals, paraprofessionals, and other legal service providers can do and a large number of state and local jurisdictions are in varying stages of creating licensing schemes. *See*, NFPA Position Statement on Non-Lawyer Professionals (2022), *supra* note 2. *See also*, ABA, *How States are Using Limited License Paraprofessionals to Address the Access to Justice Gap* (2022), <https://www.americanbar.org/groups/paralegals/blog/how-states-are-using-non-lawyers-to-address-the-access-to-justice-gap/>.

<sup>31</sup> Sparer *et al.*, *supra* note 21, at 493. *See also* Mootz, T.E. (2000). Comment, Independent Paralegals Can Fill the Gap in Unmet Legal Services for the Low-Income Community, *University of the District of Columbia Law Review* (5) 189, 199–202.

<sup>32</sup> McQuoid-Mason, D. (2018), *African Human Rights Law Journal* (18) 486, 496-97. Challenges when drafting legal aid legislation to ensure access to justice in African and other developing countries with small numbers of lawyers: Overcoming obstacles to including the use of non-lawyers to assist persons in conflict with the law.

<sup>33</sup> Golub, S. (2003) *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative* (Carnegie Endowment for International Peace, Working Paper No. 41), <https://namati.org/wp-content/uploads/2011/09/golub-beyond-the-role-of-law-orthodoxy.pdf>. The utility and success of the community paralegal paradigm is memorialized in the Kampala Declaration on Community Paralegals (2012), <https://namati.org/kampala-declaration/>, adopted by a number of African nations, building on earlier regional and international accords.

and counsel.<sup>34</sup> In that vein, a broader range of services for a broader clientele is performed by paralegals, particularly in developing countries.<sup>35</sup>

The concept of an independent paralegal has enjoyed increasing support in the United States, prompted by a crisis in access to justice, including court access.<sup>36</sup> This support has been enhanced by the prevalence of paraprofessionals in the fields of medical and public health and the ability of trained nonlawyers and self-represented litigants to rely on new technologies in certain legal transactions. Also, the success of large-scale practice by nominally supervised, quasi-autonomous paralegals and case workers employed by NGOs or non-profit legal aid organizations has allowed the general public, judiciary, and bar associations to be more accepting.<sup>37</sup>

### Lawyer Opposition to ‘Unauthorized Practice’

Despite these benefits, concerns about the unauthorized practice of law and the quality of advice will persist, some more legitimate than others. Sparer and co-authors have referred to ‘the incantation of the dark phrases— “solicitation”, “unauthorized practice”, “stirring up of litigation”, “lay intermediaries”... but rarely debated in open fashion’.<sup>38</sup> The ‘practice of law’ has been defined simply, but unartfully, as ‘what lawyers do’.<sup>39</sup> Of course, some of these concerns are due to the fact that lawyers have

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<sup>34</sup> See, Riaz, B. (2021). Envisioning Community Paralegals in the United States: Beginning to Fix the Broken Immigration System, *New York University Review of Law and Social Change* (45) 82, 106-11.

<sup>35</sup> For example, the Paralegal Advisory Service Institute in Malawi maintains a national paralegal aid delivery service throughout the criminal justice system (<https://www.pasimalawi.org>) and Kituo Cha Sheria / Legal Advice Centre in Kenya offers direct services by paralegal officers and volunteer advocates, as well as lawyers (<https://kituochaseria.or.ke>). Other examples include Indonesia's Legal Aid Act of 2011 and Moldova's Law No. 198-XVI Law on State Guaranteed Legal Aid (2007). Riaz, *supra* note 34, at 126, n. 218. A pioneering legal empowerment network, Namati, is composed of 3,300 NGOs and civil society organizations, including community paralegals, and operates in more than 170 countries. (<https://www.namati.org>).

<sup>36</sup> Zorza R. & Udell, D. (2014). New Roles for Non-Lawyers to Increase Access to Justice, *Fordham Urban Law Journal* (41) 1259, 1263-68.

<sup>37</sup> *Id.*, at 1268-69, 1276-77, 1298-99. Although nascent, the community paralegal model is gaining currency in the United States among access to justice sectors receptive to nonlawyer strategies. Riaz, *supra* note 34 at 125.

<sup>38</sup> Sparer *et al.*, *supra* note 21, at 494. Sparer and co-authors reminded us that the canons of legal ethics and statutory restrictions on lawyering were not established with an ‘overriding concern with equal justice . . . .’ Several years ago, the largest attorneys association in the US actually had before it a report recommending development of proposals to authorize persons without a law degree to ‘Provide Limited Legal Services Without [Lawyer] Oversight’ and for educational programmes to train them. However, the organization’s governing body never adopted the report. American Bar Association (2014). *Task Force on the Future of Legal Education* 33, [https://www.americanbar.org/groups/professional\\_responsibility/taskforceonthefuturelegaleducation/](https://www.americanbar.org/groups/professional_responsibility/taskforceonthefuturelegaleducation/).

<sup>39</sup> Rhode, D.L. (1981). Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions, *Stanford Law Review* (34) 1, 45. Attorney commentators Zorza and Udell provide an equally confounding definition: ‘Ask ten lawyers, bar associations, or judges what the practice of law is, and you are likely to get ten different answers. If you rephrase the question and ask what the practice of law by non-lawyers is, you will probably



a vested economic interest in retaining a professional monopoly over the privilege to advocate in court. Some critics argue that lawyers' selfish economic desires partially explain unauthorized practice of law statutes, which ban direct advocacy by paralegals.<sup>40</sup> Many of the bar's arguments against paralegal practice have been debunked.<sup>41</sup>

Rhode offered sanguine advice on the subject, counseling against a prohibition on paralegal practitioners by suggesting regulation.<sup>42</sup> Training and guidance from law schools could help answer legitimate concerns from the bar and the public at large. A clinical component can enhance the professional development of paralegals, who can be important assets in the partnership for providing legal services. Some university legal studies and paralegal programmes in the United States provide clinical opportunities for students, often in partnership with non-governmental organizations and under attorney supervision. In many instances, the clients are indigent or low income, seeking typical legal aid services, *e.g.*, asylum applications, unemployment compensation, disability benefits, or expungement of criminal records.<sup>43</sup> In other instances, they may need assistance with drafting a will, estate planning, setting up a small business, filing for bankruptcy or getting a divorce.<sup>44</sup>

More recently, the bench and bar have come to accept, and even endorse, the role played by paralegal practitioners in making the legal system more affordable and accessible. In the words of New York State's chief judge: 'Sometimes an expert non-lawyer is better than a lawyer nonexpert.'<sup>45</sup> There are a number of pilot programmes operating inside and outside courthouses that assign a substantial role to paralegals—often operating '[u]nder the radar', with little to no attorney supervision—in advising, counseling, filing, and strategizing.<sup>46</sup> Whilst supervision of *students* is a hallmark of

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get one answer: they should not engage in the unauthorized practice of law'. Zorza & Udell, *supra* note 36, at 1287.

<sup>40</sup> Judges tend to empathize with lawyers' complaints about the damage done by the unauthorized practice of law than with consumer complaints about being denied the chance to use the legal system. Flynn, M.B. (2005). In Defense of Maroni: Why Parents Should be Allowed to Proceed Pro Se in IDEA Cases, *Indiana Law Journal* (80) 881, 902. *See also*, McQuoid-Mason, *supra* note 32, at 494-95 (noting opposition to paralegal potential in developing countries, where bench and bar are invested in 'big city' lawyer availability and scepticism toward low level courts and traditional informal means of dispute resolution).

<sup>41</sup> *See, e.g.*, Rosenbaum, S.A. (forthcoming 2023). Considering a New Rule: When Best Practice is Law Student Practice, *University of Central Punjab Journal of Law and Legal Education* (1) (noting adequate attorney supervision and court oversight, limited areas of practice, and no real evidence of paralegal or student legal clinic competition).

<sup>42</sup> Rhode, *supra* note 27, at 137-39; *see also* Mootz, *supra* note 32, at 203-04 (suggesting other remedies to protect consumers against paralegal malpractice).

<sup>43</sup> ABA, *Spotlight on ABA Approved Paralegal Programs Involved with Access to Justice and Pro Bono Initiatives* (2022), [hereinafter, *Spotlight on ABA Approved Paralegal Programs*], <https://www.americanbar.org/groups/paralegals/paralegal-program-access-to-justice-and-pro-bono-work/> (*e.g.*, Pima Community College, South Suburban College, and Pennsylvania Western University).

<sup>44</sup> *Id.* (*e.g.*, Madison College, Davenport University, and Pennsylvania Western University).

<sup>45</sup> Zorza & Udell, *supra* note 36, at 1262 (statement by Judge Jonathan Lippman, New York Court of Appeals).

<sup>46</sup> *Id.*, at 1277.



clinical education, the ultimate objective of community or independent paralegal *graduates* is to practice on their own. This may be in service of, or partnership with, their clients, and may also involve collaboration with lawyers.

Since the principle was first established that lawyers have the exclusive right to practise law, there have been a number of changes in society and the legal system. These include new information technologies, a robust consumer movement, increased rates of higher education, streamlined legal forms and other adjudication procedures, growth in the number of non-profit legal professionals able to train and oversee lay advocates, scepticism about self-regulation of professionals, and a willingness of clerks and judicial officers to assist self-represented parties. At the same time, there has been a recognition of the gap in access to legal counsel by poor and low-income disputants and litigants, higher legal fees, and more voluminous adjudicatory tribunal dockets. This gap can be filled in certain ‘intermediate’ or discrete areas of law by capable, trained technicians or other nonlawyers, without suffering the risks historically associated with absolutist notions of unauthorized practice.<sup>47</sup>

This phenomenon must lead to a relaxed definition of prohibited practices. Rather than adopt a position of indifference or opposition, the legal academy and the bar should be involved in the education, training, and certification of paralegals.<sup>48</sup> Lawyers of tomorrow should have a co-educational experience with future colleagues in a collaborative, non-hierarchical, and reciprocal setting. This is preferable to operating in separate spheres, establishing impromptu relationships, or fretting over the quality of service provided by paralegals. Even sceptics of lay advocacy programmes must acknowledge that law schools presently do not adequately prepare future attorneys for collaboration with the colleagues and subordinates who are necessary in the practice of law. Instead, would-be lawyers are given the impression that they are ‘solitary warriors, doing battle for their clients’ without reference to associate lawyers, legal assistants, secretaries, and non-legal professionals.<sup>49</sup>

### **Law School Administration of Joint Programmes**

I propose that law schools take the concept of *formation* one step further, by extending educational and training opportunities to other practitioners in the legal field, namely the paralegal community—be it in clinics or other robust experiential activities.

Paraprofessionals can help lawyers accomplish their tasks with the efficiency, affordability, professional collaboration, and responsiveness to clients that is promoted by leading legal educators. Whilst the inclusion of paralegals in law school classrooms and corridors may not qualify as an act of insurgency,<sup>50</sup> it is a valuable opportunity to generate dialogue, reflection, and criticism. The presence and engagement of nonlawyer peers would further bring law schools closer to the public they seek to serve.

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<sup>47</sup> See, *id.*, at 1289-94.

<sup>48</sup> See, Sparer *et al.*, *supra* note 21, at 512.

<sup>49</sup> Munneke, G.A. (2001). Legal Skills for a Transforming Profession, *Pace Law Review* (22) 105, 146. Notwithstanding student reluctance or resistance, assigning group projects in legal courses can foster a generation of paraprofessionals who understand the mechanics and value of collaboration and teamwork.

<sup>50</sup> See *supra* note 1.

The legal educational establishment—law schools and accreditation overseers—should consider a broader approach in preparing tomorrow’s advocates. They could create opportunities for prospective paralegals to study, train, and work side-by-side with future lawyers within law school faculties, even though their instructional programme might involve different admissions and graduation criteria.

The concept of law-school-administered paralegal programmes is not entirely new. In the early 1970s, the avant-garde Antioch School of Law in Washington, DC trained paralegals for the public sector, primarily through clinical experiences.<sup>51</sup> A number of other law schools have piloted paralegal studies in specialized public law subjects, such as fair housing, consumer claims, landlord-tenant, welfare, domestic relations, social welfare assistance, and human rights.<sup>52</sup>

Opening law schools to a new class of advocates could strengthen future lawyers’ ability to deliver legal services more efficiently and to communicate more effectively with clients and co-workers. With exposure to paralegal students, traditional law students could better comprehend fundamental paralegal research and drafting skills. As noted above, the duties of paralegals vary according to the setting in which they work. In private law firms, for example, paralegals might draft and file corporate documents, maintain clients’ tax records, summarize depositions, and collect data relevant to estate planning. In the public sector, among other things, paralegals might interview clients, investigate facts, draft declarations, organize trial exhibits, and even conduct negotiations.<sup>53</sup> Over time, paralegal tasks have evolved from clerical or administrative to more substantive.

Law students could also observe the instinctual and experiential know-how that a paralegal brings to a task. These benefits support the notion that the legal academy should reach out to a wider audience. The curricular and instructional infrastructure might vary from institution to institution, but the emphasis should remain focused on the ethics of practice, clinical education, skills training, and other forms of experiential education. The faculty must also provide a more diverse curriculum that focuses as much on *formation* as it does on technical skills. The prerequisites for a paralegal degree would be less comprehensive and of shorter duration than that for lawyers and, presumably, students enrolled in such a programme would pay lower tuition than traditional law students<sup>54</sup>

The goal would be to offer a rigorous curriculum, teach shared skills alongside traditional law students, and use the clinical model and interdisciplinary teaching to

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<sup>51</sup> See Brief for National Paralegal Institute as Amicus Curiae Supporting Respondents, *Procurier v. Martinez*, 414 U.S. 973 (1973).

<sup>52</sup> *Id.*, at \*6–7. These pilot schools included Boston College Law School, Capital University, Columbia Law School, and Denver College of Law [sic]. *Id.*

<sup>53</sup> See, Brief for National Paralegal Institute, *supra* note 51, at \*2–3 (arguing, for example that in performing these tasks, paralegals could help meet prisoners’ needs for more adequate legal services); Msiska, C., Igweta, R. & Gogan, E. (2007). The Paralegal Advisory Service: A Role for Paralegals in the Criminal Justice System. In Penal Reform International, *supra* note 25, at 157 *et seq.* (introduction of paralegals offering aid to detainees and prisoners, such as in understanding of the law and in facilitating communication, with state authorities in Benin, Kenya, Malawi, and Uganda).

<sup>54</sup> That said, the disparity in earning potential between paralegals and attorneys conceivably might cause tension within the student body.

foster a common knowledge base that would aid postgraduate collaboration. Note that administrators and instructional staff might oppose the co-educational scheme. The Carnegie study does remind us that ‘in all movements for innovation, champions and leaders are essential factors in determining whether or not a possibility becomes realized’.<sup>55</sup>

### **Array of Clinical Skills and Values**

Regardless of whether a paraprofessional degree-granting institution is housed within the law school, the curriculum should not simply mirror a conventional paralegal certification programme.<sup>56</sup> In addition to standard doctrinal courses, the curriculum should focus on skills and traits such as those discussed above. Educators can also look to demand in the private sector for one good indicator of what these skills might be. Moreover, a paraprofessional programme should foster ‘integrated’ education by requiring joint classroom and clinical participation with traditional law students. Whilst the paraprofessional graduates will probably have a shorter tenure at law school than would-be attorneys—and will generally command less pay for their work—they must nonetheless be viewed by would-be attorneys as colleagues with courses and resources in common. Paralegal education should not be merely a training ground for junior lawyers or a fancy trade school for legal technicians and administrative assistants. I next discuss some of the core components of a paralegal curriculum, whether implemented under the auspices of the law school faculty or as a free-standing initiative.

#### ***Professionalization***

As already noted, law schools teach students professional values.<sup>57</sup> The academy has a similar duty to instil these values in paralegals. Also, the professional benefits of a paralegal programme are just as great for conventional law students as for the paralegals themselves. Lawyers-in-training build better relationships with paralegals, who are a type of worker that likely will be a daily part of their future career. Educators should continually challenge law students about their perceptions of co-workers, clients, and the communities in which they live. Thus, integrating paralegal curriculum into law schools would further universities’ goals of becoming public and democratizing institutions.

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<sup>55</sup> There will likely be ‘[r]esistance to change in a largely successful and comfortable academic enterprise . . .’. Sullivan, *et al.*, *supra* note 15, at 202. Accord, Stuckey *et al.*, *supra* note 14, at 283–85.

<sup>56</sup> See, e.g., Monke, D.J. (2005), What to Know Before Your Firm Hires a Legal Assistant: Why Paralegal Certification Counts, *Tennessee Bar Journal* (41) 22, 23–24.

<sup>57</sup> Sullivan *et al.*, *supra* note 15, at 185–86. Professor Stuckey urged that professionalism be taught ‘pervasively and continuously’ throughout a student’s law school tenure, in both doctrinal and experiential courses and in the conduct of instructional staff and administrators. Stuckey *et al.*, *supra* note 14, at 100–04, 129, 170. See also, Natt Gantt & Madison, *supra* note 17, at 253-70 & 280-96.

Law schools can build on the successes of existing initiatives that rely on advocacy without a law degree.<sup>58</sup> These advocates typically handle only one case at a time, and they are often motivated and well trained. They have proven effective, especially in the tasks of investigation and monitoring.<sup>59</sup>

A paralegal programme built upon a model code of professional conduct would serve clients well. It would stress adequate investigation, development of relationships with clients, monitoring of caseloads, and generally performing professional responsibilities in an ethical manner. Upon graduation, these advocates will need clear guidance on their roles and abilities to deliver quality representation.<sup>60</sup> Preparation for the workforce requires that teaching staff and students look beyond the law school walls to obtain necessary experience and knowledge.<sup>61</sup>

### ***Legal Commodification***

The changing nature of legal practice and the changing role of lawyers also has an impact on paralegal education. The trend toward ‘unbundled services’<sup>62</sup> shows that certain legal cases can be disassembled and simplified. With proper training, lay practitioners can play a key role in this unbundling. After all, skilled paralegals specialize in routinizing legal output, and law schools can train them to perform these tasks even better by introducing fundamental legal concepts into their studies. Therefore, paralegal education must include some of the traditional courses in black letter law, basic research, and procedures. It should also include simulated exercises and clinical experience in tasks like crafting letters, drafting legal documents, interviewing clients, taking declarations, synthesizing evidence, and preparing witnesses.

Like lawyers, paralegals also benefit from curricular reform. Critics fault the legal academy for disjoining the teaching of substantive law and practical application of the law to standard legal instruments.<sup>63</sup> Supplementing the law school curriculum with more worldly experience in drafting and procedure will benefit *all* students.

### ***Sensitivity to Human Factors***

The curriculum for paralegals should include courses that emphasize the development of intrinsic values, motivations, and problem-solving skills. A number of

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<sup>58</sup> Mandelbaum, R. (2000). Revisiting the Question of Whether Young Children in Child Protection Proceedings Should Be Represented by Lawyers, *Loyola University of Chicago Law Journal* (32) 1, 23–24.

<sup>59</sup> *Id.*, at 24; see also Sparer *et al.*, *supra* note 21, at 498–99.

<sup>60</sup> Mandelbaum, *supra* note 58, at 26.

<sup>61</sup> See, e.g., Breger, M., Scarnecchia, S., Vandervort, F.E., & Woloshin, N. (2000). Building Pediatric Law Careers: The University of Michigan Law School Experience, *Family Law Quarterly* (34) 531, 532.

<sup>62</sup> See Klempner, R. (2006). Unbundled Legal Services in New York State Litigated Matters: A Proposal to Test the Efficacy Through Law School Clinics, *New York University Review of Law and Social Change* (30) 653.

<sup>63</sup> In a reiteration of this criticism, the Carnegie Foundation team wrote that law school reinforces ‘the habits of thinking like a student rather than an apprentice practitioner, thus conveying the impression that lawyers are more like competitive scholars than attorneys engaged with problems of clients’. Sullivan *et al.*, *supra* note 15, at 188.

commentators have written about the lack of humanity in the typical law school diet. The above-mentioned and widely acclaimed *MacCrate Report* encouraged legal educators to teach overlooked skills and values, but was criticized for failing to address students' sensitivity to human factors.<sup>64</sup>

This concept dates to one pioneer clinician who wrote that 'the clinical student has the opportunity to study the client as a whole in relation to [society] as a whole',<sup>65</sup> a feature which distinguishes clinical education from older practices like apprenticeship. Familiarity with the client's human side requires exposure to other disciplines such as medicine, social work, religion or other sciences.<sup>66</sup> One commentator has observed that community paralegals not only 'provide frontline information and limited legal assistance; they also often provide quasi-legal and emotional services, including solidarity and support'.<sup>67</sup>

Contemporary clinical theory argues that interdisciplinary, collaborative, and real world [lived] experiences encourage sensitivity to human factors.<sup>68</sup> Clinical courses allow law students to develop subjective well-being, satisfaction with life, and self-esteem.<sup>69</sup> Like the lawyers of tomorrow, their paraprofessional peers must lead a more balanced life and adopt a 'more multi-dimensional and more interdisciplinary outlook on issues'.<sup>70</sup> To that end, lawyers and paralegals should be trained together, study in the same institutions, and collaborate in clinics.

Cultural competency<sup>71</sup> also has been accepted as a core component of legal education and should certainly be part of a paralegal studies curriculum. Paralegals can

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<sup>64</sup> Professor Carrie Menkel-Meadow was among those who took the task force to task for its failure to address the human sensitivity factor in law school training. *See* Menkel-Meadow, C. (1994). C. Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being, *Washington Law Review* (69) 593, 595–96. *See also* Weinstein, J. (1999). Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice, *Washington Law Review* (74) 319, 346–47.

<sup>65</sup> Bradway, J.S. (1934). Some Distinctive Features of a Legal Aid Clinic Course, *University of Chicago Law Review* (1) 469, 470. Professor Bradway explained that 'viewing the law as one of the social sciences . . . introduces a distinctly new element—the human equation. Not only the legal problems of the client but all [their] problems—social, economic and otherwise—should pass in review'. *Id.*

<sup>66</sup> *Id.*, at 471.

<sup>67</sup> Riaz, *supra* note 34, at 107. *See also* Global Rights (2011). *Community-Based Paralegal Training Manual* 12-13 (*cited in id.*, at 107, n. 109).

<sup>68</sup> Weinstein J. & Morton, L. (2007). Interdisciplinary Problem Solving Courses as a Context for Nurturing Intrinsic Values, *Clinical Law Review* (13) 839, 848.

<sup>69</sup> *Id.*, at 842.

<sup>70</sup> *Id.*, at 840–43.

<sup>71</sup> Among the classic literature on cultural competence, *see* Bryant, S. (2001). The Five Habits: Building Cross-Cultural Competence in Lawyers, *Clinical Law Review* (8) 38, n. 11 (2001). *See also*, McCaffrey, A. (2002) Hamline University School of Law Clinics: Teaching Students to Become Ethical and Competent Lawyers for Twenty-Five Years, *Hamline Journal of Public Law and Policy* (24) 57–59 and Copps Hartley, C. & Petrucci, C.J. (2004), Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration Between Social Work and Law, *Washington University Journal of Law and Policy* (14) 133, 170–80 (asserting that educational models for developing cultural competence should be infused throughout law school curriculum, with attention to issues of power and oppression).

‘provide holistic, culturally sensitive legal assistance at a low cost’.<sup>72</sup> Many applicants to paraprofessional schools will be members of ethnic and cultural minorities<sup>73</sup> and will further develop their cultural identities during their law school tenure. Cultural competence embraces disability as well as ethnicity, race, and language.<sup>74</sup>

### ***Collaboration***

Frequently, relationships between attorneys and other legal staffers may be less than collegial.<sup>75</sup> The typical law school agenda does not include a course about collaboration with other attorneys, much less paralegals. The art and value of teaching collaboration may be more elusive than other topics. Increasing emphasis on teamwork and the growing diversity in the legal profession highlights the importance of collaboration.<sup>76</sup> Indeed, the legal education community has recognized that teamwork and collaboration between fellow attorneys are skills worth cultivating.<sup>77</sup> Fostering professional peer relationships while in law school is a core concept in clinical education.<sup>78</sup>

To the extent that scholars and teachers have addressed the subject of hierarchical relationships, such studies mainly have focused on the relationships

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<sup>72</sup> Riaz, *supra* note 34, at 89.

<sup>73</sup> Stuckey *et al.*, *supra* note 14, at 79 (discussing capacity to ‘relate appropriately’ to issues of culture and disability as well as ‘deal[ing] sensitively and effectively’ with those from a range of social, economic, and ethnic backgrounds).

<sup>74</sup> See, e.g., Massey & Rosenbaum, *supra* note 3, at 285–94 (discussing student ‘dis-awareness’ in context of cultural competence). Dis-awareness, a term that I coined several years ago, might be viewed as a benign form of ableism, *i.e.*, a mindset that ‘privileges able-bodiedness, promotes smooth forms of personhood and smooth health, creates space fit for normative citizens, encourages an institutional bias towards autonomous, independent bodies, and lends support to economic and material dependence on neoliberal and hyper-capitalist forms of production’. Goodley, D. (2014), *Dis/Ability Studies: Theorising Disablism and Ableism*. Dis-awareness describes everything from bias or prejudice regarding disabled clients or colleagues, including those with ‘invisible’ disabilities, to ignorance, marginalization or hyper-awareness.

<sup>75</sup> A paralegal coordinator for a U.S. law firm recognized several years ago that, ‘[a]ttorneys don’t learn how to use paralegals in law school’ and are ill-equipped to know ‘how best to use them to their advantage’. Tripoli, L. (2007). How To Find and Groom the Practiced—and Practical—Paralegal, *Of Counsel* (3) 12, 14. See also, Mather, T.M. (2007). Twelve Most Common Mistakes by Beginning Attorneys, *Temple Journal of Science, Technology and Environmental Law* (26) 43, 47–48 (asking ‘[w]hat makes people think, that because they graduated from law school, they have a license to be abusive to secretaries, paralegals, mailroom personnel, information technology people. . .?’).

<sup>76</sup> See, Bryant, S. (1993). Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession, *Vermont Law Review* (17) 459, 459–60; Blaze, D.A. (1997). Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education, *Tennessee Law Review* (64) 939, 954; and Munneke, *supra* note 49, at 146 (stating that human relations are a fundamental part of practice and lawyers must possess skills needed to work with others). Paralegals need these skills as well.

<sup>77</sup> See, e.g., Weinstein, J. & Morton L. (2016). Collaboration and Teamwork, In Wortham, L., Scherr, A., Maurer, N. & Brooks, S.L. 427-46 (3d ed.) *Learning from Practice*.

<sup>78</sup> Blaze, *supra* note 76, at 954.

between senior lawyers and their junior associates<sup>79</sup> or lawyers working in teams with other lawyers.<sup>80</sup> Scholars also should examine the relationships between lawyers and paraprofessionals. One challenge for new paralegals, as well as for new attorneys, is to preserve a professional identity and autonomy over their professional development, within their practice and partnerships.<sup>81</sup>

Ideally, future lawyers and paralegals will collaborate as peers in law school. Lawyers and ‘para-lawyers’ labor differently and their jobs demand different skills, attributes, and preparation. Thus, expecting their ultimate relationship to be nonhierarchical may be unrealistic. Even among law students, working in a clinical setting together ‘may reflect subtle hierarchies’.<sup>82</sup> This does not invalidate the need to instil collaborative, egalitarian values and habits. The ‘subtle power differentials’ should be accounted for and utilized in teaching how to work collaboratively while maintaining one’s independence or self-sufficiency.<sup>83</sup> There are ‘rich educational opportunities’ to be found in working collectively on a matter with a supervisor, both by modeling, as well as by experiential learning.<sup>84</sup>

### ***Alternative Dispute Resolution***

The resolution of legal disputes through alternative forms and forums has significantly changed modern legal practice.<sup>85</sup> Its impact is visible in law school courses, casebooks and Alternative Dispute Resolution (ADR) centres.<sup>86</sup> The alternative dispute approaches are more amenable to long-term, non-adversarial relations than are adjudication and investigation. Some of the creative work in ADR is occurring in the field of special education.<sup>87</sup>

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<sup>79</sup> See, e.g., O’Grady, C.G. (1998). Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer, *Clinical Law Review* (4) 485, 505–12 (discussing demands on a new lawyer in working relationship with a senior partner).

<sup>80</sup> See, e.g., Bryant, *supra* note 76, at 467–68 (examining hierarchy and bureaucracy in law firm culture).

<sup>81</sup> O’Grady, *supra* note 79, at 512; see also Bryant, *supra* note 76, at 460.

<sup>82</sup> O’Grady, *supra* note 79, at 521.

<sup>83</sup> *Id.*, at 522.

<sup>84</sup> Blaze, *supra* note 76, at 956.

<sup>85</sup> Dark, O.C., (2004). Transitioning from Law Teaching to Practice and Back Again: Proposals for Developing Lawyers within the Law School Program, *Journal of the Legal Profession* (28) 17, 23–24.

<sup>86</sup> *Id.*; see also Black & Wirtz, *supra* note 10, at 1012-15; Weinstein, *supra* note 64, at 324 (noting growing trend toward mediation, in practice as well as law school training). *But see*, Rhode, *supra* note 27, at 132–35 (advocating for broader range of procedural choices and more information about ADR effectiveness).

<sup>87</sup> For example, the Center for Appropriate Dispute Resolution in Special Education (CADRE) issues publications, sponsors symposia, and maintains a comprehensive website on alternative dispute resolution in the special education context. See CADRE, <https://www.cadeworks.org/>; see also Massey & Rosenbaum, *supra* note 3, at 308 (noting that other commentators have said a mediation clinic can encourage ‘party empowerment and self-help’ even more than a litigation clinic).



Lay advocates are well suited to engage in an ADR practice and have done so successfully.<sup>88</sup> The cost and time savings that come with mediation, conciliation, and other forms of informal dispute resolution can be accomplished in large part by nonlawyers. A paralegal concentration should give high priority to this subject, and traditional law students should be encouraged to enrol in doctrinal and clinical classes in this field as well. This would provide an appropriate area for law students and paralegals to collaborate.

### **Organizing**

Commentators have explored the ambiguous and overused meaning of ‘organizing’ in the legal context.<sup>89</sup> Whilst the role of fostering client autonomy and empowerment, as well as working with established or loosely organized groups, has been urged upon community-based lawyers,<sup>90</sup> it is equally within the competency of lay advocates. Law schools can enhance the natural organizer traits that many paralegals bring to this movement. Many putative lawyers would benefit from the training as well.<sup>91</sup> Teaching community organizational skills, however, demands a disciplinary perspective which may be lacking in typical law school core curricula.<sup>92</sup> To fill the holes, we must turn to social workers<sup>93</sup> and professional organizers to teach organizing, mobilization, public education, consciousness raising, and policy advocacy.<sup>94</sup> This will require law schools to call on colleagues in social work, urban or regional planning, education, or other departments to augment the curricular offerings through co-teaching, co-managed clinics,<sup>95</sup> joint appointments, and interdisciplinary workshops or courses. This also may give law students and paralegals the opportunity

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<sup>88</sup> See Sparer *et al.*, *supra* note 21, at 502.

<sup>89</sup> See, e.g., Cummings, S.L. & Eagly, I.V. (2001). A Critical Reflection on Law and Organizing, *University of California, Los Angeles Law Review* (48) 443, 460–69.

<sup>90</sup> See, e.g., *id.*, at 493–95, 500–01; Diamond, M. (2000). Community Lawyering: Revisiting the Old Neighborhood, *Columbia Human Rights Law Review* (32) 67, 123–26; & Riaz, *supra* note 34, at 104.

<sup>91</sup> See Massey & Rosenbaum, *supra* note 3, at 311–15.

<sup>92</sup> Professor Katherine Kruse has written about teaching skills for problem-solving for a client community, not just for individual clients. Kruse, K.R. (2002). Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation, *Clinical Law Review* (8) 405, 408–09. Professor Shin Imai has also written about training students for work mainly in indigenous communities and other communities of colour. Imai, S. (2002). A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering, *Clinical Law Review* (9) 195.

<sup>93</sup> Professor Paula Galowitz has catalogued the possible roles played by social workers, including teaching lawyers about working with community groups and community analysis. Galowitz, P. (1999). Collaboration between Lawyers and Social Workers: Re-Examining the Nature and Potential of the Relationship, *Fordham Law Review* (67) 2123, 2131–32 (citation omitted). See also Aiken J. & Wizner, S. (2003). Law as Social Work, *Washington University Journal of Law & Policy* (11) 63, 65–66 (arguing that empowerment of groups and communities, pursuit of social and economic justice, and reform are central to social workers’ professional obligations).

<sup>94</sup> Cummings & Eagly, *supra* note 89, at 481–84.

<sup>95</sup> See Pualani Enos, V. & Kanter, L.H. (2002). Who’s Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting, *Clinical Law Review* (9) 83, 100 (indicating that increasing number of legal programmes use multidisciplinary approach to service delivery by forming partnerships with other professionals).

to work in culturally diverse communities.<sup>96</sup>

### ***Self-Advocacy***

In addition to educating legal paraprofessionals, schools should open their doors to members of the general public for workshops, abbreviated courses, and seminars. The courses should be aimed at improving the advocacy skills and legal literacy of persons who constantly encounter the same bureaucratic and quasi-legal procedures as lawyers and paralegals. This audience would comprise people from the community who pursue knowledge for its own sake, generally with the aim of helping themselves or a family member. Rather than a formal degree, these short-term adult learners might take home a hand-lettered certificate of attendance. The skills that these non-traditional students gain could be transferred to numerous informal and administrative forums. As seen through a more explicit legal empowerment lens, the community paralegal strategy is one ‘that fits between legal education and legal representation’.<sup>97</sup>

### **Clinical Advocacy on Behalf of Disabled Students**

Lay advocates can operate successfully in many forums. To exemplify the benefits of paraprofessional partnership, I refer to my specialized practice area, special education law. Parents of students with disabilities must negotiate the labyrinth of education law at parent-educator conference tables,<sup>98</sup> in mediation rooms or stakeholder meetings, or at parent-community organizing or mobilization forums. These would all be appropriate settings for paralegals to engage in individualized or group advocacy on behalf of youths and their families.

Any number of factors may interfere with parents’ ability to advocate for a ‘free appropriate public education’ (FAPE) for their children. These include: failure to recognize a disability, fear of retaliation against the student; a desire to maintain good relations with the school; cultural norms that place educators in positions of unquestioned authority; feelings of shame or stigma about having a child with a disability; and a sense of powerlessness.<sup>99</sup> Parents may be confused about available options or lack the services of legal advocates. The stress, frustration, and anger that

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<sup>96</sup> See Rosenbaum, S.A. (2004). Aligning or Maligning? Getting Inside a New IDEA, Getting Behind No Child Left Behind and Getting Outside of It All, *Hastings Women’s Law Journal* (15) 1, 10; Aiken & Wizner, *supra* note 93, at 65–66.

<sup>97</sup> Riaz, *supra* note 34, at 108 (quoting Namati founder Vivek Maru). According to activist and scholar Maru, a promising paralegal institution is ‘one that maintains a focus on achieving concrete solutions to people’s justice problems but which employs, in addition to litigation, the more flexible, creative tools of social movements’. *Id.*

<sup>98</sup> The hallmark of United States special education programming, the Individualized Education Program (IEP) is a written statement of a child’s educational levels of academic achievement and functional performance and measurable goals, as well as instructional methodologies and services developed by a team of educators and parents for meeting these goals. See 20 U.S.C. § 1401(19) (2000 & Supp. 2007).

<sup>99</sup> Rosenbaum, S.A. (2001). When It’s Not Apparent: Some Modest Advice to Parents of Students with Disabilities, *University of California, Davis Journal of Juvenile Law and Policy* (5) 166, 176–80.

many parents experience may interfere with their ability to present their concerns in adjudication or mediation.<sup>100</sup> A lack of negotiation skills or familiarity with educational jargon contributes to the power imbalance, as does limited training in evaluating and marshaling evidence. A disproportionate burden falls on parents who are from marginalized groups.

### ***Individuals with Disabilities Education Act***

The primary role of enforcing the United States' premier law that entitles students to FAPE—the Individuals with Disabilities Education Act (hereinafter IDEA or 'the Act')<sup>101</sup>—falls on parents and/or their advocates.<sup>102</sup> In a major decision interpreting the Act, the Supreme Court declared decades ago that parents 'will not lack ardor' in making sure their children gain access to all the educational benefits entitled to them under the Act.<sup>103</sup> Whilst the Court has since re-emphasized the central role of parental decision-making,<sup>104</sup> it has overestimated the ability of all parents to act effectively as advocates on their own. This is particularly true when families are limited by poverty, disability, language barriers, immigration status or lack of formal education.

Under IDEA, parents or guardians are equal members of the planning team, along with school personnel.<sup>105</sup> To be successful, they must understand both their children and their children's disabilities. They also must be able to follow the proceedings of the planning meetings, voice disagreement, seek clarification, and be willing to use the available procedures to resolve conflicts.<sup>106</sup> Successful decision-making and implementation under the Act require skills and knowledge beyond the reach of many. Sometimes the parent needs more *support* than actual advocacy.<sup>107</sup>

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<sup>100</sup> Engel, D.M. (1991). Law, Culture, and Children with Disabilities: Educational Rights and Construction Difference, *Duke Law Journal* 166, 189. See also Marchese, S. (2001). Putting Square Pegs into Round Holes: Mediation and the Rights of Children with Disabilities Under the IDEA, *Rutgers Law Review* (53) 333, 351 (parents face school officials 'often speaking to each other in technical terms').

<sup>101</sup> 20 U.S.C. § 1412 (Supp. 2006) (originally enacted as Education for All Handicapped Children Act of 1975).

<sup>102</sup> National Council on Disability (2000). *Back to School on Civil Rights: Advancing the Federal Commitment to Leave No Child Behind* 7, 70 (2000) [hereinafter *Back to School*].

<sup>103</sup> Bd. of Educ. v. Rowley, 458 U.S. 176, 178, 209 (1982). I have previously argued that ardour may not be enough to achieve success in light of some of the jurisprudential and legislative setbacks in the IDEA. Rosenbaum, S.A. (2005). A Renewed IDEA and the Need for More Ardent Advocacy, *Human Rights* (32) 3, 3.

<sup>104</sup> *Winkelman v. Parma City Sch. Dist.*, 127 S. Ct. 1994, 2000 (2007) (noting that the Act sets out 'general procedural safeguards that protect the informed involvement of parents in the development of an education for their child').

<sup>105</sup> There are extensive procedural protections for parents as the educational representatives of their children. 20 U.S.C. § 1415 (Supp. 2006).

<sup>106</sup> Rosenbaum, *supra* note 99, at 166–67, 172–86 (describing trials and frustrations inherent in IEP design and implementation).

<sup>107</sup> See, e.g., Trubek, L.G. & Farnham, J.J. (2000). Social Justice Collaboratives: Multidisciplinary Practices for People, *Clinical Law Review* (7) 227, 243 (describing collaborative relationship with counselors, victim advocates, and other service providers in domestic violence context).

This is precisely where advocates with or without a law degree can provide assistance. The skills required for special education counseling and advocacy are not necessarily conventional legal skills.<sup>108</sup> Advocates versed in instructional methodology, behavior intervention, nursing, medicine, child development, or other therapies can provide great support to parents and legal practitioners.<sup>109</sup> Skills in community organizing and policy analysis are also relevant and might be useful. Private sector practitioners and law students alike have observed that what many public interest or social justice lawyers do ‘isn’t law, it’s social work’.<sup>110</sup> This truism has resonance when working with disabled clients seeking education or other services.<sup>111</sup>

This unique form of advocacy also requires an understanding of the child’s disability, how schools and other bureaucracies function, and how to articulate a client’s objectives and negotiate effectively. The stress, frustration, and anger that many parents experience also may interfere with their ability to present concerns in adjudicatory administrative hearings or mediation. Advocates can provide the necessary distance and composure, along with knowledge and empathy. With the proper training, a paralegal can be well suited for this task.<sup>112</sup> Community resource centres were specifically created to give training and information to the underserved parents of children with disabilities.<sup>113</sup>

#### ***Lack of Affordable Advocacy Services***

Those who do manage to avail themselves of procedural ‘due process’ hearings are predominately white, upper-to-middle class, English speaking, and well educated. In situations where this parental subgroup has difficulty with special education advocacy, non-English speakers with little formal education fare far worse. These parents also are far less likely to have sufficient resources to pay a traditional attorney to guide them through these mechanisms to secure an appropriate education for their children, but a lay advocate may be more within their means.<sup>114</sup>

Unfortunately, free legal service providers, who are usually lawyers, are limited by staff capacity, case priority, and service guidelines. As a result, most low-income and middle-income families cannot realistically secure representation under the current system. Therefore, cost is an obvious plus factor for paralegal participation at the

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<sup>108</sup> Sparer *et al.*, *supra* note 21, at 506 (stating that ability to ‘add[] hope and a sense of human dignity’ is an important skill).

<sup>109</sup> Massey & Rosenbaum, *supra* note 3, at 306–07.

<sup>110</sup> Aiken & Wizner, *supra* note 93, at 63.

<sup>111</sup> *Id.* at 74–77 (describing lawyer as social worker who serves her clients holistically and seeks to understand nature of all social diversity and oppression, including those related to mental or physical disability).

<sup>112</sup> *Back to School*, *supra* note 102, at 217–18 (Recommendation VII.7). Given the particular needs of poor and underserved families, the Council recommended that a lawyer be available at each parent centre. *Id.* at 217.

<sup>113</sup> 20 U.S.C. §§ 1472–73 (Supp. 2006).

<sup>114</sup> See generally, Hyman, E., Rivkin D.H. & Rosenbaum, S.A. (2011). How Idea Fails Families Without Means: Causes and Corrections from the Frontlines of Special Education Lawyering, *American University Journal of Gender Social Policy and the Law* (20) 104.

educational planning meeting or other pre-administrative hearing stages.<sup>115</sup> Lawyers' time should be preserved for more complex adjudicatory hearings and for litigation, whilst paralegals can provide assistance throughout the process.<sup>116</sup> In many instances, lay advocates better relate to their clients with respect to class, ethnicity, language, and parental status. They can assist parents at earlier stages in advising, negotiating, or informal decision-making. The contributions of these paraprofessionals would facilitate the entry of lawyers for more complex transactions, such as administrative hearings or appeals.

### ***Other Modes of Advocacy***

Beyond their role in individualized educational planning, lay advocates can help initiate systemic change for disabled students. Organized and mobilized parents have played a significant role in the enactment and reauthorization of special education laws. They have served as catalysts initiating change in the way that schools address the needs of students with disabilities.<sup>117</sup> Grassroots advocacy can include anything from *tête-à-têtes* with school authorities or serving on an advisory committee or a consultative council<sup>118</sup> to joining statewide coalitions and *ad hoc* mass actions to forming parent-led organizations.<sup>119</sup> Through conversations, group dialogue, and reflection, parents and others act communally and learn how to use their power to collectively advocate for change.<sup>120</sup>

Legal clinics engaged in special education representation have also been shown to highlight dis-awareness among law students.<sup>121</sup> These clinics also provide a forum for considering the public policy and civil and human rights implications of the challenges faced by poor parents, families of colour, language minorities, and immigrants.

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<sup>115</sup> One commentator on special education representation wrote, 'On a more global level, people of low or moderate means often do not have access to the judicial system. Attorney fees are so extravagant that most of the populace cannot afford an attorney's hourly rates'. Flynn, *supra* note 40, at 901–02 (citations omitted).

<sup>116</sup> See Rosenbaum, *supra* note 99, at 167–71 (explaining 'upsides and downsides' of litigation under IDEA) & Rivkin, D.H. (2008). Legal Advocacy and Education Reform, *Tennessee Law Review* (75) 265, 282–83 (discussing mix of litigation and extrajudicial advocacy strategies necessary to enforce educational rights).

<sup>117</sup> Kotler, M.A. (1994). The Individuals with Disabilities Education Act: A Parent's Perspective and Proposal for Change, *University of Michigan Journal of Law Reform* (27) 331, 361–62; Rosenbaum, *supra* note 96, at 30–37 (describing need for 'macro-advocacy' on behalf of classes of (disabled) students, as well as 'micro-advocacy' in individualized IEP process).

<sup>118</sup> Such councils were set up under the No Child Left Behind Act. 20 U.S.C. §§ 6316–7941 (2003).

<sup>119</sup> Zachary, E. & olatoye, s. [sic] (2001). *A Case Study: Community Organizing for School Improvement in the South Bronx* 6 (New York Institute for Education & Social Policy).

<sup>120</sup> See Slater, L. *et al.* (2001). Report of the Parent Self-Advocacy Working Group, *Fordham Law Review* (70) 405, 408–09 (stating that through value-based and skills-based training, professionals learn ways to empower parents to be strong and effective self-advocates); Rosenbaum, *supra* note 99, at 193–94 (providing examples of alliance building in special education context).

<sup>121</sup> See *supra* note 74.

With the exception of litigation, special education processes often allow for the resolution of disputes within a relatively short time period, even where the case necessitates mediation or an adjudicatory hearing.

Special education attorneys sometimes teach classes for parents or distribute self-help literature. Training of clients and others has increased the number of parents and other nonlawyers who can serve as effective advocates at meetings, mediation, or other ADR venues. Paralegals can often substitute or assist attorneys in supporting these parents, which would result in a great social benefit. Because parents will need to continue to advocate for their children on their own, students in special education-only clinics teach self-advocacy skills to parents and help them understand their rights. Legal training for former clients and community members can enhance parental skills and the capacity of school-based constituencies. One law school has offered in-depth parent training through a lay advocate certification programme, enabling former client parents to help other parents become more effective advocates for their children.<sup>122</sup> These special education legal clinics provide training, information, and self-help strategies to those whose cases are not selected for direct representation and can be adapted for students enrolled in paralegal studies programmes.<sup>123</sup>

### ***Clinic Practice Models***

Clinics representing special education students in the U.S. tend to fall into three general practice types—system-focus clinics, child advocacy clinics, and special education-only clinics. Again, these clinics, designed for students pursuing a juris doctor or bachelor of laws degree can be adapted for *paralegal* students.<sup>124</sup>

*System-focus* clinics offer special education advocacy for youth with disabilities already involved in other institutional or legal ‘systems’. These can provide extensive training and support to facilitate special education representation for juvenile justice, child welfare (abused or neglected youth), truancy or disciplinary action clients. There is a strong link between a pupil’s involvement in the juvenile justice or child welfare system, and mental health conditions that arise from unidentified disabilities and a failure of the schools.

These clinics afford access to representation through a single provider. For example, families and youth involved in the juvenile justice process receive help to navigate the court system and to identify and obtain education supports and placement. These families are often poorer and less educated and in greater need of advocates. For law students, system-focus clinics provide substantive and practical training in at least two areas of practice. Students exploring career paths in youth representation gain a broader view of the field and can develop skills and contacts across disciplines. The youths they encounter will not necessarily all be identified as disabled and are more likely to have a learning disability or ‘emotional disturbance’ than a severe physical or cognitive impairment.

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<sup>122</sup> Massey & Rosenbaum, *supra* note 3, at 316–17. *See also*, Slater *et al*, *supra* note 108, at 408 (stating that law schools and other institutions of professional education should be ‘targets of parents’ advocacy efforts’).

<sup>123</sup> Massey & Rosenbaum, *supra* note 3, at 317.

<sup>124</sup> As noted above, another clinical prototype is a set of field placements or externships, or short-term service-learning opportunities, which may be integrated into more traditional ‘black-letter law’ disability or educational law courses.

*Child Advocacy* clinics adopt a holistic or whole-child approach to representation. These clinics offer representation in all, or most, areas of the needs of an individual child or youth. For example, where a child requires assistance relating to education, medical, and federal entitlement programmes, their law student team would offer representation in each of those areas. Some of these clinics are interdisciplinary, offering practical training for graduate students in psychology, education, health, and other fields. These clinics may also represent ‘collective’ or ‘class action’ disputes on behalf of a group of children.

*Special Education-Only* clinics are less common than the other two prototypes. The stand-alone special education legal clinic can offer a strong foundation for subsequent fieldwork or externships in this field of law.<sup>125</sup>

Well-prepared paralegal clinical students can also bring meaningful skills to a wide range of legal and social welfare assistance organizations and private practice, in such fields as family law, landlord-tenant, wage and hour claims, adult disability or financial benefits.<sup>126</sup>

## Conclusion

As it is for their law student peers, the education of paralegal students is enhanced by their own cultural and work backgrounds and lived experience. Ultimately, these students will enter the world of practice with rigorous training under their belts and professional principles on their minds. A law school adopting a paralegal programme presents an opportunity to demystify the law, democratize the law school, and de-emphasize professional elitism. The legal community often aspires to these goals but only occasionally attains them.<sup>127</sup>

In a speech to an earlier generation of students, one veteran law professor advised them not to accept the status quo in legal education nor to expect voluntary reform from law school administrators or the national bar association.<sup>128</sup> This advice is still relevant today: Neither be complacent about change nor build only on what has gone on before, lest it be ‘*déjà vu* all over again’.<sup>129</sup> Now is the time to reflect on ways to open the door to previously overlooked students in the legal academy. However, reflection alone is insufficient. We also must move to restructure campus classrooms and law offices to prepare practitioners to meet the changing needs of the future.

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<sup>125</sup> For a more detailed discussion of clinic types, see Massey & Rosenbaum, *supra* note 3, at 295-98 and Appendices.

<sup>126</sup> See generally, ABA, *Spotlight on ABA Approved Paralegal Programs*, *supra*, note 43.

<sup>127</sup> Bellow, *supra* note 24, at 376; Clinical Legal Education: Reflections, *supra* note 1, at 340-41; Sparer *et al.*, *supra* note 21, at 494.

<sup>128</sup> Elson, *supra* note 19, at 1135.

<sup>129</sup> Blaze, *supra* note 76, at 939.



## APPENDIX

These are some of the basic considerations involved in establishing a degree-granting paralegal clinical programme embedded in a law faculty:

### *Programme Structure*

- The institution may decide to establish a pilot programme for an initial period of time as it experiments with facilities, curriculum, admissions, staffing, community partnerships, community needs, accreditation, etc.
- Co-educating lawyers and paralegals in one building or on one campus fosters future collaboration and de-emphasizes hierarchical relationships.
- The law faculty could offer joint doctrinal, ethics, and skills law classes for law students and paralegal candidates, and clinics and field placements, well as specialized paralegal curriculum. The tenure of lay paraprofessional students undoubtedly will be less than three years.
- For course design, schools should review and revise existing law school course descriptions and syllabi as well as courses and syllabi available from other public institutions that offer paralegal studies degrees. Likewise, institutions should review materials for community-based training.
- Students could take courses in other disciplines, such as social work, public policy, communications, or planning. These non-legal courses might be offered by other departments on campus, sister schools, or by jointly appointed teaching staff. There may also be interdisciplinary courses, which would meet at the law faculty and also be available to juris doctor students.
- In-house and community-based clinics and practice settings should be an integral part of the paralegal curriculum. This includes ‘hybrid clinics’ which are held in off-campus offices (governmental, NGOs, legal services, civil society) in partnership with the law school and field placements or externships at off-campus offices. These clinics would involve candidates for a law degree and the paralegal degree working in teams on litigation, policy, negotiation, and/or organizing campaigns.
- A community needs assessment should be conducted before any clinical component is added to the curriculum. Assessors would include instructional staff, students, administrators, community organizers, civil and faith-based organizations, lawyers, government officials, and/or other stakeholders.
- Partnerships or other formalized relationships should be formed with local NGOs, civil society organizations, and informal dispute resolution facilitators and leaders as well as with bar associations and government lawyers. This helps

to develop a culture of *pro bono* service, mentoring, and more integration of practitioners in local law faculties.

- Accreditation must be considered. In the United States, the American Bar Association (ABA) is the major entity that oversees institutions that issue diplomas or certificates to future lawyers and paralegals. A list of the approximately 260 ABA-approved programmes is available at <https://www.paralegaledu.org/aba-approved-paralegal-schools/>.
- Distinct criteria for a *para* doctoral and *juris* doctoral degree may pose less of a problem administratively than philosophically or fiscally. Tensions may arise due to differences in students' academic or intellectual orientation, socio-economic status, and/or divergent career paths. The temptation to track or segregate students may be greater than to *integrate* them.
- Additional revenues that law schools receive from tuition paid by paralegal students may be offset by the cost of personnel and infrastructure. Even reduced fees are likely to be a burden for many paralegal applicants; law schools should consider providing financial aid, and loan forgiveness schemes. Targeted recruitment of non-traditional students should be a priority. There may be a need for additional revenue to support needs peculiar to the clinical component.
- Pedagogical objectives and student needs also influence individualized case selection. For some clinical programmes, emphasis is placed on skills-building opportunities and for others, the emphasis is on major impact advocacy, or representation as a catalyst for systemic change.
- In seeking to balance responsiveness to community needs with the goal of skills and ethics instruction, clinics often select a combination of cases that are likely to be resolved at the level of planning meetings or negotiations and those that might require administrative adjudications or litigation.

### ***Disability Focus***

- In creating a special education clinic, there must be a process for determining the target client population and case selection. Given the large need for legal services and limited clinic capacity, only a small portion of the eligible families and children can be served. Some clinics may represent only low-income or otherwise marginalized families, whilst others accept clients by referral from the courts or other public agencies— with or without income screening.
- The selection of special education clients based on the type of disability inevitably can also have an impact on law students' understanding of disability or stigma, especially if they have little or no prior knowledge of intellectual or other developmental disabilities. That experience may be different from those representing pupils with the more 'invisible' learning disabilities or mental

health issues. In either case, the experience should help dismantle ableist thinking.

- Special attention needs to be paid to the physical, sensory and programmatic accessibility of the facilities and written and audio materials.

### *Logistics*

- Ideally, the clinical programme should have its own space, dedicated staffing, and governance. Governance might include a multi-stakeholder advisory board. The space must be accessible for persons with physical or sensory disabilities.
- A periodic budget must be developed for personnel, transportation, information technology infrastructure, meals, multi-media promotional materials, translation/interpretation, and administrative costs.
- An application procedure and criteria needs to be established for new—and possibly, continuing—students and for evaluation of students.
- Evolving procedures or guidelines will need to be established for intake, case review, professional-client relationships, community outreach, accessible documentation and procedures, etc.
- An evolving process should be established for securing funds and in-kind contributions and for audits, programme and staff evaluation, and other reporting.
- A timeline should be developed for various phases of establishing the programme, its scope, and short- and long-term objectives.