

The Clinical Legal Education Program & Preparing the Ethical Lawyer

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The Clinical Legal Education Program & Preparing the Ethical Lawyer

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Abstract

Ethics should be a way of life. Law schools, are the duty bearers in the process of re-evaluating and validating ethical standards of law students. Through the Clinical Legal Education Program, law graduates will not only be practice-ready, but will likewise be morally equipped to face the daily challenges of legal practice.

Preface

The Honorable Supreme Court Associate Justice Ma. Filomena Singh first presented The Clinical Legal Education Program and Preparing the Ethical Lawyer during the First Philippine Clinical Legal Education Summit, a gathering of local and international thought leaders, practitioners, and stakeholders of the clinical legal education program to share their experience, challenges, and best practices in the implementation of their Clinical Legal Education Program (CLEP). More than 800 online participants – law deans, law clinic directors, supervising lawyers, and law student practitioners, were all geared for the full implementation of clinical legal education programs that not only to enhance learning opportunities for their law students, but also ensure access to justice of the marginalized sectors in the communities they serve. The Summit is a culmination of the 5-year Strengthening Rule of Law through Legal Aid Clinics in the Philippines (Legal Aid Project) implemented by The Asia Foundation, with support from the U.S. Embassy in the Philippines Office of International Narcotics and Law Enforcement Affairs (INL).

The presentation by Justice Singh emphasized that underlying the design of the programs for law schools nationwide is the imperative to form lawyers that are not only excellent, but more importantly – ethical and socially responsible, as highlighted by the Supreme Court in the Revised Rule 138-A of the Rules of Court or the Revised Law Student Practice Rule. CLEP is premised on the value of legal education in shaping the knowledge and skills of future lawyers through experiential learning. In light of the changing landscape of the legal profession, there is the demand for lawyers to not only be knowledgeable and experts of the law but also capable of ethical decision-making in complex legal scenarios. As they advocate for the rights of individuals and communities, law students are invited to reflect on, not only the requisite knowledge and skills, but also the importance of ethical standards and behavior in the practice of law.

The Asia Foundation has been granted the rare opportunity to journey with the legal education and legal aid communities in the first stages of the institutionalization of CLEP in the Philippines. In its meaningful partnership

with key stakeholders of CLEP and access to justice, there is evident promise in transforming future lawyers that have integrity and deep orientation towards public service. The Foundation and the INL are honored to support the memorialization of this important paper. May the reader be reminded that, as Justice Singh stated at the end of this paper, "For the legal and judicial system, the reality is it takes an entire institution to deliver justice and this must start with the law schools. If we are to have ethical lawyers, we must adopt a relevant and meaningful Clinical Legal Education approach through Applied Ethics with the goal that we prepare practice-ready law graduates who are socially responsible and who practice Ethics as a way of life."

I. Introduction

As a guardian of the rule of law, every lawyer, as a citizen, owes allegiance to the Constitution and the laws of the land; as a member of the legal profession, is bound by its ethical standards in both private and professional matters; as an officer of the court, assists in the administration of justice; and as a client's representative, acts responsibly upon a fiduciary trust.

Preamble

Proposed Code of Professional Responsibility and Accountability

The importance of ethics in law practice cannot be overstated. For one, lawyers, as guardians of the rule of law, play an important role as officers of the court in promoting public trust in legal authorities and proceedings and, concomitantly, respect for and stability of the legal and judicial systems. When people have respect for the legal system, it leads to increased compliance with the law, because there is appreciation for being treated with fairness.

It is noteworthy to highlight that this sense of being treated fairly is largely dependent on a process where people are fully informed in accessible language about the procedures and criteria for legal decisions and are shown respect by the frontliners of the legal system, the lawyers.[1] The low trust ratings for the legal and judicial system stem not so much from a perception of corruption, although it is mentioned. Rather, majority do not exhibit confidence in the legal and judicial system because of a simple lack of comprehension of the complicated proceedings, mainly due to the fundamental language gap: English is the medium of communication. Absent trust in the system, the public will resort to alternative means of resolving conflicts and the rule of law will be gravely weakened.

Lawyers should play a more proactive role in promoting equal access to justice. Ensuring the access to justice of the marginalized or underserved is central to the proper administration of justice and the rule of law. As pointed out by former Chief Justice Hilario Davide, Jr.:

When persons in the fringes of national life have access to judicial process, and when their attempts to seek redress from the courts are not peremptorily barred by archaic concepts of standing, the very hospitability and accessibility of our judicial system would be the strongest condemnation of any recourse to violence and anarchy.[2]

Now more than ever, lawyers should broaden their professional and personal commitment to the administration of justice and there is no better place to start than with legal education. As observed by the Lord Chancellor's Advisory Committee on Legal Education and Conduct of the United Kingdom, "no amount of external regulation of professional practice will serve as an adequate substitute for the personal and professional values and standards that lawyers should internalize from the earliest stages of their education and training." [3]

Notwithstanding the undeniable significance of ethics, legal education in our country has not given it sufficient or proper attention. All we have traditionally is a two to three-credit course on Legal and Judicial Ethics. Any further courses are commonly merely offered as Electives. How can we hope to prepare our law students ethically if we do not give Ethics the time it deserves. Together with knowledge and skills, Ethics should be a core element of

legal education.[4]

Scholars have noted a global decline in the ethical conduct of lawyers, which they attribute to, among others, the failure of law schools to teach courses that promote pride in the legal profession and raise ethical issues, and the inadequate curriculum where Ethics is taught.[5]

In fact, in the United States, it has been said that the law school experience frequently involves students in a process of "disillusionment, generating cynicism about legal education and the lawyering process, and an ethical pragmatism, or even amorality, about the lawyer's role." [6] A number of studies also demonstrate that legal education "tends to undermine student idealism about using law to promote justice." It is also said to simulate "moral and political cynicism," as well as "a propensity towards ethically dubious behavior." [7]

Drawing on research and studies conducted in other jurisdictions including the United States and the United Kingdom, this paper will discuss the role that CLEP can play in pulling the brakes on the decline of ethics in the legal profession by advocating for a shift to a more relevant pedagogy which I will call, "Applied Ethics."

Applied Ethics, like other skills and attitudinal courses, requires that students be exposed experientially to issues and problems that reflect real life situations to allow them a hands-on approximation of conflict resolution.

For me, the starting point of a truly meaningful Ethics pedagogy is the acknowledgment that we cannot teach Ethics. Rather, Ethics is a body of values and principles that each individual lives by and observes, and which is shaped through the course of a lifetime. Such "shaping" starts unconsciously in our formative years, from childhood, and the range of influences which contribute to this shaping is varied—from the family, to early schooling, religion, peers, and the community in general.

By the time the law student arrives in law school, this value system we call "Ethics is already well formed. A law school, however, is not to simply throw its hands up and surrender. Rather, as I stated at the start in my Abstract, the law school's role is to help the student re-evaluate his or her value system and validate the correct ethical values.

At present, there are 127 law schools in the country and they are expected to each establish a law clinic by 2023. These law clinics should serve as the primary laboratories for Applied Ethics.

According to the Integrated Bar of the Philippines, based on information gathered from its Chapters, out of its 84,326 members, only 1,216 are legal aid practitioners and volunteers.[8] We certainly hope that giving assistance to the underprivileged is not the last priority among our lawyers but the statistics speak of hard facts. Equal access to justice should be a core advocacy of the legal profession. By exposing the students to unmet legal needs, CLEP can greatly further legal aid efforts and give true meaning to the constitutionally protected rights to due process and equal protection. In the process, we hopefully open the eyes of our law students to becoming more socially aware and responsible.

II. Legal Ethics and Professional Responsibility

In some jurisdictions, "ethics" is defined narrowly to mean "making decisions according to the professional rules of conduct." On the other hand, the concept of "professional responsibility" has gained a deeper significance incorporating notions of a lawyer's values and their responsibility to the justice system and the community.[9]

Ethics and professional responsibility or obligation are related and mutually reinforcing terms and are recognized as the foundation of professionalism and integrity needed for an independent bar that will promote and protect the rule of law and social justice. While legal ethics refers to legal rules developed and codified by the legal profession to regulate the conduct of all legal professionals in a country, professional responsibility or obligation refers to the sense of duty and commitment a lawyer is expected to show to the profession, other

lawyers, his client and the courts to uphold the rule of law and ensure that justice is done, and rights are upheld at all times.[10]

In the Philippines, "professional responsibility" is synonymous to or, at least, part and parcel of the ethical standards that lawyers are expected to observe and uphold. Former Chief Justice Manuel V. Moran defined the term "Legal Ethics" as the "embodiment of all principles of morality and refinement that should govern the conduct of every member of the bar." [11] The ethical standards for the legal profession are embodied in the Code of Professional Responsibility and the Canons of Professional Ethics.

III. Can Law Schools Affect Moral Behavior?

I go back to what I pointed out as the starting point of a truly meaningful Ethics pedagogy and that is the acceptance that we cannot teach ethics. Much of the literature in legal education relating to Ethics has focused on the question of whether Ethics can be taught. In other words, are ethical lawyers born, made, or some combination of both?

Research suggests that law schools can influence the law students' moral behavior even though they are well into adulthood. This is because while law students might have a developed personal moral character, they have yet to develop a professional moral character. And, as law teachers generally are the first to introduce them to the legal world, they have a unique opportunity to influence this process.[12]

As succinctly put by former Chief Justice Warren Burger of the Supreme Court of the United States:

The law school is uniquely situated to shape and form the habits of students during the period in which their professional ideals and standards of ethics, decorum and conduct are being formed. At this stage, law students are more malleable and receptive than they will be after years of professional observation of bad habits of legal thinking, legal application, or dubious ethics.[13]

Of course, the next question is how?

It has become accepted that ethical behavior requires the engagement of four psychological components: moral sensitivity, moral judgment, moral motivation, and moral courage.[14]

Moral sensitivity enables individuals to recognize moral problems when they arise. Having identified a moral issue, moral judgment enables individuals to identify its salient features, and to select and justify appropriate responses. However, empirical research repeatedly confirms that knowing what is morally right by no means guarantees moral behavior. Moral motivation is required to ensure that individuals want to put into effect the moral solution selected and elevate it over competing considerations like self-interest or organizational and institutional values. Finally, even if individuals care about converting ethical judgment into action, they require the moral courage to be able to resist temptations to compromise moral standards. Crucial here are moral fiber, steadfastness, perseverance, backbone, or what psychologists call ego-strength, as well as the ability to set goals and focus one's attention.[15]

Thus, in order to have a positive and lasting effect on students' ethical predisposition and behavior, legal education must address these four components. The method currently employed to teach Legal Ethics fails in this regard and in its place, I propose to use Applied Ethics.

IV. The Case Against Indoctrination

At present, Ethics is being taught as a free-standing subject. The Revised Model Curriculum of the Basic Law Program[16] requires two courses on Ethics, namely, Basic Legal and Judicial Ethics (3 units) and Legal and Judicial Ethics and Practical Exercises Review and Integration (2 units).

Law students are usually given a rule by rule account of the Code of Professional Responsibility, the Canons of

Professional Ethics, and the Canons of Judicial Ethics, with cases demonstrating their application. This formalistic approach is not without some value considering that it serves to equip students with substantial knowledge and technique. However, its efficacy in teaching students how to be ethical is far from proven. It does not capacitate the students to resolve real ethical problems since it divorces the process of learning "what" from learning "how." It does not confront students with the realities of ethical decision-making and the tensions that it involves. In this traditional approach, the importance of individual judgment and context in ethical decision-making is underemphasized.[17]

Surveys in the USA have shown that ethics courses (compulsory since the Watergate debacle) are perceived as inferior. In a study by Granfield:

"only three out of forty respondents characterized their ethics course as valuable preparation for legal practice. The vast majority reported that their ethics course merely provided them with formalistic instruction about the rules of professional responsibility that were largely silent on the fundamental contradictions inherent in their practice."[18]

To be successful, teaching Ethics must not be a process of indoctrination. It must center on intellectual training and development rather than just knowledge acquisition in the narrow, substantive, sense.[19] At the center of teaching Legal Ethics should be a recognition that a lawyer, as a professional, is dutybound to help improve the administration of justice.

More importantly, a focus on rules generates "legalism," an ethical attitude which encourages individuals to reduce moral conduct to rule-following and to use rules unscrupulously through forms of creative compliance.[20]

Also, based on the American experience, free-standing courses on Legal Ethics are relatively ineffective at instilling legal values and easily sidelined within the curriculum. It has thus been suggested that professional ethics be taught using a pervasive approach, which seeks to link ethical issues across the law curriculum.[21] Towards this direction, the Technical Working Group to Study the Proposals and Recommendations during the 2019 Legal Education Summit, in its proposed amendments to Rule 138, is recommending that Ethics be incorporated in every bar examination subject. Because ethical issues arise in the course of legal practice, as lawyers apply legal knowledge and skills to a variety of subjects and fields, teaching Ethics separately or divorced from these subjects and fields does not reflect real life practice. The result: a disjointed and impractical assimilation of "Ethics as a body of rules for compliance" attitude.

V. The Clinical Legal Education Program: the Most Effective Vehicle to Teach Ethics

There is global consensus that CLEP provides the most vehicle for teaching Ethics and inculcating ethical and professional conduct in law students, our next generation of lawyers.[22] According to legal scholars, "effective learning in legal ethics is enhanced (some might say is only possible) where students are confronted by the reality of acting in the role of the lawyer." [23] For purposes of teaching the standards and values of the legal profession and for inculcating a commitment to professionalism among students, supervised practice trumps classroom instruction.[24]

As early as 1996, James E. Moliterno envisioned the integration of skills and Ethics teaching. According to him, the incorporation of "professional responsibility teaching, which was, after all, about the ethics and the rules governing lawyering, into skills teaching, which was after all, about how lawyers do what they do" seemed natural.[25]

In recognition of this, Rule 138-A of the Rules of Court as amended by A.M. No. 19-03-24-SC declared "[instilling] among [law students] the value of legal professional social responsibility" as one of the objectives for institutionalizing CLEP in all law schools.[26] The same rule defined CLEP as "an experiential, interactive and

reflective credit-earning teaching course with the objectives of providing law students with practical knowledge, skills and values necessary for the application of the law, delivery of legal services and promotion of social justice and public interest, especially to the marginalized, while inculcating in the students the values of ethical lawyering and public service." [27]

How then can CLEP become both the platform and the vehicle for re-evaluating and validating ethical and professional responsibility?

Four Psychological Components of Moral Behavior

Numerous scholars, using tenets of moral philosophy, argue that the most effective means of ensuring the development of all four psychological components for moral behavior discussed earlier (moral sensitivity, moral judgment, moral motivation, and moral courage) is through a process of character development. For them, education should be designed to gradually develop relatively stable "character dispositions, or habits of perception, thinking, feeling and behavior, through actual engagement with moral issues" in a manner similar to the way that proficiency is developed in other professions. [28]

By emulating others, by trial and error, by instruction and feedback from authoritative others, by experiencing and reflecting on the appropriate pride or regret at the outcome of one's actions, moral habits or dispositions are said to gradually develop to the point that appropriate moral behaviour and feelings become embedded in the individual's character. In other words, character formation results not so much from direct teaching but from the experience of frequent immersion in real-life problems, exercise of one's moral muscles, and learning from mistakes and successes. [29]

This character development is what I call the process of re-evaluating and validating ethical standards.

Absent exposure to the realities of legal practice, the type of ethical issues it raises and the moral considerations relevant to their resolution, "law students will not be able to begin to develop the professional identity, moral judgment and instinctive, spontaneous and habitual responses to professional moral problems that make ethical practice much more likely. Without actual clinical experience, it seems unlikely that students can develop an ethical identity capable of surviving the transition into the world of work." [30]

By engaging the interest and emotions of students, CLEP has more potential to develop moral commitment than traditional methods of teaching. [31] Learning is more profound where student experiences are more personal, immediate and realistic, and relate to the fulfilment of their future societal roles. [32] In addition, "by encouraging students to see issues from the client's perspective, clinics may encourage the law students to develop empathy and other emotional sentiments, which virtue ethicists and others see as so important to morality." [33]

In reality, ethical dilemmas cannot be resolved solely by reference to some standardized rules of professional conduct. While codified rules of conduct such as the Code of Professional Responsibility and the Canons of Professional Ethics may inform the ethical judgments of lawyers, moral motivation and moral courage lie elsewhere. The "true" answers lie in the "ultimate particulars" in the personal experiences. Thus, to learn about Legal Ethics is to experience it and reflect upon it in the context of real cases. [34] CLEP also allows students to "imitate the good actions of good attorneys responding to moral conflicts and then reflect on their response in the company of a good supervisor." [35]

In CLEP, law students are asked to shoulder the responsibility of representing real clients and to reflect on the nature of that responsibility with their supervising lawyer and perhaps with their fellow law students as well. As the law student begins to analyze critically that experience, two things begin to happen: First, the law student begins to "develop the ethical capacity to evaluate for himself complex and ambiguous situations." Second, she or

he begins to develop a "coherent perspective" about the "nature of a fair and just legal system and the role of lawyer practices in operating and improving it." [36]

Adult Learning Theory

Using CLEP as a medium to re-evaluate and validate ethical standards finds support in adult learning theories. Law students are adult learners.

It is widely accepted that adults learn differently than children. The distinguishing qualities of adult learners include "an interest in being self-directed, an ability to draw on their personal experiences, an inclination toward learning subject matter that is relevant to their social roles, and an interest in being able to apply their learning immediately to solve their problems. Simply put, to be successful, adult education must be a self-directed, self-learning process." [37]

Based on the foregoing, ethical and professional conduct must be taught using methods that involve law students in planning and decision-making, and create learning experiences in which law students are actively engaged and can relate their own life experiences to helping to resolve the issues at hand. This is fully approximated through CLEP.

CLEP creates an experiential learning environment, a laboratory, where law students undertake practical work and are able to apply all their knowledge on Ethics and professional responsibility when interviewing and giving legal advice to clients, negotiating, drafting legal documents and pleadings, appearing before the courts or quasi-judicial or administrative bodies, and undertaking other activities aimed at promoting public interest. Law students gain first-hand knowledge of the strategic and ethical dimensions of the legal profession and acquire valuable legal skills.

CLEP also provides "disorienting moments" to law students. In adult learning theory, the idea of a "disorienting moment" is that "opportunities for significant—'transformative'—learning arise when the learner confronts an experience that is unsettling or disturbing because it cannot be easily explained by reference to the learner's prior knowledge." [38] The "disorienting moments" experienced by law students in CLEP may be used as tools for teaching Ethics and professionalism. [39]

In sum, CLEP extends the task of "learning to think like a lawyer" to include an effort to integrate the law students' interpersonal, analytical, and advocacy skills, with their credibility, values and work habits to form a professional identity. Suddenly, being a good student is not enough. Through CLEP, law students get a very objective glimpse at the lawyer they will become someday. [40] Exposing law students to a wide variety of ethical considerations and the obstacles to ethical behavior thrown up by legal practice may equip them to cope more effectively with those dilemmas and obstacles they will surely encounter once they are admitted to the bar. [41]

CLEP Contextualizes Ethical Problems

The traditional Socratic and case method to teach law students to "think like a lawyer" places the law in a vacuum, which in no way helps the law students develop the skills necessary to recognize and resolve ethical dilemmas in actual practice. [42] CLEP attempts to bridge this gap.

The chief strength of CLEP as a tool for Applied Ethics is that it provides a direct mechanism for raising questions about the law students' value systems within a realistic setting. In working with actual clients, law students will be able to see how ethical problems are contextualized.

Suelyn Scarecchia, the former Associate Dean for Clinical Affairs of the University of Michigan Law School, shared the experience of her students:

Their trial is next week. They have carefully investigated the case, and planned an opening statement, direct examinations, ideas for cross examinations, and an outline for a closing argument. We discuss refinement needed in their trial preparation. I stand and begin to end the meeting. One student says, "Shouldn't we talk about whether we should do this or not?" I take my seat and begin, once again, to discuss the merits of our client's case and whether we should be moving for termination of parental rights.

These two young men, in their twenties, have been grappling for weeks now with the job of balancing the rights of a teenager mother against the rights of her one-year-old son. This is not a hypothetical case, filled with twists and turns by their professor. It is a real case where parental rights may actually be terminated. The real case is complicated by an expert who changes her conclusions less than a week before trial; difficult client counselling sessions; knowledge that opposing counsel will take little time to prepare (making the playing field not so level); and ethical concerns about calling a witness who is a minor and wants to limit his testimony to certain issues.

A professor could have written this complicated hypothetical, but the experience is profoundly different when faced with real deadlines and a real family at stake. These students feel the urgency of their decisions. They have an opportunity, in clinic, to begin to form their own professional judgments in a setting where they are encouraged to ask hard questions and where time is built in to reflect on their performance as lawyers.[43]

Access to Justice and Public Interest Work

CLEP also brings law students face to face with the problem of access to justice and to public interest work.[44]

Law clinics reveal the extent of unmet legal need, and social and legal injustice, that legal practice can involve helping others, and that this can be rewarding as well as intellectually challenging.[45]

In the United States, there has been substantial research as to the impact of legal education on law students' attitudes towards the availability of legal services, which is one of the core values of Legal Ethics. Their findings suggest that the proportion of law students who are committed to including public interest work in their future professional activities declines as they work through their legal education process.[46] However, there is evidence that undertaking CLEP reverses this trend.[47] This indicates that in respect of access to justice, not only does conventional legal education tend to undermine that value, but that the process is reversed by law students completing CLEP which brings them into contact with real clients.[48]

For example, Stover found that while 33% of first year students rated public interest practice as their ideal first job, three years later the proportion had fallen to 16%. These studies also showed a decline in the importance law students paid to doing pro bono or social reform work. By contrast, Maresh shows evidence that undertaking a clinical programme with real clients reverses this trend. Over six years she found a consistent tendency for a higher proportion of students to express an interest in public interest work after taking their clinical course than they had before taking it. It might be objected that the students opting for clinical courses would most probably be those motivated towards public interest work. However, this does not explain the increase as a result of the experience and the percentage of students expressing the interest before their clinical course was as low as 25% in one year.[49]

Another study looked at the impact of a clinical course on students' desire to work in public interest law. The said study found that 97% of students who were interested in public interest law before a clinical course, had this interest affirmed and 57% who did not intend to practice public interest law before the course, were interested in practicing it after completing a clinical course.[50]

Clearly, CLEP is closely related to the broader goals of teaching values in, and promoting, access to justice. It engages law students in a meaningful relationship with their clients, legal institutions, and the community around them. It also raises consciousness, both within the law school and in the local legal culture, as to the appropriate

role of the bar in defending the right of equal access to justice.[51]

VI. The Importance of Reflection

As discussed above, law students must be taught the habit of developing their ethical and professional identity. How do we do this?

The best way to do this, as part of Applied Ethics, is to emphasize reflection on each of their clinical experiences.[52] Through this, the law student learns the habits of careful reflection, seeking feedback from supervisors and peers, and humility in the face of how profound an effect lawyers can have on people's lives.[53]

According to educational theory, lessons learnt from experience are likely to be far more profound and sophisticated if accompanied by reflection on the experience through dialogue with others, especially those with relevant expertise and experience, and an exploration of relevant academic literature.

...

Ethical reflection is further enhanced by keeping a reflective diary which is submitted for comments, to which students then respond, and by an assessed essay requiring them to explore the ethical implications of their cases. Student diaries and course evaluations clearly reveal that they are sensitized to ethical issues not previously contemplated to the extent that some have changed their ethical orientation and even career plans.[54]

Journaling is another favored technique. Law students across the United States are required to maintain an Ethics journal throughout the semester where they document ethical issues as they arise and they discuss their own reactions and possible resolutions of the issues.[55] In sessions with the supervising lawyer and their fellow law students, law students in our country can consider how the Code of Professional Responsibility and Canons of Professional Ethics do or do not provide guidance. They can also discuss how certain clients or cases challenge their own morals and values. The supervising lawyers must emphasize that law students should develop the habit of recognizing ethical problems and resolving them through discussions with supervisors and peers, and through careful, private reflection.[56]

Self-reflection has been identified as a key feature of CLEP in terms of teaching Legal Ethics, which enables law students to "learn by doing" and understand the development of professional skills. This is where "re-evaluation" plays a crucial role which brings the law student to the inevitable point of choice: validate his or her value system or accept that a change is necessary. An explicit link has been made between ethical competence and self-reflection: "a teaching approach that enhances students' reflexive capacity is critical to enabling them to identify and manage ethical challenges."[57]

VII. Some Challenges

There are a number of important criteria to achieve the goals of teaching the standards and values of the legal profession and for inculcating a commitment to professionalism through CLEP. If these are not met, the promising potential of the CLEP as a mechanism for teaching Legal Ethics may remain unfulfilled.

These criteria include the need for high-quality supervision. Attention must be paid to ensuring the quality of training and level of commitment that the supervising attorneys possess and their ability to provide a safe learning environment for law students to explore ethical and practice dilemmas and to ask questions and reflect on their practice, e.g., giving the law students the freedom to ask questions without fear of "looking stupid."

There are two essential characteristics needed of supervising lawyers. One is that they have a sufficient understanding and practice of educational theory to be able to design and implement experiences for the law students which will maximize their opportunities for deep learning. The second is that they should have the experience of practice which is necessary for them to act as effective supervisors of the law students' attempts to

advise and represent their clients. Neither alone is sufficient.[58]

In his appraisal of clinical legal education in the United States, Professor Robert Condlin observed that clinical legal education has failed because "[c]linical teachers—in the way [they] instruct—teach students to manipulate and dominate others as a matter of habit." [59] This is another important aspect of CLEP that must be closely monitored—the perpetuation of unethical behavior through the supervising lawyers.

In addressing this issue, it is important to remember that ethical learning requires a combination of experience and reflection. There must be a conscious effort on the part of the supervising lawyer to develop the law student's ethical reasoning skills. In doing so, both the supervising lawyer and the law student have the means to judge one's "habits" against individual experience as well as a broader conception of Ethics.[60]

Students may acquire some character virtues by imitating the actions of their instructors or other practicing attorneys; however, moral judgment is formed through a process of critical reflection. Students are taught to judge their actions in relation to the particulars of the situation, and also to assess the efficacy of traditional lawyering practices in relation to society. The goal here is to make this kind of reflection a habit of character as well as of mind, so that students can continue to learn from their experiences beyond law school.[61]

There is also the need to balance the interests of providing adequate training to law students and providing legal assistance to the underserved.

Professor Richard J. Wilson argues that "a conception of the primary mission of [CLEP] as that of service to the poor rather than training of law students risks failure in both. Law students participating in those clinics often provide less than adequate legal services because they are attending too many cases for their effective supervision, and the clients are often poorly served by these novice practitioners who lack judgment to make legal decisions without effective guidance. A primary emphasis on training rather than service does not in any way diminish the importance of [CLEP] as a vital source of services to underserved populations. Indeed, the clinical experience is often crucial in creating a sense of mission and commitment to public service for participating students." [62] Managing the case load of the law students is crucial in ensuring the effectivity of CLEP as a tool in honing the legal skills and ethical behavior of law students.

VIII. Conclusion

The law students' exposure to Ethics should include more than a familiarization with or, worse, memorization of professional codes of conduct and the mechanism for enforcing them. The goal should be to produce lawyers with a sense of why Legal Ethics is important to society, why it is important to the legal profession and why it is important to them, as individuals, that lawyers have ethics.[63] CLEP presents the most suitable vehicle in achieving these goals.

More importantly, CLEP bridges the gap between the poor and the justice system.[64] Law clinics provide the marginalized a glimpse of hope as their only way to avail of judicial remedy and have a voice.[65] It is thus incumbent upon law clinics to impress upon law students the importance of Ethics when rendering services to those who have the least power in our society.[66]

We should continue to strive for a model of legal education that prepares law school graduates to enter the profession adequately prepared as competent practitioners, knowledge-wise, skills-wise, and ethics-wise.

We have often heard it said that "it takes a village to raise a child." For the legal and judicial system, the reality is it takes an entire institution to deliver justice. And this must start with the law schools. If we are to have ethical lawyers, we must adopt a relevant and meaningful Clinical Legal Education approach through Applied Ethics with the goal that we prepare practice-ready law graduates who are socially responsible and who practice Ethics

as a way of life.

Hon. Maria Filomena D. Singh

Hon. Maria Filomena D. Singh earned her Juris Doctor degree from the Ateneo de Manila University School of Law with Second Honors distinction. She pursued further studies at the Washington College of Law of the American University in Washington, D.C., USA for a Master of Laws in International Legal Studies. She earlier obtained a Bachelor of Arts Degree in English major in Imaginative Writing, cum laude, from the University of the Philippines.

In 2021, she co-authored a best-selling pre-week reviewer on Remedial Law for bar examinees. She presented a paper on Court and Case Management upon the invitation of the International Organization for Judicial Training, the global network of judicial training institutions. She has also written a Toolkit for Philippine Trial Judges, as well as a working paper on Enforcement of Ethical Standards. She has published a number of articles in the Court of Appeals Journal and the Ateneo Law Journal, including the articles entitled "Rule 42: Writing Finis to a 20-Year Redundancy" and "The Hearsay Rule: A Paradigm Shift."

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