SPECIAL ISSUE: TRANSNATIONALIZING LEGAL EDUCATION

Nurturing Commitment in the Legal Profession: Student Experiences with the Osgoode Public Interest Requirement

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A. Introduction

"Eye-opening," "disheartening," and "inspiring" are some of the words used by law students who met in 2008-2009 to discuss their mosaic of experience in the field doing public interest work.[1] These students had returned from placements under the first mandatory public interest requirement to be introduced in a Canadian law school (the Osgoode Public Interest Requirement, OPIR).[2] OPIR arose from questions about the relationship between what is learned in law school and what is required to be a professional. Academics have challenged each other to do more to instill an "ethos of professionalism" during law school.[3] Others have suggested that law students who do not receive exposure to the world outside the walls of the law school carry an "idealized conception of the profession" and are often unaware of the many practice contexts available to them.[4] Others have warned that if ethical and professional responsibilities are not modeled and articulated for students, that teaching only the "law of lawyering" does

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[1] Student Discussion Session, 30 March 2009.

[2] The Osgoode Public Interest Requirement (OPIR) was implemented in September 2007. The first Canadian program of its kind, OPIR requires all graduating law students to complete 40 hours of public interest, law related, uncompensated work and participate in a reflection of notions of professionalism, access to justice and the public interest after completing their hours. The student discussion sessions are moderated discussions which continue working with concepts introduced to students during their first year of law school during the Ethical Lawyering in a Global Community Course.

[3] John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students* 30 UNIVERSITY OF TOLEDO LAW REVIEW 323. Professor Montgomery, former Dean of University of S. Carolina School of Law proposes a continuum of professional education beginning in law school which intentionally incorporates a stronger "Ethos of Professionalism."

[4] Lois R. Lupica, *Professional Responsibility Redesigned: Sparking a Dialogue Between Students and the Bar*, 29 JOURNAL OF THE LEGAL PROFESSION 71, 74.

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not prepare students for becoming ethical lawyers.[5] Teacher-educator Lee Shulman has bluntly accused law schools of "failing miserably" at connecting its lessons in how to "think like a lawyer" with how to "act like a lawyer."[6] For years, there have been similar concerns raised about the decline of professionalism among lawyers, both in Canada and in the U.S.[7] A survey of Osgoode graduates revealed that students wanted more opportunities to engage with the community and to experience non-traditional forms of law practice. Osgoode Hall Law School grappled with many of these questions, and in 2007 it approved changes to the curriculum, including a new first year Ethics course (Ethical Lawyering in a Global Community, ELGC) and OPIR. In addition to the more traditional first year mandatory course load, Osgoode Hall law students must also complete ELGC, a minimum of 40 hours of public interest work and then engage in a discussion or written exercise reflecting on their experiences. These reflections are a valuable lens for seeing the profession and the administration of justice through the eyes of first and second year law students. Their experiences remind us in the profession that learning can flow in both directions.

B. The Nature of Public Interest Placements

In the two years since Osgoode's public interest program began, law students have completed their public interest work in a broad spectrum of placements. Students have worked in stock market regulation, advocacy for low-income HIV+ clients, sexual assault information sessions in high schools, and immigration information for detainees at the Metro West Detention Centre in Toronto. They have served low-income mental health survivors, policy advocacy associations, rape crisis organizations, and shadowed litigators in criminal cases. Their placements took them into high schools, jails, family court, community legal clinics, government offices, criminal court, judge's chambers, law offices and small claims court. Some went overseas, working with tenant advocacy organizations in South Africa or providing legislative and policy analysis for draft legislation to protect

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[5] Liz Curran, Judith Dickson & Mary Anne Noone, *Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice*, 8 INTERNATIONAL JOURNAL OF CLINICAL LEGAL EDUCATION 104, 105.

[6] Lee Shulman, *The Signature Pedagogies of the Professions of Law, Medicine, Engineering and the Clergy: Potential Lessons for the Education of Teachers* paper delivered at the MATH SCIENCES WORKSHOP: "TEACHER EDUCATION FOR EFFECTIVE TEACHING AND LEARNING". National Research Council and Centre for Education, Irvine, California, 2005.

[7] See for example: *"In the Spirit of Public Service:" A Blueprint for the Rekindling of Lawyer Professionalism*, 112 F.R.D. 243 (1986), available at: <http://www.abanet.org/cpr/professionalism/Stanley_Commission_Report.pdf> last accessed 14 June 2009; cited in *supra* note 3. at 324.; Justice Rosalie Abella, *Speech to Law Society of Upper Canada Bencher's Retreat, "Professionalism Revisited"* 14 October 1999; Justice Coulter Osborne, *Civil Justice Reform Project*, November 2007; Justice Stephen Goudge, *Goodman Lecture at the Chief Justice of Ontario's Symposium of Lifelong Learning in Professionalism*, 20 February 2009, Toronto.

children in the Philippines from pornography and the sex trade. They received a range of training, orientation and sometimes, security clearance. While a large percentage of students who have finished the program to date report improving their knowledge of substantive law (89%), an even greater percentage, 92%, reported that they had obtained a better understanding of the role of lawyer as a result of their placements.

The curriculum reforms were a natural progression for the Osgoode culture of blending classroom academics with clinical teaching. In addition to Osgoode's many clinical programs which qualify for OPIR, the on-site student legal aid clinic (CLASP) and the Parkdale Legal Services Clinic (PCLS) have served low-income communities for decades. These clinics provide services in diverse matters including elder law, law reform, mental health, landlord tenant, criminal law, victim's rights, human rights and alternative dispute resolution. One student marveled at the range of legal experience available at the Parkdale clinic, describing it as a "fantastic opportunity" to be exposed to poverty issues and administrative law. The student organization, Pro Bono Students Canada, was already well integrated at the law school, offering diverse volunteer opportunities for law students interested in experiencing public interest work and community lawyering. With these foundations in place, when the mandatory public interest requirement began, students began to work towards fulfilling their public interest requirement in first year. Many students provided their organizations with many more hours than the minimum as their interest became engaged. In some cases, individual students provided literally hundreds of hours of public interest work. As community organizations and firms became aware of the program, new placements and partnerships were created for law students. Faculty members brought new placement opportunities forward and supervised students interested in community outreach. In some cases, students created their own OPIR placements or developed new qualifying clinical programs, such as the Mediation Intensive program at Osgoode. With each point of contact, the students added to their store of information about the nature of the profession and shared their reflections with each other.

C. Student Reflections

In the language of the Osgoode Strategic Plan which led to the adoption of a mandatory public interest graduation requirement, one of the goals for the program was for students to appreciate how, "the study of law as a systematic and dynamic process has social consequences, affects power relations, encompasses interacting behaviours, serves as a ritual and symbol and is a reflection of interest group politics."[8] Yet as pedagogical

[8] Osgoode Hall Law School, *Making a Difference* in PLAN FOR THE LAW SCHOOL, 22 (2006), available at: http://www.osgoode.yorku.ca/about/documents/plan_for_the_law_school_2006-2010.pdf last accessed June 14, 2009.

research has demonstrated, highly successful learning opportunities stimulate students to construct their own knowledge rather than passively receive the existing mental models of others.[9] In debriefing with their peers after the public interest experiences, Osgoode's law students have begun to demonstrate their own frameworks for understanding the legal profession, not necessarily in the language that we imagined for them. The first such reflection from this year's students has been the value they have found in taking the time to talk about their experiences with each other. One student described the law school experience as being all about the immediate concerns of courses, marks and jobs: the discussion session was an unusual and positive contrast from the casual conversations among law students about work and school. Students have begun to tell each other what has troubled or engaged them about the profession during their placements and to find in each other, an understanding audience. They discovered repeatedly that their experiences in one sector of public interest work were often similar to what students learned from other kinds of law, in other organizations or in other countries.

In the context of the "professionalism debate" within the profession, such a discovery should not be dismissed as obvious. Engaged lawyers and students will take the time to reflect on their actions and can contribute to a greater public good, but many may not take the time to reflect until they are persuaded of its value. The route to that understanding is not in the telling, but in the doing. The experience of the discussion demonstrated its worth to students and to the facilitators.

A second significant student-driven observation was in the appreciation of how professionalism becomes intertwined with serving the public interest. Students connected the way in which lawyers related to one another to better processes and outcomes, whether in informal negotiations or before courts or tribunals. They described for each other how a lawyer's reputation is on display and known within the culture of the courthouse. They noticed lawyers who seemed oblivious to the impact of their advocacy style on decision makers: in one case, a particularly aggressive style adopted by counsel opposing an unrepresented applicant did nothing to assist counsel's client. In another case, a law student watched an appeal with significant constitutional issues at stake. In this case, the student was impressed by the collegiality among opposing counsel, right up to the courtroom door of this case. The value of watching how successful counsel go about their work in such a way became clear to the student who was there and to the others who heard about this style of advocacy. In other situations, students saw the limits on what lawyers can accomplish using strictly legal means, and often felt frustration when those limits were tangible in the face of human need and suffering. At the same time, students began to understand the possibilities of making a difference without resort to "black letter" law. Some found they could ease a difficult situation by listening to a client and giving the client a better understanding of the situation. They were inspired by those

[9] KEN BAIN, WHAT THE BEST COLLEGE TEACHERS DO, 26-27 (2004).

professionals who were living models of justice, professionalism, and integrity. In their hunger to understand "how" lawyers do their work, these law students were able to describe the positive and negative attributes to guide their own future choices as professionals. They are also a useful reminder of how the profession continues to be invaluable in modeling the "habits of mind, heart and hands" for law students.[10]

The third unexpected learning from this year's students concerned awareness: their own and others. They talked about the importance of self-awareness as part of being an ethical professional. The students repeatedly made the connection between improved self-awareness and the capacity to serve clients. Students who worked with unrepresented clients in what might be seen as relatively minor disputes discovered the extent to which emotion drives litigation. Other students who advocated for difficult clients realized how encounters with government representatives can become easily personalized, to the detriment of a fair outcome. These students learned that their ability to "navigate personalities" could be as important as the factual equities in a given case. They learned to draw on a broader set of skills in having conversations on behalf of their clients. Even in organizations with a shared community of interest in social justice, students learned that there is not necessarily immunity from internal politics. By identifying assumptions or simplistic ideas of what lawyers actually do at this stage of their education, these law students have begun the work of setting those assumptions aside and to develop more comprehensive ideas of the nature of their roles. One student who had observed a serious criminal trial later saw the accused in the case during a tour of the jail. The accused acknowledged the student and in that instant, the student experienced a flash of insight into the humanity of those who are prosecuted for criminal offences and how that might play into role of prosecutor.

Students returning from public interest placements demonstrated a willingness to move beyond what Montgomery has described as the more "cerebral understandings" of law (and) into notions of the "empathetic understanding of the interests of others, in addition to competency."[11] It may be that part of this capacity for empathy is created by the unique dynamic of being a law student, and being dependent upon their supervising lawyers and/or faculty. These students described the enormous gratitude they felt when a senior practitioner took the time to explain what had happened on a file, or to share their worry, fear or disappointment at a development in a case. They are aware of the limits on their knowledge and how experience and knowledge will enhance their skills in the future, because they have seen it in others. Although students sometimes hesitated to ask too many questions, when they did ask questions, they found lawyers were extremely generous with their time for students. In the busy family court setting, law students quickly learned to appreciate how important a combination of emotional and substantive

[10] Lee Shulman, *Pedagogies of Uncertainty* LIBERAL EDUCATION 18, 22 (Spring 2005).

[11] *Supra*, note 3 at 331, 349.

support was from their supervising duty counsel lawyers in intense circumstances. Those law students, and others, have been exposed to the "grief and joy, the emotional and rational aspects of lawyers work."[12] One student, who took on multiple successive statements said that "social justice was far off my radar of goals" at the beginning of law school, but now this student has entered second year law school feeling "inspired" by the possibilities.

D. Lawyers as Role Models

Some of the most rewarding discussions took place when students brought back vivid accounts of the competent and ethical counsel they saw whose "theory of the job" was on display. One student who sat in on multiple resolution meetings in criminal cases with Crown counsel noticed that people-skills like eye contact, friendliness and openness contributed to an atmosphere conducive to resolving cases. This student linked the personable style of one prosecutor directly to the public interest in the negotiation and resolution of criminal cases. Even where the substantive positions taken were not markedly different from those of other prosecutors, the particular style of one prosecutor created such an atmosphere of trust and collegiality that defence counsel would wait in line to meet with that prosecutor.

Another student observed a murder trial and connected integrity with the way the lead Crown counsel on the file conducted herself toward the accused, her prosecution team and the court. This student saw how this particular Crown Attorney embodied the notion of being an "officer of the court" with the responsibilities of a "minister of justice". Another student spoke of the warm collegiality in the legal department of a government ministry. This collegiality translated into leadership when the student realized extra time spent by her supervisor in sitting down to provide the student with the context to the project which the student had been assigned. This meant that the student avoided asking 'basic' questions, could problem-solve as the project unfolded and rewardingly, could understand her piece in a larger more coherent whole. Not surprisingly, this leadership extended to the attitude within that government department to go above and beyond the bare requirements of the project at hand. For the law student placed there it was invaluable to see fellow professionals focus directly on how to accomplish something tangibly helpful to an identified sector of the public.

This is not to say that students learned only from the good. Students spoke candidly of seeing varying degrees of commitment within the legal profession to notions of professionalism and the public interest in the practice of law. They spotted the hypocrisy

[12] Ann Juergens, *Practicing What We Teach: The Importance of Emotion and Community Connection in Law Work and Law Teaching* 11 CLINICAL LAW REVIEW 413.

of those firms who publicly proclaimed the importance of pro bono work in their firm information materials but accorded low priority to pro bono projects. Lack of interest by lawyers who had volunteered to supervise students was disappointing to other students, although it did lead to the unexpected challenge of how to work without the expected level of practitioner support. All of these students persevered and discovered for themselves the rewards of helping community groups and clients. They also expressed a resolve to include some measure of pro bono work in the future.

By watching these lawyers, students were able to appraise the positive attributes of the skilled counsel in large and small ways. The details of *how* lawyers took on challenging cases and *how* they do their work underscores the accuracy of Patrick Schlitz's metaphor on the making of an ethical profession:

> The moral fabric of an attorney is stitched out of the dozens-hundreds-of decisions that she makes each day. It is stitched in the tone of voice she uses in talking to others, out of her choice of adjectives while writing a letter, out of the care she takes in describing what she represents to be the truth of a matter. It is stitched out of one decision after another, each of which may be mundane in itself, but all of which combine to form the moral fabric of the attorney and combine with like decisions of other attorneys to form the moral fabric of law firms and legal communities.[13]

Schlitz effectively moves from the individual to the larger fabric created by our legal communities at large. This point was not lost on law students who have stepped into these communities for the first time. In addition to the individual to whom they were exposed, they also paid attention to the environment and the legal community in which those professionals were operating. Their observations of unmet needs for legal assistance were a refrain heard in every discussion session.

E. Limits on Access to Justice

Students who spent time in low-income legal clinics, with legal aid duty counsel, at tribunals and in community advocacy organizations found a troubling gap between the extent of the legal needs and resources. Students expressed dissatisfaction with these realities, especially once they realized that for those who could be helped, a "huge difference" could be made in the lives of those clients and their families. They saw clients who had to be referred elsewhere because of limits on what could be done. More than

[13] Patrick J. Schlitz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School & the Moral Foundation of the Novice Attorney* 82 MINNESOTA LAW REVIEW 705 (1998), cited in Patrick J. Schlitz, *Making Ethical Lawyers* 45 SOUTH TEXAS LAW REVIEW 875, 877.

one student heard from clients that "If you weren't there, there would have been nobody there to help me." Students who provided intake services for clinics became aware of a referral cycle for clients, who were sent around in a circle looking for assistance. The students told each other about examples of "desperate need" and of people who were being required to return for services over and over because of limits on publicly available services. They were reminded of the implications of turning away clients in observing unrepresented claimants before tribunals. Students described the power imbalance created for unrepresented people, and the fear of those people in "going to court." The profession may make distinctions between levels of court, tribunals and administrative bodies, but the students understand that this may represent the view of a legal insider. Students described how even in the less formal setting of a tribunal, unrepresented litigants are "intimidated and overwhelmed." The outcome of these imbalances can veer between overcompensating by the tribunal to the detriment of an opposing party, to a failure in having the best possible record available for the making of a significant decision to those affected.

In considering the gaps, the students asked whether the disparity they were seeing between publicly funded legal services and private representation is an indication of a failure on the part of our profession. Who is to blame? What can be done? Why is this tolerated? These are difficult questions and the willingness of future practitioners to grapple with them now is important. The future direction of the legal profession may depend on the answers.

F. Conclusion

The law students who have completed the public interest requirement at Osgoode Hall Law School have learned from fellow professionals within a larger context which has been simultaneously inspiring and discouraging. Students found themselves in situations that were not capable of an easy or quick fix. They confronted disappointment and fear. They were exposed to human courage in the face of difficult life circumstances. They began to appreciate that legal work and sometimes more modest efforts can address client legal needs that include feeling isolated, fearful and without control. The students also began to realize the necessity for finding their own supports, through mentors, collegial support and positive role models. In the words of one student, often the "best and the hardest part" was helping those most in need. For that student, and others, the work was "best" because of its relevance. It was "hard" because of the knowledge that many others in need are not being helped. Finally, these students benefited from the generosity of this profession to nurture the commitment of future members of the bar. For those on the verge of entering the profession, these experiences have been formative. Early results of the students who have completed the OPIR suggest that there is even greater future potential to nurture the commitment of students and the bar to a culture of commitment, to the public interest and to professionalism.