

DRAFT PAPER: NEW YORK LAW SCHOOL WORKSHOP

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Introduction

This paper will critically consider and discuss how law schools prepare students to use law on behalf of oppressed people, while also ensuring that students learn the fundamental elements of law that they must master. The authors will discuss this topic within the context of the law clinic environment in the Republic of South Africa¹ with specific reference to the University of the Witwatersrand Law Clinic.²

The oppressed people that will be discussed in this paper are the various members of the public who attend at the Wits Law Clinic for legal assistance. The overwhelming majority of clients are oppressed both on an economic and social level and these persons include asylum seekers and refugees, victims of police brutality, persons involved in housing disputes, victims of unfair labour practices, persons involved in family law disputes and persons seeking access to information.

The authors will begin by discussing the Wits Law Clinic together with the course Practical Legal Studies. The authors will explain the unique functioning of the Wits Law Clinic and how in conjunction with the course Practical Legal Studies students are enrolled in a course that enables them to provide legal services to oppressed groups. It will further be explained how the Wits Law Clinic serves a dual mandate of providing access to justice and facilitating clinical legal education. The authors will indicate that through the course Practical Legal Studies students are taught the fundamental skills required for the practice of law as well as being taught how they can use the constitution and the law to advocate on behalf of oppressed people.

Next the authors will consider the role that clinical legal education should play in preparing students for the challenge of advocating on behalf of oppressed people. The authors will submit that law clinics play a vital role in preparing students for the challenge of using law on behalf of oppressed people. The authors will further submit with specific reference to Wits Law Clinic that the law clinic is the appropriate mechanism to instill constitutional values in students and promote legal reform. Thereafter the authors will consider how students can be taught to address past injustices and promote social reform through the provision of legal services to oppressed people.

¹ Hereinafter referred to as “the Republic”.

² Hereinafter referred to as “the Wits Law Clinic”.

The paper will then consider the dichotomy facing clinicians between the need to impart foundational lawyering skills to students and the challenge of instilling a sense of social awareness in students and the understanding that law can be used as a mechanism for the advancement of oppressed groups. This will be discussed with broad reference to constitutional court precedent set by the Wits Law Clinic and the lessons that can be imparted to students regarding the achievement of constitutional law reform. One of the examples that will be considered is the lessons taught to the students in the Refugee Unit regarding the confidentiality of asylum procedures by reference to a recent Constitutional Court judgment in which the Wits Law Clinic acted as an *amicus curiae*.

The paper will then consider the issue of how deeply law schools should be involved in the study, teaching and reform of lawyering skills and values. The paper will assert that law schools and particularly law clinics should be fundamentally involved in the study, teaching and reform of lawyering skills and values. The paper will provide an example from the South African context regarding the need to reform and instill basic skills in graduates. Reference will be made to the discussions between the South African Law Deans Association and the Law Society of South Africa to address the lack of basic skills and values that currently exists in law graduates in the Republic.

Lastly reference will be made to the various barriers of access to legal services within the Republic, particularly large-scale unemployment and consequent poverty or economic hardship as well as the effect of rising legal costs. The paper will consider the contribution that law schools and more specifically the role clinicians can play in promoting reform in these areas so that these challenges can be addressed and so that the foundational constitutional values of human dignity, equality and freedom can be promoted and permeate all aspects of legal practice.

Background to the University of the Witwatersrand Law Clinic

The Wits Law Clinic has been operating for over forty years and is recognised as one of the biggest law clinics of its kind within the Republic. The Wits Law Clinic started informally as a small legal office in which students and staff would volunteer their time in order to assist oppressed people. In 1989 the course, which has now become known as Practical Legal Studies, was introduced as a

compulsory final year course within the University of the Witwatersrand's law curriculum. This eventually led to the formalization of the Wits Law Clinic, which is used as a mechanism for students to provide legal services to oppressed groups and to provide a professional environment so that students can acquire lawyering skills through experiential learning.

The Wits Law Clinic has a dual purpose in that it provides legal services to oppressed groups whereas previously the initial legal office only provided legal advice. The second purpose is that through the course Practical Legal Studies final year law students are provided with legal skills that will enable and prepare them for a successful career in the legal profession. Accordingly this fulfills a clinical legal education mandate.

The Wits Law Clinic currently employs ten full time admitted attorneys, eleven candidate attorneys³, an office manager, two typists, an administrative assistant as well as a receptionist. The Wits Law Clinic frequently has volunteers and interns who offer to assist in a limited capacity in the clinic in order to gain practical experience.

The Wits Law Clinic comprises of five specialized units and one external pilot unit. A distinguishing feature of the Wits Law Clinic is the fact that there are specialized units within the clinic which allows the clinic to offer a wider range of legal services in order to assist various oppressed people. The five units at the clinic are the Family and Gender unit, Promotion of Access to Information unit, a General Commercial unit, the Labour unit, the Property and Evictions unit, the Delict unit and the Refugee and Migrant unit.

The structure of the Wits Law Clinic

The Family and Gender unit provides assistance in a range of issues specifically divorce proceedings, enforcing parental rights and responsibilities, guardianship, maintenance claims, discrimination on the basis of gender and children's rights.

The Human Rights commission approached the Wits Law Clinic with a pilot project whereby students would enforce and create awareness on the *Promotion of*

³ *The Attorneys Act 53 of 1979* as amended by the *Attorneys Amendment Act 115 of 1993* provides in section 3(1)(f) *inter alia* that candidate attorneys may serve their articles of clerkship in an accredited law clinic.

*Access to Information Act*⁴ by taking students from the Wits Law Clinic and going into the rural communities and assisting clients with access to information requests.

The General and Commercial unit primarily deals with matters arising out of a contract, rescission of judgments and consumer related issues.

The Labour unit assists with different aspects of employment law including unfair dismissal disputes, unfair labour practices disputes and labour court litigation.

The Property unit deals with evictions, disputes relating to the transfer of ownership as well as foreclosures and executions.

The Delict unit deals with delictual claims including unlawful arrests, damages arising out of personal injuries and medical negligence.

Lastly the Refugee and Migrant unit deals with the rights of Refugees, Asylum Seekers and undocumented migrants. This unit will be discussed at length throughout the paper.

The aim of the Wits Law Clinic, which in a way has been defined through funding received from different organisations, more specifically the Legal Aid Board, is to give effect to the fundamental right of access to the courts⁵. The Wits Law Clinic provides legal assistance to persons who are indigent and who cannot afford to pay legal fees. Such persons are now provided with the means to litigate in order to enforce constitutional rights and values.

The Wits Law Clinic operates throughout the year and is maintained by the candidate attorneys and attorneys whilst students are on break and after they have completed the course. Clients simply have to attend the clinic on the day that is allocated for their specific issue, there is no appointment system, so their name is taken down in the book allocated to the specific unit and students, candidate attorneys and supervising attorneys see each client that is present on the day.

⁴ *The Promotion of Access to Information Act 2 of 2000.*

⁵ The right of access to the courts is recognized in section 34 of the *Constitution of the Republic of South Africa, 1996*. Hereinafter referred to as “*the Constitution*”.

The authors are the co-supervisors of the Refugee and Migrant unit. The *Refugees Act 130 of 1998*⁶ was promulgated in an observance of international law⁷. The Refugee unit seeks to enforce the Refugees Act and thus as a result further enforces constitutional rights.

The unit has frequently launches impact litigation cases which result in the change of the law for clients whilst also observing constitutional rights and objectives. Thus the oppressed groups of people that are given assistance will be refugees, asylum seekers and migrants.

The authors lecture students on Constitutional Law during plenary lectures. Students need to understand that for example the right to just and fair administrative action which is guaranteed in *section 33* of the Constitution, isn't simply a right, it means that the failure by the Department of Home Affairs to render a decision to a client who has made an application for asylum is unlawful and thus the students must use branch of law in order to enforce their client's rights and at the same time learn from the service that they are providing.

Constant emphasis is placed on students having to reflect on their own experiences, so during lectures and tutorials the supervising attorneys ensure that students aren't just completing tasks but are also thinking about the thought process behind what they are doing. Through reflection students will grasp key legal concepts, and realize the foundational overarching value of the Constitution as the means of enforcing all rights.

The Wits Law Clinic exposes students to social justice, so whilst they may not continue to pursue litigating on the same issues in public interest and assisting oppressed groups, it can still influence their perceptions on their future as a legal professional.⁸ The effect of this is that the legal profession will be enhanced.⁹

⁶ Hereafter referred to as "*the Refugees Act*".

⁷ South Africa is party to two international conventions which is given effect in the *Refugees Act* namely the *1951 Refugee Convention* and the *1967 Protocol Relating to the Status of Refugees*, the *1969 OAU Convention*.

⁸ Willem De Klerk "*University Law Clinics*" 2005 SALJ 944.

⁹ *Ibid.*

The course Practical Legal Studies

When considering the course Practical Legal Studies an analysis of the teaching outcomes as well as how this is to be achieved is an essential part of the discussion of how students can acquire legal skills and assist oppressed groups.

The Wits Law Clinic teaches students through the use of the live-client model. Students are given a real case with merit and teaching value and under the supervision of a practicing attorney they must attend to the matter as if they are an admitted attorney. The idea behind this method is that the student will learn through doing.

Students can also learn by omission, for example a supervising attorney may ask the students to decide what legal route they should take in order to resolve a particular matter. In the event that the students may have chosen to proceed in the incorrect manner, the supervisor may then instruct the students to justify why they chose that option and allow them to continue in that manner until students themselves realize that it was the incorrect legal route and will thus not repeat the same mistake in future. Alternatively, students will be guided and given exact direction and learn from actually performing the specific task.

Practical Legal Studies currently has 410 students enrolled in the course in 2014. During the first lecture in Practical Legal Studies students are given a brief overview of each unit within the Wits Law Clinic and it is emphasized that each unit will provide skills regardless of the unit into which the student is allocated.

Thereafter the students are divided into pairs and allocated to a supervising attorney. Before students begin their clinic sessions they are given an orientation of the Wits Law Clinic. Students will work in the Wits Law Clinic like any other attorney and will have to work with the staff in the law clinic. Students are accordingly provided with a professional working environment.

During the orientation session students are notified that each pair has to choose a designated time for a weekly tutorial. The student is closely monitored by their Supervising Attorney who has a duty to ensure that every client is provided proper legal service as the Supervising Attorney will be liable for any misconduct.

Furthermore the attorney has to ensure that the student understands each aspect of the legal process. After the orientation session, students are then given an instructive video with guidance and interaction by their Supervising Attorney. During this session the Supervising Attorney tries to engage with the students in order to cultivate an environment where the students feel like they can approach their supervisor, there is engagement amongst peers and most importantly so that students can reflect on what they learnt and what they will learn.

Practical Legal Studies consists of plenary lectures in which the entire class is given lectures on specific general aspect such as ethics, the legal profession, drafting skills, numeracy skills, communication and consultation skills. There are also a number of unit based lectures in which students are separated into their specific unit within the Wits Law Clinic and given specific lectures on certain areas such as the substantive law relevant to that unit, what to expect from clients, potential problem areas and the different legal documents they will be drafting. Each supervising attorney has contact hours with students in the clinic ranging from upwards of 35 hours per week¹⁰.

There are six different assessments for Practical Legal Studies, thus students are given ample opportunities to be assessed. The assessments serve to impart foundational lawyering skills. Thus the clinician is able to continually impart skills to the students. Students are given two tests in the first semester. The first test is on the substantive law of each specific unit. It is vital that students understand the law on which they will be advising clients. Whilst Practical Legal Studies is not a theoretical course by nature, students will have to familiarize themselves with the necessary information so that their analytical skills will be honed. Students will not be able to develop if they do not have the substantive law as a foundation.

Students are then given a drafting test, such tests are specific to each unit. This is to familiarize students with the drafting skills necessary for the unit. It is necessary for students to be assessed in this way so as to prompt students to engage with the material as it has been found that students will only do the work when prompted if they were to be assessed just on the work they do with clients. The drafting test will once again serve to instill lawyering skills within the students.

¹⁰ The current student to attorney ratio is 1:23

Students are asked in the second semester to write up a court report not exceeding 750 words. Students are given a set of instructions and asked to watch a case in court and asked to reflect on the facts and procedures within the court. This is a good assessment for those students who have yet to step inside a court room and it is an assessment in which they are given no direct supervision. This process enables students to reflect on the court process and the basic skills necessary for court work. This further promotes and stimulates learning.

Trial Advocacy is a moot exercise in which students are divided into groups of ten given a comprehensive set of facts and have to simulate what would happen in practice after they consult with a client and have to litigate on the matter. They have to draft the necessary documents, have a case number allocated, serve and file pleadings, and run the trial before their Supervising Attorney. Students are once again split into pairs and given a specific oral task and written task. If the students are given a difficult written task it will be paired with a relatively easy oral task and vice versa.

This group task really motivates the students and often is appreciated by all the students. At this point if students have really seen the practical side of the law, this assessment will provide them with the experience. It is specifically done after the court report so that students can reflect on that exercise in order to assist them with trial advocacy. Once again this is a method used by clinicians at the Wits Law Clinic to further inculcate legal skills within the students.

File assessment comprises the majority of the students mark and consists of engagement with clients of the Wits Law Clinic. Students are required to spend two hours per week in the Wits Law Clinic consulting with clients. Students will consult with a client and thereafter seek and confirm what advice to provide. During clinic sessions students should start to hone their general lawyering skills such as critical thinking and analysis, oral communication and problem solving. It is during these sessions that the supervising attorney will advise students to open a file which will have learning value and usually has merit.

Students may also have certain files allocated to them at the beginning of the year. Students will then have to determine the way forward in the particular matter under the supervision of an attorney. Students will have been taught about file

management, thus the students have to ensure that client's information is accurate, that correspondence is filed, that the matter won't prescribe and the students have a duty to ensure that proper and accurate notes are kept in the file.

Oral exams are scheduled at the end of the year during the examination period. Students are required for 15 minutes to discuss what work they have completed throughout the entire year. The oral is a means of understanding their knowledge of both procedural and substantive law, problem solving skills and the application of the law to the facts. The oral exam further serves to test the students communication skills and to promote this particular facet of the legal profession.

How should law clinics prepare students to advocate on behalf of oppressed groups

The issue of the role that clinical legal education should play in preparing students for the challenge of advocating on behalf of oppressed groups is a topic that requires some discussion. The law clinic has a dual function namely to facilitate access to justice and to provide legal education. The dual mandate particularly the interaction between the provision of free legal services and the teaching of students places the law clinic in a unique position whereby it can instill constitutional values within students and in turn promote legal reform.

Students are made aware of the importance of constitutional values and the importance of the rights contained in the bill of rights. Further through litigation and legal intervention students are taught that they themselves through the practice of law can promote and develop the rights contained in the bill of rights and consequent constitutional values.

Students are taught and practically experience how the provision of legal services to oppressed groups can serve to address past and continuing injustices. Students for example are able to address issues such as oppression in the workplace and exploitation of workers, property related disputes and housing shortages as well as to intervene in contemporary situations such as abuse by the police services, corruption in governmental departments and the effect on asylum seekers and refugees and to promote access to information, access to education and the protection of vulnerable groups such as the family and children. This serves to

elucidate students to the reality that law can make a practical, tangible difference within society.

There exists a dichotomy that is experienced by clinicians. On the one hand they must impart foundational lawyering skills to students and on the other they face the challenge of instilling a sense of social awareness and the understanding that law can be used as a mechanism for the advancement of oppressed groups¹¹. It is difficult to strike a balance between the two as there can be no question of providing practical action to deal with social issues without one being equipped with the basic lawyering skills. Nevertheless students through their compulsory attendance in the course practical legal studies and their consequent assistance to clients who are by definition indigent attain a greater sense of social awareness as they are exposed to the various social and economic plights experienced by persons within the Republic.

Due to the unique structure of the Wits Law Clinic particularly the fact that it is divided into specialist units, students encounter clients with needs that spread across a range of legal disciplines and which consequently give expression to a range of societal needs. Accordingly students become aware of a range of needs for example housing shortages, unemployment, access to education, police brutality, abuse of fair labour practices and the plight of asylum seekers and refugees. Students are further made aware of the force and practical value of law as a mechanism of social reform through the use of law to address these societal needs and to advance the rights of oppressed groups. Students through the live client model can see first hand the power of law as a mechanism of social reform and as a vehicle to uplift society. Students accordingly see the practical effect of law and the difference that legal intervention can make in the lives of oppressed groups.

¹¹ "By the early 1990's, statistics from Garth and Martin (1992) concluded that that the teaching of professional responsibility formed part of the integral part of legal studies through clinical education. Writers regarded the law clinic as the best learning opportunity for teaching professional responsibility because of the direct consequences for student and client alike". *Clinical Law in South Africa*, Bodenstein et al 2004 at page 3.

Promoting constitutional values and reform through the use of constitutional court precedents

The Krejcir¹² matter involved an appeal against a judgment made by the North Gauteng High Court, Pretoria (High Court) on 6 December 2012. The Applicant's sought a court order allowing it access to the Second Respondent Radovan Krejcir's Refugee Appeal Board hearing, the Applicant's further sought an order declaring that *section 21(5)* of the *Refugees Act* was inconsistent with the right to freedom of expression found in *section 16* of the *Constitution* to the extent that it precluded the Refugee Appeal Board from allowing, in appropriate cases, members of the public or the media to attend and report on proceedings of the Refugee Appeal Board.¹³

The Applicants argued that *section 21(5)* was inconsistent with *section 16* of the *Constitution* and that it constituted an unreasonable and unjustifiable limitation of the right to freedom of expression. The Applicants also sought that certain words be read into *section 21(5)* of the *Refugees Act* in order to cure this defect.¹⁴

The Constitutional Court had to decide if the limitation of the right to freedom of expression was reasonable and justifiable¹⁵ in an open and democratic society based on human dignity, equality and freedom.

The Applicants argued that there are cases where there is no justification for confidentiality because the information in the application is already in the public domain.¹⁶ The Respondents argue that a statutory requirement for absolute confidentiality is a necessary and justified requirement owing to the sensitive

¹² *Mail and Guardian and others v M j Chipu N.O (Chairperson of the Refugee Appeal Board) and two others and amicus curiae Southern Africa Litigation Centre CC 136/12 2013 ZACC 32.*

¹³ Ibid note 13 at par 1.

¹⁴ Ibid.

¹⁵ The Limitations clause is found in *section 36* of the *Constitution* and provides:

“The rights in the bill of rights may only be limited by law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose...”

¹⁶ Ibid at note 13 at par 43.

nature of the applicant¹⁷. It encourages full disclosure of why the applicant is seeking asylum, because the reasons for fleeing may still pervade in which case the applicant must feel satisfied that there will be no retribution from their country of origin because their whereabouts will not be disclosed and thus they are protected.¹⁸

The constitutional court held that if there was no right to freedom of expression certain other rights are weakened.¹⁹ The court held that the *section 21(5)* of the *Refugees Act* was inconsistent with *section 16* of the *Constitution*, the declaration was suspended for two years or until such time as Parliament cured the defect. Until such time as the defect is cured the Refugee Appeal Board is conferred with discretion to allow any person or media to attend or report on a hearing.

This case was run in 2013 and was a perfect example of how the authors used constitutional law to teach students lawyering skills and how the law can be used to promote legal reform. The issues were presented to students both in 2013 and 2014, and vigorous discussions were held on the purpose of *section 21(5)* and whether or not it was fair considering that in most cases no confidentiality was provided to South African citizens.

Students themselves would then see the link between this particular section and their clients and how in clinic clients are often reluctant to convey why they fled their country of origin and the importance of the right but also how there should be a balance and that certain persons should be excluded in terms of *section 4*²⁰ of the *Refugees Act* and should not benefit from the Act. We then discussed and linked the Krejcir case to another impact litigation matter which discussed *section 21(5)* being CoRMSA²¹ a matter in which the Wits Law Clinic was reviewing the decision to grant a suspected Rwandan Warlord asylum. Students would then use these discussions to inform their skills in clinic and thus overall improve their insight and skills as legal professionals. Students would once again be shown

¹⁷ It was submitted in this matter that the Radovan Krejcir was linked to criminal activities and accordingly the applicants sought to promote transparency in this particular Refugee Appeal Board hearing.

¹⁸ Ibid at note 13 at par 55.

¹⁹ Ibid at note 13 at par 51.

²⁰ *Section 4* of the *Refugees Act* deals with persons excluded from obtaining refugee status and includes *inter alia* those who have committed war crimes and crimes against humanity

²¹ *Consortium for Refugees and Migrants in South Africa v President of the Republic of South Africa and Others*, case 30123/2011.

practical examples of how the law can be used in a proactive manner in order to promote legal reform.

The involvement of law clinics in the teaching and reform of lawyering skills and values

Equally pivotal to the discussion of legal education and social change within the South African context is the question of how deeply law schools should be involved in the teaching and reform of lawyering skills and values. The authors submit that law schools particularly law clinics should be deeply involved in the reform of lawyering skills and values. There are two elements that need to be considered in order to provide an exhaustive discussion of this topic. The first is a discussion of the issue of lawyering skills, the second a discussion of lawyering values. Although lawyering skills can be measured and assessed with some degree of objectivity, values by contrast are inherently more difficult both to impart and to assess with any sort of objective measurement.

An assessment of the involvement in the teaching and reform of lawyering skills in the South African context should be considered with regard to the call from the South African Law Deans Association to the the Law Society of South Africa²² to address the concerns that are emerging from practitioners, particularly the attorneys profession that candidate attorneys²³ do not possess the requisite level of basic skills required for legal work. The organization is further concerned about the ethical crisis in the legal profession and the consequent need to inculcate values into future practitioners in order to build a sustainable constitutional democracy.²⁴

The task of addressing this lack of skills falls upon law schools and more specifically law clinics, as the one of the key vehicles for imparting practical legal skills to students, forcing law clinics²⁵ to become fundamentally involved in the

²² The Law Society of South Africa is a regulatory body tasked with representing and promoting the common interests of the profession as well as providing training to candidate attorneys and continual professional development to attorneys.

²³ In accordance with the provisions of the *Attorneys Act 53 of 1979* prior to admission as an attorney within the Republic of South Africa a prospective candidate must *inter alia* complete a two years of articles of clerkship alternatively a year of articles of clerkship and six months practical legal training at an accredited institute.

²⁴ Joint press statement by the South African Law Deans Association, the Law Society of South Africa and the General Council of the Bar. [Http://www.lssa.org.za/upload/LLB%20summit%20press%20release.pdf](http://www.lssa.org.za/upload/LLB%20summit%20press%20release.pdf)

²⁵ Ibid "Law clinics at universities are the ideal mechanism for providing a capstone course which allows students to intergrate their knowledge with the practice of the law. They also provide much needed legal services to indigent members of the public."

reform of lawyering skills and accordingly fundamentally involved in the study and teaching of these skills.

The South African situation

The nature of the problem is however inherently complex by virtue of the fact that the Republic has eleven official languages and the government has faced many challenges in providing access to education for the majority of the population. For example many classrooms throughout the Republic lack the basic necessities required for teaching namely classrooms, desks and chairs, textbooks, electricity and abolition facilities. Thus a student finds himself or herself entering the University environment in which the majority of written and oral communication takes place in the English language. The student themselves may not have been taught English as a first language at primary school as well as a secondary school level.

Nevertheless the demands of the legal profession require a certain level of English discourse and accordingly dictates that students use the English language effectively in order to draft the requisite legal documentation such as letters, pleadings or opinions.

Law schools and consequently law clinics find themselves in a difficult position. They must, within a limited period of time with finite contact hours per student, impart the necessary practical skills to a student, particularly the drafting of legal documentation in English. A student may not be a native English language speaker and thus struggle to effectively communicate in written English. Nevertheless the demands of the legal profession are such that any deficiencies in written English can severely hamper and even prejudice a particular case. Furthermore law firms do not have the time or patience to teach candidate attorneys this particular skill and an employees' weakness in this area can severely curtail their future development as a practitioner as well as their continued employment.

Clinicians are thus required to become fundamentally involved in the study, teaching and reform of lawyering skills. Clinicians are able to conduct reform in the area of lawyering skills through the dictates of file work that the student will undertake during the course of their practical legal training. Students are repeatedly exposed to a range of drafting exercises from the taking of an initial client

statement, to the drafting of letters and legal documents. Through a continual process of exposure to drafting situations, coupled with a period of critical assessment and feedback a clinician will be able to impart the necessary skills to the potential student.

A supervisor will be able to assess the particular needs of certain students in the tutorial sessions and will be able to impart the necessary skills. Certain students may require closer attention in certain areas namely the basics of drafting a letter with sufficient legal language.

The task and mandate of imparting lawyering skills to students is symbiotic with the study and teaching of lawyering skills. A clinician must continually be involved in the study of lawyering skills in order to convey the best possible lessons to their students. The duty of study itself is not enough as the clinician must effectively be able to teach students the necessary lawyering skills within the limited time available and with large student numbers²⁶ as well as being able to discern the weaknesses in a particular student's skill set and address any deficiencies.

Clinicians are further required to reconsider even the very manner in which students are taught. Large student numbers at the Wits Law Clinic have forced the supervising clinicians to reconsider traditional teaching models of dealing with students in pairs to a firm type scenario in order to realistically deal with increased student numbers.

The issue of promoting legal values is a slightly more cumbersome task. The very concept of legal values itself is a somewhat difficult notion to quantify. Are legal values limited to values of professionalism or professional standards, notions such as efficiency, attention to detail and speedy service. It is submitted that legal values are something significantly more normative. Values such as the principles of justice, equality before the law and equal protection before the law.

²⁶ For the period 2013-2014 the Wits Law Clinic had in excess of 400 final year students spread between 10 clinicians

It is submitted that within the South African context where the constitution is the supreme law of the Republic that lawyering values should be aligned with the foundational values of the constitution. The constitution is premised on the foundational values of human dignity, the achievement of equality and the advancement of human rights and freedoms, non-racialism and non-sexism, supremacy of the constitution and the rule of law.²⁷

The building of a truly egalitarian society requires an adherence to these values and in order to reform these values one requires a sober analysis of the current position. The majority of the population of the Republic live below the poverty line, many without adequate access to housing, basic sanitation, food, water and education. Nevertheless the bill of rights for example guarantees that everyone has the right of access to the courts²⁸ and the rights accorded to arrested, detained and accused persons provide that detained and even sentenced prisoners have the right to have a legal practitioner assigned to their case and at state expense.

In order to give concrete practical effect to the rights within the bill of rights lawyering values will have to change. The rise in legal fees within the Republic of South Africa and globally means that financially speaking the vast majority of the population cannot afford the services of a legal practitioner.

The realization of the founding values of the constitution requires that radical reform take place in the tradition values of legal work, namely a paradigm shift from the use of law as a means of financial enrichment to the use of law as means to serve and uplift society and to promote the rights contained in the bill of rights.

Lawyers should seek to promote the achievement of equality through the provision of access to legal services even with clients who are faced with severe financial impoverishment. Lawyers should promote human dignity by being approachable to all sectors of the population and the promotion of the ideal that access to legal knowledge or the services of a quality legal practitioner is not the exclusive domain of the rich or the socially elite. Values of non-racialism and non-sexism

²⁷ *Section 1* of the Constitution.

²⁸ *Section 34* Access to the courts-“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum”.

can further be achieved through the challenging of such contentious issues in the courts when matters arise and the need is presented.

To this end law clinics can fundamentally contribute to the shaping of the legal order through the reform of legal values. The law clinic environment seeks *inter alia* to promote the ideal of access to justice and consequently free legal services. Students are taught that the inherent dignity of every client must be respected and honoured. Each client who attends at the Wits Law Clinic will be assisted. Students in practical legal studies assist in the running of South Africa's largest university law clinic. They provide professional, quality legal services to members of the public without charge.

Students are further exposed to a culture of litigation within the law clinic that promotes the notion of access to justice and the use of law as an instrument to promote reform in society and the promotion of the rights in the bill of rights. Students are not only imparted with the necessary practical skills to undertake the work of a legal practitioner but they are further shown the concrete, practical and forceful effect of the law.

Students within the refugee unit frequently assist persons who are some of the most socially and financially marginalized people within the Republic, many without the most basic of documentation to ensure their freedom of movement within the Republic.

Students through the use of law are able to ensure that clients obtain documentation, access to education and access to health care. Similarly throughout the clinic students frequently assist with unfair labour dismissals, access to housing and the realization of property rights, family law issues and unlawful arrests and detentions. Students are inculcated with a sense of the value of the law not just as a means of financial security but as an instrument of social change. Students are shown the value of promoting access to justice and the practical realization of the right of access to the courts.

Values are further promoted as students interact with government departments that instead of promoting the values in the constitution²⁹ find themselves riddled with

²⁹ Again drawing from the refugee unit. The department of home affairs has consistently violated the rights of asylum seekers and refugees to just administrative action.

corruption and in turn oppressing the very people they were tasked to assist³⁰. Students are further taught the value of inherent dignity and equality. That every client no matter their physical appearance, financial status or otherwise is entitled to a professional consultation and quality efficient legal representation and advice.

Conclusion

In this paper the authors have shown that law schools and in particular law clinics should be fundamentally involved in the teaching and reform of lawyering skills and values. The authors submit that the law clinic is the most suitable mechanism to promote reform in these areas. The authors have further sought to show that law clinics can indeed impart both essential lawyering skills to students as well as the notion that law can be used to promote social change and to assist various oppressed groups. The use of law in this manner and teachings in this regard can serve to promote a truly egalitarian society both in the Republic and elsewhere.

³⁰ “No way in. Barriers to Access, Service and Administrative Justice at South African Refugee Reception Offices. African Centre for Migrant Studies report compiled by Roni Amit, September 2012.