

THE LEGAL CLINIC  
The Idea, Organization, Methodology



Warsaw 2005



## The Legal Clinic. The Idea, Organization, Methodology



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The Idea, Organization, Methodology



Fundacja Uniwersyteckich  
Poradni Prawnych

The Legal Clinics Foundation  
Warsaw 2005

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## Foreword

This publication is addressed to students and the faculty – the managers of legal clinics. Students will find here a repository of knowledge on the idea, the history and the rules that govern the functioning of legal clinics. Members of the faculty will find here practical knowledge on how to organize the work of a legal clinic and how to best teach within its framework, as well as pointers on how to prepare students to lend assistance to clients.

On behalf of the Board of the Legal Clinics Foundation I would like to express my gratitude to all persons who have contributed to the creation of this publication.

Firstly, I thank the sponsor of this publication: the Open Society Justice Initiative from Budapest, in the person of its Director Zaza Namoradze and Mariana Berbec, whose good will and support were instrumental in the creation of this book.

I would also like to thank Grzegorz Wiaderek, the Head of the Legal Education Program of the Stefan Batory Foundation, who are the institutional sponsor of the Legal Clinics Foundation.

My warm thanks go to the editor, Dariusz Łomowski, for the hard and responsible work he has contributed to this publication.

I am grateful to the authorities of the legal clinics community, and I thank: Professor Andrzej Zoll, Professor Maria Szewczyk and Professor Eleonora Zielińska. I also thank all the authors: Professor Leah Wortham, Professor Catherine Klein, Dr. hab. Jerzy Pisuliński, Dr. hab. Fryderyk Zoll, Dr. Barbara Namysłowska-Gabrysiak, Dr. Małgorzata Szeroczyńska, Dr. Jerzy Ciapała, Dr. Andrzej Sakowicz, Attorney-at-Law Wojciech Hermeliński, Łukasz Bojarski, Izabela Gajewska-Kraśnicka, Aneta Frań, Celina Nowak, Magdalena Olczyk, Edwin Rekosh and Grzegorz Wiaderek.

This book is the first publication describing the origins and the rules governing the functioning of legal clinics. I am delighted that among the authors of this publication there are not only representatives of the most experienced legal clinics in Poland, but also representatives of institutions which were involved in the forging of the legal clinics program from the very beginning, and persons from abroad to whom clinical teaching of law in Poland owes so much.

I would also like to express my gratitude to the Foundation Board Members: Izabela Gajewska-Kraśnicka, Dr. Piotr Girdwoyn, Attorney-at-Law Filip Wejman and Dr. Paweł Wiliński for their contribution and their commitment to this publication. Special thanks go to Izabela Gajewska-Kraśnicka for her editorial contribution and the significant help she has lent in translating the publication into the English language. I also thank Magdalena Czernicka who has

not only contributed to the editing of the book but has also been particularly involved in the shaping of its very idea.

I am very happy that the hard work of the authors and the effort of the many people mentioned earlier have resulted in this publication, which I hope will contribute to the development of the legal clinics movement. I strongly believe that it will serve as a practical tool in the hands of the legal clinics.

Once again I thank for the immense volume of work committed to this publication by the above mentioned persons, I should also like to ask the readers to let the Legal Clinics Foundation know of their remarks and comments to this publication, as such would help us further improve it in the next editions.

*Filip Czernicki*

*President of the Board of the Legal Clinics Foundation*

## Introduction

I have observed the development of legal clinics in Poland for some time now and with the greatest of interest. From the point of view of the Ombudsman, legal clinics play a particularly important role for two reasons. Firstly, they play a significant educational role. They show young lawyers the extent of injustice, poverty and misfortune that surrounds them. These young people confront such phenomena as lawyers and, if only in a small degree, need to personally face up to them. The experience they gain here tells them never, not even when they become esteemed partners of huge law firms, to forget the needs of a great many people, and that lawyers are in particular called to lend service to those who unassisted are unable to secure such services to themselves. Secondly, legal clinics assist the Ombudsman in identifying threats to human rights as they emerge. This role is of particular significance – young lawyers not only learn to look at things from the point of view of human rights, but also create a network of information about the functioning of law in Poland. By these means they help to enhance the quality of the law and of its application.

Legal clinics are being created in most of the Polish law faculties. They are becoming an ever more important part of the curricula. They condition the education of new generations of lawyers – educated in democracy, soliciting the rule of law, protecting human dignity. This movement supports the office of the Ombudsman in fulfilling its mission, it also brings hope that the new generations of lawyers will guarantee better functioning of the justice system in Poland, and thus contribute to the enhancement of the citizens' trust to their state.

As the Polish legal clinics grow in strength they forge fully fledged educational programs. This is reflected in the creation of this book, the ambition of which is to assist in organizing good and safe clinics, which fulfill their social and educational mission. I hope that such Readers' expectations will be fulfilled herein.

*Professor Andrzej Zoll*

*The Polish Ombudsman*

## **Clinical education as a nucleus for the reform of legal education in Poland**

**Professor Eleonora Zielińska**

**Legal Clinic, Faculty of Law and Administration of the Warsaw University**

The creation of legal clinics at law faculties of many universities in Poland is by no exaggeration the beginning of a new era in legal education.

The idea of teaching law through practice fell on fertile soil in Poland in the beginning of the 90's. It coincided with a major teaching program overhaul at Polish law schools, which was prompted by the need to adapt curricula to the requirements of ECTS (European Credit Transfer System) in view of our accession to the European Union. It was also a live issue at the time of a more general debate over the traditional teaching methodology at law faculties of state schools, in particular in view of the more "vocational" – and thus often more competitive – curricula of the newly inaugurated law faculties at private schools. It also became a part of a nationwide discussion over the need to grant graduates of law schools broader access to the legal profession, basing their future functioning in the society on the principle of competition, particularly at a time when professional corporations tend to limit access to apprenticeship. It is also related to the criticism of the limited accessibility to legal services in Poland, particularly by comparison, and the lack of a tradition of *pro publico bono* work among lawyers.

The above objective, general conditions have been coupled with specific conditions relating to the functioning of individual universities.

At the Warsaw University the process of incorporating clinical education in the curriculum was made easier by the constant readiness of the dean authorities, student organizations and many of the members of the research and teaching staff to further improve teaching methodologies to enhance the execution of the legal profession by our students, and – at the same time – to make it easier for them to find employment. The reform consisted in modifying curricula so as to incorporate to much greater an extent and already at university level the issues of ethics and of the ethos of the legal profession, as well as the need to develop skills necessary in the execution of this profession. Teaching methods were also modified, among others, to include the use of practical experience gained from contacts with the clients' real-life problems.

The introduction of clinical education was also favored by the realization of the need to transform the social image of our schools of law from elitist educational centers to institutions with ambitions to serve the social justice mission. This mission would manifest itself in the raising of legal awareness and education within our society, in the opening of the Faculty to co-operation with social organizations. The great significance of one of the foremost elements of the

mission remains unchanged - the provision of legal assistance to persons with limited access to legal protection due to their poor material status or their susceptibility to discrimination.

The Faculty of Law and Administration of the Warsaw University has faced up to these challenges, also in an organizational sense, which was manifested in the gradual institutionalization of the legal clinics program. In 1998 it was incorporated in the curriculum as a facultative course and was conducted by university teachers within their obligatory teaching hours. At present the legal clinic program awards students 6 credit points within the ECTS system.

During the five years of functioning, the legal clinics have been fully institutionalized within the Faculty's organizational structures, a process which started with the creation of an independent legal clinic office with one full-time administrative employee, and was completed by the clinic's obtaining interdepartmental status, the employment of one faculty member, and the offering to its students of a legal clinics textbook and other teaching aids.

The completion of the organizational phase, and the obtaining by the legal clinic of an identity of its own does not mark the end of the quest. At present the issue of perfecting the methodology of teaching of lawyers has come to the fore. The legal clinic may become a superb laboratory for experimenting with alternative teaching methods, which is the more important considering that these methods may find application not only within the legal clinics program but also in a wider range of legal educational programs.

For this very reason the initiative of creating this publication is particularly valuable as it creates a forum for sharing experience in the curricula and methodologies of teaching law gained from clinical education.

## **Thoughts on the reform of the teaching of law**

**Professor Maria Szewczyk**

**Legal Clinic, the Jagiellonian University in Kraków**

The continuing changes to the economic, social and political systems bring about the need to adapt to them both the Polish legal system and the system of teaching law. It is the young people – the students of today, whose knowledge, social and professional status are being shaped by the present educational system – who will determine the direction in which this "new world" goes. For this reason it is necessary not only to continue discussing the shape of that system but also to undertake real actions to adapt to the new reality. Legal professions are professions of social trust – which, in a nutshell, means that lawyers are given extensive powers which are however accompanied by equally great expectations. Before their professional and personal experience instills a sense of equilibrium between the power and the duties, they need to receive their first instruction in this respect during the time of their studies.

The hitherto law studies have been clearly academic in character, and it remains certain that vocational education *sensu stricto* is not the aim of the university. Its role is to convey to students theoretical knowledge that would constitute a sound foundation for further studies – more specialized and better fitted to the requirements of the future profession. The distinction between academic studies and "professional" studies is still too clearly-cut in Poland. The pace of life demands a reflection and perhaps an attempt to find a compromise between the hitherto traditional theoretical legal education system and the teaching of the legal profession. Young graduates of even the most renowned law schools ever more often realize that a university diploma with the highest of accolades does not guarantee the finding of a job of their dreams, nor does it give the graduate the conviction that they are sufficiently prepared to execute their profession. The present legal educational system – university law studies coupled with apprenticeship, significantly prolongs the formative process of lawyers. The limited number of apprenticeship openings available to students of law deprives many of them of the opportunity to learn their profession. It is clear to me that the broader theoretical university education should not be abandoned. The university must give lawyers the foundation for their future professional activity. Nevertheless, it would seem advisable to give willing students the opportunity to come in direct contact with the profession as early as during the course of their studies.

The clinical legal education program, created in the United States of America in the 60's, is the answer to the need of bringing university education closer to real life and stepping up the process of the future lawyers' coming in contact with their real trade. In the Polish language, the word



"clinic" is associated with the process of healing of human beings, i.e. the practical application of the medical science. Legal clinics are nothing more than the practical application of the legal science, albeit in the course of university studies. Nearly seven years ago, the law faculty of the Jagiellonian University in Kraków was the first in Poland to introduce this very educational method into its legal studies. Today most of the Polish universities have followed suit. Legal clinics are a supplement to the hitherto educational model in the form of a facultative course. The students' enthusiasm to be a part of this demanding program is the best testament to the need for its existence. Legal clinics do not assume to teach law in the traditional sense (this is attained through the teaching of individual university subjects), they teach procedures intended to give the students a demonstration of how, with the possession of sufficient knowledge, they can practice the legal profession. Thus, basing on the knowledge already at hand, the legal clinic program teaches students what university studies do not teach or teach insufficiently. One of the greatest advantages of legal clinics is that they demonstrate to students the meaning of responsibility for one's own words, i.e. for the legal advice given. They no longer consider made up legal case studies of Mr. X finding himself in situation Y, but a living person of a distinct economic and social status who confides to the student their real problems, and whose fate may be influenced by the student's advice. Thus the student takes responsibility for the vital matter of another person. Now, it is not a grade that the student risks but their clear conscience and the feeling of responsibility for someone's fate. It is one of the objectives of clinical education to teach students to be fair, so to speak, to the knowledge they acquired and to their conscience. Previously, the first time a student ever practiced their profession was during the apprenticeship. Now, the student learns the meaning of legal ethics during the course of their university studies.

There is yet another argument which speaks for the introduction of the teaching of legal advising during the course of university studies. Often a student's vision of the legal profession stems from a better or worse movie, a book or television footage from a court of law, and they base their vision of themselves in a violet, red or green-rimmed robe on such impressions. It is only during the legal apprenticeship that they realize what it actually means, and only then does the realization dawn on them that things were supposed to be different. It is the contact with a client, at times a troublesome, poor, helpless, wronged client, whose ill fate makes them unfair in their judgments, makes the future lawyer realize what it really means to be a judge, a prosecutor or an attorney. It is through contacts with clients that students realize what their talents are and what prospects for a professional career they have. Often the experience of legal clinics helps the students realize what it is that they would like to do, and how emotionally resistant they are, thus possibly saving them unnecessary disappointments in the future.

One final purpose we would hope to serve by introducing legal clinics into the legal educational system is to show future lawyers the amount of satisfaction that can be drawn from unselfish assistance lent to people in need. Legal clinics are not just the learning of a profession or the application of law. They are also a school of life, at times miserable and brutal, with a face so much different from that of a wealthy, well-educated and cultivated client stepping into an elegant law firm office. The satisfaction derived from offering help, hope or just an expression of interest, are often more valuable than any financial remuneration. I am sure that letters from clients containing touching expressions of gratefulness and recognition to students for their efforts in attending to a client's case will constitute a great value to the young people at the onset of their legal career. A value that may influence all of their future professional life.

To operate the legal clinics program costs money. The securing of financial resources to cover these costs is probably the most difficult of tasks that the program managers face. It would be most unfortunate if this aspect hindered the further development of this activity. Speaking quite bluntly: this product is well worth the price.

## CHAPTER ONE – THE AIM OF LEGAL CLINICS

### 1.1. The social aspect of legal clinics (Łukasz Bojarski, the Legal Clinics Foundation Council Chairman, Helsinki Foundation for Human Rights)

*Democratic equality before the law is seriously threatened by the fact that legal assistance may only be purchased at a market price. Dubious is the value of rights and claims that cannot be exercised. Therefore, free of charge or inexpensive legal advice is clearly a democratic necessity.*

*Czesław Znamierowski<sup>1</sup>*

Two of the objectives of legal clinics ought to be distinguished: the educational<sup>2</sup> and the social<sup>3</sup> one. The latter objective consists in the clinics' delivering legal assistance to persons who require such service but can not afford to pay for it. The notes that follow refer largely to the aspect of legal clinics that consists in delivering assistance. The standards relating to the right to legal counsel shall be presented in short. An answer to the question whether legal assistance is sufficiently available in Poland shall also be outlined. A map of institutions delivering legal assistance in Poland shall be sketched, and serve as a backdrop for presenting legal clinics, the role they currently play and the role they can and should play in the future.

#### 1.1.1. Introduction

Independently of efforts to raise a society's legal awareness at a time when law is omnipresent, complex and in constant evolution, availability of professional legal assistance is often a **prerequisite for the exercising of civil rights**.

The issue of legal assistance has not been publicly debated or researched in Poland over the past ten years. Recently the situation has slowly changed<sup>4</sup>. The provision of legal assistance in the

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<sup>1</sup> C. Znamierowski, *Poradnie prawnicze [in:] O naprawie studiów prawniczych*, Warsaw 1938, p. 95, reprint of article published in "Gazeta Polska", October 4, 1936., see full text p. 30.

<sup>2</sup> See below p.33.

<sup>3</sup> Ibid. and: M. Szewczyk, *Idea uniwersyteckich poradni prawnych*, "Klinika. Czasopismo Uniwersyteckiej Poradni Prawnej UJ" issue 1/1999; E. Rekosh, K.A. Buchko, V. Terzieva, *Pursuing the Public Interest. A Handbook for Legal Professionals and Activists*, Public Interest Law Initiative, 2001 (hereinafter: *Pursuing the Public Interest...*), chapter Clinical Legal Education: Forming the Next Generation of Lawyers, p. 257 and following.

<sup>4</sup> The research and actions undertaken by the Helsinki Foundation for Human Rights were the first attempt to analyze the issue of accessibility of legal assistance, in particular of the free of charge legal assistance; see Ł. Bojarski, *Dostępność nieodpłatnej pomocy prawnej. Raport z monitoringu*, Warsaw 2003 (hereinafter: *Dostępność...*), also available on the Internet from [www.hfhrpol.waw.pl](http://www.hfhrpol.waw.pl) in the Publikacje section.

judicial and administrative procedures<sup>5</sup> has been reformed, some actions have been undertaken by the Ministry of Justice<sup>6</sup>, the Bar has appointed a working team, and the issues are close to the heart of the Ombudsman<sup>7</sup>. Also, the nongovernmental sector has attempted to comprehensively and strategically approach the issues of legal assistance – one should mention here the programs of the Helsinki Foundation for Human Rights<sup>8</sup>, the Stefan Batory Foundation<sup>9</sup>, the "Citizen And Law" program of the Freedom Foundation<sup>10</sup>, the coordinating efforts of the Union of Citizen Advice Bureaux<sup>11</sup>, the Nongovernmental Advisory Platform<sup>12</sup>, the work of legal clinics and the Legal Clinics Foundation<sup>13</sup>.

Let us be hopeful that all these actions engaging the appropriate institutions will trigger a serious public debate on the existing system of access to legal assistance and the need for its reform. It would be worthwhile if all the people active in this field were aware of the efforts undertaken by others. It is also important that a platform of cooperation or at least a platform for information exchange is created so that all can make use of the cumulated knowledge and experience. This should lead to the necessary reforms and to the creation of a coherent and effective model of legal assistance for the entire country. It is important that the legal clinic community be involved – on the one hand, by sharing its experience, on the other, by determining its role and position on the map of institutions that deliver legal assistance.

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<sup>5</sup> New regulations are in force since January 1, 2004, see also: *ibid.*, p. 157.

<sup>6</sup> The Civil Law Codifying Committee concerns itself with the issue of court fees (amendments were drafted to the law on court fees, available at: [www.ms.gov.pl](http://www.ms.gov.pl) and social welfare – for the time being from the point of view of the directive of the EU Council on court-appointed legal assistance in cross-border litigation (Council Directive 2002/8/WE to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, *Journal of Laws WE L 026* of January 31, 2003 pages 41-47); the Ministry is also carrying out a twinning project within the framework of the EU PHARE fund together with the French Ministry of Justice relating to legal assistance and information supplied to citizens.

<sup>7</sup> This is reflected, among other, in the establishment of cooperation between the office of the Ombudsman with legal clinics, office of citizen advice, the education and informational activities (for example the placement on the Internet site of 50 guidebooks on how to behave in concrete situations), see: [www.brpo.gov.pl](http://www.brpo.gov.pl) and below p.108.

<sup>8</sup> See footnote 3.

<sup>9</sup> See [www.batory.org.pl](http://www.batory.org.pl).

<sup>10</sup> See [www.pafw.pl](http://www.pafw.pl); a program administered by the Institute of Public Affairs.

<sup>11</sup> See [www.zbpo.org.pl](http://www.zbpo.org.pl).

<sup>12</sup> See [www.platformaporadnicza.ngo.pl](http://www.platformaporadnicza.ngo.pl).

<sup>13</sup> See [www.fupp.org.pl](http://www.fupp.org.pl).

### 1.1.2. The right to legal assistance – the international standards

Is the right to legal assistance a human right? Is it guaranteed by the Constitution and the provisions of international law? Do norms exist that would oblige the state to provide its citizens with at least a minimal standard of legal assistance and what would that standard be?<sup>14</sup>

The **Universal Declaration of Human Rights**<sup>15</sup> provides that “all are equal before the law and are entitled without any discrimination to equal protection of the law” (article 7), it also formulates the right to fair trial (article 10). The document does not envisage any obligation of provision of legal assistance, however it does emphasize that everyone is entitled to all the rights and freedoms envisaged by the Declaration without discrimination of any kind (article 2) – including that of property. Can one speak of equality before law, of equal legal protection, of equal right to fair trial in case of people who, due to lack of means, can not take advantage of legal assistance? Is the lack of access to such assistance not an act of discrimination against the poor?

A further document of the United Nations – the **International Covenant on Civil and Political Rights**<sup>16</sup> - similarly to the Universal Declaration, guarantees to all the right to fair trial “In the determination of any criminal charge against him, or of his rights and obligations in a suit at law” (article 14). It also prohibits discrimination of any kind (including against financial status) in the execution of rights recognized by the Covenant (article 2). The Covenant also formulates the right to defense in criminal charges “in person or through legal assistance of his own choosing.”

Legal assistance should be assigned, where the interest of justice so requires, to all who do not have defense counsel and can not afford such counsel (article 14.3.d.).

The **European Convention on Human Rights**<sup>17</sup> which is binding and enforceable, formulates the right of all charged with an offence to legal assistance – through defense counsel of their own choosing or assigned counsel if they have not sufficient means to pay for legal assistance or “if the interests of justice so require” (article 6.3.c.). What are the situations in which the “interests of justice” require legal counsel to be assigned?

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<sup>14</sup> Cf. H. Brayne, Is legal aid a human right?, “The Law Society Gazette” January 25, 1989.

<sup>15</sup> The United Nations General Assembly Resolution 217 A (III) passed and proclaimed on December 10, 1948, translation into the Polish language is available at [www.hfhrpol.waw.pl](http://www.hfhrpol.waw.pl).

<sup>16</sup> Open for signing on December 16, 1966 in New York, translation into the Polish language is available at [www.hfhrpol.waw.pl](http://www.hfhrpol.waw.pl).

<sup>17</sup> Convention for Protection of Human Rights and Fundamental Freedoms, passed on November 4, 1950 in Rome, translation into Polish is available at [www.hfhrpol.waw.pl](http://www.hfhrpol.waw.pl).

The European Court of Human Rights in Strasbourg has pointed out a number of elements which should be taken into consideration beside the lack of financial means: incapability of the accused that would render impossible or hinder their own defense; factual or legal complexity of the case; severity of punishment involving the probability of imprisonment (this refers to the threat itself of such punishment)<sup>18</sup>. The Court may therefore rule that a country infringed the Convention by not providing assigned defense counsel to an accused deprived of financial means when one criterion or more of the mentioned “interests of justice” have occurred.

The Convention does not refer to legal assistance other than in criminal charges. It also guarantees the “right to trial” – a fair hearing of the case by a court to determine civil rights and obligations<sup>19</sup>, and secures the enjoyment of rights set forth in the Convention without discrimination on any ground, including property (article 14). By means of interpretation, the Court derived the “right to trial” in civil cases – the state is obliged to provide legal assistance in civil cases if it is necessary to guarantee effective access to trial in view of the obligatory representation by a defense attorney or due to procedural complexity, or the complexity of the case<sup>20</sup>. Although the above criteria set out by the Court give ground for conclusions of a general nature, the decision whether assigned legal assistance is necessary in a given case is dependent on the evaluation of each case separately. The Convention and the Court leave it up to the signatory states to determine their internal system of provision of legal assistance to persons without means.

It is the **European Union Charter of Fundamental Rights**<sup>21</sup> that speaks of the right to legal assistance most directly. It states that "everyone shall have the possibility of being advised, defended and represented" and that "legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice" (articles 47.2.,3.). Nevertheless, the possible mechanism of enforcing the rights provided for by the Charter (should it become binding at the moment of passing the European Constitution) shall refer to relations between countries, not the countries' policies toward their citizens.

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<sup>18</sup> Appropriate ruling of the European Court of Human Rights see: L. Bojarski, op.cit., p. 129-130, 280-283, and Access to Justice in Central and Eastern Europe. Source Book, Public Interest Law Initiative and others, 2003 (hereinafter: *Access to Justice...*), p. 160 and following, cf. M. A. Nowicki, Europejski Trybunał Praw Człowieka: orzecznictwo. T. 1 – Prawo do rzetelnego procesu sądowego, Warsaw 2001.

<sup>19</sup> Art. 6.1 of the Convention. It is worth emphasizing that the expression “civil rights and obligations” in autonomous in the Convention, it may therefore refer to issues regulated in Poland by the administrative law, for example.

<sup>20</sup> The Airey v. Ireland case, ruling of October 9, 1979.

<sup>21</sup> Translation of the Charter into the Polish language available from [www.hfhrpol.waw.pl](http://www.hfhrpol.waw.pl).

The European Union Council directive concerning the minimal common rules for *ex officio* legal assistance in cross-border disputes<sup>22</sup> is similar in character. It stipulates that all persons involved in a civil dispute have the right to adequate legal assistance *ex officio* if they can not afford to otherwise exercise their rights before a court. This assistance embraces both the legal advice rendered before the trial and the right to legal representation during the trial (article 3). However, this provision refers exclusively to cross-border disputes, it is therefore possible and probable that citizens of the European Union will have better access to legal assistance in Poland than Polish citizens.

How a **legal assistance system is organized** is considered an internal matter of the country in question, and various models thereof exist in the world and in the European practice. Next to the *ex officio* defense and representation model (applicable in Poland, where the duty of attending to *ex officio* cases is extended onto all members of the legal corporation), there exists for example the institution of "professional" *ex officio* lawyers (employed by institutions that render services exclusively to the poor, for example the Public Attorney Office). Corps of lawyers are also created who conclude contracts to run individual *ex officio* cases (*judicare*) or a larger number thereof, for example in a given jurisdiction and time (contracting, franchising)<sup>23</sup>. Insurance systems also exist (legal insurance schemes) – after accessing a program and payment of premium, the insured is entitled to obtaining legal assistance up to a given value of the lawyers' fee.

Various types of legal clinics exist – not only those operating at universities, but also clinics for graduates and practicing lawyers. Sometimes legal assistance is extended to the poor within *pro publico bono* work – unbilled work of lawyers, either voluntary or ensuing from the ethical obligation to work a quota of hours *pro publico bono* every year. Finally, there exist networks of information offices, where applications for court-assigned legal representation may be submitted (usually an application includes a detailed financial status questionnaire, and the assignment of free of charge or partly free of charge legal assistance depends on a person's yearly income), and where straightforward legal advice is supplied in cases that do not require court ruling. Across the world independent institutions operate – councils, and committees for legal assistance, which administer the system of provision of legal assistance, research its effectiveness, create standards for the provision of assistance, conclude contracts with individual lawyers or companies for the provision of legal assistance to the poor.

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<sup>22</sup> “Where the party applying for legal aid [...] is domiciled or habitually resident in Member State other than the Member State where the court is sitting or where the decision is to be enforced”, art. 2.1. of the Council Directive 2002/8/EC.

<sup>23</sup> See more on various types of legal assistances in: *Access to Justice...*; cf. Ł. Bojarski, Czy instytucja obrony z urzędu wymaga zmian, “Palestra” Issue 5-6/1999, p. 52 and following.

### 1.1.3. Legal assistance in Poland – the law and the practice

What is the situation like in Poland – not only in view of the law, but also in practice? The Constitution **guarantees defense** to all under criminal proceedings (article 42.2)<sup>24</sup>. This provision refers to, among others, the right to choose the defense attorney or to apply for an attorney for the defense to be assigned *ex officio*. The Constitution does not provide for legal assistance in cases other than criminal. Detailed regulations are found in Laws that govern particular court procedures.

**In criminal proceedings** the law envisages that the accused who cannot afford to hire an attorney may apply to the court for a defense attorney to be assigned<sup>25</sup>. At doing so, the accused must "expressly" demonstrate that they "are unable to pay for their defense without detriment to their ability to provide for themselves or their family"<sup>26</sup>. What does it mean to demonstrate expressly? What kind of information needs to be contained in the application? What should be documented, and how? What criteria does the court apply to judge over such applications? Regrettably, none of these questions can be answered unequivocally as the regulations are imprecise and the practice varies across the country<sup>27</sup>.

**Within civil proceedings** the assignment of an *ex officio* attorney (an advocate or an adviser) depends on prior total or partial exemption from court fees. In order to be granted such exemption a statement needs to be filed specifying the state of the family, property and income<sup>28</sup>, additionally the court may order an investigation<sup>29</sup>. The state of the family and property need to be properly documented, which means that a statement needs to be accompanied by appropriate proof<sup>30</sup>. The regulations are therefore far more detailed than in case of criminal proceedings, but they too lack clear and objective criteria, which would be helpful in making a decision, there is no "wealth questionnaire" that would facilitate the application, and here too court practices vary.

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<sup>24</sup> Polish Constitution of April 2, 1997, Journal of Laws No. 78, item 483.

<sup>25</sup> This also applies to others persons who are a party to criminal proceedings (auxiliary prosecutor, private prosecutor, claimant in criminal proceedings). This is inferred only indirectly from the regulations (a number of regulations need to be interpreted) and often victims of crimes are not aware that they may, similarly to the accused, apply for legal assistance *ex officio*.

<sup>26</sup> Art. 78 § 1 of the Law of June 6, 1997 the criminal proceedings code (Journal of Laws No. 89, item 555 as amended).

<sup>27</sup> For more see L. Bojarski, *Dostępność...*, p. 130 and following.

<sup>28</sup> Art. 113 § 1 of the Law of November 17, 1964 the civil proceedings code (Journal of Laws No. 43, item 296 as amended).

<sup>29</sup> Art. 116 § 1 of the civil proceedings code and § 127 par. 2 of the internal procedural regulations of common courts of law (decree of the Minister of Justice of November 19, 1987 (Journal of Laws No. 38, item 218 as amended).

<sup>30</sup> § 127 of the internal procedural regulations of common courts of law.



The application for the assignment of an *ex officio* attorney is granted by the court to a person exempted from fees if "the participation of an attorney is deemed necessary." The criteria that need to be taken into consideration are the factual and/or legal complexity of the case, incapability of the applying party, equality of parties (when the other party is professionally represented). These criteria however are not precise and in each case the decision depends on the assessment of the judge, most often the judge presiding over the case. In civil proceedings, as opposed to criminal proceedings, the refusal to exempt from court fees and assign *ex officio* representation may be appealed against.

Since 2004 a new system of free of charge legal assistance has been in force in the **court-administrative proceedings**<sup>31</sup>. A motion to exempt from court fees and to assign *ex officio* representation (a tax adviser or patent agent beside an advocate and legal adviser) is submitted on a form containing detailed questions relating to the state of family, property and income<sup>32</sup>. The application may be considered by a court clerk and their decision may be protested to the court, in turn a complaint may be lodged against a court's decision. Practice will shape the criteria for evaluating such motions, yet among the three types of proceedings the court-administrative proceedings is the most detailed<sup>33</sup> and holds the greatest hopes for creating a clear set of criteria for court decision making, and may result in the establishment of uniform practice across the country, which shall be aided by the entitlement to lodging complaints against court decisions<sup>34</sup>. No provisions exist for *ex officio* legal assistance within administrative proceedings before the court stage.

To sum up this short presentation of legislation, one may come to the conclusion that apart from the new court-administrative regulations our legislation defining the right of access to free of charge legal assistance is general and imprecise, which results in the lack of clear evaluation criteria and a practice that varies across the country. Furthermore, it only embraces the court stage of proceedings, thus failing to secure provision of legal assistance in cases where court proceedings do not occur and need not occur. It is true that an *ex officio* attorney may, for

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<sup>31</sup> Regulated by a separate section of the Law on proceedings before administrative courts – the Law on assistance, articles 243-263 of the Law of August 30, 2002 (Journal of Laws No. 153, item 1270 as amended).

<sup>32</sup> See appendices 1 and 2 to the decree of the Council of Ministers of December 16, 2003 on the standard form and procedures for making available motion forms to grant the right to assistance in proceedings before administrative courts and the standards for documenting property status, income and family status of the applying party (Journal of Laws No. 227, item 2245).

<sup>33</sup> The instructions attached to the form are scant and surely it will be difficult for many to fill it out.

<sup>34</sup> Forms suggest that the legislator chose the formula of "free" statement of the applying party on their property, income, etc. However, the information on the type of documents that may serve to prove the financial status presented in the form – if only in cases that raise doubts – is included not in the form itself or the instruction thereto, but in the decree of the Council of Ministers.

example, convince a party to resign from submitting their case to the court, however in essence *ex officio* attorneys are employed at the court stage of proceedings only.

What is the **practice** of accessibility to *ex officio* attorneys? It is not easy to answer this question directly and explicitly. Research conducted by the Helsinki Foundation for Human Rights suggest that the practical availability is significantly limited<sup>35</sup>.

Most often *ex officio* assistance is granted **in criminal cases** – largely due to the need to assign a defence attorney in cases for which such representation is obligatory. And yet many people who can not afford to hire an attorney are still convicted without defense. Many of them are sentenced to imprisonment, which is a clear violation of the standards resulting from the jurisprudence of the Court in Strasbourg.

In **civil cases** the situation is even worse – the comparison of the number of cases submitted to courts with the number of *ex officio* cases reported by attorneys and legal advisers proves that this kind of representation applies to a fraction of one percent of all cases. For a number of reasons, *ex officio* representation is a rarity among non-criminal cases<sup>36</sup>. These cases constitute too great a burden to lawyers (mainly advocates, of whom the numbers are not excessive). Many judges are reluctant to grant *ex officio* representation due to the lack of funds in court budgets, lack of faith in its professionalism or, finally, their conviction that a case will be easier to work through without an attorney for the defense.

On the other hand, only time will show the real availability of legal assistance in **court-administrative** proceedings in view of the new regulations.

#### 1.1.4. Legal clinics on the map of legal assistance in Poland

In Poland it is possible to obtain legal assistance or "citizen" advice other than *ex officio* legal assistance granted by the court and provided by professional attorneys or legal advisers<sup>37</sup>.

In civil proceedings<sup>38</sup> the court may act *ex officio* to instruct persons without legal representation. This procedure however lacks detailed standards and its practice varies across the country.

In some cases legal assistance may be obtained from the public prosecutor's office, however this service constitutes only a marginal part of the duties of this heavily burdened institution.

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<sup>35</sup> Ł. Bojarski, *Dostępność..., passim*.

<sup>36</sup> For more see: Ł. Bojarski, *Dostępność..., passim*.

<sup>37</sup> For more detail cf. *ibid.*, part VIII, Dodatkowe możliwości uzyskania pomocy prawnej.

<sup>38</sup> Art. 5 of the civil proceedings code.

Information and advice is provided by the Office of the Ombudsman, as well as consumer rights protection institutions and organizations. To a limited degree legal assistance is provided by regional family assistance centers, however these centers focus their efforts on humanitarian aid.

Finally, hundreds of nongovernmental organizations exist across the country, which among other activities provide legal advice services to a greater or lesser extent. A network of citizen advice offices exists as well as many specialized organizations of varied territorial reach. Advice is provided by media which sometimes reserve space for legal advice sections or invite viewers to call in for advice from legal experts on duty, legal assistance is also supplied by offices of members of parliament and senate, labor unions, some parishes. Legal websites exist, however they still are not a popular means of obtaining legal advice.

The experience of many of the above mentioned organizations shows that the citizen demand for information and legal assistance is immense. Each organization must make choices, as none of them will single-handedly help every person in need.

**What conclusion should legal clinics and students who practice in those clinics draw from this state of affairs?**

First of all the assistance provided by students within the framework of legal clinics is very much needed. Although the primary reason for the existence of legal clinics is their educational aspect, it must be emphasized that in the Polish context particularly **the social role of legal clinics is not to be underappreciated**. It is undoubted that the society needs the students' assistance. The scale of such assistance is large and growing. Professional attorneys and legal advisers report of a total of approximately 12 thousand *ex officio* cases that are attended to beside criminal cases<sup>39</sup>. To compare this number with the over five thousand cases attended to by legal clinics in the year 2003 (a number that is growing every year) gives an indication of the social impact of the assistance provided by students. Clinic will most probably continue to play a significant role on the market for legal advice services for the indigent. Until a coherent and comprehensive legal assistance system is constructed in Poland, and until the number of lawyers in legal corporations increases significantly, the social aspect of the legal clinics' operations will continue to be of great importance.

It must however be not forgotten that the obligation to provide legal assistance to the poor rests on the state. Over time, assuming that the state undertakes to scrupulously fulfill its obligations to indigent people, the social aspect of the legal clinics work will fade and clinical programs will focus on educational objectives.

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<sup>39</sup> As of the year 2002, see Ł. Bojarski, *Dostępność...*, p. 52 and following.

**The fact that legal clinics are *de facto* a significant element of system to provide legal assistance to the indigent should be appreciated by the state authorities.** In the process of creating new system solutions the authorities should consider to sanction legal clinics and enable them to represent their clients to a fuller extent, for example through granting them the right to represent their clients in selected procedures before a court, which is envisaged by the draft law on legal clinics prepared by the Legal Clinics Foundation. State financial support to legal clinics should also be postulated. A state obliged to finance legal assistance to the poor should appreciate the efforts of the academic community and the very real cost-saving it brings to the state budget.

From the very beginning of their existence legal clinics made use of mostly their own financial resources and, to a limited extent, that of private funds – subsidies from a number of foundations<sup>40</sup>, however this support has decreased significantly. International experience, mainly American, shows that it takes years for the legal clinics to take root in the university structures<sup>41</sup>. The competition between university law faculties and the competition from private law schools is only starting in Poland, it is however bound to result in the legal clinics' upkeep being fully taken over by the universities. It should not however be permitted that the number of legal clinics be limited due to lack of financial resources, particularly that the financing needed to keep up the operations of a clinic is not large as students receive no compensation for their work (the overheads are mostly related to the employment of one non-student administration staff and the cost of equipping the office and purchasing office materials). A little financial support from the state, in the amount of a few tens of thousand Polish zloty per year per clinic, depending on the clinic's size, would suffice to secure a relative sense of stability. This would, nevertheless, mean significant saving compared to the cost of legal assistance to the poor incurred by the state, and effected through attorneys and legal advisers<sup>42</sup>.

The best interest of the society would also seem to require **cooperation between clinics and the coordination of their works by the Legal Clinics Foundation.** Such cooperation would mean that detailed statistics prepared by each clinic could be collected and compiled to assist in determining the scale of social demand for legal services and the spheres of life where the

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<sup>40</sup> Mainly the Ford Foundation, the Open Society Institute, the Stefan Batory Foundation.

<sup>41</sup> See for example R. Wilson, *Clinical Legal Education as a Means to Improve Access to Justice in Developing and Newly Democratic Countries* (1996), available from [www.pili.org](http://www.pili.org).

<sup>42</sup> If legal clinics provide assistance to 5,000 people every year, and estimating roughly that the assistance in one case is worth 300 PLN (and the fees for *ex officio* representation are certainly higher), the total value of these services amounts to 1.5 million. A part of this sum could be used by the state to provide financial support to the legal clinics. Since the total cost of *ex officio* legal assistance incurred by the state amounted to 63 million PLN in the year 2002, the expenditure would only be small, and yet have great social effect.

greatest deficiencies occur. Such information could be instrumental in the undertaking of necessary reforms by appropriate institutions. The Ombudsman has already shown appreciation for the role of legal clinics by establishing formal cooperation with the movement. The Ombudsman makes use of studies and reports prepared by the clinics and takes up some of the cases prepared by the students working in the clinics. This cooperation also resulted in the clinics' creating a number of citizen informational materials concerning legal matters<sup>43</sup>. It would seem worth mentioning that the provision of such information is also an obligation of the state, although sadly, for the time being, it is an obligation insufficiently met by the responsible institutions.

Yet another socially significant aspect of legal clinics work is the formation of **attitudes of students** – future lawyers<sup>44</sup>. Delivering legal assistance to the indigent develops the students' compassion for social needs, allows them to learn the often dramatic personal and legal problems of citizens, to come in contact with injustice or the heartlessness of procedures and institutions. This kind of experience may and often does result in an attitude of openness to social needs after completion of the educational process. Regardless of the choice of professional career made by the legal clinics' students – whether within legal corporations or state institutions – their awakened sensitivity and compassion for the hardship of socially marginalized groups will "civilize" the law and its practice.

After completion of studies some of the graduates of legal clinics continue the mission initiated therein by working for the numerous nongovernmental organizations that deliver assistance and legal advice (as is the case of a few lawyers employed with the Helsinki Foundation for Human Rights) or in the office of the Ombudsman<sup>45</sup>.

As signaled in the introduction, Poland has recently seen the beginning of a public debate on the legal assistance delivery system. Let us be hopeful that it will result in the creation of a coherent and comprehensive model for pre-court and in-court legal advice and assistance to the poor – perhaps beside the institution of *ex officio* attorneys it will be possible to create a network of district and commune advice centers<sup>46</sup>. Such solutions would bring about new work places for graduates of law. Many cases, particularly at the pre-court stage, do not require the involvement

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<sup>43</sup> They are available at the website of the Ombudsman [www.brpo.gov.pl](http://www.brpo.gov.pl) in the "e-poradniki" section.

<sup>44</sup> See L. Bojarski, Zapomniany etos prawnika, "Klinika. Czasopismo Uniwersyteckiej Poradni Prawnej UJ", Issue 1(2)/2000.

<sup>45</sup> On the influence of clinical work on future legal career see: S. Golub, Forging the Future: Engaging Law Students and Young Lawyers in Public Service, Human Rights, and Poverty Alleviation (2004), An Open Society Justice Initiative Issues Paper, available from [www.justiceinitiative.org/publications](http://www.justiceinitiative.org/publications).

<sup>46</sup> For more on this issue see: L. Bojarski, *Dostępność...*, p. 165 and following, p. 251.

of an attorney or a legal adviser. In a well-organized and professionally-managed system of advice and legal assistance centers advice could be delivered by appropriately trained lawyers who would know which cases require the services of a professional attorney and which do not. Therefore, the participation of students in the works of legal clinics could also serve as excellent training ground for them to undertake such a role in the future.

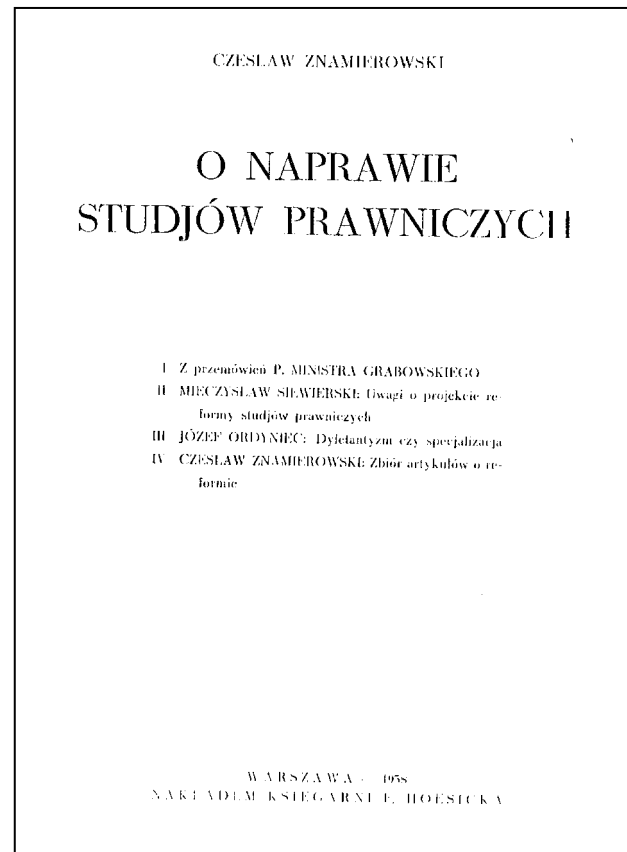
**Czesław Znamierowski**

## **LEGAL CLINICS<sup>47</sup>**

It is generally known that the Polish justice system is far from perfect. It is a conclusion one may draw from reviewing the jurisprudence of our courts and the decisions of the public prosecutor's offices to remit criminal proceedings. Such a review will provide us with a peculiar, yet vividly colored picture. It will not however be a picture that would do justice to the number of just claims and rights that linger unfulfilled in accordance with the letter of law, and to the number of barefaced violations of norms that

remain unpunished. Many legal conflicts fail to enter the sphere of the court system. Crimes remain undisclosed, civil claims never reach the instance of the court. For it is true that efficient justice systems require not only unfading diligence of the courts, but also an active and tireless sense of justice with the citizens. It is also essential that the citizens know which paths will lead them to justice and the assertion of their rights. To this effect an average citizen will require legal assistance: advice and recommendation of an expert of law and, in most cases, the cooperation of such an expert of law within a legal proceeding.

This very expert of law and a professional adviser, an attorney, puts his knowledge to the service of others against remuneration. An obvious fact of life: his services require effort, and every useful effort comes at a market price. Sadly, not every citizen can afford such a price, which



<sup>47</sup> A text published in "Gazeta Polska" on October 4, 1936, the above text was taken from the collection O naprawie studiów prawniczych, published by Wydawnictwo F. Hoesika in 1938.

deprives such people of legal assistance. When wrong is done against them they know not what actions to undertake and allow their most undisputed of claims to wane away. Alternately, they undertake common sense actions and due to some procedural error divest themselves of their claims at one stage of the proceeding or other, and at far greater an expense.

The democratic equality before the law is threatened by the very fact that legal assistance may be purchase at a market price only. Doubtful is the value of unenforceable rights and claims. Therefore, the provision of modestly-priced or altogether free of charge legal assistance is a clear democratic necessity. Such assistance has indeed been envisaged by the Polish legislation, as is the case elsewhere, in a way that people who acquired the indigent status are assigned an attorney for the defense by the court (in criminal cases) or by the bar chamber (in civil cases).

The duty of *ex officio* defense rests on all attorneys who, it must be said clearly, perceive it as a truly burdensome social servitude. And therefore it may not be said that this duty is fulfilled eagerly. Only recently have I come across a case where an assigned attorney failed to turn up at court three times in a row, without providing his forced client with even a hint of an explanation. Of these "cases of the poor" one may speak at length, and those in search of ideas for doctoral dissertation would find this an exhilarating ground of research.

This forced legal assistance may easily be replaced by a straightforward institution the idea of which may be derived from medical studies. There is a truly comical and at the same time sad analogy between a lawsuit and an illness. They are similar in that they befall not exclusively on those who can effortlessly afford help. This very analogy draws our attention to legal clinics and outpatients' clinics as a model for organizing inexpensive and gratuitous legal assistance.

A legal clinic associated with a university law faculty may play a role similar to that of a medical clinic. It is quite clear that it may serve an expert's function. If it is assumed, that the organization of a law faculty meets the obvious postulate of maximum competence, then a simple conclusion may be drawn in that the professors of the respective sections of legal systematics are the most competent experts in criminal, civil and administrative disputes. Very much like professors of medicine who should be the highest authority in diagnosing and treating illnesses. Failing that would be a testament to the faultiness of the teaching staff selection process, since the most competent would linger outside the organization which is called to congregate competence of the highest order.

As for the in-court defense function there also should be no doubts. The present laws grant professors powers of defense which would seem more of a privilege than merely a right. Therefore, since the law and the moral opinion allow them to act in the role of attorney for the

defense on the grounds of a private contract and against remuneration, there is no impediment for them to act in that same role on the grounds of their high academic function and gratuitously.

Quite evidently, professors would only exercise a managerial role in legal clinics. They would diagnose only the most legally complex of cases, and would come before the court only in cases of particular importance. Most of the cases would be retained in the hands of the legal clinics' assistants, again quite similarly to medical clinics. These assistants, people only half-way through their academic and practical career, yet already holding license and experience of defense, would fulfill two functions. Firstly, in the presence and with the participation of students they would assess cases filed with the clinic. Secondly, they would supervise the first steps of senior students who would be assigned the simplest of cases.

Legal clinics are needed not only, and surely not foremostly, as a philanthropic institution. It is indispensable as an educational means, its function being that of introducing bustling life within the walls of the university, make it subject to academic research and turn it into the building material of a social construction teeming with a sense of responsibility and practical significance. It is quite impossible to study the science of medicine exclusively in museums of pathologic anatomy. It is also impossible to learn the art of navigating legal and social life from the dead letter of a scientific treatise, or for that matter from the practice of ruminating records extracted from court archives. The young apprentice of law must fence with real-life cases. They must see in them an unconfined perspective into the future and clearly realize the broad margin of possibilities that present themselves before those who make decisions with a sense of responsibility. Modeling cannot be taught on frozen casts, nor can the ability and the joy of action be instilled without soft clay in one's hands.

But these clinics are needed not only as a teaching tool. They are indispensable as a means or instrument of scientific research to the professor and to the entire research team that surrounds him, or indeed should surround him. They too are subject to the general laws of creativity and life. Anyone who should attempt to break free of these laws will quickly lose their sense of reality. I would be inclined to use this to explain why jurisprudence so easily enters the domain of intellectual teratology. And yet, the legal science should be something quite different from the magical conjuration of intellectual monsters.

I am most grateful to the legal youth for showing maturity in acknowledging my modest and simple concept and thrusting legal clinics into a prominent position within their "draft reform of studies." I am happy that they understood the intentions from which my simple thoughts on the reform of studies stem and that they share with me the desire to attire the legal profession in the majesty of dignity, and bestow on it the great and matchless joy of a job well done.



## **1.2. Clinical education and the university mission (Leah Wortham and Catherine Klein, The Catholic University of America in Washington)**

University crests the world over repeat similar words in varying combinations. Their emblems speak of seeking truth, bringing light, furthering learning, enhancing knowledge, serving society, and pursuing justice. Universities exist to expand and promote knowledge and to educate students in ways that will serve their future lives and the societies in which they live. Universities aspire to more than transferring a body of unchanging content to students and more than producing students proficient in particular tasks. University faculty employ their years of study in a critical perspective on the subject matter they teach and about which they write. Faculty build and test theories about why things are as they are, what consequences flow from those conditions, and what might be predicted from different ways of doing things. Their broad and deep knowledge allows them to provide a cognitive map of a subject for students, but faculty also seek to develop a critical facility such that students can apply, question, and evaluate concepts as well as absorb and retain them.

Legal clinics offer an effective way for law schools to further such goals for the university. While legal clinics provide valuable service to clients, their primary justification within the university's framework is their enhancement of the university's goals of student education, furthering knowledge through research, and service to society through education and scholarly inquiry.

### **1.2.1. Enhanced motivation and ability for students to learn from the law school's curriculum**

When asked what they are gaining in clinics, students the world over usually include in their first comments, "I can apply what I have learned in my classes. I now see what it actually means and how it is useful." Research in psychology and education provides much information on differences in learning styles among people. For some a chance to complement classroom material with experiential learning is crucial to retaining and processing concepts and connections among concepts. Even for those who learn easily in the classroom alone, the experience in using civil or criminal law, civil procedure, and so on in diagnosing a client's problem and offering advice is enormously motivating. Faculty in schools where clinics have been added often

comment, “Now students ask questions. They really want to understand things they have studied.”

In addition to learning and being able to use content more effectively, many students ascend to a new level of commitment and motivation about their studies when they recognize they can do something of use to others with their knowledge, and they gain a greater sense of purpose about the ends to which they might put their law degree. In large lecture classes, students can be passive. In a clinic, each must perform on a daily basis, and students recognize that others depend on that performance.

Clinics also force new connections among things studied. In their classroom studies, students organize their thinking in the subject matter boxes of their classes and the particular exams for which they prepare. Diagnosing a client’s problem and devising and implementing a plan to address it often requires consideration across subject matter domains and integration of substance and procedure. A client may come to a clinic with a problem that he express as one about property, but the students’ analysis may require them to add an administrative law perspective to that of civil law. A student frequently needs to move beyond the most obvious categorization of a client’s problem to a more creative approach.

### **1.2.2. Subject matter complementary to the classroom curriculum**

To perform successfully in the clinic, the students must not only employ the substantive knowledge and research skills gained in the law school but also must acquire proficiencies that have not traditionally been part of the curriculum in many parts of the world. For example, they must consider how to effectively interview and counsel clients. Some clinics in Central Europe and the former Soviet Union have been innovators in reaching out to other faculties in the university for interdisciplinary approaches to teaching students about these and other competencies important to client representation.

Clinical students must do types of writing other than that required for a thesis and consider what makes writing effective for varying audiences. For a single case, a student may need to write a letter to the client in language that someone unsophisticated in the law can understand, to write to an opposing party in persuasive terms, to draft a pleading for a court in a manner both persuasive and in fulfillment of the legal requirements, and to draft a settlement that fairly sets out the terms agreed to by the client and the opposing party.

Students must integrate the facts and law into a case theory that will be coherent and persuasive to those with the power to give the relief the client seeks. They must contemplate the

importance of facts as well as law and consider what sources are available to develop the facts necessary to support the client's position. They must learn to think not only as a judge might in assessing the law but also to write and speak persuasively about the law and its application to facts.

Students must know how to work with a client to clarify the objective sought, make an analysis of the likelihood of success, and counsel the client on alternative courses. Rather than only thinking of a next step, students learn to consider the client's ultimate objective, devise a strategy, measure options along the way against their likelihood of achieving the objective, and consider the deadlines in which work must be completed.

Students must recognize the time, effort, and standards for effective preparation for a court filing, a negotiation, or other events related to achieving the client's objective. They must learn the degree of diligence and effort necessary to do a competent job while also learning to function efficiently so a client's needs can be met in the time frame of real world practice. They must assess difficult questions of when they must go further in legal and factual research in contrast to when it is safe to say one has "enough" to stop and move forward.

Representing clients inevitably raises questions of professional responsibility. What kind of confidentiality can be promised to the client? What practices must be followed to ensure confidentiality obligations are maintained? What practices are observed to prevent impermissible conflicts of interests? What should a student representative do if she believes a client wants to do something that will have bad consequences for the client or for someone else? The bibliography, which follows, includes Leah Wortham's article in *Klinika*, published by Jagiellonian University, on the necessity for and benefits of teaching professional responsibility in clinics. The realities of practice require students to consider application of ethical principles in the applied context of legal ethics, a field of major scholarly inquiry in the United States and some other countries.

### **1.2.3. Cooperative Learning Model**

In addition to employing active rather than passive learning and introducing subject matters complementing those in the curriculum, clinical students must work cooperatively with other students, with faculty, and with practitioner supervisors if they also work in the clinic. In a final evaluation of a faculty workshop for teachers and senior students throughout the region held in Latvia in 2001, some of the most common comments concerned the value in seeing what participants could produce in small groups and learn from each other. One participant commented, "People often are very competitive in this region and feel a constant need to prove

themselves. In working together, we overcame that. We saw how motivating someone saying, ‘Great job’ can be even without thinking of a grade or credit.” Many clinics have students work in pairs, in part, so they will consider questions of how to work cooperatively and realize what can be learned from each other.

Some faculty with years of classroom teaching experience comment on how much they enjoy the more personal contact with students in the clinic and the opportunity to work side-by-side with students as they learn how to solve problems for themselves. Clinics in the region frequently employ senior students as first line supervisors. This helps to make clinic staffing feasible, but it also demonstrates to the supervising student how much is learned by teaching.

#### **1.2.4. A Window to the Operation of Law and the Legal System for Students and Faculty**

Countries in Central Europe are in a period of rapid transition prodded by dramatic political changes, economic forces, globalization, accession to the European Union, and other influences. Much of one legal order was swept aside in the early 1990s, and societies continue to grapple with what new laws and legal processes should replace it. Clinics offer a particular opportunity at this point in time and to societies in flux.

Clinics open a window to how laws and the legal system are functioning for groups of people who otherwise likely would not be a part of the common experience of professors and their students—poor people generally, single mothers struggling to support children, people with disabilities, ethnic minorities, refugees, elderly people trying to live on an inadequate pension, and so on. Legal systems the world over tend to give less care and attention to the problems of the poor and other disempowered groups, and such people usually lack access to well-educated legal advocates to help them press to make the legal system work for them. Through clinic cases, students and faculty see the day-to-day lives of people marginalized by the society, how the law impacts on their lives, and how it serves or fails to serve them. Professors have shown us places in their writings that have been affected by experiences with clinical cases. Students can be inspired to select topics for masters or PhD theses by seeing problems in the law and legal system as it functions for their clients.

While this window to a new perspective is provided by clinics in all countries, the role of faculty in the legal systems of many countries in the civil law tradition offers an additional important dimension. In many civil law countries, university faculties play a more central role in the development of law than that of academics in the United States, in part because of the differing structure of the judiciary and the status of judicial decisions as a source of law. In the

United States, a scholarly work may be cited by a judge in interpreting a statute, refining a common law rule, or assessing constitutional questions, but it is the decisions of appellate judges that have binding effect and are the predominant source on such questions. In contrast, commentaries by civil law professors are an integral part of the assessment and interpretation of codes. Law professors from countries in the civil law tradition serve regularly on important parliamentary and executive commissions and serve terms on constitutional and appellate courts. Heightened awareness of the law's operation for poor people adds another perspective to the subjects of their research, and they often are in positions where that perspective is employed in a context with consequences for the society rather than merely an academic exercise.

### **1.2.5. The University's Special Capacity to Provide a Critical Perspective on Lawyering and Augment Preparation for Legal Professions for Changing Societies**

The educational content and quality of post-graduate apprenticeships vary from country to country. Even in the situations in which the profession devotes considerable resources to tutelage of apprenticeships in practice skills, procedure, and legal ethics, it is difficult for practitioners to look critically at their own day-to-day world.

Most practitioner-taught training programs the world over focus on "This is how we do it here." More rarely do they ask, "What is the consequence of doing it this way—for specific clients, for groups of clients, for the justice system, for the lawyers themselves?" or "Whose interests are served by doing it this way?" Practitioners no doubt sometimes find the time to ask, "How might this be done better?" but the press of day-to-day responsibilities and the need to assure that trainees can at least function minimally often leave little time for even this inquiry. A setting in the university provides some distance and perspective on practice that can stimulate more critical thinking about lawyering as well as the law. When, as they often do, practitioners are also involved in the day-to-day supervision in clinics, this can offer a fruitful three-way exchange of perspective—the advocate with years of experience in the practice, the academic who has spent years considering the theory of the law and aspirations for the justice system, and the student who sees the process with fresh eyes.

The university offers a useful complement to post-graduate apprenticeships in encouraging the theoretical and critical facility of faculty and students in considering the "theoretics of practice" as well as the content of the law. In the U.S., and increasingly in other countries, a considerable body of scholarly literature exists on lawyering—empirical, philosophical, and

normative questions about the way that lawyers do their jobs, their role in the society, and the consequences that flow.

A shift to market-oriented societies emphasizing individual rights increases the demands for law trained people. Existing legal professions that are quite small in comparison to the population by the standard of Western democracies likely cannot meet the demand for all supplementary training in practice through post-graduate apprenticeships. Clinical programs augment the capacity to provide introductions to practice. Clinical programs in Central and Eastern Europe already offer a number of organizational and practice models and have adapted clinical models from abroad to their own circumstances. Partnership among lawyers in private practice, NGOs, and government with universities should continue to evolve in varying models so practitioners and faculty can sort out effective ways to share in producing new lawyers who meet high standards for practice and ethical behavior.

We sometimes hear people discuss clinics as offering practice to complement theory taught in the classroom. We rather think of clinical education as a dynamic integration of theory and practice. Clinical teaching presses the teacher to abstract from the day-to-day of law practice an articulation of models for quality and ethical practice such that the student can think about them. For example, a considerable body of U.S. literature, to which both clinical and classroom teachers have contributed, exists on the question of models of client counseling—whether, how much, and in what way a lawyer’s own values and assessment of the interests of others should be injected in conversations with the client about objectives the client seeks. This literature includes psychological, philosophical, political, and cross-cultural perspectives on this question as well lawyer regulation questions of fiduciary relationship, potential liability of a lawyer for a client’s acts, and when a lawyer might cross a line to become an aider and abettor of criminal or fraudulent conduct.

#### **1.2.6. An Opportunity to Contemplate Values and Jurisprudence**

In working in a clinic, a student is prodded to face more squarely how he wants to use his legal training in his career. He can see the potential of the law but also often will face the limitations of what the law can, and perhaps should, do in particular circumstances.

Law curricula in civil law countries often integrate courses in philosophy and theory of law along with study of particular subject matters. For students to whom such questions may seem abstract, the clinical experience makes concrete and illuminates questions of individual values, the function of law in society, and differing perspectives on law.

Clinical education focuses on questions cutting across legal systems, questions concerning pedagogy, legal ethics, and the potential for lawyers in social change. Subjects in which some clinics work cross borders such as refugee law, trafficking in women and children, and international human rights work, and this offers interesting possibilities for clinics in different countries to work together collaboratively. Many faculty members and students engaged in clinical education have benefited from exchanging ideas with their counterparts in other countries. Despite differences in legal systems and university conditions, such interchange usually reveals a surprising number of similarities in the challenges faced. Seeing the various ways that others approach the client work and teaching of a clinic is a wonderful stimulus for creativity.

Clinics offer valuable opportunities for faculty and students together, often in cooperation with practitioners, to make the aspirations expressed in their ubiquitous crests and mission statements a reality.

### **Further reading**

The following reading list comprises materials available in English (although a few have been translated into other languages). Selections predominantly are from American sources and provide a very limited window to clinical literature developing rapidly in other countries.

### **Annotated Bibliographies**

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J.P. Ogilvy & Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography* (2nd Ed.), Special Issue No. 1, *Clin. L. Rev.* 1 (2001). This bibliography, an earlier edition, and a September 2002 update are all available at: <http://faculty.cua.edu/ogilvy/Index1.htm>

### **Text and Reference Books**

Gary Bellow & Bea Moulton, *The Lawyering Process: Materials for Clinical Instruction in Advocacy* (Foundation: 1978). This book is acknowledged as a ground-breaking work in conceptualizing the clinical legal education method and an analytic and critical perspective on lawyering. Unfortunately, it is no longer in print. A symposium issue of the *Clinical Law*

Review, forthcoming in December 2003, will publish articles, written by authors of other clinical textbooks (included in the list below), which reflect on the Bellow & Moulton book at its twenty-fifth anniversary of publication. This symposium discusses the book's many contributions and some of the things that limited its success as a teaching text.

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Robert F. Cochran, John M.A. DiPippa, & Martha M. Peters, *The Counselor-at-Law: A Collaborative Approach to Client Interviewing and Counseling* (Lexis: 1999).

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*A Handbook on Clinical Legal Education* (N. R. Madhaba Menon, ed.) (Eastern Book: 1998).

J. P. Ogilvy, Leah Wortham & Lisa G. Lerman, *Learning from Practice: A Professional Development Text for Legal Externs* (West: 1998) .

*Pursuing the Public Interest: A Handbook for Legal Professionals and Activists* (Edwin Rekosh, Kyra A. Buchko, and Vessela Terzieva, eds.) (Columbia University: 2001).

*Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development* (American Bar Association: 1992) (commonly referred to as the MacCrate Report).



## **Selected Articles**

Jane H. Aiken, *Provocateurs for Justice*, 7 *Clin. L. Rev.* 287 (2001).

Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 *Yale L. J.* 2107 (1991).

Anthony G. Amsterdam, *Clinical Legal Education – A 21st Century Perspective*, 34 *J. Legal Educ.* 612 (1984).

David Barnhizer, *The University Ideal and Clinical Legal Education*, 35 *N.Y. Sch. L. Rev.* 87 (1990).

Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 *Clin. L. Rev.* 1 (2000).

Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in *Working Papers Prepared for CLEPR National Conference*, Buck Hill Falls, Pennsylvania, June 6-9, 1973, *Clinical Education for the Law Student* 374, 390-94 (1973).

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## CHAPTER TWO – THE DEVELOPMENT OF CLINICAL LEGAL EDUCATION: A GLOBAL PERSPECTIVE – INTERNATIONAL EXPERIENCE, THE HISTORY OF LEGAL CLINICS

Edwin Rekosh<sup>48</sup>, Public Interest Law Initiative, Columbia University

### 2.1. The Beginnings of Clinical Legal Education in Central Europe

In March 1998, I delivered a presentation on “The Possibilities For Clinical Legal Education In Central And Eastern Europe” at a regional conference organized by the Open Society Institute’s Constitutional and Legal Policy Institute in Budapest.<sup>49</sup> My remarks were greeted with interest, but also a significant degree of skepticism. I still remember the dean of one Eastern European law school challenging me immediately after I finished speaking, informing me that clinical legal education might be fine and even necessary in the United States, but that in her country there was simply no need for it because the practicum requirement for all law students would make a clinical program completely redundant. She later became one of the most vociferous proponents of clinical legal education in Central and Eastern Europe.<sup>50</sup>

In spring 1998, clinical legal education, at least in its dominant form – in which students assist with the real legal problems of individual clients – was virtually unknown among Central European law faculties.<sup>51</sup> Poland was the exceptional case, with a then brand-new legal clinic

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<sup>48</sup> The author is the Executive Director of the Public Interest Law Initiative (PILI) of Columbia University. PILI has been supporting the development of clinical legal education in Central and Eastern Europe since its founding in 1997. Much of this article builds on materials that can be found in Edwin Rekosh, Kyra A. Buchko and Vessela Terzieva, *Pursuing the Public Interest: A Handbook for Legal Professionals and Activists* (Public Interest Law Initiative, Columbia Law School 2001), chapter 7.

<sup>49</sup> Edwin Rekosh, “The Possibilities For Clinical Legal Education In Central And Eastern Europe,” delivered at the Law Deans’ Conference on Clinical Legal Education, March 20-21, 1998, Budapest, available at <http://www.pili.org/library/cle/>.

<sup>50</sup> The same person later informed me that after she raised the question with her son, a recent law graduate, she understood the insufficiency of the current practicum system in achieving its intended educational objectives.

<sup>51</sup> This model has come to be known as the “live client clinic,” a somewhat odd sounding term, in the United States. Although the concept was still not widely known in Central Europe in early 1998, there were a number of pioneering efforts, especially in the period 1996 to 1998. The Budapest conference built on a series of prior discussions that had taken place in a variety of prior fora, such as the Symposium on Public Interest Law in Eastern Europe and Russia, sponsored by the Ford Foundation and the Constitutional and Legal Policy Institute and held in Durban, South Africa from June 29 to July 8, 1997. The Symposium exposed participants to South African approaches to public interest law, including clinical legal education: “Workshop participants agreed on the importance of having a clinical course for academic credit in the law curriculum. Such a program should be started with an introductory course on legal aid, followed by tutorial and consultation sessions on the students’ individual cases.” *Symposium Report* (Public Interest Law Initiative, Columbia Law School 1997), pp. 32–34. The concept of clinical legal education had been introduced at the preceding Symposium on Public Interest Law in Eastern Europe and Russia, held in Oxford, England from July 15-20, 1996. See *Report, Symposium on Public Interest Law in Eastern Europe and Russia*, September

already starting to provide services to clients at Jagiellonian University and a second one developing at Warsaw University.<sup>52</sup> An abortive attempt in the mid-1990s by Palacky University in Olomouc, Czech Republic to set up a legal clinic to provide legal services to needy clients had, by this time, come to a close.<sup>53</sup>

Since then, clinical legal education programs has spread rapidly throughout Central and Eastern Europe to well over thirty law schools – and many more if Russia and Ukraine are included.

There are many reasons for the rapid growth of clinical legal education programs in the region, but one of them is that law faculties in Central and Eastern Europe are increasingly operating in crisis mode. Applications are growing in number each year in almost exponential fashion. In many respects, this represents a healthy development for law faculties, but it also puts pressure on them to accept increasing numbers of applicants each year, in turn placing tremendous strain on the existing system of apprenticeship. This not only limits the number of law students that can eventually become members of the bar, it means that for the majority of law students, exposure to the practical side of lawyering is limited to a short, mostly pro forma practicum experience, if anything.

Another engine of growth has been the tremendous need in the region for legal assistance to those who cannot afford to hire a lawyer. While there are limits to what a student is permitted to do on behalf of clients according to national legislation, students can do a lot to fulfill the unmet legal needs in society. Students can provide legal information, clarify legal issues for individuals with legal problems, conduct legal research, counsel and in some cases representing individuals

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1996, on file with the author. The first public discussion in Poland on clinical legal education took place at a conference organized by Polish ELSA and Jagiellonian University in Krakow with support from the US Consulate and the OSCE's Office for Democratic Institutions and Human Rights, Poland in December 1996. In addition, the American Bar Association's Central and East European Law Initiative (CEELI) organized a number of activities to promote clinical legal education around the same time, including a study tour for Russian law professors in 1997 and a regional conference in Rijeka, Croatia in 1998. CEELI's , initial emphasis, however, was on the interactive teaching methodologies of clinical legal education, rather than advice and assistance to individual clients.

<sup>52</sup> The clinical program at Jagiellonian University began operating in fall 1997; Warsaw University launched its program in 1998; a tax advice clinic which soon grew into a larger clinical program at Bialystok University began operating in 1997. Correspondence with Izabela Gajewska-Krasnicka, Bialystok University, February 23, 2004.

<sup>53</sup> The Ford Foundation had made a grant to Palacky University through Hofstra University School of Law, which also provided technical assistance from 1995 to 1997. Correspondence with Stefan Krieger, Hofstra University, March 16, 2004. The author consulted with Palacky University legal clinic in 1996, as funding from this initial support was winding down. Other, more successful, early adopters included a Russian law clinic established at Petrozavodsk State University in 1996 with the assistance of University of Vermont and a simulation-only clinic established at University of Skopje in Macedonia in the mid-1990s with the assistance of CEELI. The Skopje clinic began to provide services to clients with the support of the Soros Foundations beginning in 1999.

before administrative or other instances. Primarily for this reason, a number of donors, such as the Ford Foundation and the Soros network of foundations, have provided initial funding to legal clinics in Central Europe.

Yet another attractive aspect of clinical legal education is that it encourages critical thinking and the development of analytic skills, because students must solve real problems stemming from actual cases. Especially in an environment in which the legal system is going through a rapid transformation, as in Central Europe at the current time, these analytical skills are essential to a lawyer's capacity to work within an unstable and constantly changing legal environment. They are equally essential to the scholarly goal of identifying gaps between theory and practice.

For the above reasons and many others, clinical legal education has proven to be attractive to a small minority of law professors and their Deans. And it has been extraordinarily attractive to a much larger number of students who have experienced the excitement of helping to solve the real legal problems of individual clients.

## 2.2. The Origins of the Clinical Movement in Higher Legal Education

Clinical legal education emerged from recognition that the traditional academic approach to teaching law left an important gap in providing future lawyers with the skills they needed in order to be well-trained practitioners. The concept of university-based legal clinics was first discussed in scholarly journals at the turn of the twentieth century, as a law school variant of the clinical programs common in medical schools. From the beginning, this early conceptualization had an international audience, with strong roots in Europe. Russian scholar Alexander I. Lyublinsky, wrote about clinical legal education in 1901, quoting an article from a German journal.<sup>54</sup> Around the same time, a Polish scholarly journal published an article on the same topic<sup>55</sup> William Rowe published an article in 1917 based on a memorandum he had written several years earlier for Columbia University and New York State urging the creation of a university-based legal clinic in New York City.<sup>56</sup> The model he had in mind was inspired by a Danish legal aid program established in cooperation with a university in Copenhagen.<sup>57</sup>

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<sup>54</sup> Lyublinsky, A., "About Legal Clinics," *Journal of Ministry of Justice* (Russia), January 1901, pp. 175-181,

<sup>55</sup> This fact was revealed by prof. Aleksander Ratajczak, Polish legal scholar speaking at a conference entitled "Legal Education Reform: Development of the Legal Clinics Idea" organized by the Polish section of the European Law Students Association in Szczecin, Poland on May 8, 1998.

<sup>56</sup> William V. Rowe, "Legal Clinics and Better Trained Lawyers – A Necessity," 11 *Illinois Law Review* 591 (1917). Rowe had by then succeeded in convincing the New York State Bar Association to adopt a resolution in 1916 providing, in part, "every law

In all of these articles, the authors analogized the proposed legal clinic to the medical profession's tradition of requiring medical students to train in school-run clinics ministering to real patients under the supervision of experienced physician-professors. This call for a clinical component to legal education was not an attempt to replace the apprenticeship system already existing in many countries, in which students worked outside the law school under the supervision of an experienced practitioner. Instead, it was a call for a new type of education that would offer students the opportunity to experience the realities of legal practice and the context in which laws develop, within the structured laboratory of legal education, providing a more pedagogically effective introduction into the profession.<sup>58</sup>

Clinical Legal Education developed most rapidly and extensively in the United States. Yet, while some legal clinics were operating in the United States in the first part of the twentieth century, the clinical legal education concept did not take hold in U.S. law schools on a large scale until the 1960s.<sup>59</sup> One reason for the development of clinical legal education in the 1960s was the increasing visibility of the social issues of the day: civil rights, opposition to the Vietnam War and the anti-poverty political agenda. Law students were demanding a socially "relevant" legal education, one that would give them the opportunity to learn how to address the unmet legal needs of poor people.<sup>60</sup> The Ford Foundation saw the value of clinical legal education early and began funding legal clinics as early as 1959, institutionalizing its support in 1965 by launching a grant-making institution that became the Council on Legal Education for Professional

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school shall make earnest clinical work, through legal aid societies or other agencies, a part of its curriculum for its full course." Rowe, *op. cit.*, p. 595.

<sup>57</sup> *Id.*, Rowe based his proposal in large part on a model described by a past president of the New York Legal Aid Society after a visit to Copenhagen. Arthur v. Briesen, "The Copenhagen Legal Aid Society," 5 *The Legal Aid Review* 4, p. 25 (1907).

<sup>58</sup> An apprenticeship was still a prerequisite to entering the legal profession in the United States during the first decades of the twentieth century. In contrast, state bars did not require a law school degree to practice law until the 1930s. Laura G. Holland, "Invading the Ivory Tower: The History of Clinical Education at Yale Law School," 49 *Journal of Legal Education* 504 (1999), p. 506. Still, Rowe points to the deficiencies of the apprenticeship system in the growing and evolving legal profession of the modern age as one of the justifications for adopting clinical legal education. He speculated that the advantages of clinical education might lead regulators to extend the normal apprenticeship requirement in New York State from one year to 18 months or 2 years, while giving a one-year university clinical course equal credit. Rowe, *op. cit.*, p. 616.

<sup>59</sup> A six-week clinical course was initiated by John Bradway in 1928 at the University of Southern California, and after Bradway moved to Duke University, he established the first full-fledged, university-based clinical program in 1931. The second university-based clinic was established at the University of Tennessee School of Law in 1947. See Margaret Martin Barry, John C. Dubin and Peter A. Joy, "Clinical Education for This Millenium: The Third Wave," 7 *Clinical Law Review* 1 (2000), p. 8 citing various sources. Rowe cites earlier experiments in his 1917 article, but these appear to have been primarily voluntary, student-run projects. Rowe, *op. cit.*, p. 591. By the end of the 1950s, 35 US law schools had some form of legal clinic, including 13 which were university-based, 15 in which students received academic credit for their work and five law schools in which supervising faculty received teaching credit for their clinical courses. AALS Proceedings 121, p. 121 (1959) cited in Barry et al., *op. cit.*, p. 10.

<sup>60</sup> Barry et al., *op. cit.*, pp. 12–14.

Responsibility (CLEPR). When CLEPR ceased its activities in 1978, the US Government picked up the funding of clinics through grants administered by the Department of Education until 1997.<sup>61</sup> CLEPR grants, and then later Department of Education grants, enabled legal clinics to flourish, and once law faculties, students, and administrators saw the virtues of clinical legal education, law schools began to finance them from their general budgets. Over the past century, US clinical legal education has evolved from voluntary, student-led efforts to an integral part of legal education.<sup>62</sup> Most U.S. law schools have legal clinics, clinical law professors generally have some kind of long-term academic status within the law school, and students earn academic credit for their participation.

Parallel to these developments, clinical law school programs have developed in South Africa, the United Kingdom, and other Commonwealth countries. Law clinics were first supported in South Africa by foundations such as the Ford Foundation and the Rockefeller Brothers Fund. Legal clinics first began operations in 1973, but it wasn't until 1978 that the first legal clinic was formally recognized by the University.<sup>63</sup> There are now 21 legal clinics operating in South Africa, and they have associated in an Association of University Legal Aid Institutions (AULAI).

Legal clinics have existed for decades in Latin America, but they have been characterized as lacking in quality because they are largely unsupervised by either teachers or practitioners.<sup>64</sup> A new effort has emerged in recent years, with the support of the Ford Foundation, to develop law clinics that focus on public interest legal problems through careful case selection which allows for more deliberate and thorough work by students and adequate supervision by professionals.<sup>65</sup> A burgeoning clinical legal education network is developing in China as well, including the establishment in August 2002 of a Chinese Clinical Legal Educators Committee, which at the time of writing is governed by a board representing 13 law schools, with clinics developing at another 10 law schools.<sup>66</sup>

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<sup>61</sup> See *Id.*, p. 19.

<sup>62</sup> See American Bar Association Section on Legal Education and Admissions to the Bar, *Legal Education and Professional Development – An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* 207-21 (1992) (known as the MacCrate Report) see below p. 188.

<sup>63</sup> *Symposium Report* (Public Interest Law Initiative, Columbia Law School 1997), *op. cit.*, p. 32.

<sup>64</sup> Richard Wilson "Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South," 8 *Clinical Law Review* 801 (2002).

<sup>65</sup> Mary McClymont and Stephen Golub, eds. *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World* (2000), p. 275.

<sup>66</sup> Interview with Mina Titi Liu, Program Officer, Ford Foundation – Beijing, February 23, 2004. The Committee is supported by the Ford Foundation, which began funding the first university legal clinics in China, at seven of the law schools, in December 2000.

### 2.3. Current Challenges in Central and Eastern Europe

There are a number of challenges to the further development of Central and Eastern Europe. The main one is to consolidate and strengthen the programs that have developed over the past seven or eight years. If the first phase of development was characterized by rapid adoption of the clinical model of teaching and widespread dissemination of the concept of university-based clinics, this second phase must focus on improving the quality of clinical programs.

There are a number of ways in which the quality of clinical programs can be enhanced. The first, and most basic, priority is to focus on teaching. Teacher training programs have been developing concurrently with the clinics themselves, and many of them have become quite sophisticated.<sup>67</sup> Strong clinics must develop their own plans for training new teachers and for strengthening the skills of even the most experienced teachers. On-going professional development is as important for teachers as it is for other professionals.

For university-based clinics, quality-control has a double meaning, referring both to the quality of the teaching and to the quality of the service provided by students. These two aspects of quality are of course closely related, but it must be remembered that it is not only the professor who has teaching responsibility. Legal clinics often rely on practitioners to assist with the supervision of student work. High quality supervision does not mean just finding mistakes before they happen; it also means providing a good learning experience to the student. Improving the quality of teaching in the context of university-based legal clinics should be understood as improving the ability of instructors and supervisors to achieve these twin goals – whether they are principally academics or practitioners.

Another way to enhance the quality of a university-based legal clinic is to examine its structure. Important structural aspects of quality include: clear, transparent and well-understood procedures; clear lines of authority and supervision; and a written code of ethics binding on students and discussed with them. This last point also offers an opportunity to enhance the educational experience for students. The best way to understand legal ethics is to focus on some of the dilemmas that emerge from real life situations. Nothing can have a greater educational effect than a guided consideration of an ethical problem that stems from a case for which the student feels responsible.

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<sup>67</sup> PILI, in collaboration with the Open Society Justice Initiative, undertakes several teacher training activities each year, including annual English-language and Russian-language workshops conducted on a regional basis. Over the years, these workshops have evolved, tackling increasingly sophisticated subjects. This past year, for example, workshops have focused on teaching how to learn from experience and self-evaluation.



In addition to these aspects of clinic structure, the need for specialization is also an important consideration in achieving the strongest possible legal clinic. Specialization has a number of advantages: it narrows the scope of preparation that students will need, making it easier to ensure adequate preparation; it ensures that there will be a certain degree of repetition to the cases that students handle, enhancing the prospects of learning from the experience over a short period of time; and it increases the likelihood that students will discover gaps or other defects in the law that are of scholarly and social significance, enhancing some of the ancillary objectives of clinical legal education.

While it is important for clinics to strengthen their capacities in the areas described above, it is equally important for proponents of clinical education to start thinking about the place that legal clinics occupy within the larger project of improving higher legal education.<sup>68</sup> Clinical programs are by their nature more expensive per student than other forms of teaching. Yet, many of the teaching methods associated with clinical legal education can be put into practice in ordinary classes, in the format of lectures and seminars. Promoting the adoption of these methods is important for at least two reasons: they engage students more in the learning process, thereby increasing teaching effectiveness; and they help develop skills that will be increasingly necessary for European lawyers and arguably for any lawyer working within the global economy.

The first point is self-evident to anyone who has had the experience of both reading lectures verbatim to unprepared students and leading discussions by students who expect to respond to questions and make comments regarding materials they read in advance. I have had opportunities to make such comparisons myself, and no one will ever convince me that students learn better by listening to someone reading a lecture. Of course, there are many studies that prove the same point, but simple experience is convincing enough.

The second point stems from the changing role of lawyers in Europe, and by extrapolation, in less direct ways, in the rest of the world as well. Within the European Union, which as of this writing is on the verge of expanding to cover 25 countries, lawyers – along with other professionals – are becoming increasingly mobile. While this trend will take some time to be felt strongly by lawyers and university law faculties, we can expect in the future that detailed knowledge of the laws of a particular jurisdiction will matter less than the skill to learn and interpret the laws of any given jurisdiction. Clinical legal education is one method of skills-based education, but it is not the only one. Skills – such as legal reasoning and analysis, legal research,

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<sup>68</sup> There is some evidence suggesting that clinical programs can have a wider impact on educational reform. A thorough examination of university-based legal clinics in Chile, for example, indicates that there is some hope, though not yet realized, that clinical innovations in pedagogy at one of three universities studied (Catholic University) may have a broader impact on curricular reform. See Richard Wilson, *op. cit.*

legal drafting, problem-solving, and so on – will become increasingly important. These skills are inherently mobile, and law faculties that provide them to their students will be preparing them to be competitive in the future European (and global) labor markets for lawyers.

## **2.4. Keeping What We’ve Achieved: Sustaining Clinical Legal Education for the Long Run**

Ultimately, the most important test of clinical legal education will be its durability as a regular feature of higher legal education. This will not happen automatically. In the United States, after many years of experimental initiatives and foundation-supported incubation efforts, clinical legal education has become a permanent feature of higher legal education.

One key measure of the degree to which clinical legal education has become mainstreamed is the extent to which law faculties cover the costs of their clinical program out of general resources. This is typically the case in the United States, and is becoming increasingly so in Poland.<sup>69</sup>

Mainstream acceptance of clinical legal education in the United States is also reflected in the law school accreditation requirement to provide real-life practical experiences to law students, including through clinics.<sup>70</sup> By analogy, similar mainstream acceptance in Central Europe would be achieved ultimately by a reference to legal clinics incorporated into Ministry of Education standards for law faculties. There is some movement in this direction, with references to law school service-providing programs contained in recent legal aid legislation in Hungary and Lithuania.<sup>71</sup>

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<sup>69</sup> The law faculties of Bialystok, Jagiellonian and Warsaw universities each absorb a significant portion of the operating costs of their clinical programs.

<sup>70</sup> Accreditation of law schools in the United States is carried out by the American Bar Association (ABA), with state bars generally requiring (with some exceptions) that prospective practitioners graduate from an ABA-accredited school. The standards considered by the ABA in making its accreditation decision include: “A law school shall offer in its J.D. program: (1) adequate opportunities to all students for instruction in professional skills; and (2) live-client or other real-life practice experiences. This might be accomplished through clinics or externships. A law school need not offer this experience to all students.” ABA Standards for Legal Education, section 302(c).

<sup>71</sup> See Hungarian Law on Assistance in Legal Cases, providing that legal assistance providers can include university law faculties. Law 2003/4919, sec. 66(1)(a). (Unofficial translation on file with author.) See also Law on State-Guaranteed Legal Assistance of the Republic of Lithuania, 28 March 2000, no. VIII-1591, sec. 19(2), which provides: “Public institutions providing legal assistance shall have the right to create a possibility for the law students to undergo practical work of legal assistance provision.” An English translation of the law can be found in Public Interest Law Initiative et al., *Access to Justice in Central and Eastern Europe: Source Book* (2003), p. 565.

Similarly, clinical programs in the United States helped gain mainstream acceptance of clinical legal education by promoting the adoption of student practice rules in each state, enabling students to represent clients in court in certain limited circumstances.<sup>72</sup> In many cases, however, the existence of a university-based legal clinic preceded the adoption of student practice rules.<sup>73</sup>

Clinical legal education is so well entrenched in some countries that there are associations of clinical teachers which meet on a regular basis to discuss many of the issues this chapter raises. In the United States, there is the clinical section of the Association of American Law Schools (AALS), the Clinical Legal Education Association (CLEA), and the Society of American Law Teachers (SALT). In the United Kingdom there is the Clinical Legal Education Organization (CLEO), and in South Africa the Association of University Legal Aid Institutions (AULAI).<sup>74</sup> In addition, the Global Alliance for Justice Education (GAJE) was started in 1996 in order to promote socially relevant legal education by forming an internationally active network for the exchange of information and ideas on justice education. The inaugural GAJE international conference was held in India in December 1999, with a second conference taking place in December 2001 in South Africa. As of this writing, the third conference is scheduled to take place in Krakow, Poland in July 2004.

The approach to self-organization represented by CLEA, CLEO and AULAI is a critical means for getting from the present situation in Central and Europe to the kind of sustainable environment in which clinics are funded out of the general resources of university law faculties and encouraged by Ministry of Education standards. The Legal Clinics Foundation in Poland – which draws its inspiration from the South African Association of University Legal Aid Institutions (AULAI) and its funding arm, the AULAI trust – is an excellent example.

In addition to securing in-kind and cash contributions to the material needs of clinics and to providing capacity-building assistance, the Legal Clinics Foundation has an important role to play in promoting clinical legal education and securing its mainstream acceptance, particularly through developing educational standards and urging the adoption of explicit rules allowing for student-provided legal services.

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<sup>72</sup> A conference on Clinical Education and the Law School of the Future: Law Students in Court was held at the University of Chicago in 1969. By then, 36 states had already adopted student practice rules. Steven M. Fleischer, *The Practice of Law by Law Students*, The University of Chicago Conference Series No. 20, 131 (1970) cited in Holland, *op. cit.*, p. 521.

<sup>73</sup> For example, a formal university-based clinic was set up at Yale School in 1969, building on a tradition of law student involvement in legal aid activities at outside institutions dating back at least to the late 1920s. Connecticut did not adopt a student practice rule until 1972. *Id.*

<sup>74</sup> Inspired by AULAI, a group of Nigerian law schools initiated a process in 2003 to establish a Nigerian version called NULAI with the support of the Open Society Justice Initiative. In Nigeria, where clinical programs are just getting started, the mission of the association is not so much to sustain existing clinical programs as to be an engine for their development.

## CHAPTER THREE – THE ADMINISTRATION AND MANAGEMENT OF LEGAL CLINICS

### 3.1. The organizational and legal form of legal clinics (Dr. Andrzej Sakowicz, the Białystok University)

The organizational and legal form of an organization determines its operational effectiveness regardless of its aim or scope of operations. Clinical teaching of law, the aim of which is the effective acquisition of practical foundations of the legal trade, is required not only to educate and prepare students psychologically for their profession, but also to function in an appropriate organizational and legal form. At present the legal clinics may assume the following forms:

- student research groups;
- a faculty organizational unit;
- an associations or foundation;
- a mixed form.

Legal clinics in Poland operate in these very forms. Below are some comments on each of them. It must be said that legal clinics may operate in any of the forms depending on the situation at the university, university organizational possibilities, or the will of students themselves. We would also like to point out that it is not our task to describe the establishing of legal clinics in those forms, we merely discuss the advantages and disadvantages related thereto.

#### 3.1.1. Student research groups

A student research group is the shortest route to the establishment and functioning of a legal clinic. In accordance with article 158 of the Law on higher education, beside the rights ensuing from the Law on associations<sup>75</sup>, students have the right to associate with university student associations, in particular with student research, art and sport societies, in accordance with regulations provided for by that Law.

Significant rights ensue from paragraph 2 of that article – if the legal clinic is registered in the form of a student research group it has the right to move to university authorities and the

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<sup>75</sup> Law of April 7, 1989 Journal of Laws of 2001 No. 79, item 855.

authorities of the student self-government on matters regarding the studies and the functioning of the university. This is important as, for example, the practical teaching of law under the name "Legal Clinic" needs to, and indeed must, be incorporated into the faculty curriculum. Furthermore, in accordance with article 158 paragraph 3 the university authorities<sup>76</sup> may allocate financial funds to support the clinic's operations.

The establishment of a legal clinic in the form of a student research group requires certain steps to be undertaken, firstly to register the group, which is demanded of every university student organization. Registration is public (article 150 paragraph 1 of the Law on higher education), and the rector is the registering body and the keeper of the register of student organizations. Rector's decisions may be appealed against to the competent minister (article 159 paragraph 2 of the Law on higher education).

The sole condition for a legal clinic to be registered in the form of a student research group is the conformity of its statute or regulations with the provisions of the Law on higher education and with the university statute (article 159 paragraph 3 of the Law on higher education). Hardly could the idea of legal clinics ever stand in contradiction to the provisions of the Law. However, this does not mean that a clinic could not be dissolved. Article 159 paragraph 5 of the Law on higher education envisages that the university senate, acting upon a motion from the rector, may dissolve a student organization should its activities constitute a gross or persistent violation of the provisions of the Law, of the university statute or the organization's own internal regulations. The rector's authority over the clinic is not limited thereto, as the rector may repeal a resolution of a clinic authority should it stand in contradiction to the stipulations of the Law.

The establishment of a legal clinic in the form of a student research group is straightforward, and university bureaucracy may be the only threat of procrastination. The advantage of this organizational form, beside its simplicity to establish and manage, is the ability to apply for financing to the rector, the dean or the student self-government. A disadvantage thereto is the lack of legal personality which results in the organization's inability to participate in competitions for grants or to cooperate with sponsors to a larger degree. Furthermore, a legal clinic that operates in this form may not act in court proceedings as a social organization.

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<sup>76</sup> In accordance with art. 46 of the Law on higher education the university collegial governing bodies are the senate and faculty councils; single-person governing bodies are the rector and the deans.

### **3.1.2. A faculty organizational unit**

A higher form of organization than the student research group is a faculty unit, for example a department, a chair, or an institute – depending on the statute of a given university. Such form of organization involves the arranging for dedicated clinical teaching staff. Members of such staff should lecture or conduct seminars to broaden knowledge of the law, the study of the various branches of law and the legal deontology.

A legal clinic is established in the form of a faculty unit in accordance with statutory regulations of a particular university. Such decision is usually made by the faculty council, which is obliged by article 51 of the Law on higher education to define the general directions of the faculty's activities and to pass curricula and study programs in consultation with the faculty legislative body of the student self-government.

Also in this case the limiting of the ability to participate in grant competitions and the inability to act in court proceedings as a social organization count among the disadvantages of this organizational form.

### **3.1.3. Association, foundation**

The third organizational form of a legal clinic consists in incorporating an association or a foundation for *pro bono* legal advice.

The Law on associations envisages that a clinic may operate in the form of an association with legal personality (article 17 paragraph 1 of the Law on associations) or as a common association, which is an association without legal personality (article 40 paragraph 1 of the Law on associations).

The former type of association needs to be initiated by no fewer than 15 persons. Those intending to establish such an association pass a statute of the association in the form of a notary deed and elect a founding committee, which in turn is obliged to apply for registration with the National Court Register on official form KRS-W20, accompanied by the association statute, a list of founders containing their first names and surnames, dates and places of birth, places of residence and their personal signatures, a protocol from the election of the founding committee as well as information on the provisional address of the association.

In accordance with article 17 paragraph 1 of the Law on associations such associations obtain legal personality and may commence their operations at the moment of registration with the National Court Register.

A clinic operating in the form of a common association is burdened with the following requirements of the Law on associations:

- 1) to notify without delay (within 7 days) the court of registration of changes to the statute, the authorities, the address, the right of representation as well as to make that same notification to the supervising body, only in this case within 14 days;
- 2) for the association board to supply within specified time copies of resolutions of the general meeting of members to the supervising body, i.e. to the province governor (the voivode) or (and) the governor of the district specific to the address of the association's registered office;
- 3) for the association authorities to supply to the supervising organ and at its request clarifications and yearly reports.

A legal clinic operating in the form of an association may own and dispose of assets that originate from membership fees, donations, inheritance, legacy, own revenue, revenue generated by association assets and public donations. Furthermore, an association with legal personality may be commercially active, and the revenue thus generated should support the realization of statutory objectives and may not be distributed among its members. Additionally, the clinic operating in such a way may be subsidized, it therefore holds the right to participate in grant competitions. It may also act as a social organization in court proceedings. Similar rights apply to clinics that operate in the form of a foundation<sup>77</sup>.

A legal clinic may also operate in the form of a common association. It must however be kept in mind that this simplified form of association does not hold legal personality. The establishment of a common association is simpler due to the fact that the required number of founders is only three and that a statute is not required, but only a set of rules that define the name, the objective, the area of operations and the means of operations, a registered office and an association representative. Moreover, the founders of such an association only inform in writing the supervising body specific to the address of the future office of the establishment of the association.

Although a common association is not a complex legal formula, it must be kept in mind that this type of organization may not operate commercially or receive donations, inheritance, legacy or subsidy, it also may not receive public donations as it may fund its operations only through membership fees.

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<sup>77</sup> Details are specified by the Law on foundations of April 6, 1984, consolidated text Journal of Laws of 1991 No. 46. item 203.

### 3.1.4. Mixed form

The fourth organizational form of a legal clinic may combine the first or the second with the third form, thus its working name of a "mixed" form.

The clinic operations may be enriched if beside a student research group or a faculty organizational unit – a department or a chair - an association or foundation is established. The clinic will thus be able to act in court proceedings as a social organization, and to finance its operations from sources outside of the university.

#### **How to create a legal clinic? (Filip Czernicki, the Legal Clinics Foundation)**

The first step is to find a key patron of the clinic, whose involvement and assistance may play a vital role in the attainment of subsequent objectives.

A patron will prove particularly helpful in obtaining the consent of the dean or a faculty council to enter the legal clinic's program into the university curriculum. This is the very foundation for the clinic's future development.

The next task is to find an office for the clinic and to provide it with the necessary equipment, which is instrumental for the clinic to operate efficiently. If in the initial phase of clinic organization problems present themselves in obtaining an adequate office at the university, one may arrange with the charitable organizations, which will refer clients to the clinic, to hold client conferences in their offices, thus limiting operations on the university premises to consulting opinions with supervisors and to holding weekly seminars.

Finance is necessary to secure the clinic's efficient operations. It is needed to pay for the running of the office and for an office secretary. Such means may be obtained from institutions and foundations such as: local government, the Stefan Batory Foundation, the Legal Clinics Foundation, the Polish-American Freedom Foundation, the Embassy of the United States of America (which finances exclusively nongovernmental organizations, which means that the legal clinic would need to hold legal personality independent of the university). It should also be kept in mind that one should not assume that any of the above mentioned institutions will continue financing the clinic indefinitely. The aim of the clinic should be to become incorporated in the curriculum and to build itself a strong position at the university law faculty and, ultimately, to obtain recognition in the form of financing from the university budgets.

It is important in the process of establishing a legal clinic to initiate close cooperation with charitable organizations from a given city (such as city social service, Caritas, the Red Cross, Father Albert Association, offices of members of parliament and parishes), so that such



organizations may refer clients to the clinic. Such referral would translate into the lack of need to select cases within a specified type, or to verify the financial status of the clients.

The next step shall be recruiting students to work in the clinic, and the process of establishing the clinic should be concluded with the fulfillment of all standards of legal clinic operations, including civil liability insurance, the proper organization of the clinic's secretary office, and the drawing up of appropriate sets of rules and forms which are going to be used in the clinic.

#### **How to create a legal clinic? – in short:**

- find a patron for your clinic,
- obtain consent to incorporate the clinic in the curriculum,
- secure an office,
- research financing options,
- initiate cooperation with charitable institutions in your city,
- promote the clinic and assist with student recruitment,
- make sure that the clinic meets all standards from the onset of its operations.

### **3.2. The organization of a legal clinic (Izabela Gajewska-Kraśnicka, the Legal Clinics Foundation)**

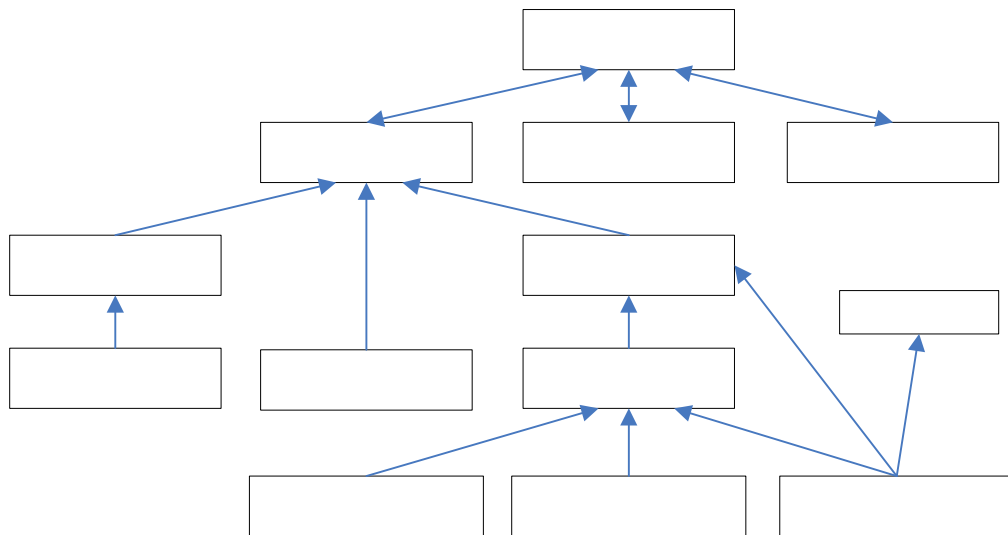
A legal clinic is an institution characterized by enormous work dynamics, it therefore requires perfect organization and management systems. Such systems will vary depending on the size of the clinic, the number of students, of supervisors, and the number of cases under review<sup>78</sup>.

The typical organizational elements of a legal clinics should embrace: a secretary office and a team responsible for the running of the clinic, namely, the head of the clinic (usually holder of a postdoctoral or higher degree, and a faculty member) and a team supervising the every day-to-day work (usually students, members of the clinic, for example in the form of a board of a student research group or of an association, or a foundation). The clinic work is usually divided into sections that concern themselves with specific types of cases.

An example of a clinic structure:

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<sup>78</sup> Proportions vary strongly between Polish legal clinics. In the academic year of 2002/2003 106 supervisors and 779 students worked in 17 legal clinics, and the clinics attended to a total of 5,584 cases. This information is based on the Report on the study of conformity of the activities of legal clinics with the standards of the Legal Clinics Foundation, of the year 2003.



\* The direction of the arrow indicates with whom decisions are consulted.

**3.2.1. The head of the clinic (the caretaker, the patron)**

The head of the clinic (also referred to as the caretaker or patron in some clinics) is usually a holder of a postdoctoral or higher degree, and an independent member of the faculty. The head of the clinic is responsible for the general coordination of the clinic's work, professional supervision over the services rendered by the students, they are also the highest ruling instance in case of conflict between clinic members. Once a year (for example in the end of each semester or in the beginning and in the end of an academic year) the head of the clinic should call a general meeting of students and supervisors to discuss current problems, to give account of the number of cases reviewed within a defined period, and if need be to evaluate the involvement of individual students in the fulfillment of their duties. In the course of such meetings plans for the development of the clinic are also discussed (creation of new sections, organization of lectures or training, the search for sponsors etc.). The meetings are a chance to settle conflicts, exchange experience, and to celebrate success. The head of the clinic can use these meetings to fully assess the quality of the clinic's functioning. Meetings also serve to integrate students and supervisors and thus motivate to greater involvement in clinical work. Some Polish clinics have taken on a custom of meeting at Christmas and Easter time and combining meetings with celebrations of these holidays.

Civil  
clini

Assistant =  
group supervisor

Student group =  
5-10 persons

Student  
5-10

2 student  
to c

### 3.2.2. The sections

The most popular organizational model for legal clinics at Polish law faculties is the division into sections corresponding to the sections of the law. This guarantees a clear structure and a good organization of work at the clinic, it also gives good opportunity to practice team work.

As early as in the course of recruitment should students be allocated to divisions, depending on a candidate's preference and skills. Each section has its own supervisor, usually a faculty member, at times a practitioner in a given field (for example somebody involved with refugees) who supervises and consults with students all legal matters. In the practice of Polish legal clinics supervisors are not always incorporated in the formal structure of the clinic and students contact them during their standard duty hours. On-going contact and the opportunity to regularly consult with a supervisor are fundamental to all of these systems.

#### **Legal clinic sections**

In most Polish clinics the following sections exist:

- criminal law section,
- civil law section,
- administrative law section,
- labor law section.

Additionally more specialized groups also exist such as:

- human rights sections,
- international law section,
- refugee section,
- section for cooperation with nongovernmental organizations (NGO),
- section for gender-related violence and for discrimination,
- section for preliminary custody,
- section for law on cooperatives.

Within each section students may work individually or in teams of two. Therefore, every case is allocated to a team of two students who share responsibility for contact with the client, meeting dates, and the drafting of legal opinion in a given case. The clinic secretary office accepts cases and distributes them to their appropriate sections. In some clinics (particularly those where sections are composed of as many as 8-10 persons) heads of sections are appointed and take responsibility for liaising with the secretary office, allocating cases to students and supervising

deadlines. Depending on the adopted model of the secretary office, the heads of sections may also control the work of students attending to the secretary office.

### **3.2.3. The legal clinic board**

The efficient functioning of a legal clinic requires the existence of an organ that would attend to the day-to-day organizational and administrative matters. Depending on the organizational form this will be either a student research group board (or a chairman), or an association or foundation board (composed of one or more members).

In most of the Polish legal clinics organizational matters are attended to by a board composed of students – clinic members. The rules of electing this authority and the scope of its duties are defined in the statute or the regulations of a research group, an association or a foundation. A three-member board composed of a chairman (a president), and two deputy chairmen (vice presidents) is standard. Additionally a treasurer and a secretary may be appointed, although these functions may just as well be executed by the chairmen of the board. These are persons involved in the legal clinic's operations in the same way as other members – they belong to sections, therefore they assume responsibility for the cases allocated to them. The duties resting on them as members of the clinic authority are carried out on top of their standard duties. Such an arrangement does not generate conflict, but guarantees knowledge of legal clinic mechanisms from root up. Maintaining continuity of the board is particularly important, therefore it is a good solution to appoint fourth and fifth-year students to the board (assuming that a board member term is two years). If, in a given year, a fifth-year student is the chairman of the board and the other board members are fourth-year students, then in the following year at least one of these persons should maintain their function with the board.

Board members make sure that the clinic's organizational and administrative standards are met. They represent the clinic before faculty and university authorities as well as organizations cooperating with the legal clinic. Depending on requirements and needs the board draws up reports on the clinic's operations, which include the number and the subject matter of cases (for example reports regarding the clinic's cooperation with the Ombudsman), it also coordinates recruitment of new members. The board calls meetings of clinic members, organizes guest lectures by representatives of the legal professions or specialists in the area of legal clinics. The soliciting of additional material and financial support to ensure effective functioning and the development of the clinical program are also among the board's tasks.

## **The statute on clinic management**

The provisions of the statute that refer to clinic management depend on the scope of activities and may be as concise as in the case of the Szczecin University clinic:

„The clinic is managed by the Chairman of the “Student Legal Clinic” Student Research Group, hereinafter referred to as the chairman, together with supervisors who are members of the Law and Administration Faculty of the Szczecin University. The chairman is assisted in their duties by deputy chairmen” (article 13 of the Regulations of the “Student Legal Clinic” of the Szczecin University),

or more developed as in the case of the Legal Clinics Foundation:

"The Board manages the affairs of the Foundation and represents the Foundation. (§ 18 of the Legal Clinics Foundation Statute).

In particular, the Board’s duties embrace the following:

- 1) the securing of means to finance the Foundation’s activities,
- 2) the managing of property in accordance with rules provided for in the set of regulations passed by the Foundation Council, including the distribution of means to entities supported financially by the Foundation,
- 3) the drafting of yearly financial plans for the Foundation,
- 4) the drawing up of yearly reports on the Foundation’s activities and submitting those reports to the Foundation Council, the Advisory Board and to the minister competent for national education and the Minister of Justice, as well as publishing those reports to the public,
- 5) the execution of resolutions of the Foundation Council,
- 6) the controlling of conformity of the clinic’s activities with the Standards referred to under § 26,
- 7) the submitting of motions to verify whether the clinic’s activities meet Standard or otherwise,
- 8) the creation of organizational units of the Foundation,
- 9) the setting of the number of staff, the value and the rules of remuneration, and other gratification to the Foundation staff, as well as to persons who cooperate with the Foundation,
- 10) the initiating of motions to alter the volume of the Foundation payroll" (§ 20 of the Statute of the Legal Clinics Foundation).

The clinic must select the optimal version of these provisions for itself.

### **3.3. Recruitment of new clinic members (Izabela Gajewska-Kraśnicka, the Legal Clinics Foundation)**

Recruitment is best left to the heads of clinics and to section supervisors. The supervisors will best verify the knowledge and skills demanded of candidates to the particular teams. The

recruitment of members of legal clinics is an important element of the clinical teaching of law for two reasons. Firstly, the recruitment process should identify candidates with the best subject knowledge, well-prepared for work on legal problems. Secondly, the character of the work carried out by the clinic demands that its member students demonstrate appropriate attitude and traits of character. Legal clinics are not an obligatory course, clinic members are therefore volunteers, well-aware of the peculiarity of the program. The recruitment process is aimed at selecting the very best of them.

Various models to recruit students to work in the program are operated in Polish legal clinics, both one-stage and multi-stage. Interviews however remain a constant element.

Depending on a clinic's time schedule, the recruitment of students takes place either in the beginning or the end of each academic year, or at the beginning of each semester. The curriculum often sets limitations to the recruitment process as the students working in the clinic should already possess a given scope of knowledge and should have passed exams of the core legal subjects. Therefore usually only senior-year students may become clinic members, sometimes third-year graduates.

The process of selecting students to legal clinics may commence with the collection of curricula vitae and motivational letters from candidates, which contain short justification of their selecting legal clinics for extracurricular activities and information on average grades (with particular emphasis on subjects relevant to the selected section or area of law which the candidate intends to concern themselves with). This stage allows for preliminary document-based evaluation and analysis of the motivation to work in the clinic.

A recruitment committee members' meeting with the candidate remains the key part of the recruitment process. The committee is usually composed of the supervisors of particular sections, often students already working in the clinic or a psychologist who shall evaluate the candidate's ability to work with clients. The interview should not resemble an exam, therefore it should not be composed of a series of questions on the contents of a code or a law. Sound exam grades guarantee the ability to learn given material. A candidate should demonstrate knowledge of the subject sufficient to would allow them to preliminarily examine a problem and to find answers to detailed questions asked in a given case. It should be kept in mind that students will neither directly reply clients' questions nor deliver legal advice on the spot.

For example: a student inquired about international adoption should know that in view of the Polish law such adoption is possible (as envisaged by the provisions of the family and guardianship code) if it provides the child with adequate foster family environment, and that adoption and foster centers that concern themselves with international adoption exist. The

candidate should also know how to identify procedural details, and that the laws in force in the other country will also play a prominent role.

The international law, the human rights section and the refugee section will demand of students knowledge of foreign languages (foremostly of English, but also Russian, Ukrainian and other languages). The process of recruiting students to such sections should envisage a short conversation to verify a candidate's ability to communicate in a given language.

The recruitment procedure should, and truly must, consider evaluating a student's non-academic strong points. It should be kept in mind that the student shall have direct contact with the client, i.e. a person in need of assistance and expecting to receive such assistance from the student. Therefore, students working with the clinic should have sound communication skills and be comfortable with people, but at the same time they should be able to listen and listen patiently. Therefore, students who possess such qualities or those able and willing to acquire such qualities should be sought after. It is thus worthwhile to pay attention to the motivation and the attitude a candidate demonstrates, the way they answers questions, their self-confidence, but also their kindness and sympathy.

During the interview the student should be informed that the clinic work is often time-consuming (additional lectures, training, seminars or the work to draft particular legal opinions), that it demands determination and good organization skills. Persons who take part in many other programs, volunteer with other organizations or are employed elsewhere might not be able to cope with the often very demanding rhythm of the clinical program.

Not all clinics have recruitment procedures. In some clinics candidates are admitted to membership after completion of an internship and after their cooperation with the clinic has been positively evaluated by the legal clinic board. In some clinics candidates are admitted in the order of application (membership form) or of average grade.

In other countries the legal clinics program have specific methods of recruiting students to work with people in need of legal assistance. At some universities in the Republic of South Africa working in legal clinics is obligatory to all students of the law faculty in their last or penultimate year of studies. In the American legal clinics students are admitted in the order of registration and only after graduation from a set of courses (foremostly the following procedures: civil, criminal and administrative, as well as ethics and professional liability).

### **3.4. The legal clinic secretary office (Dariusz Łomowski, the Legal Clinics Foundation)**

The administering of a legal clinic may seem no task at all – photocopying, binding and filing of documents, taking notes, mailing correspondence, drafting protocols... The basic function of legal clinics, namely, the delivery of legal assistance, may be fulfilled without the bureaucratic surrounding, as administrative actions are not the essence of the assistance delivered by legal clinics. However, when attention is focused on the clinic's operational standards – in particular on the conscientiousness of the services rendered – the answer becomes self-evident. An efficient secretary office that documents and coordinates the delivery of legal assistance completes the legal clinic's operations. It is a truism worth taking note of as lack of diligence in administering the clinic will make the fulfillment of the operational continuity postulate far more difficult.

This chapter will answer the question why the core operations of a legal clinic, namely, the delivery of legal assistance, need to be complemented by a secretary office; not a secretary, but an office.

#### **3.4.1. The secretary office in general**

„A legal clinic operates a secretary office in the scope corresponding with the volume and character of its operations” – such is the wording of the sixth legal clinics standard<sup>79</sup>. In practice this means that the administering of the clinic is entrusted to a permanent secretary office, and the scope of its responsibilities matches the volume of the clinic's activities.

Every person involved in clinic administration needs to realize that the secretary office plays an important role in supporting the clinic's core function, which is the delivery of legal assistance to people of modest means. It is a service role, yet an indispensable link in the clinic's chain of operations. In particular, the role of the secretary office is evident in the on-going servicing of cases attended to by the clinic. This consists in the careful documenting of cases, or the archiving of information on the operations of the clinic as a subject of law – depending on the organizational form either an association, foundation or a student research group.

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<sup>79</sup> The full text of the standard is as follows: “6. A Legal Clinic operates a secretary office in the scope corresponding with the volume and character of its operations. The operating of a secretary office is also subject to a Clinic's financial possibilities, although a place must exist where the client may obtain information on the state of affairs in the case attended to by the Clinic; a secretary office is open at least for one hour on every working day, or failing that at regular hours at least two days a week, each time for no less than an hour; the Clinic informs the clients of the secretary office opening times; at least one person is dedicated to the execution of administrative and secretary duties in the Clinic.”



Therefore, from the point of view of these twofold tasks, one may speak of a secretary office directly linked to the advice given by the students – a secretary office to the advice, and a secretary office to the clinic. The latter is an inwardly organizational function and refers to the formal activities of the clinic, and although it is not directly linked to the issuing of legal opinions it is no less important.

It is worth realizing that – as a rule – the clinic students should hold responsibility not only for the delivery of legal assistance to the clients, but also for the preparation of all the documentation relating thereto. Depending on the internal organization of the clinic, it is the students' duty to fill out and hand out forms, it is the students who prepare and archive memoranda and information relating to the advice given, they also keep the register (registers) of cases attended to by the clinic etc. The secretary office is not strictly limited to its staff. All clinic students and – to a given extent - section supervisors are involved with it. For the clinic to operate correctly – as would be in a classic law firm – all persons working on a case should know how to record the results of their work, so that those records could serve others who encounter factually similar situations in the future.

The legal clinic secretary office organizes and archives the legal clinic's works depending on the formula it operates in (as a foundation, association, a student research group or a different, independent unit within the framework of the university). In this respect the secretary office should therefore keep watch over the conformity of the legal clinic's operations with its statute (regulations), it should also document and archive the works of the clinic's statutory authorities. The secretary office will also be obliged to keep the clinic's financial records (unless other persons keep such records, for example the university bursar's office). The clinic secretary office shall also be responsible for documenting all clinic membership matters (organization of recruitment, including membership forms if such are used). Clearly, the above will depend on the scope and character of the clinic's operations, in agreement with the provisions of standards.

### **3.4.2. The secretary office – the place and the people**

#### **Let us start with the place<sup>80</sup>**

Clinic administration commences with the management of the premises assigned to the clinic – the office, the room, the clinic seat. Naturally, a clinic is tightly or loosely bound to the university – the premises should therefore be made available by the law faculty authorities, free of charge in principle, along with all the necessary equipment. This ensues from the fact that in

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<sup>80</sup> On the organization of work with clients in the clinic see also p. 113 and 144 below.

principle the clinic will use the word "university" in its name, and from the requirement to provide supervision over the clinic's activities and the advice it delivers.

The office should be large enough to allow for the fulfillment of the basic objectives of the clinic – to guarantee clients the essential confidentiality, to grant students the right conditions to work on cases, and to keep documents adequately secured, in view of the sensitivity of the information they hold. But let us take one step at a time.

The seat of the clinic is foremostly intended for the clients, therefore we should keep their requirements in mind when arranging interiors and organizing the office. Firstly, we should win the client's trust and guarantee confidentiality during their every visit to the clinic. It is best to arrange for a separate client conference room and failing this to single out a client conference area, if only with a symbolic partition made up of furniture. Should such a solution be also problematic, the clinic's work time should be arranged so that during client visiting hours students researching cases are not present in the clinic and thus do not disturb client conference.

The office is also a place for students to research cases, it should therefore meet adequate standards and be large enough to allow students to work on cases individually and in teams. Case documents should never be taken out of the clinic office, the clinic should therefore have enough space to allow students to review documents in preparing themselves to draft legal opinions. Moreover, it is also convenient if the clinic office allows for holding section seminars, as this gives the students and the supervisors easiest access the entire case documentation and gives them the opportunity for unconstrained sharing of opinions. The size of the office is also of significance when the clinic wishes to organize, for example, a meeting with a practicing lawyer, a judge of the regional court, or a Christmas or Easter get-together. To organize such events in a way that clients and students do not get in each other's way is one of the fundamental (if not the most demanding) of the secretary office's tasks.

### **The equipment**

The work and tasks fulfilled by the clinic demand that the clinic office be furnished with the necessary technical equipment. The below list is only an example, particularly that every clinic will have different needs as well as financial and organizational capabilities.

Essential equipment	Additional equipment
filing cabinet with a key-lock for keeping files with information obtained from clients, information board (with schedule and notices), computers (a minimum of two), at least one furnished with access to the Internet and a computer legal database, printer, telephone, fax machine, photocopier, also: paper, pens, thumbtacks, scissors, felt tip pens, staplers with staples, punches, plastic filing jackets, files, binders...	cabinets, coat hangers, radio, tape recorder, kitchen equipment, flowers.

To conclude, let us not forget that the clinic office is a showcase for the faculty and the university, it often determines the first impression (which – as is commonly known – is the most important) in the minds of the sponsors of our activities, of the students who would like to join the clinic, and of representatives of other Polish and foreign clinics who would wish to call on us. This means that the office should be adequately marked – starting with the entrance to the building – providing the number of the room and the working hours, so that nobody wanders around corridors or calls on the clinic when it is shut.

### **Who is going to do all this?**

The secretary office is not only the four walls, the floor and the ceiling, but also – and most importantly – the people who work in it. Standards require that at least one person be dedicated to secretarial duties. Let us consider: at least, which means that in principle all other persons active in the clinic should be acquainted with the principles of clinic administration.

The running of the secretary office is shaped individually by the custom and the capabilities of a clinic – some are managed by a person (persons) employed by the university (the faculty), in others this duty rests on a student (students) selected from among the clinic members. Both of these ideas have advantages of their own. To assign the administering of the clinic to a person from outside of the clinic translates into the secretary office's greater professionalism, but on the other hand it also creates the risk of the secretary office being ignored by an average student working in the clinic. The latter may be mended if the secretary office is managed by clinic members themselves, although this might diminish the quality of the administrative work. It would be optimal if a number of persons pertaining to the various sections were professionally trained in secretarial duties, and they would in turn introduce other students to this work. The risk of error may never be done away with, but it would be advantageous if the persons directly involved with the cases – i.e. the students, could identify themselves with the work of the

secretary office. It is also worth taking this opportunity to note that in the future work of a lawyer office work experience may prove just as valuable as the delivery of legal advice to law firm clients.

### **The place and the people – what do standards say?**

In addition to the fundamental provisions of standards, every clinic should set its own catalogue of secretarial regulations that would conform to the character of its operations (for example taking into consideration the library or kitchen that are part of the office). Every new clinic member should be acquainted with the rules of using the office and the equipment contained therein. The following should be emphasized in particular:

- the equipment serves the clinic's purposes only, it may not be used for private purposes,
- office materials and telephones should be used frugally,
- everyone is informed of what the clinic is and what the rules for delivering advice are,
- we read all information addressed to us and acknowledge its receipt,
- we recognize our own mess and clear it up,
- if we take something we put it back,
- we work and let others do their work.

It is essential to the clinic's operations that consistent working hours be set to students and sections. They should be as regular as possible and set out once for a long period of time, at best once for the duration of an academic year (as they are adapted to the academic timetable) and reviewed after the winter exam session. The working days and times set should be convenient to the clients. This facilitates the organization of work, accustoms clients to the clinic and allows for professional legal assistance to be delivered in the clinic. Let us keep in mind that the opening times may not clash with other duties of clinic members, for example section meetings, and that they must allow everyone to come to the clinic, review the case and work over a legal opinion.

### **3.4.3. The secretary office to the advice**

As already mentioned the secretary office's chief duty is to support the delivery of legal assistance<sup>81</sup>. In particular this will consist in reminding everyone of clinic regulations, organizing training, and securing the constant availability of the necessary forms, questionnaires and prints<sup>82</sup>.

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<sup>81</sup> See also p. 132.

### The tools used in delivering legal advice – the file, the register and the index

In the work of a legal clinic it is difficult to separate the delivery of legal assistance to a client from documenting that activity in a case file, a register or an index, i.e. the fundamental tools used in a clinic’s secretary office. Each of these tools fulfils an essential function but only if used correctly and conscientiously.

The reason for the existence of the above mentioned tools is the collection of materials used to deliver legal assistance. The **case file** is the most voluminous of these tools as it contains copies of documents submitted by the client, forms and statements signed by the client, as well as all further information prepared during the course of delivering legal assistance (for example client telephone call memos or decisions of the section supervisor to remove a student from a case). The case file is therefore a set of information that shapes the content of the legal opinion (this purpose is served by the information obtained from the client) and documents the process of delivering legal assistance itself (manifested for example through decisions of the section supervisor).

The **case register** is a summary of the content of a case file. Its function is twofold – the first is a function close to that of a court register of cases, which is a list of all cases under review by a given court department<sup>83</sup>. The second is to assist in determining whether a given case does not hold the risk of conflict of interest.

The order of entries should be observed – as in the example provided below (from 1 to 5).

CASE REGISTER						
COMMENCEMENT OF CASE				CONCLUSION OF CASE		
Item	Catalog number	Date of receipt	Decision to accept the case	Person in charge of case	Case returned	Refusal to issue opinion / opinion
	1	2	3	4	5	
	To be filled out by: Students on duty when full set of documents was submitted, or students pertaining to the section to which the case belongs, or the section secretary office.		To be filled out by: section supervisor, or students assigned to the case upon decision of the supervisor, or the secretary office upon decision of the supervisor.			

Three types of duty of registration exist: the initial entry (which is related to the receipt of case – i.e. columns: Catalog number, Date of receipt), intermediate entries (relating to the progress in the work over an opinion – Decision to accept case and Person in charge of case) and the final entry (relating to the issuance of opinion to the client or refusal to issue such an opinion).

<sup>82</sup> A set of forms handed out to the client is contained in annex 4.

<sup>83</sup> See annex 8.

Additionally, the register may hold statistical entries with room for further entries that serve the purpose of reporting to the Legal Clinics Foundation, as demonstrated by the table below:

Time of case review	Type of case	Source of information on the clinic	Has the client used professional legal assistance?
two weeks and shorter, two weeks – two months, two months – one year, one year and longer.	family, labor and unemployment, refugees and foreigners, housing, health service, social service, administrative, financial, criminal, assistance to nongovernmental organizations.	family, acquaintances, the press,  leaflets, the radio, the television, the Internet, nongovernmental organizations, other.	yes, no.

A number of methods are used in Polish legal clinics for initial entries. Initial entries may be done by students present during the clinic's duty hours in spite of the fact that they may not be put in charge of a particular case afterwards. In such a case they serve as the registry office and after the case is registered it is transferred to the appropriate persons, i.e. those who will assist the client. Sometimes the entry is made by section students who will be in charge of the case, sometimes the register is filled out by the permanent secretary office, usually employed by the university.

Regardless of who makes the entries it is essential that they be made without delay, conscientiously and truthfully. As little as this, as much as this, for in principle nothing more is expected of the register.

The section supervisor should be responsible for the intermediate and final entries, i.e. those relating to the work on a case and the issuance of an opinion, although technically this may also be the role of the student in charge of the case or of the secretary office. It is however important that the case file contain traces of the section supervisor's decisions (for example at a least a short note of the section supervisor on documents submitted by the client stating that the supervisor "approves the case" and "accepts the case" etc.).

The example below holds three sections: the administrative section (AA, the section supervisor enters their signature and initials), the civil section (supervised by CC) and the labor law section (supervised by PP). Let us explain that the below is only a general example, therefore every clinic may design its own model of a register.

CASE REGISTER						
COMMENCEMENT OF CASE					CONCLUSION OF CASE	
Item	Catalog number	Date of receipt	Decision to accept the case	Person in charge of case	Case returned	Refusal to issue opinion / opinion
...						
9	9/2002/C	Nov. 13, 2002	reject case Nov. 16, 2002 CC			
10	10/2002/P	Nov. 13, 2002	accept case Nov. 17, 2002 PP	Katarzyna Kozłowska		opinion issued Dec. 1, 2002 PP
11	11/2002/A	Nov. 15, 2002	accept case Nov. 16, 2002 AA	Patryk Lisowski Nov. 27, 2002 removed AA Sylvia Mamińska		refusal to issue opinion Dec. 4, 2002 AA
12	12/2002/C	Nov. 16, 2002	accept case Nov. 22, 2002 CC	Robert Antoniewicz	obstructed by client Nov. 30, 2002 CC	

Beside a written case register it would be advisable to keep an electronic version of the register in order to allow for easier, on-demand access to all data contained therein. The secretary office shall be responsible for the latter.

And finally – the third of the tools used in a clinic secretary office – **the index of cases**. This is an undervalued yet useful list of all clients in alphabetical order, together with the catalog number of the case and – should the clinic undertake such practice – the name of the student responsible for the case. Such a list should first of all allow for case files to be located quickly and for the student in charge of a given case to be contacted quickly should a client call unexpectedly to inquire about progress in their case. An index may not be needed if all data is placed in the clinic's computer databases, but should such databases not exist, a list written down on paper will certainly be of help.

A case file should contain the following (in order, starting from the bottom):

- a list of all forms which the client signed during their first meeting with the clinic students (financial status statement, information on the client and the case, client's agreement to the rules of case review and those relating to personal data protection),
- copies of all documents of significance to the case,
- the section supervisor's decision to accept/reject the case for review or any other of their decisions relating to the work over the case,
- written notes from additional meetings with the client, telephone conversations with the client etc.,
- a copy of the opinion in the case,

- a list of all documents contained in the file (document name and number of pages).

### **Secretary office to the advice – what do standards say?**

Legal clinic standards provide for a number of rules for advice-related secretary office work.

They relate to the:

- safekeeping of documents, which is covered by standard five:

#### **5. The clinic shall safeguard documents entrusted by the client; the clinic shall not accept originals of documents.**

The documentation of cases under review is kept in a place to which only the head of the Clinic and persons authorized by the head of the Clinic have access.

- written form of all procedures relating to the delivery of advice, and of the rules to which the forms used by the clinic should adhere, which is envisaged in the seventh and eighth standard:

#### **7. Before a case is accepted for review the clinic shall inform the client in writing of the rules of delivery of legal assistance by the clinic (...).**

Before acceptance of a case the Clinic hands to the client the above mentioned information in writing and subsequently it collects from the client a signed confirmation of the client's having acquainted themselves with that information.

The Clinic leaves the documents handed to the client and containing the above mentioned information with the client.

The information form contains the current address, the address of electronic mail and a fax number to the Legal Clinics Foundation.

(...)

#### **8. In a client qualification procedure the clinic ascertains that the client's financial status does not allow them to purchase legal assistance (...).**

Before acceptance of a case the Clinic receives from the client a statement that their financial status does not allow them to purchase legal assistance.

- the ninth standard relates to the standards of the client information system:

#### **9. The clinic operates a client information system, within the scope allowed by the law and with the aim of minimizing the risk of conflict of interest (...).**



### **Everything in writing**

To conclude this part – a thing of greatest importance at delivering legal assistance – the need to document in writing and to keep all information received from the client and all decisions relating to the case in the case file. This may be done in the form of notes (or memoranda) from meetings or telephone conversations with a client. Decisions of the section supervisor or the head of the clinic should also be made in writing, for example:

- decision to accept a case / to reject a case,
- decision to remove a student from a case,
- decision to return a case to the client,
- decision to refuse issuance of opinion.

Finally, the case file should contain the opinion issued to the client. After it has been signed by the student in charge, the section supervisor and the client, the original of the opinion should be left with the client and a copy thereof should be placed in the case file. The decision on how an opinion is delivered to the client – in person or by letter – are in the hands of the clinic and depend on the nature of the case and the requirements of the client, although the rudimentary principles are worth adhering to.

Let us keep in mind that the obligation to formulate and document the clinic's activities in writing rests evenly on all who participate in the clinic's activities: the students, the section supervisors and the persons responsible for clinic administration. The secretary office arranges the technicalities of delivery of legal assistance, it also documents and assists in activities not strictly relating thereto (for example in the organization of training, documents handed out for filling out by clients).

#### **3.4.4. The clinic secretary office**

Legal clinics in Poland operate in the form of foundations, associations and student research societies<sup>84</sup>. These forms are similar in some respects and differ in others, but they all have one thing in common – regardless of whether it is a foundation, an association or a student research group, a clinic must have a permanent secretary office that will manage its internal administration.

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<sup>84</sup> See p. 52 above.

**Like the organizational form, like the secretary office**

Let us begin with the legal basis: a clinic that operates as a foundation is governed by the Law of April 6, 1984 on foundations; if it functions in the forms of an association it must meet the requirements of the Law on associations of April 7, 1989; in turn the Law of September 12, 1990 on higher education regulates the functioning of student research groups, including clinics, should the latter choose to operate in that organizational form.

The Law on foundations and the Law on associations put the heaviest demands on the legal clinic secretary offices. Suffice it to say that institutions that base their operations on those laws are legal persons registered in the National Court Register, and they are subject to supervision of administrative bodies. When operating within the framework of this legal form it is necessary to observe the regulations provided for by the Law on foundations and the Law on associations, such as the obligation to have a statute, to hold regular elections to clinic authorities or to keep accounting records in line with the Law on accounting. A secretary office appears and plays a significant role in each of these areas.

The most popular form for Polish legal clinics is the student research group, which is hardly a formalized organization and yet it also should have a secretary office, the scope of duties of which should be proportional do the clinic's range of operations, as is the case with all other aspects of a clinic's operations.

An example of a description of tasks to be fulfilled by the secretary office and corresponding to the execution of the various clinical duties is given below. Let this clinic be governed by a legislative body (which will assume the name of a Council for the sake of this example) and an executive body (the Board<sup>85</sup>), which reflects the organization of a clinic regardless of whether it is a foundation, an association or a student research group. In our example the clinic is governed by its statute.

The Council		The Board	
Duties of the organ	Corresponding duties of the secretary office	Duties of the organ	Corresponding duties of the secretary office
the passing of clinic program	archiving hitherto programs, preparing and keeping minutes of resolutions in this respect	clinic representation	watching over correspondence relating to external relations and archiving documents, documenting cooperation with other legal clinics and the Legal Clinics Foundation
the passing of and changing clinic statute	preparing and keeping minutes of resolutions in this respect	execution of Council resolutions	watching over the conformity of clinic activities with the statute, keeping minutes of the Board's activities
passing of resolutions	preparing draft resolutions and	day-to-day clinic	preparing and documenting Board's

<sup>85</sup> See details of the scope of duties of a legal clinic Board on p. 60 above.

	keeping minutes	administration	activities in this respect
appointing and dismissing, controlling and acknowledging Board activities	taking meeting minutes	clinic membership	watching over the statutory procedures for accepting and excluding clinic members, preparing membership forms
dissolution of clinic	preparing resolutions to this effect	documenting cases under review by the clinic	watching over the clinic documentation, its completeness, training in this respect
other matters not reserved for the authority of the Board	supervising matters under review by the Council from the point of view of statutory regulations	finance	watching over financial documentation and reporting
		cooperation with patrons, section supervisors and the dean authority	watching over correspondence relating to contacts and archiving documents
		submitting reports to the faculty and university authorities	preparing reports based on the documentation in hand
		clinic publications	preparing materials

The above example – just an example let us nor forget – implies that the secretary office's main task is to ensure conformity of clinic actions with the common law and its internal organizational regulations, to organize clinic activities and to document them, to carry the clinic's correspondence and to keep minutes of the meetings of its authorities, to manage the clinic archive and – as far as possible – to plan its yearly activities.

### **Answers to some questions**

#### **How to manage the clinic's statutory matters?**

No easy solution exists – the person in charge of the secretary office must simply be acquainted with all the organizational regulations envisaged in the statute, the regulations and all the resolutions of the appropriate bodies which have an effect on the clinic activities. Furthermore, in line with the rules of common law and the organizational form of the clinic itself, the Law on foundations, the Law on associations or the regulations relating to the institutions of higher education need to be known.

In moments of doubt one must refer to the laws themselves and should not be afraid to admit ignorance – an old lawyer's saying goes: one should have a law in one's head as much as one's head in the law.

#### **How to document a clinic's activities?**

No great philosophy here either – apart from conscientiousness, diligence and regularity. Documenting the clinic's activities consists in the tireless taking note of all official activities and collecting materials that may be useful to the future generations of clinic members. All the official materials should be held in the clinic office and kept in one place, inaccessible to unauthorized

persons and open to all who might wish to become acquainted with them. This place is the archive.

### **How to manage clinic correspondence?**

The correspondence should be clear, linguistically correct and if only possible put down on headed paper with details of the clinic – this relates to the formal and official correspondence. Let us remember that some forms of correspondence should be attended to at specific times, for example reports on the clinic's activities should be submitted to the Legal Clinics Foundation by July 31 of every year. It may be that similar reports need to be submitted to university or faculty authorities or – just as importantly – that accounts need to be timely presented to the clinic sponsors, or reports need to be filed with supervising authorities within appropriate deadlines (if we operate in the form of a foundation or of a student research group). Persons employed in the secretary office are responsible for observing all deadlines. Oh, and one more thing: all official letters are prepared exclusively by the clinic secretary office and signed by authorized personnel.

### **How to keep minutes?**

Minutes is an official document containing the formal presentation of a position of a person or an institution fundamental in the drawing of official conclusions at a later time. Within the context of a clinic's activities, the taking of minutes is important as its content constitutes official confirmation of actions, such as the passing of a certain resolution or the election of a person to a certain function. As a matter of fact, if minutes are not taken little may be known of what resolution was passed or who was elected member of the clinic board. The minutes will therefore serve as proof of facts contained therein, proof of a legal power to which no man of law will remain indifferent.

A dilemma will always emerge – which actions need to have minutes taken and which may be omitted. In case of legal clinics let us take one iron-clad principle – the taking of any decision that influences the rights and obligations of subjects is recorded in the minutes, let all else be silence.

The taking of minutes is not complicated – we need not write down everything that was said down to the last word, let us concentrate (this is important!) on the conclusions. Let us make sure that the minutes contain the essential and indispensable facts, so that everyone can use them to learn of the essence of the problem, and of the decision made regarding a given issue. Let us consider that the minutes make enjoy implied warranty of public trust and, providing they tell the truth, they are formally privileged over all other documents.

### **What should the minutes contain?**

The minutes should contain: the consecutive number of the minutes, the date of the meeting, the names and surnames of the board members and guests present at the meeting, the agenda of the meeting, the titles and the exact wording of each resolution passed, the voting method (secret or open), the number of votes in favor and the number of votes against a resolution, as well as the number of votes abstained, notes of dissent (if such are made), the name and surname of the recorder and an attendance roll. All letters and documents reviewed or presented during the meeting should be attached to the minutes.

### **How to manage the clinic archive?**

The archive should be managed in accordance with five basic principles, namely, those of formality, legibility, order, accessibility and continuity. I shall discuss each one separately.

The principle of **formality** assumes that everything that is contained in the archive is the only true and irrefutable set of documents in a given case. It is not the property of any person but of the clinic, and it is indeed in the clinic where it should be stored.

The archive must be **legible**, namely, it must be kept in a clear way to allow each student of the clinic to know exactly what and where is stored. Furthermore, all documents contained in the archive must be legible to a degree that would allow everyone to learn of its meaning.

Thirdly – the archive needs to be **ordered**. The archive should not be allowed to become infested with materials that are redundant, useless or expendable. On the other hand, the documents should not be too few, so as to avoid ambiguity caused by insufficient information. Documents should be assigned to the correct files and binders, in order from the most recent (on top) to the oldest (in the bottom), and best arranged by section and types of clinic activity.

The fourth of the principles is **accessibility**, although linked with confidentiality. Let us not forget that the documents we collect are confidential as they contain personal data of our clients and of clinic members. On the other hand, the archive must not be locked away from everyone in a safe box. The reason for its existence is to serve every student in their every day work at the clinic.

It is very important that documents are not archived as one fancies, but in a coherent system adopted for the whole clinic. This is the more important should one consider that the archive is kept to serve other people – a fact reflected in the fifth and last principle of proper archiving – the rule of **continuity**.

### **What may an archive look like?**

So that nobody gets lost in it, an archive may be divided into sections marked with appropriate catalog numbers. The sections presented below are only an example and every clinic will set out its own rules for classifying its archive – it is a clinic's independent decision and we only hope that the below indication will be of assistance in this task:

A. The advice archive

This will contain all the materials obtained from clients and not needed anymore in the current clinical work.

- A 1 – the civil section,
- A 2 – the criminal section,
- A 3 – the administrative section,
- A 4 – the labor law section etc.

B. The clinic archive

This will contain all documents, information, correspondence or leaflets that relate to the clinic and its activity.

- B 1 – the general section (for example documents relating to projects, competitions or conferences organized by the legal clinic),
- B 2 – the clinic authorities section (for example minutes from the meetings of the Council and the Board, the resolutions passed by these bodies etc.),
- B 3 – clinic members (a register of membership forms, address lists etc.),
- B 4 – external contacts (detailed description of the hitherto and ongoing contacts between the legal clinic and its patron, section supervisors, the university, the law faculty, nongovernmental organizations, the municipal or regional government, the sponsors, the media, other clinics, the Legal Clinics Foundation etc., depending on the volume of correspondence and contacts with the various types of addressees).

C. The training materials archive

Here belong all textbooks and materials needed for the in-clinic training (for example presentations of the clinic's activities for recruitment purposes etc.).

D. The address archive

This is the right place to hold all address details of members of the clinic.

**How to manage the clinic's membership matters?<sup>86</sup>**

Every clinic has its own set of rules regarding clinic membership. Nevertheless, it is important that every clinic create shortlists of candidates that meet the preliminary requirements to become

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<sup>86</sup> On recruitment to the clinic see p. 61 above.

members of the clinic. It is simpler if, for example, candidates need to be students of a given year of studies or need to have completed a given extracurricular course. After the meeting of the requirement is verified, a membership form may be presented to a candidate. The latter should contain a number of elements.

The minimum are: name and surname, contact address and the place of residence during the studies, the date of joining the clinic, confirmation of receipt, acknowledgement and acceptance of clinic rules, as well as the consent for the clinic to process the candidate's personal data in accordance with clinic objectives. The above should be confirmed by the candidate's signature and the decision of the appropriate clinic authority to accept the candidate as clinic member.

Additionally, the membership form may contain the date and place of birth, the year of study and the study group, the course of activity with the clinic and the functions held within, awards and sanctions received, annotations of the patron, membership of particular sections etc.

Every membership form should be updated at least once every six months. At the moment of membership termination the date and the reason for terminating clinic membership should be added to the application.

Let us keep in mind that the membership form itself does not suffice for a candidate to become a member of the clinic – it is necessary to establish in this respect an appropriate educational cycle which would assume training in the delivery of advice, in the running of the secretary office and other skills indispensable in legal clinic work. Such a path to membership should also be initiated and coordinated by the clinic secretary office, depending on the capabilities and the conditions of a given clinic.

### How to plan activities?

It is worthwhile to consult the calendar and the requirements set out by certain dates when planning the clinic's activities. An example of a clinic activity time schedule is presented below. Please note that not all events that take place in the Polish legal world have been listed, for example leaving out the legal clinics conference, which takes place every six months.

Month	Internal affairs	Clinical activities	Routine affairs
October	<ul style="list-style-type: none"> <li>- general meeting of clinic students after the summer holidays,</li> <li>- appointment of authorities (if envisaged by the statute),</li> <li>- planning of activities for the new academic year,</li> <li>- complementing and updating membership forms,</li> <li>- October 15 – submitting application to Legal Clinics Foundation for autumn grants;</li> </ul>	<ul style="list-style-type: none"> <li>- setting the clinic's duty hours and weekly section meetings,</li> <li>- series of training for new members,</li> <li>- ongoing documentation;</li> </ul>	<ul style="list-style-type: none"> <li>- supervision of clinic documentation;</li> </ul>

	- meeting with clinic patron, - meeting with clinic seniors, - recruitment of new clinic members;		
November	- ongoing documentation;	- motivational and training trip for the junior members of the clinic, - ongoing documentation;	- supervision of clinic documentation;
	- meeting with a practicing lawyer;		
December	- the ongoing keeping of documentation;	- ongoing documentation;	- supervision of clinic documentation;
	- clinic Christmas party;		
January	- ongoing documentation, - January 31 – half-yearly report to the Legal Clinics Foundation regarding the spring grant;	- ongoing documentation;	- supervision of clinic documentation;
February	- ongoing documentation;	- organizational meeting in sections – setting of duty hours adjusted to the new timetable, and of weekly meetings, - ongoing documentation;	- supervision of clinic documentation;
	- clinic meeting – discussion of problems relating to the clinic activity in the new semester, meeting with the clinic patron, - planning activities in the new semester – verification of execution of hitherto yearly plans, - a series of training for the new members;		
March	- ongoing documentation;	- clinic seminar, training trip to another clinic, - ongoing documentation;	- recruitment in the new semester, - updating membership forms, - supervision of clinic documentation;
April	- ongoing documentation; - April 30 – preliminary final report to the Legal Clinics Foundation regarding the autumn grant, - April 30 – submitting of application to the Legal Clinics Foundation for the spring grant, - April 30 – preliminary final report to the Legal Clinics Foundation regarding the spring grant;	- meeting with a practicing lawyer - ongoing documentation;	- supervision of clinic documentation;
	- Easter meeting;		
May	- ongoing documentation;	- meeting with a an organization similar to a legal clinic, - setting out clinic activities during the summer holidays, - ongoing documentation;	- supervision of clinic documentation;
June – August	- ongoing documentation; - July 31 – yearly report to the Legal Clinics Foundation regarding clinic activities, - July 31 final report to the Legal Clinics Foundation regarding the autumn grant, - July 31 – final report to the Legal Clinics Foundation regarding the spring grant;	- ongoing documentation (provided the clinic operates during the summer holidays);	- supervision of clinic documentation;
September	- preparing documentation and putting it in order before the new year of activity, - ongoing documentation.	- preparing documentation and putting it in order before the new year of activity, - voluntary training, - ongoing documentation.	- supervision of clinic documentation.



The time schedule does not present, for example, issues relating to the recruitment of students to the clinic as these are regulated by each clinic individually and in accordance to their requirements. However, it is worthwhile emphasizing here that such activity should be included in the yearly plan of activities, and its timing depends on a clinic's practice (usually it takes place before the summer exams session).

The above has no ambition to replace every clinic's independent decisions. Nonetheless, it is important to plan a clinic's activities and to be prepared beforehand to execute them.

### **How to prepare obligatory reports to the supervising bodies and the Legal Clinics Foundation?**

In view of the fact that Polish legal clinics operate in a number of organizational forms, they report to different supervising bodies and must comply with different reporting standards.

In principle, a foundation is subject to the supervision and control of the Minister of Interior and Administration. If it operates within the territory of one province (voivodeship) then the province governor (voivode) is its supervising organ. Regardless of whether the foundation is an organization of public benefit<sup>87</sup> or not, it reports on its activities and its finance to the minister competent for social security (at present the Minister of Social Policy). Reports must be submitted to the supervising organ by the end of the calendar year following the year to which the report refers. Therefore, if the report covers the year 2003 it must be submitted by December 31, 2004. A reporting standard is provided by the decree of the Minister of Justice on the standard scope of reporting by foundations<sup>88</sup> and it is assumed as the model for all reports submitted to supervising organs.

In case of associations the reporting standards are less strict, although if they hold the status of a public benefit organization the minister responsible for social security will take over the duty of supervision together with the district governor (mayor of a city with district status). The latter is the organ of supervision and control for all associations registered on the district territory.

A student research group reporting procedure is governed by a university's internal regulations. Nevertheless, every year and within deadlines specified by university regulations, an activity report should be submitted to the university rector, who is the supervising organ of research groups that exist at a given university.

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<sup>87</sup> In accordance with the regulations provided for by the Law on public benefit activity and voluntary service (Journal of Laws of the year 2003 No. 96, item 873).

<sup>88</sup> Journal of Laws of the year 2001 No. 50 item 529.

Regardless of whom the report is submitted to, it should contain, among others, the rules, forms and the scope of statutory operations, a report on the fulfillment of objectives and a description of main events – importantly, not only factual events but also legal events, which generate financial consequences. Minutes prepared by the secretary office will serve to attach to the report copies of the resolutions of the organization board. Moreover, information on the income obtained, detailing the source of income (for example inheritance, legacy, donation, means obtained from public sources, including the state and local budgets), paid-for services rendered by the organization within the framework of its statutory objectives and including the cost of delivering such services, should be attached. If the foundation or association is commercially active it must attach information on the financial result generated and a percentage relation between income generated from commercial activities and that generated by other sources.

A report must also contain a part relating to financial matters, which should contain, among others, information on cost incurred on realizing statutory objectives, commercial activity, administration, as well as the number of people employed by the clinic, the total payroll, the value of assets and the organization's liabilities. The financial part of the yearly report should also contain information on the real-estate acquired, and the realization of tasks commissioned by the organs of public administration within the framework of the Law on public benefit activities and voluntary service, as well as the law on procurement of public orders.

Let us keep in mind that the above requirements apply mostly to foundations and associations, and only to a lesser degree to student research groups. In their reporting, the latter shall have to place greater emphasis on the university educational activities (for example seminars, training, lectures), and the financial part of the report should detail the use of subsidy, which – in principle – is granted by every university to finance the activities of research groups.

### **The secretary office to the clinic – what do standards say?**

Besides the obligatory reporting to their supervising organs envisaged by the appropriate regulations of law, university standards for legal clinics provide for further obligatory reporting<sup>89</sup>. This obligation is detailed in the eleventh standard.

No later than on July 31 of every year the legal clinic shall submit to the Foundation information on:  
the number and of type of cases under review,  
the number of students and supervisors,  
information on any other successes and achievements.

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<sup>89</sup> See sample in annex 5.

### **3.5. University legal clinic's financing and fund-raising (Grzegorz Wiaderek, the Stefan Batory Foundation)**

In order to work efficiently and effectively, legal clinics need adequate financing. The clinic managers must therefore endeavor to secure suitable funds, be able to analyze operating costs, know how to construct a budget and, last but not least, must possess the ability to manage the organization's finances.

University legal clinics find themselves in a specific situation, foremostly in that they enjoy a close relationship with universities and their legal faculties. To a certain degree this determines the ways the clinics' operations are financed, the methods in which financing is sought after and the directions of fund searching. On one hand the strong and formal relationship to the university brings a certain degree of stability, as it facilitates the clinics' functioning (by providing book-keeping services and securing premises, for example), it also gives them the support of a strong institution. On the other hand it may limit the clinics in searching for funds. Some funds are available exclusively to nongovernmental organizations in the strictest of senses, which excludes university organizational units. Also, not all fund-raising techniques may be used by legal clinics. Regardless of the above, legal clinics, very much like other organizations, need to seek financing and need to apply similar standards and methods of fund-raising.

#### **The art of fund-raising**

Fund-raising for nongovernmental organizations has a long tradition, literature and doctrine, particularly well established in the United States of America. In Poland fund-raising is traditionally understood as the art and skill of procuring funds. The word art is used purposefully since it is emphasized that in order to function effectively a fundraiser needs appropriate aptitude and talent. Fund-raising incorporates specific knowledge, a fundraiser's methods and techniques, skills in presenting the organization and its needs, as well as organizational and negotiating skills.

A prerequisite to effective fund-raising is the possession of an adequate pool of well-organized information. In the first place this refers to information on one's own organization (its mission, objectives, strategy, capabilities and needs), but also information regarding the environment in which the organization operates and the potential sources of financing.

### 3.5.1. Let us start with the costs

In order to raise funds for the functioning of a legal clinic in a sensible and effective way, the clinic's needs must firstly be defined. These needs can differ depending on the range of the clinic's activities (a big clinic with many clients generates much bigger administrative and office overheads, costs of postage, telephones etc.) as well as the stage of its development (in the phase of establishment a clinic requires large sums to acquire computer hardware, furniture, technical equipment, training). In general, however, the operational needs of a clinic are in principle identified with overheads, which in turn may be split into the following categories<sup>90</sup>:

1. Payroll:
  - salaries of the clinical supervisors,
  - salaries of office and secretary staff,
  - costs of experts' work;
2. Office rent (the clinic's office, meeting points for clients);
3. The cost of equipment:
  - computer hardware, printer, scanner,
  - photocopier, fax machine, telephone,
  - books, computer software;
4. Administrative costs:
  - telephones and Internet connection,
  - postage,
  - office supplies;
5. Travel costs;
6. Civil liability insurance costs;
7. Costs of training for students working in the clinic and for supervisors (instructors' fee, hiring an auditorium, training materials);
8. A reserve fund.

Therefore, when calculating the cost of organizing a university legal clinic or of its functioning, one must take into consideration the above categories, adequately estimating the clinic's needs and organizing information on operating costs. This should significantly facilitate

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<sup>90</sup> The above enumeration is purely illustrative. For instance, in many clinics payroll does not appear, since the supervisors work *pro bono* or the hours spent in the clinic are included in their obligatory teaching hours and therefore do not generate costs for the clinic.

formulating fund-raising strategies as well as creating clear budgets, and subsequently managing the clinic's finances. It is also worthwhile to define a minimum budget, i.e. the lowest budget which would permit the clinic to function without a significant detriment to the effectiveness and quality of its work.

### **3.5.2. Sources of financing for legal clinics**

A legal clinic, similarly to nongovernmental organizations, should endeavor to finance its activities from different sources. Although a single source of adequately generous financing would quite obviously be a comfortable situation, it is however rather difficult to attain. It also creates certain risks – a regular source of financing can eventually run out, thus driving the clinic into serious trouble. While applying for different types of support, it would therefore be advisable to seek the possibility of assigning a certain part of the finance to a reserve or auxiliary fund. The aim of such a fund is to ensure stability and security to legal clinics. Obtaining such means is not at all easy since usually the financial resources are scarcer than the needs and the grantors are rather unwilling to accept such an allocation of their subsidies. However, this does not mean that attempts should not be made.

The most important sources of financing include: the university, public institutions, European funds, domestic and foreign foundations, commercial corporations and law firms. Let us discuss the above shortly.

#### **The university**

The university is the most obvious and fundamental source of financing for a legal clinic. Formally and legally it is the foundation for the clinic's existence. Without the university financing some of the operating costs the clinic would not be able to start up its operations. The university should therefore cover the costs of the clinic supervisors' salaries and – in principle – provide the clinic premises. The basic rules and conditions for the university support to the clinic should be set before the clinic starts operating. A substantial and stable assistance from the university can also be an important argument during negotiations with other grantors.

#### **Public institutions**

Public institutions, such as the Ministry of Justice, the Ministry of National Education and Sports, the Office of the Ombudsman and institutions of local governments are another important source of support for legal clinics. Their assistance may be financial (subsidies), in-kind

(for example computer hardware, granting premises where meetings with clients may be held) or consist in the provision of know-how. The cooperation between clinics and public institutions bestows splendor and credibility onto the clinics. In case of public institutions the best method is to constantly monitor the possibilities of obtaining support, to send inquiries, to keep them informed of the clinic's activities and to maintain direct contacts.

### **European programs**

European programs should be (and indeed are) an increasingly important source of support for legal clinics. However, the organizational and formal connection between the clinic and the university may cause certain difficulties here. This is because a considerable part of the European resources available to clinics impose restrictions concerning, for example, assigning financing to nongovernmental organizations only. There are three solutions to this problem: the financing from European programs may be applied for by a nongovernmental organization which groups legal clinics and acts on their behalf, by a nongovernmental organization created by an individual clinic, for example a student association or a foundation, or by a nongovernmental organization which collaborates with the clinic (for example Caritas), which would need to specify in its budget sums it intends to allocate to the clinic. The basic method of obtaining this type of financing is to submit grant applications within the framework of European programs. This requires constant monitoring of those programs and a considerable amount of knowledge of procedures applicable to applying for and reporting on the application of EU financial support.

### **Domestic and foreign foundations**

The programs of some domestic and foreign foundations incorporate the support of provision of legal advice and of the reform of legal education. This creates the opportunity for legal clinics to prepare projects and submit appropriate applications, either by themselves or through organizations representing them.

Foundations have autonomous procedures, methods of assigning grants and of communicating with the beneficiaries of their programs. In case of such institutions constant monitoring of their activities, surveying invitations to contests and preparing grant applications are also fundamental. Personal contacts and a history of cooperation between the clinic and the grantor may be a particularly weighty argument in relations with foundations.

### **Commercial corporations, legal publishing houses, law firms**

The last but not least group of potential financing sources are commercial corporations and law firms. Legal publishing houses, legal software manufacturers and large international law firms should be considered here. Without doubt they are difficult partners to obtain financial support from. This is because they usually do not operate any grant awarding programs. It is therefore important to have precise knowledge about the potential of a given corporation and its operating methods. If one is to stand a chance of fully benefiting from its generosity, one must formulate the offer as precisely as possible. In this instance direct contacts undoubtedly play the most important role. Although sometimes financial support may not be on the agenda, a corporation may wish to discuss in-kind contribution. Publishing houses may wish to donate books and legal periodicals, software manufacturers may donate their products and computer hardware. Law firms may make their lawyers available to legal clinics for consulting and advising. Naturally, the provision of in-kind contribution and of the assistance of experts does not exclude the possibility of further seeking financial support to the clinic.

#### **Grant application or offer?**

When applying for support to commercial corporations or law firms, proposals should have the form of an offer rather than a grant application. In short – a grant application comprises: a specification of the amount of money applied for and a description of its planned application accompanied by a suitable justification. An offer, on the other hand, beside a request for support (transfer of know-how, financial or in-kind contribution), must formulate clearly and as specifically as possible the benefits that the corporation will enjoy from lending the support. This may include, for example, promotion of a publishing house or publicity for its publication, the good repute of a corporation that provides aid to the indigent, or the opportunity to collaborate with the best students, who may in the future join the corporation or the law firm.

### **3.5.3. How to solicit support**

#### **The strategy and the plan**

The starting point for raising funds for the clinic's activities is an appropriate strategy, which should follow from the general operating strategy of the legal clinic. One of the more important elements of a strategy is a reliable financial plan which is the basis for determining the size of the clinic's financial needs and the allocation of the means provided for in the budget. Legal clinics are in a comfortable situation in that their mission, objectives and strategy are clear, transparent

and socially comprehensible: the practical education of law students and the provision of free of charge legal assistance to the indigent. This facilitates the formulation of the fund-raising plan, namely: determining the level of means to be sought after, choosing adequate searching techniques and methods, and short listing potential sponsors. It also makes it easier to present the clinic's objectives and the results of its activity.

A good financial plan should therefore – in brief – answer a few basic questions:

1. From whom the support is to be obtained?
2. What methods shall be employed to achieve this?
3. Who will be engaged in the fund-raising?
4. When will individual actions be undertaken?
5. What type of assistance shall be solicited and what shall be its value?
6. How exactly will the solicited support be allocated?

Both the fund-raising strategy and the financial plan should be subject to constant control and verification. Strategies and plans generally need to be modified and amended. Some actions can prove ineffective, new sources of financing may appear. It is therefore important to work out a set of rules for verifying strategies and financial plans and to reserve time for this in the schedule.

### **Methods of soliciting funds**

Not all fund soliciting methods are available to every organization. In principle the type of activity and institutional limitations narrow down the options available in this respect. This is also true of legal clinics. It would be hard to imagine a situation in which a clinic raises means to finance its activities by organizing charity balls or street collections. Therefore, in practice the choice of methods of soliciting financial means by a clinic is limited to applying for subsidies from various institutions or in-kind and know-how contributions.

The soliciting of financial means in the form of subsidies requires the ability to write grant applications and to construct projects for which funds are to be solicited. Such projects should present well defined objectives, which would follow from the clinic strategy, clear action plans, time schedules and budgets. While designing the projects, special care needs to be taken to define concrete and credible effects. These often provide the necessary common sense justification of the expenditure in the mind of the sponsor. For example: while preparing a project for a grantor who wishes to support the distribution of legal reference books, beside presenting their authors, contents and their aim, one should indicate the number of copies of the book intended for distribution, how and whom the book is going to be distributed to, what benefits the project is going to bring to its beneficiaries and how its effectiveness is going to be measured.



Persons and institutions we wish to ask for know-how or in-kind support need to be approached in a similar manner. Regardless of whether it is gratuitous computer hardware or the possibility of obtaining free of charge consultations from an experienced practicing lawyer, one should clearly indicate to the potential benefactor the benefits they will enjoy from lending us their support. The benefit would usually consist in positive publicity for the sponsor or partner of a legal clinic.

### **How to help oneself win funds?**

It is vital in seeking financial support to be able to make a presentation of one's own organization. This refers to presentations prepared sporadically for specific sponsors and a permanent presentation, which provides information on the activities currently undertaken by the legal clinic. Creating a sensible presentation always requires possessing a certain amount of knowledge about the sponsor. One must know what information to present to the sponsor, what the sponsor is interested in, who it is that one should talk to, and what presentation method to choose (for example a meeting or lengthy letters).

A good solution, conducive to creating a sensible financing scheme for a legal clinic, is the establishment of a supporting organization. This may be, for instance, an association of students or graduates, or a foundation created by people involved in the development and functioning of the clinic with the objective of supporting its activities. The existence of such an organization is indispensable should one, for example, wish to apply for funds inaccessible to a university unit for formal reasons. Such an organization may also lend professional assistance to the clinic, for example through the use in cases conducted by the clinic of various legal instruments available to nongovernmental organizations.

Cooperation with other clinics may often bring positive effect to the efforts of soliciting financial support to legal clinics. This refers to cooperation within the entire network, as well as to bilateral or triangular cooperation. Within this cooperation fund soliciting strategies may be combined, shared projects may be prepared and sponsors may be approached jointly. Sometimes this approach is necessary as some sponsors are not interested in small projects presented by individual entities, but prefer programs with a wider operational scope. Such cooperation permits offers to complement each other, and to eliminate possible shortcomings of individual clinics. After all it may happen that one clinic has more experience in, for instance, refugee law, another can have a remarkably well developed labor law section.

Another factor which can influence a legal clinic's search for funding of its operations is collaborating with nongovernmental organizations, the activities of which relate to the activities

of the legal clinics. These include organizations working with the indigent or providing support to the disabled or to convicts. The infrastructure of those organizations may be used by clinics in their activities (for example a place to hold meetings with clients, preliminary examination of cases). Cooperation with such organizations may also prove decisive in applying for selected types of support. Cooperation within this sector may assume different forms. A subsidy can be obtained by an organization for a project realized in collaboration with a clinic, the two institutions can apply jointly or the clinic can apply for subsidy by itself, using its collaboration with a renowned nongovernmental organization as a significant argument which would undoubtedly add credibility to its grant application.

### **3.5.4. Relationships with benefactors**

Correct relationship with grantors who support the clinic is very important. It is an obvious and banal statement, and yet it is often underestimated. Proper relations with grantors must be kept at every stage of cooperation. Firstly, while establishing contact with a grantor, basic knowledge of their mission, objectives and activities is essential. It facilitates initial talks and helps to customize the clinic's offer. In case of long-term cooperation it would be useful if one person were appointed to liaise with the grantor. This allows for continuity of cooperation and prevents misunderstandings or shortage of information. It should be remembered that the grantor's role does not end with the transfer of the grant. It is crucial to maintain good relations with the supporting organization if the clinic plans to submit further applications to a given grantor. Their opinion may also be decisive in soliciting support from other sources. Grantors will often exchange information and opinions regarding the organizations they support.

#### **Reporting to grantors**

Cooperation with grantors does not require any particularly complex or time-consuming actions or procedures. It is more the question of conscientiousness in conducting one's activities. In principle, the grantor cares for the same. First of all it is professionalism that counts. If a report needs to be sent, it must be sent within the agreed deadline and it must present the scope of information agreed beforehand. Nothing more, and nothing less. Grantees who fail to send their reports in within the specified deadlines, or who fail to send their reports altogether, will make an equally bad impression as those who send voluminous reports detailing everything they know. A report on the disposition of the subsidy should be composed of two parts: a factual one, detailing the actions undertaken, information on participants, publications published within the

project etc., and a financial one, giving account and description of the expenditures of the financial means obtained from the subsidy. There is no doubt that the figures presented in the report, particularly those concerning finances, must add up and be presented as clearly as possible. Bills which are settled from the subsidy need to be endorsed. The structure of a financial report should directly correspond with the structure of the budget which was the basis for awarding the subsidy. Any differences or alterations should be pointed out and discussed in depth. The report should indicate the expenses covered by the subsidy obtained from a particular grantor, as well as expenses covered from other sources, if such arrangements were previously made with the grantor. It is advisable to report on standard forms provided by the grantor, if such exist. Reporting specimens may also be obtained from the various guidebooks for nongovernmental organizations.

It is often worthwhile to propose to the grantor to take a closer look at the organization's activities, the benefactors may also be asked for advice or opinion, and they absolutely must be informed about any significant alteration or deviation from the initial action plan or changes to the budget.

While assessing the validity of the subsidy, the grantor will in particular consider the feasibility of the project's objectives, and the attainability of its effects. It is crucial that reliable information on the future of the organization or of the project after the period of implementation of the subsidy granted by a given sponsor be presented. Contrary to what one might expect, the strategy of using the argument that without the grantor's support the organization will sink into serious financial trouble and will be able to function no more, stands little chance of success. When looking for financing of the organization's activities one must keep in mind the generally known truth, namely, that reputation is built painstakingly over many years, and yet it may be destroyed very quickly and often for a trivial and commonplace reason.

### **3.6. Insuring the clinic (Aneta Frań, the Jagiellonian University in Kraków)**

In 1997, alongside the foundation of the first Polish legal clinic, a discussion was initiated among attorneys, legal advisers and notaries to introduce obligatory civil liability insurance for people of these professions. The civil liability insurance obligation for attorneys, notaries and legal advisers was introduced in the year 2000 and it covered damages ensuing from the provision of legal assistance, in particular from advising, formulating legal opinions, preparing draft laws and acting before courts and government administration offices. At the present moment the issue

of obligatory insurance of the professional groups of attorneys, legal advisers and notaries is regulated by three independent legal acts<sup>91</sup>.

Since the clinics' operations are analogous to the activities conducted by attorneys and legal advisers, immediately after creating the first legal clinic measures were taken to find an insurer with whom an appropriate insurance agreement could be signed – quite an unusual concept in those days.

### **3.6.1. Why take out insurance?**

The necessity of introducing legal clinic insurance – similarly to the legal professions – was motivated by the risk of causing damage to the client served by the clinic. Due to the specific nature of the clinic's activities such risk could not be ruled out. The never-ending amendments to the provisions of laws and the growing number of laws result in the unquestioned necessity to introduce obligatory insurance of legal clinics' activities, to cover damages that may arise in relation to the provision of legal assistance.

### **3.6.2. Coverage and insurance agreement**

The clinic should sign an agreement with a chosen insurance company, operating in the field of civil liability insurance. In practice, such an agreement will be signed by the university, since clinics most commonly operate within the legal personality of the university. Former experience indicates that some clinics had problems signing such an agreement, owing to the unusual character of their legal form and the scope of operations.

A clinic's insurance policy should, in the first place, indicate the period of validity, name the date from which the clinic is covered by insurance, it is also recommended that it should define:

- the basic range of the insurer's responsibility,
- the minimum guarantee sum of the insurance, expressed as a value,
- the range of rights and obligations of the insured and the insurer and resulting from the insurance agreement.

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<sup>91</sup> The decree of the Minister of Finance of December 11, 2003 on the obligatory civil liability insurance of attorneys, Journal of Laws of the year 2003, No 217 item 2134, the decree of the Minister of Finance of December 11, 2003 r. on the obligatory civil liability insurance of legal advisers, Journal of Laws of the year 2003, No 217, item 2135, the decree of the Minister of Finance of December 11, 2003 on the obligatory civil liability insurance of notaries, Journal of Laws of the year 2003, No 218, item 2148.

It is not compulsory for a clinic to conclude an insurance agreement. It may be signed with an insurance company of the clinic's choosing and against a written application from the clinic to the insurance company. Such agreements are usually signed for the period of 12 months.

The insurance covers primarily the conducting of activities within the scope of provision of legal advice and legal assistance, including the performance of guardianship by students under the supervision of members of a given university's faculty. The insurance should extend the protection provided for in the insurance agreement over all the students working in the clinic as well as persons supervising their work. It is important for the clinic to make sure the agreement covers the largest possible spectrum of activities and that no area of the clinic's activity remains uncovered by the insurance.

The insurance policy should cover civil liability within the scope of tortious and contractual liability. For each of these an insurance sum should be defined. In case damage arises in the course of the clinic's activity, this sum will serve to cover compensation to the injured party, it should also cover, for instance, the fees of experts called by the insured (the clinics), with the insurer's consent, in order to establish the circumstances and the extent of the damage, reimbursement of indispensable expenses to prevent augmentation of the damage and of the financial claim, if they are justified by the circumstances of a given incident, the expense of in-court litigation undertaken with the insurer's consent, as well as the costs of settlement proceedings, undertaken and incurred by the clinic with the consent of the insurer.

Indemnification is limited by the size of the determined damage as well as by the level of the guarantee amount to the amount of which the insurer bears responsibility<sup>92</sup>. It should be nevertheless said that the legal clinic standards indicate that the above mentioned sum should be no less than the equivalent of 10,000 EURO<sup>93</sup>.

In accordance with the general regulations concerning insurance agreement procedures, the insurance company does not bear responsibility for willful damage caused by the clinic<sup>94</sup>. In case

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<sup>92</sup> These sums are defined individually in an agreement concluded with a given clinic. For the clinic's safety they should amount to approximately 10,000-12,000 US dollars for tortious liability and the same amount for contractual liability.

<sup>93</sup> The tenth standard provides for the following: "The Clinic's activity shall be covered by civil liability insurance and the guarantee sum shall be no less than the equivalent of 10,000 EURO.

The insurance agreement is concluded by the university, as the insuring party.

The insured party are: the university, the students, the Clinic personnel.

Until the provision of legal assistance to the clients is undertaken, the clinic shall obtain from its clients written statements to the effect that the clients agree to exclude liability with the exception of liability for willful damage.

The insurance sum in the above mentioned amount refers to every incident for which damage is payable.

<sup>94</sup> See art. 827 § 1 of the civil code.

of gross negligence indemnity is not payable, unless indemnification corresponds in that particular circumstance with the principles of social coexistence. Parties to civil liability insurance may establish in the agreement principles of insurance company liability other than the above.

### **3.7. External contacts and public relations (Celina Nowak, Polish Academy of Sciences, Legal Clinic Warsaw University)<sup>95</sup>**

A legal clinic can not and does not function in a void. Without clients it would not be able to counsel, which features distinctly in the clinic's operational scope, without the support of university authorities it would lack self-confidence and it would be unable to develop. Therefore, issues relating to the building of a broadly understood image and of conducting proper PR<sup>96</sup> activities should be vital to the clinic. The present short survey has the aim of, firstly, introducing the nomenclature of this subject and, secondly, to relate it to the conditions of legal clinics and to indicate the range and manner in which a clinic should approach this issue.

#### **3.7.1. Basic concepts**

The concept of PR is closely linked to management. Management is a process, conducted within an organization, consisting in setting aims, allocating means for the realization of those aims, supervising their execution and assessing the degree to which they have been realized.

Every organization, whether commercial or non-profit, needs to be properly managed. Competent management is enhanced by identifying planes of communication within the organization. Usually the following planes of communication are distinguished:

- inward – the corporation communicates with its employees, and the employees communicate between themselves – its objective is the enhancement of human relations;
- mostly outward to create a desired organizational identity – the so-called corporate identity (composed of corporate design – the image of the organization, comprising visual means, and of corporate culture – the culture of the organization, comprising the norms accepted and promoted by the organization);
- predominantly outward and aimed at realizing the sales policy – marketing;

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<sup>95</sup> The author based the present text on K. Wójcik "Public Relations od A do Z", Warsaw 2001, as well as her own experience from several years' work in the Legal Clinics of the Law and Administration Faculty of the Warsaw University.

<sup>96</sup> In the present study the acronym "PR" shall be used for public relations as it is widely accepted in the science of management and PR.

- outward and inward communication to build the desired level of confidence, credibility and image within the various groups in the organization's environment - typical public relations.

Sometimes PR is identified with marketing, as a matter of fact those two planes blend together, particularly if one refers to the definition of marketing, according to which it consists in identifying and meeting the needs and wants of the clients in a way that ensures achieving the organization's aim, and to the definition of the marketing process, which is defined through the so-called marketing-mix, which determines the effectiveness of marketing. Marketing-mix is composed of 4P (price, place, product, promotion). Promotion, according to its definition in the science of management, is a way of communicating with the environment so as to increase the demand for a given product.

All the concepts discussed shortly above are interrelated, as marketing is a part of the management process, and both processes are directed at achieving the objectives of the organization. In turn, in a broader sense, PR is a part of the general management process and, in a more narrow sense it is a part of the marketing-mix, since it is inscribed in the range of promotional activities which will be of great importance, also in connection to the activities of legal clinics.

The most straightforward definition of PR amounts to the phrase "do good and speak of it." PR is therefore an action which consists in providing the environment with honest, impartial, professional and prompt information concerning the activities of a given organization, in a manner that is advantageous to it, in other words it supports the organization in achieving its objectives.

More scientific definitions would say that, for example, PR is a social activity that is deliberate – therefore purposeful and intentional, methodical – therefore systematic, planned, based on analyses and research, availing itself of the achievements of all the sciences which provide a chance of being effective and give due consideration to the fact that the nature of the objectives demands continuity of actions and relatively long periods of realization and, above all, that the object of influence – i.e. the environment – needs to be adopted as the starting point. An activity with such characteristics is to lead to the formation of relationships, structures and connections of a suitable quality between an organization undertaking such an activity – commercial or otherwise – and its immediate and more distant environment, composed of a relatively stable target group structure. Conducting activities with mutual regard for goals, attitudes, opinions and interest in the organization and its methods of communicating, i.e. the information system, and

the system for collecting feedback, as well as for adapting behaviors, is to stimulate the understanding and appreciation of its affairs and position, and to use that as a foundation to develop positive attitudes, even sympathy and support, and to create the desired image of the organization in the mind of the environment, so as to create the foundations for changes in the behavior of the environment, should such changes be desirable<sup>97</sup>.

It is important to establish the interrelation between the above mentioned concepts since – in order to be able to speak about PR - actions undertaken with the aim of building a positive image must (or at least should) be incorporated in the entire management process. PR is a strategic domain within a particular organization, as PR actions are long-term and are directly connected with the organizational management policy, and indeed are a means of realizing that policy.

PR, as a strategic domain, must be methodical, i.e. systematic and undertaken intentionally and with a clearly defined aim. We must realize that, as has been emphasized above, PR is a part of organizational management, and is the outward expression of the proper management of an organization.

Three types of PR aims may be distinguished. Firstly, the general or strategic aims, which are defined during the phase of deciding about the priorities of the management process and which thus define the role of PR in this process. To this group the following fundamental objectives belong: to develop a favorable attitude, a desired image, opinion and reputation of a given organization within its environment and to build, maintain, enhance, or regain lost confidence.

The second type of PR aims are the operational aims, which shape actions undertaken within strategic aims. The fundamental objectives within this group are: to provide reliable information about the organization, to present the organization's standpoint and to present the organization's offering to the environment.

The third group of PR aims embraces specific tasks, which serve to realize operational objectives.

Regardless of the various classifications, it must be stressed that the primary aim of PR activities is to achieve the desired perception of an organization and to model its positive image.

The image is a general opinion which a specific group or community has about an organization. The image is made up of several factors. Firstly, the actual state of the organization (its mission, philosophy, code of conduct – the declared and the real one, its offering, products, unique competence, character, operational program), secondly, communicating about the state of the organization's affairs and, thirdly, perception, public response to the elements and activities mentioned above, which is the result of the following:

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<sup>97</sup> K. Wojcik, op.cit.



- a) rational factors (knowledge of the organization);
- b) emotional factors (feelings towards the organization, sympathy, antipathy);
- c) social factors (social norms accepted by the group to which people relate, and the perception, or the opinion of the leaders of that group about the organization).

The image does not form in a void. Our perception of the image of a particular person or organization is influenced by very elusive and emotional factors. They may be grouped into several effects.

The effect of radiation takes place when the opinion about the whole organization is based on features, spectacular and easily accessible events (for example the clinic's winning a high profile case, which is widely publicized by the media). The stabilization effect is related to maintaining a negative or a positive image created and fixed previously through good or bad experiences of the organization. It is difficult to fight this effect, and it is particularly hard to change a bad image formed upon irrational factors. In turn, the transfer effect (or the halo effect) reflects the influence of general impressions of an organization on detailed impressions (a positive general image of an organization is transferred to a positive perception of the organization's offering or its policy – for example the pleasant appearance of an office and the attentiveness of customer service will influence a client's general positive opinion about the clinic, even if they do not obtain any help). It is even harder to fight the reversed halo effect (or the devil's effect) which characterizes the influence prejudice has on an organization's negative image (for example we dislike lawyers as a rule and have a bad opinion of them, therefore the clinic is certainly not going to help us, and no wonder that indeed it did not).

The PR of a given organization, as a strategic activity which consists in communicating, is not directed at the public opinion as a whole. When conducting PR activities a given organization is interested only in certain groups, isolated from within the society, which:

- a) are important to it now or will be in the future, as they somehow influence it,
- b) are themselves interested in the organization because, having their own motives and wanting to solve their problems, they know that the solution may or indeed does depend on the organization.

Those groups are known as the organization's environment – they build up a circle of those who can have positive or negative influence upon its effectiveness. Usually, organizations have certain fixed environments, but sometimes they add *ad hoc* groups, defined, for instance, for a given project.

Within the typological structure of an organization's environment several distinct levels are distinguished. Firstly, the internal environment – for a legal clinic this means its employees and

volunteers, secondly the functional environment – for a legal clinic this is the law faculty and university and, thirdly, the general environment. It must be said that due to different planes of PR communication, depending on its orientation to the particular types of environment, various branches of PR are distinguished – for example internal PR (internal relations), sponsor-oriented PR (financial relations) etc.

In today's global world communication can assume different forms. In regards to the distance of time and space one can distinguish direct personal communication (face-to-face), direct non-personal communication (by telephone etc.), indirect communication - by means of mass media and multistage communication – through the media information reaches the so-called intermediate recipients (leaders of a given environment group), and through them it reaches the actual addressees.

### **Types of communication**

Types of communication have direct influence on PR techniques. The following categories of techniques used in the PR process are distinguished:

A. Communicating by means of instruments developed autonomously by the organization

I. Influence exerted by type of communication

1) The word

a) printed:

- own publications,
- annual reports,

b) written:

- informational letters to members of the organization, employees,
- bulletin boards,

c) spoken:

- lectures, seminars, trainings,
- meetings, open-doors policy,

2) The image

- company exhibitions, photo service
- the Internet;

II. Influence exerted through events:

- 1) Visits to the corporation,
- 2) Jubilee celebrations,
- 3) Informational events at fairs and other such events,

4) Meetings with local communities;

B. Communicating with surroundings when the organization has limited influence on the final shape of the communication

I. Word in written texts, mainly for the press:

- announcements, the organization's position in a given subject,
- articles,

II. Press events

- press conferences, briefings,
- company sightseeing organized for the media;

III. Inviting the press to the company's own events

- taking charge of reportages initiated by the media,
- proposing interviews, articles;

IV. Other forms

- taking part in seminars held by other entities,
- lectures given by employees invited to third-party events;

C. Cultivating good relations

I. Non-personal forms

- letters to employees,
- letters directed outside;

II. Contact events (appealing to the emotional sphere)

- organizing receptions for VIPs, journalists and reporters,
- special rules for receiving guests.

Examples of PR activities include: informing the media about the organization's activities, assisting the media if information related to the organization's activity profile is required, monitoring the organization's image and reacting to information about the organization in the media, stimulating desired image of the organization in the media, which should be accompanied by communication within the organization and creating its positive image with its employees. Since PR, as has been said above, is related directly with management, people responsible for PR should take part in decision making about the organization's strategy and the tasks it sets to itself. PR is important in crisis situations, when it should provide the organization with appropriate crisis communication.

### **Phases of the PR process**

As any other area of strategic organization management, PR should be a methodical and a well thought through activity. Many organizations make the frequent mistake of undertaking PR activities from time to time. The PR process should be well planned.

**Firstly**, before any PR activity is undertaken, the initial state of the organization should be examined from the point of view of PR (this means gathering information about the organization's initial situation, about its present image, whether and how it is spoken of in the media, what opinions specific environments have about it). Consequently, this data should be processed.

**Secondly**, planning needs to be executed. At this stage, the objectives of PR must be defined, on the basis of the previously gathered and processed data, and thus PR activities must be planned. It has been said earlier that the most common objective will be to build or change the organization's image.

**The third stage** of PR process is the implementation of the PR programs formulated in phase two.

**Fourthly**, an essential and yet frequently neglected part of the PR process needs to be effected, namely, evaluation. This means to assess the executed programs from the point of view of attainment of the previously defined objectives. Evaluation is necessary to define whether the PR process has been a success, for example whether it has succeeded in building a positive image of the organization or in changing the old, negative one. Only after completion of this phase can the organization state if the objectives set for the PR process are correct, and likewise, if the PR process is heading in the right direction and should be continued, or whether the objectives should be reformulated and operational methods altered.

### **3.7.2. PR in a legal clinic**

Entities such as clinics, in other words non-commercial organizations, operate on the market on the same premises as corporations, since they also have to compete for financing and for clients. Therefore, similar rules can be applied to them as regards the necessity of using management instruments, which includes PR.

Legal clinics find themselves in a very specific situation with respect to the undertaking of PR activities. Firstly, it would seem that they face complex communication challenges as they need to direct their communication at many different entities. Moreover, clinics' internal problems are added, since very much like all nongovernmental organizations legal clinics are self-focused,

which brings about various decision making problems. Finally, problems with conducting PR activities in legal clinics are closely related to the fact that clinics suffer from impaired ability to make autonomous strategic decisions due to deficiency or altogether lack of financial resources. It is difficult to plan long-term PR activities, which would bring about certain expenditures, if the financial resources do not suffice to cover on-going costs. The lack of stability and self-sufficiency affects also the clinics' human resources and means that PR activities are undertaken unsystematically, and are executed by random personnel.

For the sake of clarity we have decided to discuss the clinical PR in relation to the identifiable types of environment. It seems that, very much like any other organization, a legal clinic has two basic types of environment – internal and external. A clinic's external environment can also be subdivided into various types. Each type of PR activity, having effect on a particular type of identified clinic environment, shall be shortly discussed from the point of view of the objectives it serves and the techniques which may favor their realization, classified by type of communication.

#### **Internal PR, addressed to employees and volunteers (students already working in the clinic)**

The aims of internal PR will be: firstly, to motivate the internal environment, secondly, to awaken community spirit, particularly among students and, thirdly, to build loyalty toward the organization.

The above aims will be achieved with the following techniques: direct PR – first of all meetings and discussions with the participation of employees and volunteers, during which the organization – voiced by the manager or the person in charge of PR – presents and explains its actions in a way which would permit the internal environment to gain full knowledge of the planned activities and identify itself with the organization, and to give it the opportunity to express its opinion and feel it has been heard out; indirect PR – various publications (brochures, news-sheets etc.) intended for internal circulation.

#### **External PR**

The PR activities of a legal clinic should be conducted simultaneously on several planes, i.e. in relation to several distinguishable types of environments. Firstly, one type of PR should be aimed at the so-called "target groups", the second at its functional environment, and the third at the typical external environment.

In relation to the first of the above mentioned types of PR, it would seem that two different external target groups may be distinguished for a legal clinic:

- the so-called suppliers – entities which provide resources, such as people who wish to work in the clinic or potential sponsors;
- the clients – the people who are provided by services by the organization.

The issues mentioned above shall be shortly discussed.

### **Clinic suppliers – potential clinical students**

The main aim of the PR addressed at the potential clinical students should be to create a positive image of the clinic. The innovative methodology of clinical teaching of law, the new challenge that clinical work brings about, and the comparison with the over-theorizing academic studies should be emphasized. One should not forget the personal aspect of clinical work, namely, the enhanced prospects for finding better employment, the opportunity to work with real people, and consequently to prove oneself and verify one's legal skills. All such circumstances should be mentioned in the information about recruitment rules so as to encourage students to apply for work in the clinic.

The techniques which can be applied to this group concentrate largely on direct PR. Information concerning work in the clinic can be passed on to their peers by former students (this is the reason for which internal PR and the development of a sense of identification and pride from working for a given organization is so important). They are the best testimony and the most trustworthy source of information about clinical work. Additionally, knowledge about the clinical work may be delivered by clinic supervisors. Finally, direct PR will be of great importance at meetings during student fairs or seminars, when the organization shall present itself.

As far as indirect PR is concerned, one should focus on posters, which should be hanged on student notice boards, and on the various types of announcements concerning the existence and the activity of the clinic, placed in the university course guide. At the same time one should not neglect organizing events which give the opportunity to promote one's activities (simulated court hearings, seminars) before the would-be clinic students and to allow them to formulate their own opinions about working in the clinic.

It seems that the real value of a student's work in the clinic does not entirely correspond to their academic grades, therefore students with somewhat worse grades should also be encouraged to join the clinic, and an image be built of an organization which gives credit not only to academic merit but also to personality. At the same time, one ought to take due note of the forging of the interrelation between the students and the second target group type, namely, the

clients. The clinic wants more clients to come and bring along interesting cases. To achieve this, the clients must have confidence in the quality of the assistance offered by the clinic or – using marketing nomenclature – in its “product”. This confidence depends on the quality of assistance rendered by the students. In turn, the quality of assistance depends largely on the proper selection of students, which will be possible only if proper PR is carried out. This interrelation is an example of the connection between PR, marketing and management.

### **Clinic suppliers – the sponsors**

Let us commence this discussion by saying that sponsors do not act disinterestedly. The main reason for sponsoring someone is the opportunity of promoting one’s own image before one’s own target group, and this means that it is important to make the activity of a given organization known and positively perceived by the group in question. Some sponsors also act to improve their own image in the perception of other market players. Consequently, the aim of the PR directed at sponsors should be to convince them of the positive reception of our organization within the group of interest to the sponsor or to prove that the allocation of funds to our organization will enhance the sponsor's image in the eye of other market players.

In relation to a clinic it will be important for a law firm to develop its positive image in the minds of students – its future employees – and with the law faculty, while a non-profit grantor may, for example, be proud of the achievements of the legal clinic it sponsors and of the clinic's work for the indigent.

#### **How to improve one’s chances with a sponsor?**

The science of management distinguishes certain factors which increase the chances of success in winning over sponsors. Proper PR ranks the highest here. Therefore efforts should be made to make the clinic’s operations visible, to inform of the results of its work, to present and promote its successes and achievements, to effectively cooperate with the media and to publicize the sponsors well. For a sponsor the aims of a given organization are also important, therefore they must be formulated clearly and with precision, they should bring practical benefits to the society, but also be attainable and written down in a clear program of operations. Sponsors take into account the image and the reliability of the organization’s authorities, including also the presence of famous people in the executive and supervisory bodies, as well as the trust the environment has for the organization and the testimonials thereto of renowned authorities. Finally, proper cooperation with the sponsors is fundamental, namely, the ability to gain their

confidence, to report conscientiously on grant disposition and, in the phase of searching for sponsors – to formulate grant applications in the forms of marketing offers.

The basic technique used with the potential sponsors is promoting one's activities. The fundamental objective thereof will be to arouse interest in the idea, not a product. For the clinic this means that the sponsor needs to become vitally interested in the idea of providing free of charge assistance to the indigent and eventually to be proud to be spending money on this cause.

Promotion techniques used to achieve this aim are not excessively complicated as they consist in direct PR, namely, meetings, and indirect PR, namely, letters, brochures, Internet etc. Nevertheless, letters to potential sponsors should always formulate clearly and emphasize the organization's aims, draw the sponsor's attention to the organization's operational continuity, define its territorial and social scope of activities (research shows that regional organizations are more likely to obtain support).

### **The clients**

Clients are, quite evidently, a natural target group for the clinic's activities. The primary aim of the PR activities directed at them is to inform them of the existence of the clinic and of the services it renders, with the aim of persuading them to seek the clinic's assistance.

Techniques which are used within this scope can vary greatly. Indirect PR will be of greatest importance here. Firstly and foremostly this will mean information coming directly from the clinic, contained in leaflets, brochures and posters directed at the clients and displayed in every possible place (state institutions, local government offices and public institutions, court-houses, befriended nongovernmental organizations etc.). Practice demonstrates that often clients are referred to the clinic by other nongovernmental organizations. Therefore, the clinic's image in the minds of the so-called social leaders – persons who work for other organizations and who may refer clients to the clinic – will be crucial.

Of course, media are of vital importance in reaching clients. For many organizations, particularly commercial ones, cooperation with the media is a core element of their PR activities. Media are important in the PR of legal clinics, although perhaps not as crucial. For this reason one must know how to work with and support the media. A database of reporters, who are interested in the clinic's activities or who we think might be interested in it, should be created, information about the clinic's activities should be sent to them, even without previous request on their part, if need arises the clinic must be able to furnish them with information concerning a



given topic. A reporter can help considerably in reaching the clients if only through passing reference in an article or broadcast of theirs.

Direct PR techniques are instrumental in reaching the former and present clinic clients. If they are satisfied with the services rendered by the clinic, they will give the clinic positive testimonial and encourage other people to use its services. To this effect, an additional long-term objective of clinical PR should be to create a positive image of the clinic with its clients, so that they can later become its best living advertisement and the most reliable source of information for other people. This may be achieved quite simply by providing high quality services which would be of satisfaction to the client, but also through corporate image – the way the clients are addressed, the appearance of the office, the letterhead, and even tea offered at the beginning of a meeting, which will appeal to the client and permit them to feel satisfied with their visit to the clinic.

PR directed at potential clients may be just as well conducted by people involved in clinical work, particularly by students who are a source of information about the clinic to, for example, their community. They can also provide information about the clinic's activities at various meetings, conferences, visits to penal institutions, refugee centers etc., which carries its weight, similarly to clients coming in direct contact with the clinic at fairs, seminars, and meetings outside of the university.

### **PR directed at the faculty and the university**

Separate PR activity should be directed at the so-called functional environment of the organization which, for a legal clinic, are the law faculty and the university. This aspect of PR is very important and should under no circumstance be neglected, for without the support of the university the reason for the clinic's existence will cease. The objective of the PR addressed at this group shall be to secure on-going support on the part of the faculty and the university authorities by creating a positive image of the clinic and convincing them of the need for the clinic's existence at the faculty and university.

PR towards the university is not uniform in character. Two target groups may be distinguished within this environment – on the one hand the administrative staff, on the other the faculty together with the authorities. The latter will be of importance for the stability and the existence of the clinic as such, the former will influence the day-to-day functioning of the clinic and hence the need to distinguish it as a separate category. Direct PR, shaped mostly by the clinic's corporate image and by information on the clinic's activities, will work best with the administrative staff. An administrative worker can, through their positive attitude, make a clinic's work easier, if only by showing the way to a client who has lost their way. It is therefore essential to furnish them with

full information on the services rendered by the clinic so as to make them feel they are helping the indigent and the helpless by assisting the clinic. It is equally important to build in their minds the best possible image of the clinic through positive attitude and behavior toward them, to encourage them even further to lend support to the clinic. Sometimes the administrative workers will themselves apply to the clinic for assistance and in such a case the clinic must demonstrate openness and willingness to help, although without prejudice to the clinic's regulations. This will help them to identify with the clinic and accept it as an integral part of the faculty and of the university.

Techniques directed at the faculty and the academic authorities need to be somewhat more sophisticated. Direct PR, and its primary tool – the corporate image, will again play a key role. The faculty's opinion of the clinic is influenced by the way it presents itself as an organization and an entirety, inside the office and outside of it, as a group and as individuals. Direct contacts are instrumental in providing reliable information about the clinic, in particular meetings of the clinic management with the faculty and the university authorities, reports submitted to the faculty council and the senate etc. Indirect PR techniques work better with university authorities. It should be considered to supply university authorities with written reports about the clinic's activities, including information about the clinic's mission, its objectives and the program, supported by recommendations from renowned authorities, as well as organizing interdepartmental events which offer an opportunity to promote the organization.

### **External environment PR**

Finally, the PR of a clinic should be directed at the external environment, which can be divided into two major groups: external entities with which we cooperate or which we care about, and the so-called general public.

Related entities are, first of all, the nongovernmental organizations cooperating or resting on friendly terms with the clinic, secondly, public institutions, thirdly, law corporations. Within this group other organizations working in the same sector may also be identified, although they would rather belong with the *ad hoc* PR group, i.e. one considered in relation to a specific issue, for example the position of nongovernmental organizations in general.

The first and foremost objective of the PR directed at related entities is to develop a positive image of the clinic so as to gain support for its policies, to present its competence and the social benefits it generates, and to stimulate cooperation. Techniques used in this case should be a mixture of direct PR, such as building the *corporate image* (for example befitting appearance of the clinic representatives, and the expression of an attitude of openness) and personal contacts,

whereas indirect PR may be carried out in the form of letters, participating in external seminars. Every such meeting ought to be an opportunity to present information about the clinic's activities and to build a positive image with the recipient, in order to encourage them to undertake joint activities.

In turn, PR activities directed at the general public are carried out in order to arouse interest in the organization's objectives, to make the public sympathize more with the clinic's needs and, in consequence, the needs of our clients. Indirect PR and exerting influence through the media are of vital importance here.

Most legal clinics do not have the financing necessary to use the more expensive forms of PR, therefore the PR directed at the functional environment and the external environment needs to be focused on key opinion makers, people who create opinions and write on a given subject. It would be both inexpensive and, supposedly, effective to use one's own private contacts in this respect.

### **3.7.3. Summary**

By way of summary, it must be emphasized that very much like the provision of legal assistance, the PR activity must be based on certain ethical principles. Firstly, PR should be guided by the principle of truthfulness – the information concerning one's activities must always be reliable and true. Secondly, the principle of informational openness and openness to conduct dialogue, which means that the organizations should be willing to provide information about themselves and to enter into discussion about their activities. And thirdly, the principle of partnership in respect to the target groups and the environment.

Space limitations of the present study do not permit to discuss the practical aspects of PR. Nevertheless, it must once more be said, that it is imperative that PR activities be systematic, long-term and methodical. PR activities may be initiated by creating a database of mailing addresses of reporters, or a mailing list of befriended entities, and those interested in the clinic's work. It must be also remembered that every piece of information (a release, a letter etc.) originating with the clinic should be prepared from the perspective of the people it is addressed to. It should also be concise, clearly structured and easy to understand.

It is also worth saying that various authors point out that PR is rarely come across in non-profit organization, therefore the application of the techniques discussed above may permit to gain considerable advantage over the competition.

### **3.8. The aims and principles of cooperation between the Ombudsman and the legal clinics (Magdalena Olczyk, the Jagiellonian University in Kraków)**

The Ombudsman initiated cooperation with legal clinics in the year 2000. Cooperation was based upon agreements between the Ombudsman and the authorities of the various universities at which legal clinics operate. The agreements envisage cooperation within the scope of protecting human and civil freedoms and rights. Currently nine clinics participate in the program. These are, ordered by the dates of agreements: the Legal Clinic at the Jagiellonian University in Kraków, the Warsaw University Legal Clinic, the University of Białystok Legal Clinic, the Center for Administrative Information at the Białystok School of Public Administration, the Legal Clinic of the Mikołaj Kopernik University in Toruń, the Szczecin University Legal Clinic, the Łódź University Legal Clinic, the University of Silesia Legal Clinic and the Legal Clinic at the Wrocław University. There are plans to establish cooperation with the Legal Clinic of the Gdańsk University. One of the above mentioned clinics operates at a private school (the Białystok School of Public Administration). Furthermore, the Ombudsman cooperates with the Academia Iuris Foundation which operates a dozen or so information points in Warsaw and its vicinity, where legal help is delivered by law students of the Warsaw University and the Cardinal Stefan Wyszyński University in Warsaw.

Cooperation agreements stipulate three aims to be achieved by the Ombudsman and the legal clinics. These shall be shortly discussed below:

#### **1. To assist the Ombudsman in protecting human and civil freedoms and rights by making use of the students' work at the clinics.**

This point of the cooperation is fulfilled, on the part of the clinics, by means of presenting the Ombudsman with reports from the activities of a given clinic. As a rule these reports refer to quarterly periods of activity. They consist of two parts: statistical, which presents information concerning the number of cases submitted to the clinic for examination in the reporting period, the number of cases examined, pending examination, rejected, the reasons for rejection, reasons for nonexamination, and the types of cases detailing client questions and the procedures used to solve cases. The second part is based on information provided by the students, and supplied in the form of the so-called report annex, which is a presentation of the cases which the students wish to submit to the Ombudsman for various reasons and client consenting.

On the one hand the reports are a presentation of the condition of human and civil rights and freedoms in the territory of the clinics' activities, on the other, they allow the Ombudsman to take over the cases which, for various reasons, the students are not entitled to handle.

## **2. Promoting legal awareness in the society with regard to the protection of human and civil freedoms and rights by publishing educational and informational guidebooks**

Forty-one brochures have been compiled (more are being published) available not only in the form of booklets but also at the website of the Ombudsman's Office, [www.brpo.gov.pl](http://www.brpo.gov.pl). They are distinguished by easy language and clarity of form, taking the shape of answers to questions asked most frequently by the clinic's clients. Within their cooperation with the Ombudsman, the students of the Law Clinic in Warsaw prepared guidebooks for people with intellectual disabilities, their parents and assistants.

The brochures are intended to provide advice to the clinic's clients, particularly when, on account of the number of cases or time constraints, the students cannot render legal advice. Brochures ought to serve as "first aid," informing clients about their fundamental rights and obligations and explaining to them their current legal situation. Brochures are often sent to inmates of penitentiaries.

## **3. Creating favorable conditions for better teaching of students within the scope of law and order and the observance of human and civil rights and freedoms**

– this is the third aim of the cooperation between the Ombudsman and the clinics. It is achieved, among others, by means of organizing meetings for students and supervisors of clinics which cooperate with the Ombudsman. These meetings serve to compare the experiences of individual clinics and to present the Ombudsman with motions relating to the cooperation (which may be illustrated by a problem brought up during one such meeting by the supervisors of the Jagiellonian University Legal Clinic, namely, the fact that clinical students were denied access to records of their clients' cases. In October 2003 the Ombudsman requested the Minister of Justice to grant wider access to criminal case court records to the representatives of legal clinics, although the restricted access to civil case records continues to be a problem for the students). The Ministry submitted a request to the presidents of district courts to make court records accessible to representatives of legal clinics.

Another example of how this aim is achieved is the organization of student training in the Office of the Ombudsman. Legal clinic students may participate in training with one of the teams working in the Office, and thus obtain credit for obligatory student training, which is necessary for the successful completion of legal studies.

The Office of the Ombudsman provides legal clinics with materials concerning the Ombudsman's activities, for example materials from conferences organized by the Ombudsman, directories, texts of addresses to the Constitutional Tribunal, etc. This serves to make it easier for students to resolve cases which had previously been reviewed by the Office of the Ombudsman. Within their cooperation with the Ombudsman, students send to the Ombudsman's Office copies of their publications (for example "The Clinic. A Jagiellonian University Legal Clinic Periodical," or the periodicals of the legal clinics in Białystok, which contain descriptions of cases reviewed by the students of that clinic).

Collaboration between legal clinics and the Ombudsman is beneficial to both of these organizations. First of all, the clinics' clients can count on the Ombudsman's help in cases where the clinic can no longer be of assistance. In the course of such collaboration students have handed over to the Office of the Ombudsman many cases which were examined and concluded following the Ombudsman's intervention. The system of informational and educational brochures has been successful, as upon their entering a clinic the brochures give clients immediate assistance and fundamental information which helps them to undertake further steps in their cases. Students also appreciate the opportunity of taking student training with the Office of the Ombudsman, which gives them valuable experience, which they can use in their work as lawyers. The Ombudsman can monitor the condition of the human and civil rights and freedoms on the territory of operations of legal clinics. The Ombudsman presented the Parliament (the *Sejm*) with information on the cooperation with legal clinics during his annual address to the Parliament.

## CHAPTER FOUR – DELIVERY OF LEGAL ASSISTANCE BY THE CLINIC

### 4.1. Who may be a clinic client? (Dr. Jerzy Ciapała, Szczecin University)

The first contact with a person searching for legal assistance with a legal clinic – depending on the rules of a given clinic – is reserved either to the employees of the secretary office or to the students. They undertake the preliminary review of a case and pass on the necessary information and documents which will in turn serve further proceedings in the clinic. It should be assumed that any person of age<sup>98</sup> who applies for legal assistance and meets the requirements specified below, namely: is indigent, is not using the services of an attorney or a legal adviser, and agrees to the conditions of delivery of legal assistance by the legal clinic, may be a client to the clinic.

#### 4.1.1. The applicant for legal advice will state in writing to be indigent

The financial status of the applicant is a significant condition justifying the delivery of assistance. In accordance with § 2 of the Statute of the Legal Clinics Foundation legal clinics realize the educational objective within the framework of the studies curriculum by delivering legal advice to the poor.

Before delivery of legal assistance is commenced the person or persons who receive the applicant for legal clinic assistance should verify that the applicant indeed cannot afford the services of a legal adviser or an attorney. The verification of such condition should take place at the onset of the conversation, or at the latest at the moment of acceptance of the case for review by the clinic or the moment of allocation of the case to a student. The client is obliged to sign a statement to the above effect.

Only exceptionally, for example if the appearance of the person or the car that person came in suggest that the person is wealthy, may the client be asked to provide written confirmation of salary, information on disability pension or pension (or the so-called pension or disability pension stub), or a certificate from the employment agency, emphasizing that such documentation will serve the purpose of qualifying the application for legal assistance. It is worth mentioning that all available proof is attached to the application to exempt the client from fees in the course of court proceedings or proceedings before other bodies, proof which may also be used when delivering legal assistance to the clinic client.

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<sup>98</sup> Although it may happen that a clinic student – within the framework of legal assistance – acts as guardian of a minor.

It may also happen that the person applying for services of the clinic does not meet the requirements of indigence and attempts to conceal that fact. Such behavior should be deemed dishonest to the clinic, and should result in the rejection of the application for delivery of legal assistance. The disclosure of the fact that the client misled the clinic may also serve as reason to deny assistance in the future.

The issue of client financial status is very complicated and delicate. Appearances (such as clothing or car) do not always give proof of one's wealth. Some of such goods may have been purchased in the past, and some, real-estate for example, do not always generate income, therefore a person who owns an apartment of a great value may still not afford the services of a professional legal representative. I am doubtful that a level of income which should trigger refusal of service may be assumed. It must be realized that courts base their decision to exempt from court fees on a statement, therefore to demand of a client to submit documents to prove their financial status should be treated as an exception, not a rule. Excessively persistent inquiry into a client's financial status does not favor instilment of trust, which is indispensable in the delivery of legal assistance.

#### **4.1.2. The applicant for legal advice will state in writing not to have representation of a legal adviser or an attorney**

Professional legal representation may not have been appointed in the case submitted by the applicant to the clinic. It must be remembered that the activity of the legal clinic must never give reason for accusation of unfair practice both from the point of view of law or of ethics. In particular, the acceptance of a case must not lead to the challenging of prior legal assessment, advice or opinion. Therefore it is justified to inquire not only about the appointment of legal representation but also of any prior consultation of the case with a lawyer or other persons or institutions which may have supplied the client with legal assistance. Such a statement will fulfill the rule of client-clinic and clinic-client trust.

In case it is established that such consultation had taken place, an attempt should be made to contact such person indicating the client case and explaining the character of the clinic. This should take place only occasionally, for example when the information obtained from the lawyer is not precise. The aim of such contact should be to obtain the opinion of the consulting lawyer on the assistance supplied by the clinic. Cases in which legal representation has already been appointed should not be accepted for review by the clinic. A situation is possible when, in the course of reviewing the case by the clinic, the client is appointed with an *ex officio* attorney, or the



client themselves appoint legal representation. In such a situation further legal assistance should rather be refused. If at that time the case is under review by the clinic it should be terminated without delay. It is essential that the client be duly informed of the reason for nonacceptance of the case or the termination of delivery of assistance by the clinic.

When the legal assistance supplied by the clinic consists in the drafting of a request to appoint *ex officio* legal representation, the clinic shall deem such assistance completed upon receipt of professional legal assistance of an attorney or a legal adviser by the client. If *ex officio* representation fails to be established – unless the assistance of an attorney is obligatory – the legal clinic may continue to conduct the case.

Another example of a situation where the clinic may continue to conduct a case even though an attorney or a legal advisers was already involved in it, is when that professional legal assistance has been discontinued (for example legal representation was revoked) and the client is no longer receiving that assistance at the moment of delivery of assistance by the clinic.

#### **4.1.3. The client agrees in writing to the rules of delivery of legal assistance by the clinic**

The rules of delivery of legal assistance by the clinic embrace in particular the delivery of assistance by the student at the sole risk of the applicant for legal services and the indemnification of the university or a given organizational unit, its staff and students against any damage resulting from the advice, with the exception of willful infliction thereof.

## **4.2. Rules of delivery of legal advice (Dr. Jerzy Ciapała, Szczecin University)**

### **4.2.1. Client reception**

The delivery of advice to the indigent requires diligent preparation not only from the point of view of specialist knowledge (professional staff or a sound didactical infrastructure) but also from the point of view of organization. The clinic should have to its disposal premises best located on the ground floor (unless the building has a lift) as most of the clinic clients are disabled, elderly and ailing people, therefore attention must be focused on architectural barriers that hinder access to the clinic offices. It is advisable that the clinic be located in the proximity of the entrance to the university department building so that the clients do not cause disruption at the university department. The clinic office should also be located close to the educational facilities which could be used by the students in their work to prepare legal advice.

The clinic office guarantees adequate conditions for clients to present their arguments. The problems which the clients entrust the clinic with demand discretion, therefore – if only possible – a separate room should be allocated for client conference. No person other than the client and the students on duty should be present in that room (or in an isolated part thereof).

The necessary forms and writing implements need to be readied, cellular phones switched off etc. The chair on which the client sits should not be faced away from the door as this would increase the risk of the client's feeling insecure. This could in turn result in failure to obtain exhaustive information. Adequate lighting should be installed, in particular not too bright.

The duty hours during which clients are received (by the secretary office or the students) should be adapted to the needs of the recipients of the clinic's services. Every clinic may set its own working hours, nevertheless considering the educational character of a face-to-face meeting with a potential client, every student should have a chance to hold such meetings at least once every week. This means that a clinic office should be open at least for a period of six to eight hours a day (from Monday until Friday) at varied times of day thus giving consideration to the working times and home duties of the clinic clients. If clients are received by students duty shifts should be held by two students and last for approximately two hours.

#### **4.2.2. Preliminary verification of application before a case is accepted**

Before a case is accepted it should be confirmed that the client does not have representation of a legal adviser or an attorney and that the client is indigent. These circumstances are verified on the premise of trust to the future client. Should the client mislead in this respect the clinic staff receiving them, the case should be terminated in accordance with the rules of delivery of legal assistance. The nondisclosure of truth by the client may also be a reason to refuse delivery of legal assistance by the clinic in the future. Subsequently, it should be verified that no conflict of interest occurs in respect to other persons who are being advised by the clinic in that same case, in respect to the university and the faculty. If conflict of interest is suspected the student should consult the acceptance of case with a supervisor or the head of the clinic, who will then make an appropriate decision.

Two fundamental models of application acceptance control are used. The first of them assumes that the client is received and the case is set in motion by the students on clinic duty. The second assumes that the client is received by a professional secretary office which may also decide on further procedure in a given case. Receipt of cases by students has its advantages, such as the opportunity to directly contact the client, to work independently on the assessment of the

facts of the case or to formulate one's independent opinion. It also has its disadvantages though, such as the risk of qualifying a case to the incorrect section or the disregard for time limitations in the case. Some clinics receive a part of the inquiries by mail (for example from inmates of penitentiaries), some cases are submitted through refugee centers.

A mixed model may also be used – a combination of student initiative in technical matters, i.e. the acceptance and distribution of forms and statements with the final decision to accept or refuse a case reserved to the clinic faculty staff (the head of the clinic or section supervisors). In such a case the person receiving the case from the client should verify that the forms are filled out correctly and that all statements required are duly signed, read the case description and the questions submitted to the clinic by the client. It may be that the case description provided by the client is not precise and the questions too general, which makes the delivery of a prompt reply impossible as the student attending to the case (rarely does the student present at duty hours subsequently attend to a given client case) will have to commence their work with a client conference to establish the facts of the case. Such an approach seems lacking in professionalism, moreover it forces the client to make yet another appearance at the clinic and to answer the same questions a second time. Therefore, it is worthwhile to read the case description to the client in the end of their first visit to the clinic and to reiterate the questions which the client submitted to the clinic, at the same time making sure that the formulation of the facts of the case and of the questions allow to establish the nature of the legal assistance solicited by the client. Similar approach is advisable when successive client conference memoranda are drawn up.

#### **4.2.3. Case acceptance procedure**

Client interview is the first step in client reception, and the filling out of the information form required by the standards of delivery of legal assistance, the submitting of statements and photocopies of all documents essential to the case are in turn an element of such an interview. It is imperative to assume that the clinic will not accept originals of documents or the only remaining copies of documents in the possession of the client.

A client's first visit to the clinic should be concluded by the client's submitting of a filled out information form and a set of statements signed by the client, which is formally considered as an application for legal assistance. The person receiving these documents should inquire whether the client read and understood the information contained in those documents.

It may happen that the set of documents relating to the client or to the case is incomplete, although such situation should be avoided. The deadlines for completion of the already filled out

forms are set by the persons who decide to accept the application for review (the students themselves, section supervisors or the patron of the clinic – depending on the rules adopted by the clinic). Clients who submit incomplete sets of data need to be warned that the clinic will not be able to deliver assistance prior to the client's submitting a full set of statements and forms. It is in any case forbidden to deliver such assistance on a provisional basis, i.e. "pending delivery of complementary documents."

It should be assumed that the work on a draft opinion commences no earlier than after a full set of documents and information is obtained.

#### **4.2.4. Case acceptance and assignment to a student**

The decision to accept a case is made – depending on the model assumed by a given clinic – by the student receiving the client after preliminary application verification or by an assistant (the head of the clinic, section supervisor). In case of doubts, for example nondisclosure of truth by the client is suspected or ambiguity of the facts of the case or its legal status, or difficulty to allocate the case to any given section, the student receiving the case should consult the head of the clinic, an assistant or a section supervisor who will then make a binding decision in the matter.

When accepting forms and conversing with the client, one may make an attempt at preliminarily investigating the problem presented by the client. In principle however, at that time one should rather focus on a negative answer, i.e. nonacceptance of case (for example should we ascertain that the client would wish to make a last resort appeal, for which obligatory assistance of an attorney is envisaged). Should the student receiving a case decide that a case is not suitable for the clinic they may refuse legal assistance on the spot. Nevertheless, such a decision – unless evidently beyond clinic competence – should be made only after consultation with a supervisor, and it is essential that the client be informed of such a decision.

A case is allocated to a student after all case documents have been reviewed and all doubts relating to the nature of the case, for example the allocation of case to a section, cleared. A further condition of acceptance of a case for review is the recognition of the fact that the assistance will realize the social and educational objectives for which the clinic was called. Let us not forget that the clinic is under no obligation to accept all cases but only those that realize the above objectives. The decision to qualify the case for review by the clinic or to reject it (made by the student, an assistant or a supervisor) should be noted down in the case documents along with the date of that decision. Furthermore, such a decision should indicate the student assigned to

the case. Such a student enjoys greater rights than other clinic students (for example they are granted permanent access to the case documents) but is also burdened with greater obligations (including the most important of all – the drafting of an opinion).

#### **4.2.5. Management of urgent cases**

In principle a student should prepare their advice and consult it diligently with their supervisor within two to four weeks, depending on the procedures and the custom of the clinic. Complex cases may take a longer time as they often demand that the body of rulings be consulted in depth or that the facts of the case be established in detail. Some cases on the other hand need to be reviewed more quickly than the standard two weeks in order to meet the time limits pending on the case.

The essence of handling urgent cases consists in the fact that reviewing such a case within the framework of standard procedures would prejudice the legal interest of the client. This must be ascertained in the conversation with the client and through review of regulations, of which in particular time limitations for submitting motions and complaints, and the rules of negative prescription. A section supervisor or the head of the clinic should agree to the acceptance of an urgent case after preliminary hearing of the student who received the case or is in charge of the case. It is certain that students should not be allowed to make decisions to this effect.

Moreover, it must be emphasized that not even urgent cases may be advised on the spot. A student will run the risk of omitting some detail or of applying inappropriate regulations (for example the application of an amended regulation instead of a regulation that was in force at the time to which the case relates, which therefore remains applicable to the case under review by the clinic despite its repeal since that time). Nevertheless, it is certain that the urgency of a case may not affect the quality of the advice given to the client, therefore perhaps it would be best not to accept urgent cases rather than to consider them superficially and under pressure of time. Every decision to accept or reject an urgent case needs to be considered individually.

#### **4.2.6. Case review**

The reviewing of a case consists in a number of steps which will in turn be the fabric of the opinion issued by the clinic.

### **Establishing the facts of the case**

The first step is to establish the facts of the case as precisely as possible. This may be achieved through the posing of a number of questions to the client and – as far as possible – by confronting that knowledge with one's own experience and observations. It is extremely important to carefully put all the facts together in a logical, comprehensive and coherent way. In principle, the person who questions the client or – at a further stage of proceedings – the student in charge of preparing an opinion do not have contact with the client at the stage of collecting data, therefore it is essential that the facts of significance to the case be established. Diligence in establishing facts saves time and makes further contact with the client unnecessary, it also allows for the drawing up of a professional and exhaustive legal opinion.

When establishing the facts of the case it is of course impossible to exclude further meetings with the client. It is essential that the student be well prepared for such a meeting. If the student holds sufficient information on the facts of the case, although doubts may still exist in respect to some of those facts, it would be advisable for the student to prepare a script of the meeting or at least a list of questions which the student will expect the client to answer. This will allow the student to control the rush of information given by the client and to use the time of the meeting more effectively, and to focus on the matters of essence to the case.

Should the client be unable to come to a second meeting at the clinic to provide further explanation of the facts of the case, it would seem feasible for the details of the facts of the case of significance to the drawing up of the opinion to be established during a telephone conference with the client. A memorandum of every such contact (either in person or over the phone) should be drawn up and attached to the case documents. Should we contact the client via electronic mail we should also attach copies of such correspondence to the case file. One should not move on to the next stage of case review before the facts of the case have been established.

### **Formulating questions to the client**

It is so much easier to formulate an opinion if we know what the client's priorities are and what legal ambiguities the clinic is asked to clarify. This purpose is served by questions, used at many Polish legal clinics, which may be posed to the client during a meeting. These questions allow to establish the client's interest, they also facilitate the clinic's work and serve at any given moment of the work over the advice as a practical tool to verify that the latter indeed focuses on the client's questions.

### **Identifying legal issues**

The next step in the reviewing of the case is to identify the legal issues of the client's case. On one hand, a lot depends here on the clients themselves as they may inform of the title to the apartment or the type of agreement which lies at the roots of the clients' trouble. On the other hand, the identification of the legal issues should be focused on the application by the student of all the available resources. To this effect publications and samples of pleadings available at reading rooms or at libraries or the clinic itself should be used. Opinions issued in similar cases by the clinic may also be consulted, as may other Polish clinics. Any doubts arisen in regard to the case under review should be consulted with the supervisor, who should be available to the clinic members at least once every week. When identifying the legal issues of a case, the legislation pertaining to a given subject matter in force at the time to which the advice refers should be considered, as should the body of rulings which may be of assistance in the preparing of the advice.

Also, it is hardly imaginable to work without a computer furnished with a database of legal acts, accompanied with a body of rulings. However, complex cases, particularly those referring to social insurance or taxation, may require consultation with an appropriate government institution to learn of its official practices.

### **Analyzing legal issues**

After the essential information regarding the legal issues of the matter presented by the client has been collected, the legal issues of the case are analyzed. For this purpose it is necessary to refer to the legal acts in force, the body of rulings or the comments of the doctrine. This is the most time-consuming and difficult part of the work, but also the most important. After completion of such an analysis the student presents the supervisor with their recommended solutions.

### **Answers to client's questions**

The work over a case is completed by the delivery in writing of concise and unambiguous answers to the client's questions. Such answers must beforehand be examined by the supervisor. The student must carefully time the work over a case, allowing time for the supervisor to examine their opinion and to appropriately amend the opinion if necessary.

The solution to the client's problem takes the shape of advice on the client's legal situation in the form of answers supplemented by argumentation and a description of the legal issues. Other documents, in particular drafts of the client's own pleading (for example a suit or a plaint) are

attached to the advice. Having acquainted themselves with the student's recommendation, the supervisor accepts it by placing their signature on the reverse of the copy thereof and of all attachments intended for the archive. The supervisor may also return the draft of the advice as inappropriate and needing further review, or indicate the necessary additions or corrections. The documents signed by the supervisor and intended for the archive are surrendered by the student to the secretary office, and the copy of the advice signed by the student only is handed over by the student to the client along with all the attachments. If the recommended solution demands further research, the supervisor returns it to the student for further review.

It may be that the client wishes to obtain general information on the regulations of law or the institution competent to deal with their problem. Such cases should also be reviewed in the standard course of action and in writing, promptly after all the required documents have been collected (which is an indispensable and necessary stage) by attaching to the opinion a copy of the law or information where a given problem may be resolved.

#### **4.2.7. Seminars<sup>99</sup>**

Seminars should be organized within individual sections or with the participation of all students. The formula of obligatory weekly or fortnightly meetings (two to three-hour seminars) should be considered. The classes should focus on the legal and practical problems relating to a given specialization, to case studies and the discussion of selected theoretical problems. The aim of such meetings is to develop one's professional techniques. The meetings also serve the purpose of acquainting the students with the various sections of law, should they have failed to do so in university courses (for example the rights of refugees, the rights of the disabled, the social insurance law). They also make presentations to their supervisors and colleagues of the cases currently under review, which gives the opportunity for group discussion under the guidance of a supervisor. It is essential that the clients' personal data be not disclosed during such seminars. Both the supervisors and the students need to be sensitive to this rule.

Irrespectively of their participation in seminars, students are obliged to present their supervisors with their written legal opinions in order to obtain the supervisor's consent to present the legal solutions to their clients. The supervisor also rules over differences of opinion between students working as a team.

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<sup>99</sup> See below p. 120 as well as Skrypt edukacji klinicznej, edited by C. Nowak, published by the Legal Clinic of the Law and Administration Faculty of the Warsaw University, Warsaw 2002 (hereinafter: *The legal clinics textbook...*) p. 10.



#### 4.2.8. The opinion

The opinion must always commence with the description of the facts of the case and with the question or questions, namely, the problem which the client submitted to the clinic. The explanation should be well-ordered and best preceded by a thesis, which will then be developed and substantiated.

It is essential that the preparation of a legal opinion be duly supervised. It should not only be correct from a professional point of view but also comprehensible to the client of the clinic, and presenting answers to the client's questions in a way that will allow the client to independently deal with the problem. In most cases students draw up opinions which are correct from a professional point of view, however it is often difficult for the student to make the opinion legible to somebody with little or no contact with the language of the law. An opinion that clearly indicates the client's rights or lack thereof, as well as the course of the client's further action, significantly limits the necessity to undertake further and more complicated steps by the client.

The selection of vocabulary to be used in the opinion is of primary importance. Complex, imprecise and ambiguous sentences should be avoided, as should foreignism (for example Latin) and the legal jargon, on the other hand one should not exaggerate with colloquialisms and should remember to stick to the point at all times, as well as to quote full publishing details of legal acts and rulings when referring to source material.

Apart from the selection of appropriate vocabulary, the legibility of a text depends on its proper structure. This consists in the setting apart of its elements, such as the description of the facts of the case obtained from the client, the documents provided by the client and the questions posed by them, an outline of the legal issues quoting appropriate regulations and their interpretation (rulings and opinions of the legal doctrine). Conclusions are subsumed in the end of the text. The following of an appropriate scheme in constructing of an opinion is essential to the client of the clinic as the client need not analyze the often incomprehensible description of the legal issues and may focus on the text of the opinion and of the answers to the their questions.

When preparing an opinion one must plan the time needed for the work so that no longer than two to four weeks – depending on the clinic practice – pass before the opinion is delivered to the client. The supervisor should receive the draft in a time which would allow the timely delivery of the opinion to the client. In doing so, it must be assumed that the draft may contain errors and that an amended version thereof will have to be resubmitted to the supervisor.

#### 4.2.9. Delivery of opinion to the client

The final step in the delivery of assistance by the clinic is the surrendering of the opinion to the client. In principle this should be done by the person in charge of the case. Ideally the opinion should be handed to the client in person, although the mailing of the opinion to the client must not be excluded, in particular in relation to cases submitted by inmates or refugees.

During the course of the meeting the client should acquaint themselves with the opinion as this conditions the isolation and explanation of fragments of the opinion which are not understood by the client. The client should acknowledge receipt of the opinion with a signature.

##### **The most common mistakes**

- opinion is based on incomplete facts of the case,
- opinion conclusions are inconsistent,
- the vocabulary is not balanced – terminology is selected incorrectly (it is excessively complicated or simplified),
- the issues relating to the subject of the opinion are insufficiently explained (the opinion is superficial),
- questions remain unanswered (the subject of the opinion is out of focus),
- the text is incorrectly edited and the opinion is poorly presented (lacking division into paragraphs, key statements blend together with those of lesser importance).

Some issues need to be paid particular attention to when reviewing a case. First of all it is necessary to observe the time limitation for various legal actions relating to the client's rights and obligations. It is also important that the client expressly consents to the nonapplication of remedy at law should the client, having read the opinion, resign from it. For example – if the clinic's assistance consisted in the drawing up of a plaint and the client failed to submit such a plaint due to the client's nonobservance of the time limit, the clinic should have proof that it is not guilty of negligence.

Furthermore, diligence must be observed in the application of intertemporal regulations. Laws that have expired apply or may apply to many of the cases under review by the clinic. The application of the current law may distort the sense of the advice to which old regulations should apply thus influencing the case under review by the students.

Samples of pleadings should not be used extensively, as they are often incorrect. It is also necessary to give sound argumentation for the claim made in the pleading (a suit, a motion, a

plaint etc.) prepared by the students. In the opinion the student should indicate both the strengths and weaknesses of a given solution and warn of the counterarguments which may be presented by the opposing party. It is necessary in this instance to give information of potential threats because it is the client who makes the decision whether to submit a claim to the court or to withhold from such action. Nevertheless, the justification of the pleading prepared for the client, which is an element of the advice, should not contain the same argumentation. For example – a suit should not give indication of arguments against the charge of prescription thus avoiding to prompt the opposing party, and yet such argumentation may be included in the advice itself.

Finally, one should also mention the issue of the cost of proceedings. Exemption from court fees does not free from the obligation to refund the cost incurred by the opposing party should the case be lost, of which the client should be advised. If the advice refers to civil law, matters of taxation must not be omitted.

Most importantly, one must never forget to remind the client that the opinion is issued only for the client's use, and not that of the court.

#### **Example of a procedure to solve a case**

The procedures to solve a case vary and the below is only an example, although a tried and a model one.

Lectures of ethics of the legal professions, the psychology of client conference, the experience of attorneys in their work with people soliciting legal assistance should be the **introduction** to a student's work.

The inflowing cases should undergo **preliminary selection** by a person authorized in this respect by the clinic's main patron. Usually the person in charge of the clinic office is the first point of contact for the client. This person should be acquainted with at least the elements of law or – preferably – be a student or graduate of studies of law. This knowledge will allow for the correct qualification of a cases to an appropriate section, it will also allow to instantaneously verify if the case may be accepted by the clinic (for example if conflicts of interest emerge, or whether the clinic accepts cases pertaining to a given section of law etc.).

The accepted cases **are assigned** to pairs of students (it is recommended that for educational and practical reasons, as well as reasons of safety, students work over cases in pairs). The students appointed to a case receive copies of documents surrendered by the client.

Subsequently, the students individually prepare to meet the client and invite the client to a meeting in order to establish the facts of the case and to analyze the matter in detail. Supervisors

should participate in the students' initial meetings with clients, at a later time students may meet clients without supervision.

The **drafting of the legal advice** and, if necessary, of pleadings and letters to government agencies is the principle task. These in turn will be consulted and approved by a supervisor.

The students will then meet the client a second time and present them with the recommended solutions in writing. At the same time the meaning of the **opinion** should be explained verbally, although without straying from the matter at hand.

Usually the procedure of reviewing a case is thus completed, it should nevertheless be kept in mind that often the case needs to be directed to a court in which respect cooperation with practicing attorneys who could then handle the case *pro bono* in the name of the clinic is necessary.

#### **An example of a procedure to solve a case – in short:**

- lectures introducing to clinical work,
- preliminary selection of the inflowing cases by the secretary office,
- cases assigned to students,
- first student meeting with the client to obtain data or documents,
- the drafting of the legal advice by the students,
- consultation of the draft legal advice with the supervisor and preparation of a final version thereof,
- second student meeting with the client to present the client with the legal advice,
- if necessary the transfer of the case to an attorney for further court proceedings.

#### **4.2.10. What circumstances justify refusal of legal assistance?**

The clinic may refuse legal assistance in case of disloyal behavior of the client and in case of conflict of interest between the client and: the best interest of the university, the university organizational unit, the student, a volunteer, a member of the clinic staff or a person related to them, another client or a person related to that client, as well as the sponsor of the clinic<sup>100</sup>.

The final judgment whether a client's behavior was indeed disloyal or whether conflict of interest indeed arose is reserved to the clinic supervisors. Therefore, the clinic secretary office may accept a case for review and yet the client may still be refused assistance after the supervisor has been presented with the circumstances of the case and the possibility of client disloyalty or the existence of a conflict of interest. Conflict of interest may be disclosed by accident and

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<sup>100</sup> On techniques for refusing legal assistance see p. 178 below, and *The legal clinics textbook...*, annex 9.

already during the course of case review. Supervisors should be advised of such circumstance without delay and the case should be duly terminated.

The clinic management must determine whether a client's given behavior was disloyal or dishonest. In particular this may be manifested by:

- a) nondisclosure of true financial status,
- b) nondisclosure of possession of legal representation (regardless of the way such representation was appointed),
- c) deliberate misleading of the person in charge of the case if such behavior could result in the issuance of an opinion inconsistent with the true facts of the case,
- d) deliberate nondisclosure of all significant circumstance of the case, including but not limited to nondisclosure of documents in client's possession.

#### **Advice out of curiosity**

Often clients approach the clinic exclusively with the intention to satisfy their curiosity. Every advice issued is the result of a student's work, which consumes time that could have been devoted to clients in real need of assistance. Surely, the student in charge will have gained new practical experience, and yet such advice brings no effect in the fulfillment of the reason for the clinic's existence, i.e. the delivery of legal assistance to people of modest means. Lists of people wishing to apply to the clinic for assistance are usually very long and the time devoted to a person wishing to obtain advice out of curiosity could be devoted to a person truly in need of advice. Therefore, should it become known that a client has used the clinic's assistance to satisfy their curiosity, it should be considered whether not to refuse assistance to that person in the future, unless they prove that such assistance is truly necessary. In large part this matter should be reserved to the student's judgment and the investigation of the client's motivation starting at the very first meeting with the client.

A conflict between the interest of the client and that of the student, a volunteer, a member of clinic staff or a person related thereto, may manifest itself in the biased review of the case and issuance of an opinion possibly inconsistent with the legal status and the conviction of the person issuing the opinion. Such persons should refrain from reviewing the case and advise the clinic management of the possibility of conflict of interest. In such case, the clinic supervisor or the head of section transfers the case to another student. This is a problem rather common in the legal profession, therefore the risk of conflict of interest needs to be approached with due diligence.

The issue of conflict of interest between the client and another client, or a person related to them, is somewhat different. Let us take note of the need for every clinic to keep alphabetic lists of all clients (indicating the catalogue number of their files). Before starting to solve the problem, a student who was allocated to the case should verify in such a list that there is no case cross-over and therefore no risk of conflict of interest. Should a student identify such risk they must immediately advise a clinic supervisor of such circumstance, who will then consider the issue and make a final decision.

A list itself is not sufficient, as a first name and a surname of client will not necessarily suffice to fully eliminate conflict of interest. In such a case much will depend on the frequent exchange of information between students, secretary offices and clinic faculty supervisors. Therefore, it is essential that all information given by the client, including the seemingly trivial information, is paid attention to, since it may serve to identify the risk of conflict of interest.

The issue of conflict of interest may be portrayed by the resolutions of the Code of ethics of the legal adviser<sup>101</sup>.

### **4.3. The forms of legal assistance delivered by the clinic (Dr. Jerzy Ciapała, Szczecin University)**

The variety of forms of legal assistance delivered by the legal clinics depends to a great extent on the stage of development of the clinic. The oldest clinics, those of considerable accomplishments, for example the Kraków or Warsaw clinics, offer the greatest spectrum of services. These clinics do not limit themselves to issuing written legal opinions, they also represent their clients, for example, before the organs of public administration. The broadening of the scope of a clinic's activity should go hand in hand with the perfecting of organizational structures and experience, but also with guaranteeing appropriate supervision of the faculty staff or lawyers exercising the legal profession.

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<sup>101</sup> Art. 14 par. 4. of the adviser ethical code: "A conflict (collision) of interest arises in particular if:

- 1) when acting as adviser to more than one client, the legal adviser may not advise fully and fairly without disclosing the interest of one or more than one of their clients,
- 2) when representing more than one client, the legal adviser would have to present argumentation or conclusions other than the argumentation and conclusions they would present were they representing one of those clients,
- 3) the knowledge in the possession of the legal adviser and referring to the affairs of another client could benefit the new client.

Conflict (collision) of interest does not arise if:

- 1) the legal adviser represents more than one client whose interests are the same in the same case, or if the clients request the adviser to lend assistance in the realization of the same objective, the clients consent in writing to the adviser acting in the role of a mediator in a dispute between them.

### 4.3.1. The legal opinion

The basic form of activity of every legal clinic is the issuance of written legal advice by the students of law under direct supervision. A legal opinion is the written reply to questions submitted to the clinic by the client and referring to the client's rights or obligations. An opinion is composed of parts, which make it transparent to the reader. For example, an opinion may be composed of the following elements:

- description of the facts of the case,
- quotation of client questions,
- description of the legal issues,
- conclusions (opinion exposition).

An opinion may commence with the questions posed by the client, thus preceding the description of the facts of the case. Such a model will nevertheless render the control of conscientiousness of the student's opinion more difficult and will not allow for logical continuity as the client will always commence with the description of the facts of the case and only then will the client ask questions about their rights and obligations.

The usefulness of the opinion to the client is the very sense of the legal opinion. The client may use the argumentation used in the opinion in their own appearance before a court, an organ of public administration, as well as in disputes with private entities.

### 4.3.2. Pleadings

The next form of delivery of legal assistance by legal clinics is the drafting of pleadings based on the facts of the case provided by the client and the accompanying documents. Very often this form of legal assistance is a complement or attachment to the written legal opinion which leans toward acknowledging a client's specific rights, thus resulting in the need to claim or defend the client's rights in court (either criminal or civil) or in out-of-court proceedings. Therefore, students of legal clinics draft suits (for example for payment of alimony), replies to suits, objections to payment orders and to sentences by default, often they draft motion for the assignment of *ex officio* legal defense or to confirm acquisition of inheritance. The above form of legal assistance

delivered by legal clinics takes the burden of drafting complicated court pleadings off the shoulders of the client, who is often unaware of the basic rules of court proceedings.

Before drafting a pleading one should become acquainted with the regulations providing the legal pleading requirements and the rules of their formulation. The argumentation used in court pleadings should be clear and comprehensible, and the arguments should be called in the correct order. The strongest arguments come first, followed by arguments of lesser importance. On-going contact with the supervisor who practices the legal profession is of essence here, as they may explain the standards of drafting pleadings and assist in selecting the right court tactics. The vocabulary also needs careful choosing. The student is not limited here as much as when drafting a legal opinion, therefore they may make unrestrained use of legal terminology.

The drafted pleading should be furnished with an attachment detailing the procedure to submit it to the court, as well as the actions to be taken after it has been submitted to the court (registration fees, explanation of legal effects of nonobservance of orders or summons). Irrespectively, when submitting the pleading to the client, the student should provide the client with explanation of the above matters.

#### **4.3.3. Accompanying clients to courts and public administration offices**

It is sometimes practiced that students assist their client by accompanying them during their visit to court or an organ of administration. Students may participate in court proceedings as spectators or persons of trust, they may also accompany and assist the client in their reviewing or reading court records or documents. This allows the student to control the course of affairs as well as to attend to administrative matters with the various public administration offices (for example the municipal administration, the social insurance office or the employment office) with which the client might struggle. It must be noted that such actions do not stand in contradiction to the rule demanding that all procedures be executed in writing, as the student beforehand agrees with the client what administrative matters need to be dealt with and only then do they accompany the client to the appropriate organ of administration. In turn, if a student accompanies a client during the client's meeting, for example, at a local administration office, they do so to help the client understand their rights and obligations. This is not advice as such as it does not involve the student's solving any legal problem, the student is thus limited to explaining the matter or presenting problems that may ensue from application of law.



#### **4.3.4. Other assistance**

Legal clinics deliver assistance other than the analysis of the legal issues of a case. They may, for example, supply contact details (addresses, telephones) of social assistance or charitable organizations that deliver legal assistance, of associations of victims of crimes etc. Furthermore, the assistance may consist in the handing out of suit forms and samples of pleadings which, may also be obtained from the court and filled out by the client themselves. Such assistance may also involve answering questions relating to the content of laws, in which case the students may advise of the publishing details of a law or the place where the text of the law is available to the public (for example a library or a reading room).

## **4.4. Psychological skills in clinical work (Dr. Małgorzata Szeroczyńska, the Warsaw University)**

### **4.4.1. Why do we need good contact with a client?**

The ability to converse is one of the most important and the most needed in our lives. However, never during the course of our education are we taught this skill. It is assumed that we have acquired the skill of communicating with other people – to transmit and receive information, from the moment we learned to speak. Sadly, our experience shows that the above assumption is incorrect. It often happens that two people speak to each other but do not communicate – they do not understand each other, they do not listen to each other or listen only selectively, adapting the words and intentions of the other person to one's own needs.

As lawyers (future lawyers) we are often faced with the most adverse effects of that lack of the ability to communicate – when parties enter into conflicts, when marriages disintegrate and families quarrel, situations that often find their conclusion in a court of law.

To execute the profession of a lawyer one needs to acquire skills of interpersonal communication. In order to be able to solve a legal problem we need to correctly establish the facts and ask questions in a precise and yet neutral manner, as those questions will often relate to delicate matters. Asking questions will not suffice however, and we also need to comprehend the answers provided by our clients, which at times is surprisingly not all that obvious. Once we have established the facts, we need to discover our client's expectations and needs. Not every idea for a solution to a client's problem that we may have will correspond with the client's vision. Before our service to the client is done, we need to face one more challenge – how to advise the client so that they understand, remember, accept and are able to translate the advice into actions.

Furthermore, we must also pay attention to such details as the length of the conversation as well as our own and the client's emotions, and the generally friendly atmosphere of the conversation. It is certain that exceedingly lengthy conversations with clients become counterconstructive and tend to waste our own and the clients' time. Also, there is hardly any point in conversing with an emotional person – in a post-traumatic state, in despair, tears, or acting aggressively, as a person in such an emotional state is unable to transmit coherent and rational information or receive such information from their interlocutor. It is certain that such emotional reactions on the part of the client do not mean that we have lost contact with them. It is only natural that the stories the clients recall will cause such outbursts of emotions. It is important that we learn to deal with them without adding to the tenseness of the atmosphere.

Generally speaking, we are the ones who will benefit from the ability to maintain good contact with the client. A client who feels important and knows that they are being listened to, will be more eager to tell about their problems and will be more open about them. The client will also be more inclined to accept our advice or, as it may be, our refusal to advise, or to accept information that nothing can be done in the client's case. Moreover – a marketing-wise important realization – only a client who is well looked after from a professional and psychological point view will return to us with their problems or recommend us to their friends.

One of the aims of clinical work is to develop such good communication skills with the students – the future lawyers. The techniques of forging good contact with the client are a particularly important tool of work in the legal clinics due to the nature of this type of assistance. It is only natural that you may feel psychological discomfort when you consider that the level of your knowledge of law may prove insufficient confronted with the client's problems, particularly referring to the practical application of law. By keeping good contact with the client you will feel secure in the conversation despite that lack of knowledge, good contact will also allow the client to accept that lack of knowledge because they will know that you will apply due diligence in solving their problem, even though they might need to wait a while for that solution to present itself. After all, the very formal rules of clinic operations, which disallow you to deliver on-the-spot advice even in the most trifle of cases, motivate to make use of communication techniques – in particular of assertiveness – as a tool of defense against manipulation and pressure on the part of the impatient or inconsiderate client. Also, the very type of people who seek assistance of legal clinics will render communication more difficult rather than easy, as in principal – and indeed in accordance with the financial status criterion used by the clinic – these are people of modest means, often deprived of any means at all, and often poorly educated. Many of these people will suffer from mental disorders or live under tremendous stress (for example relating to family violence). Often, these people will have previously sought assistance elsewhere – at previous attempts either such assistance was refused or no solution to their problems was found. One must not forget about the specific nature of clients of refugee clinics – foreigners whose communication problems will result from language-related issues, but also from differences in intercultural communication. Moreover, on numerous occasions no legal solution to the clients' problems may be found (since, for example, the client has no right to claim, or the time for submitting the claim has already expired), and unfortunately it is a fact which clients need to be made aware of. The tools presented in this chapter will assist you in dealing with such difficult situations.

For the above reason the communication techniques presented here will specifically relate to clinical work. We will start with the rules that help build a friendly conversation space and the optimal self image, giving due consideration to the stereotypic approach of a client to a "meet-the-lawyer" situation. We will discuss the particular errors of perception, including the mechanism of stereotyping, errors of attribution and the first-impression effect. We will then present the particular techniques of constructing and conducting an interview, primarily within the aspect of verbal communication. In the end, we shall move on to the rules of transmitting information, in particular difficult information, and of refusal.

#### 4.4.2. The "visit-the-lawyer" stereotype – or how people perceive the world

Every one of us can picture in detail what a visit to a lawyer should look like. In general, the picture presents itself in the following way: the meeting takes place in a lavishly furnished office, full of code books and legal literature. Behind a massive desk – one that would allow to keep the distance and emphasize authority – sits a well-attired, omniscient lawyer (an attorney, a notary or a legal adviser), who has mastered the entire knowledge contained in the code books and the legal literature and is therefore able to give on-the-spot answers to any, even the most detailed and complex of questions, to find the legal loopholes, or to at once draft any pleading they wish. On the other side of the desk sits the client who wishes to draw from that source of professionalism – in other words to obtain correct and competent legal advice that will allow them to win a case, to conquer their opponent, to see their demand fulfilled – all at the smallest of cost. The client dares to take up the lawyer's time because they are paying for it, but it is the lawyer who dictates the conditions of the contact by setting the price, the duration of the meeting, and the solution to the client's problem. The lawyer decides whether, and to what extent, to lend their knowledge, if only by manipulating the degree of obscurity of the legal language they use.

**Consider** what your idea of a meeting with a lawyer is. Select a legal profession you have never had anything to do with (a notary, a debt collector, a prosecutor etc.). Imagine the office that person works in, the way the person dresses, behaves, speaks, and what the traits of that person's character are. Imagine yourself in the shoes of the client. Then verify your own vision – call on a notary office, a debt collector's or the prosecutor's office and see how wrong you were.

Where does this vision originate from? A human being is unable to process and memorize too great a number of pieces of information at once. Since the number of stimuli that reach our

senses at any given moment is immense, we use special filters that help make a selection. It is commonly agreed that we are able to simultaneously memorize no more than approximately seven pieces of information (give or take two). Therefore, in order to be able to understand the world, and in particular the social relations, and to render it more predictable we construct stereotypes on the basis of the few pieces of information at our disposal, which we subsequently memorize and reproduce when we come in contact with the same stimulus. These stereotypes concern social groups (in particular groups most alien to us), objects, ideas and behaviors. This process is referred to as categorization. We use this process to categorize items and we assume that since they possess at least one common feature (may it be the simple concurrence in time and space) then all the other features of these items will also be similar. Regrettably, the tendency of the human mind to categorize is common and independent of the process of learning, and the categorizing criteria need not be rational (for example we all know what blondes are like!).

**Consider** what you think of medical doctors, the policemen, journalists, public administration officers etc. Ask a friend to play a game: select any profession (equally unknown/known to both of you) and independently describe a conversation of yours with a representative of that profession (for example putting in a claim with your telephone company, a conversation with an anesthesiologist before a surgery, a session with a psychoanalyst etc.). Focus both on the features of the person, the scope of their knowledge, their and your behavior as well as your emotions during that contact. Then compare your descriptions. Do they differ much? What are the reasons for those discrepancies or similarities?

The case under discussion considers the social category of a "lawyer." If a person's first contact with a lawyer corresponds with the above description then a stereotype of a meeting with a lawyer and the lawyer themselves will be created and will serve that person in the future. Moreover, for such a stereotype to be created experience of personal contact with a lawyer is not indispensable – we may just as well base it on information received from other people (for example the gossip we hear from friends), our observation of the outside world (for example by looking at marble plaques that label notary offices and law firms situated in the most expensive areas of the city) or information derived from the mass-media (in particular from feature films). The lesser the personal experience, the stronger the categorization because the person never stood a chance to falsify it – to meet a lawyer who would disprove the stereotype.

**Select** a friend or a member of your family who has never been to a Polish court and has no knowledge of law. Ask them to tell you of their vision of a court room – who sits where, how does a court hearing proceed, how witnesses are interrogated, how they are sworn in, how everyone is dressed. Consider whether that description corresponds with a Polish court room or indeed with an American one. What do you think was the source of that person's information?

The trouble also consists in the fact that the stereotype of a visit to a lawyer's office does not only rest with the client but also with the lawyers themselves, and in particular with young lawyers and the students of law. As you have surely noticed in the first practical exercise – you too have a particular vision of how to behave as a lawyer, what impression to make on others, how to treat the client and what to think of them. Often, when commencing to execute the profession of a lawyer we automatically adopt this stereotype as a well rehearsed part, because on one hand it allows us to preserve the sense of group affiliation (for a example a judge will look after order in a court room, therefore if I am a judge I will shout at the accused should they speak out of turn), on the other hand – observance of this convention gives us a sense of safety, in particular when we feel insecure professionally or we feel uncomfortable in contacts with other people or groups of people.

For a year after graduating and undertaking to deliver lectures at the Faculty of Law and Administration of the Warsaw University to students hardly younger than myself (and often older) I have switched to wearing suits and having tests at every class to emphasize my own status and not to let my fear of students show.

**Recall** your own experience of moments in life when your social roles changed – you abandoned a group you had belonged to (you went to university, to work, changed your group of friends etc.), or assumed a position higher than that group (you were elected for student self-government or the local council, a team captain etc.). How did your thinking of the group to which you had formerly belonged alter, how did you behavior toward that group change?

Thinking in the "we-they" categories is typical to the human being as it allows to define one's one identity ("I am a lawyer"), and to classify others into recognizable groups (your kind or stranger). Therefore, in our heads lingers not only the vision of how we should behave as lawyers, but also of how clients should behave, what they want to achieve by approaching us and what they are like in general. They should present their problem in a clear way so that it can be easily

named in the language of law. They should answer questions in a detailed manner, present one coherent account of events, behave properly – refraining from showing emotions – and finally they should acknowledge the appropriateness of our solution when we recommend them to sue their employer, to divorce their spouse, to report the offence of their husband to the authorities.

**Visit** the court room on the occasion of a few civil and criminal hearings when witnesses are interrogated (I would suggest cases with reference numbers of a few years back). Pay attention to the way the court interrogates the witnesses, at what level of detail, how they react when the witness claims to have no recollection of facts, or when their testimony clashes with that of the previous witness. Also note how at civil hearings the court demands that the plaintiff clearly define their claim.

This type of attitude makes us focus on the merit of the case, we try to emphasize our knowledge and our authority, which may lead us to attempt to impose upon the client the legal solutions recommended by us and considered by us the best and the most appropriate, without even listening to the client's account of their history or investigating the client's real needs. If we find the case unsolvable from a legal point of view we take this as our personal defeat and we tend to quickly and abruptly terminate the contact which would otherwise deepen our feeling of helplessness.

We react similarly if the client deviates from the standard client behavior. We manifest our aversion to clients who do not have a legal problem but call on us nevertheless to confide their sorrows (which in contemporary Poland is still more easily done with a lawyer than a psychologist). Such clients clearly waste our time, therefore we feel pressed to rid ourselves of such a client as hastily as possible. We demonstrate a similar approach to clients with whom a conversation is difficult – for example because they know not how to give account of their story due to psychological disorders, memory problems or their inability to express themselves – and in such cases we rush to assume that such a client does not have a legal problem and that their whole account is the product of their disorders, therefore they must be asked to leave. We are aggressive toward the clients who are unwilling to accept our solution, who do not follow our orders and return with the same problem – all we wish to do is say: "Did I not tell you? It is your own fault!" Women victims of in-family abuse serve as the best example here – it is an extreme challenge to convince such a person to file for divorce as their fear of a life of solitude and rejection means that they would much rather forgive the abusing husband time and again whenever he promises to mend his ways, which leads to repeated reconciliations followed by

repeated abuse, visits to lawyers, threats of divorce or criminal charge, apologies, reconciliations and so on.

**Consider** what kinds of people irritate you, what behaviors and what traits of character you dislike? How do you react to contacts with those kinds of people, what emotions do you feel?

It is unfortunate that we should commonly ascribe negative attributes to out-groups (or they-groups) and positive attributes to in-groups (or we-groups). The greater the difference between the two groups, the worse the attributes we ascribe to the out-group (for example this is where out stereotypical vision of a "difficult client" originates from). Moreover, we tend to consider out-groups groups as more homogenous, i.e. we assume that their representatives do not differ substantially between each other. In turn, we ascribe uniqueness and many positive attributes to the in-group (for example "we, the lawyers"). Such way of perceiving people serves two purposes – first of all it simplifies our social environment (we know straight away and without any great intellectual effort what to think of and how to treat an individual pertaining to a specific group) and we raise our self-esteem by believing that we belong to a group that is unique compared to other groups, therefore we ourselves are unique. The problem however consists in the fact that stereotypical perception makes genuine contact with the client impossible, it limits perception of the problem and hinders the understanding of the client's intentions and motivation.

The moment the conviction develops in our heads that we know what a person is like, what we think of them and what kind of a behavior we expect of them, is when we receive the very first piece of information about that person, and when we react to that information, i.e. the first impression. That first piece of information may be the contact – physical or over the phone, or information obtained from a third party.

**Try to recall** how you felt when you were going to an exam with a lecturer you did not know, but of whom you had heard from a friend to be strict, moody, and to dislike women for example, or on the contrary – to be indulgent, prefer blue shirts, mini skirts etc. How did your attitude to that information change your opinion of that person and your interpretation of their behavior?

**Why is the influence of the first impression so great?** The human mind has filters to make sure that our brains are not overloaded. We best remember the beginning and the end of an event, the middle of it eludes our memory. We then speak of the so-called primacy effect (the memorization of the beginning) and the recency effect (the memorization of the last elements).



The first impression that a person makes on us imprints itself strongly in our memory because of the primacy effect, particularly that during the course of the contact we tend to uphold that impression and we distort the information which does not conform with the first impression. This is so because we enjoy thinking of ourselves as coherent and consistent, and to perceive and understand the world in that very way. When information does not conform with our idea of a subject or when in a given moment we receive contradicting information (for example when we receive negative and positive stimuli simultaneously and from one person, or a negative stimulus from a person we like, or vice versa, a positive stimulus from a person we dislike), we do our best at ignoring it or minimizing its significance. Should we fail in those attempts however, our cognitive situation becomes unbearable. We will find examples of such traumatic cognitive conflict in children who are victims of family violence, in particular of sexual abuse. They experience violence on the part of the people they trust and love most in the world. The concurrence of emotions of love and hatred toward the same person will lead to personality disorders or at least to severe perceptual distortion. An extreme effect of such experience may be the enactment in adulthood of the aggression experienced in childhood (which is reflected in the rule that the abused fathers abuse their children).

**Imagine** that a person you liked very much did you wrong (for example smashed a car borrowed from you, stole money etc.). Now imagine that that same thing was done to you by a person you disliked. How will you justify the action of the one person and of the other? How do your feelings toward either of them differ?

The so-called **halo effect** is one of the tools that we commonly use to restore and maintain the coherence of the way we perceive the world. If we value one given attribute in a person we tend to spread that positive judgment over that person's other traits (the angel effect). And vice versa - when we have a negative opinion of someone in one dimension, we will tend to perceive that person negatively in other dimensions (the devil effect). For example, it is generally known that good looking people have an easier life. The "good looks" is a positively perceived social attribute, and for that reason we would also ascribe to those people traits such as: friendliness, helpfulness, kindness etc. However, often we would not consider a good looking person intelligent or hard-working. This is a result of the generally strong stereotypes of a "silly blonde" and a "do-nothing looker." We must not forget that the halo effect builds around the dominating attribute, although which attribute of a given person determines whether we place them in the positive or negative category will depend on our experience (the hierarchy of values ascribed to

individual attributes) as well as our needs (we will perceive the attributes of the blonde girl differently if we consider her a candidate for a date or a potential PhD student).

Unfortunately, the halo effect is strongly influenced by the first impression and it is difficult to falsify that effect later on as we tend to adapt every new piece of information on a given person to the already existing stereotype. To this effect we are assisted by erroneous attribution, i.e. by false observation-based inference about a person's traits and behavioral motivations. What is the mechanism of this process? When we search for reasons for somebody's behavior we are faced with a choice of two options – either we attribute that behavior to traits of personality, skills needs or fixed values of that person (dispositional attribution) or to situational factors (situational attribution). The manipulation of our perception of these reasons is really quite simple and convenient in the preservation of coherence of a given person's image. Namely, if a person of whom we have a positive opinion does something good then we would say they did it because they are a good person (for example he passed an exam because he is intelligent; he helped me because he is a generous person etc.). However, should that very same positive action be undertaken by a person of whom we have a negative opinion, we would usually justify that action with situational or external factors (for example he passed an exam because he had luck; he helped me because he wanted something from me etc.). Clearly, this interrelation is also true the other way round, i.e. when we analyze negative actions – of a person whom we like we would say that their actions were forced by circumstances (for example he failed an exam because the lecturer disliked him; he did not help me because he was very busy etc.), on the other hand of a person we dislike we would say that such actions resulted from their fixed and invariable negative traits (for example he failed an exam because he is not only stupid, but also lazy; he did not help me because he is a self-centered egoist etc.).

**Try to recall** a situation when somebody cut in on you or a bus driver closed the doors in front of your nose. What words (attributes) did you think of at that moment? Let me just explain that words such as "moron" and "idiot" are nothing more than dispositional attributes!

A similar process takes places in our heads when we consider reasons for our own failures and successes, and other people's failures and successes. Statistically, we are more inclined to justify our own failures with outside factors, and our successes with dispositional factors. We do the reverse with failures and successes of others – they accomplished something because fate let them; they failed because they were stupid. Reactions of this nature primarily serve to preserve

the positive image of oneself, also in comparison to others (certainly people exist who perceive the reasons and consequences the other way round, however the domination of this thinking strategy would give indication of personality disorders or, for example, depression).

Furthermore, we tend to consider ourselves as the point of reference in interpersonal relations and we assume that we are the driving force of actions and emotions of other people. We undervalue the previous situational circumstances which may have preconditioned the mood of a person who entered into contact with us (for example that person may be in an aggressive mood), or that person's experience may have caused them to be prejudiced toward a group to which we belong (for example a woman may be prejudiced toward men if she was a victim of abuse by that sex). We would rather consider what it is that we did, said or refrained from doing to cause such a reaction with the person we are talking to. Before we start feeling personally responsible or, what is more, offended by that person's behavior, we must remind ourselves of the process of displacement of emotions. The most common phenomenon that leads to aggravation of conflict is the displacement of aggression, which consists in the following mechanism: if my boss tells me off, particularly if they do so in an unmannered way and without reason then, since I am their subordinate and may not reply in an aggressive way, I will take it out on a subordinate of mine, who will then take their aggression to their home and turn it against their spouse, the spouse will then tell their child off, the child will kick the dog etc. We often inadvertently enter such chain of emotional displacement between people and we get it in the neck simply because we find ourselves within arm's reach.

I remember entering once a class of mine with a sour face because I had just been told off by my superior for some negligence of a colleague of mine. The students had written a test the week before, and upon seeing me they commented loudly: "So, was the test really that bad?" which in that case was not true at all.

**Consider** your reaction when your partner comes home furious. Consider also whether you do not displace aggression onto your subordinates.

The categorizing mechanisms, which among other result in the creation of the split between the "my kind" and the "stranger", the halo effect and erroneous attribution described above all lead to the creation of stereotypes. **Stereotypes** (both positive and negative, i.e. prejudice) are the fixed generalization of attributes of a given group of people. Every one of us has a full range of stereotypes relating to gender ("women are hysteric"), the color of hair ("red-haired women are

passionate"), race ("Black people are dirty"), religion ("Muslims are fanatical"), mental health ("crazy people are dangerous"), physical health ("disabled people are worse workers"), sexual orientation ("homosexuals are pedophiles"), nationality ("Poles and drunks"), profession ("every doctor will take a bribe"), social status ("the poor are stupid") etc.

**Find** five social groups the representatives of which you would feel uneasy contacting directly. Write down ten words that you associate with that group. What is the tone of those words? What do you feel thinking of that group? Have you ever met anyone from that group? If so, then consider whether you would use the same words to describe that particular person. If not, try to confront the nightmare and meet a member of that group.

Sometimes when we meet a representative of a group of which we hold a well-defined stereotype (in particular a negative one) that person does not fit our convictions (for example a particularly intelligent blonde girl, a tolerant Muslim, a punctual Arab etc.). One might assume that such a contact should lead to falsification of our opinion. Sadly, in principle it is not so. Our need to feel that we correctly interpret the world is so strong that we would much rather classify that unique specimen within a new subcategory (in line with the saying that the exception proves the rule) than abolish a stereotype of ours. In truth, in order to rid ourselves of a stereotype of a given group we must either become part of that group or, at least, have frequent and close enough contacts with its representatives to break apart the conviction of the group's homogeneity.

**Try to recall** a situation when you drastically changed your relation to somebody whom you disliked from your first contact – for example the student-teacher relation or the subordinate-superior relation, to a relation of friendship. How did your perception of that person change? Were you not surprised that your first impression was proven wrong? Did the change in your attitude to that person alter your opinion on the remaining members of the group to which that person had belonged?

Perhaps you are convinced that your opinions of other people are based on careful analysis of their behavior and the processes described above do not concern you. Of course all of these regularities might not apply to any single, particular situation, nevertheless in general this is exactly how we behave (not because we are bad by nature, but because such perception of the world is more comfortable – let us be comforted by the observation that schizophrenics with a

dysfunctional stimulus perception filter and categorization are unable to correctly perceive the world or communicate with it).

I am also far from the opinion that the use of stereotyping, attribution or first impression is always wrong. The human mind uses these shortcuts because they often prove correct and significantly help us behave correctly towards other people. However, should the conclusions drawn from these processes prove wrong or should these processes hinder our ability to perceive the specific traits or a situation of a person, they may have destructive influence on human relations. Sadly, the risk of making such a mistake is substantial since every categorization may be untrue in respect to any given individual. Going back to the "visit-the-lawyer" stereotype, it is certain that abiding by it will assist both the lawyer and the client in having an effective conversation. Therefore, most meetings with lawyers look similarly and are satisfying to both parties. One should nevertheless remember that subjecting oneself to a stereotype will bring on the risk of impoverished relationship, particularly in respect to clients with atypical needs. In reality not every client wishes to solve their problem through confrontation, in particular confrontation before a court of law. Sometimes the problems of people who have come over only to complain may be quite easily resolved using legal instruments (of which these people are unaware). The fact that someone is suffering from mental disorders (and that they even give account of their visions) is no proof of their not having a serious legal problem. Should we therefore apply effort to abolish our own stereotype of the meeting and of the client, to create the right atmosphere for a good contact, to give the client the feeling they are listened to, important, respected, and worth our attention and should we decide to devote a lot of our time to the client, we will have the chance to avoid the above mistakes that follow from excessive generalization. Moreover, and quite paradoxically, we shall also save time, we will obtain more information and avoid excessive emotions, or least significantly limit the duration of the expression of those emotions.

Furthermore, we should also encourage the client to depart from their own stereotype of a visit to a lawyer's office. Should we allow the client to behave in line with that stereotype they will inevitably expect us to provide them with immediate response to all questions and it will be difficult for them to accept the formal conditions of the clinic's functioning, they will rather attempt to manipulate us into delivering immediate advice or representing the client in court. Moreover, it is possible that by considering us omniscient the client will relieve themselves of responsibility for their own life and any decision making, and instead will demand that we choose the best way for them. If it becomes evident that the client's problem may not be solved or if they lose their case, they will blame us for that failure. Such an assumption is destructive both to

the client and to us – it teaches the client helplessness and puts undue burden on our shoulders – as we may only be held responsible for the correctness of the information we deliver and not for their embodiment or lack thereof in the life of the client. Moreover, only the client who shares the responsibility for the solution of their own legal problem will tell us the whole truth about their situation (or at least we will be able to make the client realize their responsibility for giving misleading information).

To linger in the negative stereotype of a visit to the lawyer's office may also lead to the escalation of negative emotions. These emotions intensify with the client as they remain in the uncomfortable situation of not only having a problem but also of needing to ask for the help of a person who is in principle younger and will impose their solution onto the client. We, in turn, make the assumption that lawyers need to keep their emotional distance to the client – we can not allow ourselves empathy toward a client, we can not sympathize with the client's emotions or support the client morally, for in truth the role of a lawyer is different. From here often stem our negative reactions to the client's showing of emotions – their tears, the shouting, the aggression. Quite naturally it is not my intention to encourage you to live the client's problems as a healthy emotional distance is the foundation of every profession that involves working with people with problems. It is important, however, not to expect the client to be our enemy and not to assume that we will want to rid ourselves of the client as quickly as possible. Unfortunately, such attitudes are often characteristic of prosecutors, judges, policemen, whose main aim in life is to quickly conclude a case and who treat clients as a number in the statistics.

**Call on** a local administration office (not necessarily justice-related) and note in detail how you are being attended to. Do you think the officer attending to you has positive emotions toward you? Take note of the impression and use the following Kant principle in dealing with your clients: "treat everybody the way you would like to be treated."

Therefore, it would be best to **break away from the "visit-the-lawyer" stereotype**. The problem consists in the fact that it is us (the lawyers, and even the students of law), the stronger and the more authoritative of the two parties, who need to undertake the challenge. The client themselves will not show initiative to work with us hand-in-hand. Only the person who is in control of the relation may be effective in the taking apart of the convention. A stereotype is very much like a self-fulfilling prophecy. If we have a conviction in relation to a group of people then – as it was said earlier – our perception of the world will fall in line with that conviction, which conditions our further behavior in a given situation. In turn, our behavior preconditions the

behavior of others, which serves to confirm our conviction. For example, if you think that victims of in-family violence have themselves to blame, then you will have the same opinion of Mrs. X who comes to see you about a similar problem. As a result you will most probably ask questions in an accusatory and prejudiced manner, which may lead to Mrs. X's feeling guilty, changing her mind, deciding not to sue her husband and to attempt to justify his actions etc. It is certain that such behavior will very well prove your assumptions. Therefore, if you allow yourself to accept the "visit-the-lawyer" stereotype and if you act accordingly, you will only provoke the client to act within that same stereotype (and therefore act in a restricted way).

The spiral of the self-fulfilling prophecy may be broken in more than one place. Firstly, one may alter their internal attitude – although as you must have already noticed altering one's convictions is very hard work and often doomed to failure (even if we manage to change one of our stereotypes we will still possess many others). The aim of this chapter is not to eliminate your stereotypes. Also I wish not to encourage anyone to negate their convictions, the more so to negate their feelings. We do not need to like everyone we come in contact with (indeed this would be pathological), it is nevertheless important that our prejudice does not lead to our discriminating clients, i.e. to our negative behavior resulting from clients' group affiliation. We will not manage to elude the phenomenon of the first impression, stereotyping or erroneous perception. They are all automatic and independent of our will. We must however realize that we are subjected to such processes, for only then will we be able to control ourselves well enough not to let the client see them, or even more importantly not to let those processes control our behavior. Moreover, when we start to consider the way we perceive the world we may intentionally enrich our perception (for example try to look at another person and find situational justifications of their behavior, in particular those not related to ourselves).

Our behavior is the weakest link where the spiral of stereotype may be broken out of. Independently of internal convictions, the way we perceive the world, or our negative emotions, there is an array of communication techniques which will allow us to create for the client's sake conditions of contact that will encourage them to step out of the stereotype and, at the same time, to allow us to verify the correctness of our convictions by supplying a vast volume of information about the client, their problem and their needs.

Further on in the chapter we shall look at the basic levels of communication, proper management which will bring the effect of good client contact: management of space and image, the conditions of client contact and active listening.

#### 4.4.3. What to wear and where to sit the client – the management of space and one's own image

This may come as a surprise to you but in the eyes of the client you are a person of great authority and power to make things happen. This results mostly from the fact that you already belong – by the fact of being a student – to the group of lawyers, which enjoys that kind of an opinion in the society. The fact that perhaps you do not think so highly of yourself and that you think of yourself as merely a student is of little importance – in this case it is the client who perceives you stereotypically and imposes that part on you.

I do recall an experience of mine from a one-month training at a penitentiary during my studies of psychology. Very often inmates commenced their conversation with me by saying: "It must be very difficult to study psychology."

**Have you ever experienced** a family member boasting of you, saying that you are an all-important student of law (for example your grandmother who lives in the countryside telling that to her neighbors)? What did that make you feel?

The other significant element that bestows on you a high social status is the place where you give the advice – the university. In the social perception a university is a repository of knowledge, a place of gathering for the wisest representatives of a given nation – the professors. To somebody who never graduated from grammar school you – being a student of law – are perched very high in the society hierarchy, at least with respect to the attributes of intelligence, wisdom and knowledge. The environment will have great influence on the way you are perceived and, what is worse, there is little you can do to change that – indigent, poorly educated people will as a rule feel uneasy entering a faculty building or crossing university gates. Personally, I felt most overwhelmed and fearful when I stood in front of the university building in Moscow which looked three times as big as the Palace of Culture and Science in Warsaw.

**Try to recall** the impression you had when you entered a courthouse (for this experience I would recommend the Warsaw courthouse where nobody is able to locate the correct hall because the numbering resembles a labyrinth), a ministry or the building of a very wealthy company for the first time in your life. What do you feel when you enter the gate or when the security officer asks you for the purpose of your visit?



You certainly will not manage to rebuild the university building. You can not even influence the color of the interior to make sure it is a friendly one. The most you can do is to make the client conference room as homely as possible. Not forgetting the client's vision of a "lawyer's office" discussed in the beginning of the chapter, try to give the conference room a cozy and more personal feeling. It is worth considering of few elements:

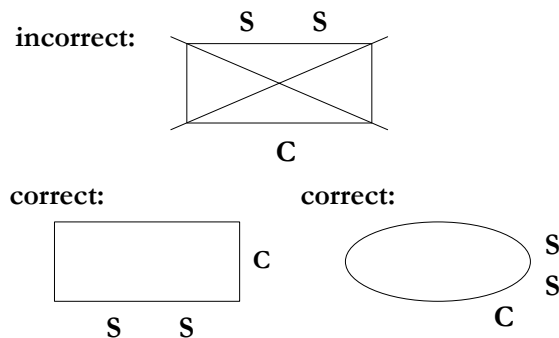
**Furniture arrangement:** As a rule a client conference room is a student working room at the same time. Therefore, it will have computers, telephones, bookshelves and the like. If this coexistence of function is inevitable (because the clinic has only one room) it is worth arranging the furniture so that to isolate a client corner and free it of office equipment (for example it may be fenced off by sliding doors or a row of bookshelves), or at least making sure that the space is not used by other students during client conference. If there are other students in the office upon arrival of a client, ask them out in a clear, determined and yet polite way, or if they occupy a different part of the office during client conference – ask them to keep their voices down. The client will appreciate the fact that you have taken care to create the best possible conditions and that you treat them as the most important person in the room.

As far as the **bookshelves** go, try to sit the client with their back or side to them, rather than having the bookshelves behind your back – do not forget that legal books will strengthen your position, as the client looking at you and the books simultaneously will find it difficult to acknowledge that you are merely a student and that there may be things that you do not know and you are not allowed to do. Also, refrain from putting legal books on the table during conversation. They tend to have the same effect.

The space where the client is received should only have one table with chairs. The putting of more than one table, in particular in an arrangement similar to a classroom, will create an atmosphere which will do little to emphasize the client's individuality, it will make them feel one of many clients dealt with at this tables. Such a room arrangement will make the impression that the room is usually used for other purposes, and that client conference is only a side function, not important enough to dictate change in furniture arrangement.

As for **the seating around the table** it is not advisable to sit the client directly in front of you, as this gives the impression of confrontation and rivalry. There will usually be two of you to receive a client. It is understandable that being partners you will want to sit next to each other – this will let you cooperate better, make you feel safer, and facilitate client's perception of you and of what you say (I discourage you from sitting in a way that would force the client to turn to face the person speaking at a given moment or the person they wish to address at a given moment – this is tiring to the client, but it will also be uncomfortable to you when at times you find yourself

facing the client's back). Try to sit at the table in a way that would prevent the table top from separating you from the client. Elliptical tables serve that purpose best, where you can sit at the longer side of the table or the longer and shorter side at the same time. If you do not have such a table, a similar seating may be arranged with a simple desk.



Always remember to **keep the right distance** to the client. We all have our personal distance zone – a distance to which we comfortably admit other people. This may be imagined as an oval area of space in front of us. The oval reaching approximately 45 centimeters away from us delimits the so-called intimate zone, to which only our partner, close friends, children and parents are admitted. Further on expands the personal zone (45-120 centimeters). This is the space of private conversation which allows both the touching (45-74 centimeters) and the keeping of a distance but without losing the sense of privacy (75-200 centimeters). Beyond that expands the social zone (1.2-3.6 meters) within which official business is attended to. The public zone expands the farthest (3.6-6 meters) and delimits a distance maintained in official contacts of an individual with a group (for example a teacher in class or a politician delivering a speech).

**Try to recall** how perfect strangers act in a crowded lift. Do they look each other in the eye? How do you feel in a similar situation?

Some may interpret the stepping into the personal space as aggression or expression of sexual interest, therefore it certainly will not be comfortable and will hinder communication focused of professional matters. Because individual personal distance varies and depends on culture, gender religion and other such elements, do allow the client to delimit their own distance of comfort and adapt to it – to respect their personal distance is proof of your respect to the client.

Nevertheless, if you feel that distance is not sufficient to your needs do not torture yourself but simple enlarge it by, for example, moving your chair away. If the client keeps moving toward you, simply tell them that you find such distance discomforting – if the client is used to a very

close intimate space they will never imagine you can have a problem with it (for example *It is a very cramped space and when you keep on moving closer to me I find it difficult to concentrate on your case, and since the reason for the meeting is to solve it, may I kindly ask you to move away from the table a little, which would help us in our work*).

**The colors and objects that build privacy:** there is a range of colors that make a room seem cozier, encouraging confession, and more soothing. On the other hand, there are colors which after some time might bring about negative emotions, including aggression. The former are warm and not excessively bright shades of yellow and orange, or honey browns. Black, gray, faded shades of blue and green, violate and pink, pistachio and dun are colors that have a negative effect on the atmosphere. I am not saying you should repaint the clinic office (or the university department, for that matter) if it is already painted in a cold shade. You may however quite easily conceal the colors of the wall. This may be aided by furniture of, for example, light shades of wood, with elements of yellow, orange, dark blue or dark green (it is necessary that chairs or armchair have soft upholstery – for the comfort of your client).

Not all clinic will afford to purchase new equipment (do not forget that you will need the consent of the dean to repaint university furniture!). In such a case little things will come in handy to make the room cozier. These may be color posters, photograph or copies of paintings hanging on the walls, curtains in windows, or a tablecloth (however moderation is advised as the introduction of color is supposed to sooth the room, and not cause distraction and annoyance with an excessive range of color). Flowers are also a useful element to positively influence the mood of a room – pot flowers and cut flowers (even plastic flowers).

It is also a good idea to always keep at hand a box of tissues in case a client falls into tears, a water kettle and some cups (as well as coffee, tea and sugar, possibly some mineral water), so that we can offer the client something to drink. The office should also be furnished with a coat stand (and an umbrella stand as clients usually are at a loss what to do with a wet umbrella) – your first gesture toward the client should be that of offering to take their coat. It is a sign of good manners to assist an elderly person or someone who is clearly upset in taking their coat off (although without imposing oneself – if the client wishes no help in that respect do not insist on it).

Remember to keep the room in which you work in order – on one hand this will facilitate cooperation with other clinic staff, on the other hand it will give the client a feeling of being expected (excessive disorder creates a feeling of chaos, haste, and gives the impression that we

are busy with other things at all times). Do not go into extremes though – sterile neatness looks artificial and excessively emphasizes the prestige of the person occupying such a space.

**Try to recall** the color of the interior of a hospital (in particular a psychiatric hospital), an administration office, a penitentiary, a monastery, a school, and such like. What do you feel like having spent a lot of time in that space? Go to a good furniture store or interior decoration store. What is their mood?

The lighting is equally important as interior decoration. The room should be light enough to allow for reading of documents. The client however should not be seated in front of a source of light to prevent them from being blinded, but also to let the client see you well. Therefore, it is best to sit the client with their back to the window if the sun is strong. It will make it more difficult for you to observe the client, but the client will be more comfortable (reverse seating could give the impression of an interrogation).

**If you do not entirely believe** how important a role space management plays in the creation of atmosphere of conversation and the presentation of distribution of power, watch the beginning of the first part of "The Godfather." Note the arrangement of furniture (particularly the placement of chairs and the distance between them and the desk), the color scheme of the room, the lighting and other features. Also take note of the appearance of the main character, his facial expressions, gesticulation and the way he speaks – the speed, the loudness and the number of words.

**Own image:** Such small measures as assisting in the taking off of the coat or offering a cup of tea will make the client feel looked after and appreciated, treated as a person and not as yet another in an array of problems you will have to deal with. But in order to keep that desirable effect of stepping out of the "visit-the-lawyer" stereotype you must be consistent throughout the conversation and act in line with the atmosphere of the conversation you are trying to instill and maintain.

As you may have noticed in the excerpt of "The Godfather," a lot of information of the relations between people is transferred by the physical appearance and nonverbal communication. Your clothes – how expensive and elegant they are – but also the way you move, speak or look will give clear indication of who of the interlocutors dominates and has power within a given system.

As said previously, in the eye of the client your status is very high right from the onset of the meeting. Therefore, to try to artificially enhance it even further using the above attributes may prove dangerous as the client's expectation will grow along with your esteem. Therefore, you should rather make an effort to lower that esteem.

**Has it ever happened** that a member of your family or a friend of yours, having learnt that you were a student of law, asked you for assistance in solving their legal problem of which you had no professional knowledge (for example a taxation, inheritance or farming-land problem)? How did you deal with that situation? Did you manage to convince that person that you were not a specialist and that you did not know the answer to their question? Did you make an attempt at explaining that or did you prefer to research the problem and find a solution?

It is certain that in the relation to them you will never be at the same level as your client. It goes without saying that in the clinic you play a certain social role which, in principle, will always place you above your client (because of your professional competence, if not for other reasons). And this is the way it should be – to reduce the conversation with your client to a friendly chat would serve neither you nor them (on the contrary – this could intensify the client's manipulating you). Therefore, by lowering your status you will not run the risk of losing the client's trust or their esteem for you. If you do this in the right way, emphasizing at the same time your respect to the client and your readiness to exert yourself to help them, you will only reestablish balance of power which will allow for responsible cooperation between the two parties.

To this effect, first of all you need to avoid excessive contrast between you and the client, at least wherever it is realistic (you will not reduce the age contrast whatever you do). As a rule, the clients of legal clinics are people of modest means, try not to shock them with the way you dress. Too elegant (a three-part suit and a tie, a black mini skirt and white blouse) or too casual (torn, dirty jeans, washed out or a stretched t-shirt) will not serve contact well. The former emphasizes the status of the role you play, the latter indicates lack of respect to the client and fails to inspire a feeling of trust. Examples of professions with a specific dress code are proof of how much the way we dress tells of our social role.

**Note** how you talk to a policeman in uniform, a medical doctor in a white coat, a priest wearing a cassock. How do you address these people? Would your behavior toward these people alter if they wore "civilian" clothes?

The same rule – to adapt to your client – refers to **nonverbal communication**. Understanding between people of whom one speaks quietly and slowly, sits curled-up and motionless and the other speaks loudly, gesticulates vigorously and paces around the room is so much more difficult. The more your behavior differs from that of the client the greater their discomfort. The problem consists in the fact that the way we move, gesticulate and speak is largely a result of our innate temperament. On the other hand, it is important to remember that the signals we transmit through nonverbal communication are very susceptible to outside factors (for example our emotions, our mood, nervousness or haste). What is more, only rarely do we actually consider our nonverbal expression, transmitting those signals subconsciously.

It is only natural that if we feel uneasy in a given situation we try to hide that feeling and we put on a brave face – we act more vigorously than usually, we speak louder, we gesticulate more, so as to demonstrate our self-confidence. We feel more inclined to this kind of reaction when we are on our own territory, as we then feel authorized to this kind of behavior. In your clinic work with a client you may subconsciously bring about a similar reaction as, at least in the beginning, professional contacts are a source of stress to all of us, stress which we try not show in order to stay firmly in our social role.

It is worth realizing that your nervousness is far more noticeable to you than to any third party. A client who arrives at the clinic is focused on their complicated problems on the one hand, and on the actual fact of being at a university to seek advice on the other. Being so self-focused the client will not notice your nervousness or lack of self-confidence in your behavior. Nevertheless, if your behavior remains in too great a contrast to that of the client (the tempo, the gesticulation, the pace, the loudness of speech), you will often unintentionally make them more stressed.

Let the client's nonverbal communication dominate the beginning of your meeting, not yours. Try to move the way the client moves, use the same amount of gesticulation, the same speed of movement and speech. This is not about being a copycat, but rather about broadcasting at the same nonverbal wavelength. If your sitting posture, volume of speech and face expression are similar to those of the client, they will feel listened to and understood even before you actually transmit any information. Such adapting to the other person gives the impression of our flexibility and interest in the other person's problems, and subsequently serves the purpose of creating good contact. Also, when we focus on the client our own stress and fears relating to our insufficient competence will slip our mind.

**Try to observe** how you behave in a conversation with your best friend. After you have spoken for hours, has your posture, gesticulation, the volume of voice and the speed of speech altered much? Why do you think it is so? Try a reverse experiment: when talking to somebody, try to adapt to them (do not be too obvious in it though to avoid the impression that you are mocking the other person) – sit the way they sit, try to speak in the same manner, breathe in the same rhythm as they do. Is it easier or more difficult to speak to that person? What impression do you think did that contact make on the other person?

What I am trying to convince you to do is quite evidently a technique of nonverbal communication. I would not recommend identifying with the client to the extent where you would start living their emotions – it has already been said that keeping the emotional distance is imperative. You must not feel what the client feels, you must behave in line with the client's behavior, or rather avoid behavior distinctly different to the client's. You must not laugh when the client cries, which means not that you need to cry along with them. In the end of the day you remain the stronger party, the one that determines the terms of your relationship.

If, on the other hand, you find yourself unable to control your own behavior, I would suggest that you use expression which is unnoticeable to the client. If you feel the urge to assume a closed posture (hunched and with your arms crossed) when you are talking to a client and should instead assume an open posture, try to "close" the part of the body the client does not see – for example, cross your legs under the table. Similarly, if you feel like fiddling with your pen or tearing a tissue in your hands, rather take notes or swing your leg under the table (make sure you do not kick the client though, and should that happen then simply offer your apologies).

**Eye contact** is one of the fundamental channels of nonverbal communication. Failure to maintain eye contact may be interpreted as lack of interest in the client and in the information the client is sharing. On the other hand, excessive eye contact is interpreted as aggressive or – depending on circumstances – sexual interest. It has been calculated that on average a person listening should look at the person talking for approximately 60% of the time. Naturally, eye contact depends on individual and cultural (religious, social and nationality-related) factors. If you notice that the client is avoiding eye contact with you do not impose this form of communication on them. If you feel the need to look at the client, do concentrate on their hands rather than the face. You will find this helpful and the client will find it less aggressive. Similarly, if you have a problem with looking the client in the eye, direct your eye to, for example, their mouth or an altogether different object in the space behind their head (you may also follow the outline of the client's face with your eyes which you will find very relaxing) – the client will most probably not

notice that you are not looking at them. When the client fixes their eyes on you aggressively, thus throwing you off balance, tell them that directly (*I find it disturbing when you keep on looking at me and it makes it difficult for me to focus on your problem, and the reason for this meeting is to analyze that problem*), or else you will continue feeling uncomfortable and no hints that you may throw at the client will make them change the way they are behaving.

#### **4.4.4. Let us set the terms – your contract with the client**

At the **beginning of the conversation** you should define the terms of contact between you and the client for it to be positive and fruitful – the time, the place, the expectations of either party and the ability to meet those expectations, as well as the language convention. Since your partner and you are the hosts of this meeting, you should present those terms to the client. The client will have to observe those terms in order to be supplied with legal advice.

Some of these rules will clearly follow from the legal clinic regulations and as such they surely have already been presented to the client at the moment of arranging their visit to the clinic (over the phone or during the client's visit to the clinic's secretary office). This fact does not release us from the obligation to reiterate the clinic regulations to the client, as when applying for a meeting the client may have not heard (or failed to take notice of) the formal preconditions, did not believe they were binding or assumed that in their case they would manage to circumvent them or force you to bend the regulations due to the client's "personal and special circumstances." Also, you should not limit yourself to simply handing over the form specifying the regulations for the client to sign. You probably are aware of the fact that people usually do not read the documents they sign, and if they do then only cursorily and without paying attention to the document's content.

For these reasons, at the very beginning the client needs to hear the rules of the clinic and the consequences of nonobservance of those rules, as well as information on the type of advice and support the client may obtain from you and within what time limits.

For example, this may be done in the following way:

*Good morning. My name is Jan Kowalski. This is Anna Nowak. We are fifth-year students of law and we attend to civil law cases at the clinic. We will be in charge of your case. I am not sure if you know the details of the Zielona Góra Legal Clinic rules, therefore please allow me to tell you how we are going to proceed. The clinic may deliver assistance exclusively to people of modest means, who can not afford the assistance of a professional lawyer. For this reason you have been asked to bring along a salary certificate. For the very same reasons we will now ask you to sign a statement which says that you do not have income that*



*would allow you to pay for an attorney. I must warn you now, that unfortunately if during the course of our work it should be found that you do not meet this requirement – because for example your financial status has improved – we will have to refuse advice. This is a clinic regulation which we must observe.*

*The clinic rules do not allow us to advise people who are already using the services of an attorney. This results from the fact that our clinic may not enter into conflict with attorney and legal adviser self-governments. We do not have the authority or competence to compete with professional lawyers, or to verify their work. Therefore, I need to ask you whether you have an attorney, for example a court-appointed attorney?*

*We are only students, therefore we will not be able to answer your queries straight away and during this meeting. We are studying the law and wish to make no mistake in advising you. Therefore, before we can issue advice we need to consult our supervisor, who is a member of the faculty. Only after they have verified that the advice or the pleading we have prepared for you is correct will we give it to you. Therefore, today we would like you to tell us of your problem and as soon as we have gathered all the necessary information we will set another appointment for which we shall prepare your advice. Do you agree to this working procedure?*

People better adhere to regulations the reason for which they understand. Therefore, when you list the above regulations, it is a good idea to justify them (*We may not enter into conflict with the Bar because this may put the clinic under risk of dissolution*). However, in order to avoid the client's putting pressure on us to exclude them from those rules, it is helpful to cite them the authority which makes us unable to change the rules and makes us subject to those rules (*These are clinic rules which we need to respect if we want to continue working here*). It goes without saying, that all rules are best set out together with the client, since psychologically we are more strongly bound by rules we have thought up ourselves. However, it is quite evident that the client has no power whatsoever to change any of the above rules. Let us then at least allow them the opportunity to reject those rules, and thus resign from applying for our assistance, as they have that right at all time. As for the other stipulations of your contract with the client, it is best to let the client cooperate with you in their creation – this refers for example to the date of the subsequent meeting (*When would it be convenient for you to meet up again? We are on duty only once every week, always at this time of the day, how soon would like to see us again?*), the form of contact (*We can mail you this pleading, if that is more convenient for you*), the amount of time reserved for collecting data (*Do you think it would be advisable for us to meet one more time so that you could provide us with more information? Or would it be enough for you to drop by and leave the necessary documents with our secretary office? We will collect them and give you a call if we have any additional questions*), or even the people receiving the client (*I can see that you are very uncomfortable talking about your family matters with two men. We could ask two of our women colleagues to take up your case. It is entirely up to you whether you wish to continue to work with us or not*).

Let us not forget that the client contract (also its unwritten aspects) is established so that it may be referred to **during conversation**. Therefore, do not allow the client to forget the once agreed upon conditions, and remind the client of those conditions should they ever slip their mind (*I do understand that you would really like to receive an answer to this question quickly. However, as I told you before, we are only students and we are not allowed to advise without consultation with our supervisor. This rule is there to look after your best interest too because we all want to be sure that our advice to you is correct*), and most importantly, do use sanctions if the terms of the contract are violated (*You just said that this is what your attorney advised you of. I should like to remind you that, as we told in the beginning, we may not advise anyone who is being advised by an attorney. In this situation we have no choice but to terminate this conversation; What you just said implies that the inheritance is of substantial value. As we told you in the beginning we may advise only people of modest means. We do understand that you have no cash at the very moment, but law firms exist that will take a case in return for a percentage of the case won. Therefore we have no choice by to refuse further advice to you*). When trying to recognize attempts of the client to manipulate the terms of the contract one must be vigilant. If we let slip one attempt of the client to alter the rules or information of breach of rules, the client will immediately draw the conclusion that that particular rule does not apply to them.

One thing that needs to be immediately corrected is the **form in which the client addresses you**. Very often will you come across clients who wish to address you as "attorney." This results from the fact that you already belong to the "lawyer-attorney" stereotype, and the use of that title proves that the client belongs within the convention of a contact with a lawyer (because this is the way to address a lawyer). Furthermore, when the client uses that distinguishing form, they establish in you a feeling of indebtedness and they flatter your ambition. Probably you too are guilty of using this mechanism when addressing your university teachers whom you referred to as "professors" (or at least "doctor" referring to younger people), just in case or if you were not sure of their title. The same rule applies when you address policemen and soldiers using a rank higher than the one they really hold.

To allow the client to address you in that manner is very dangerous as that label is accompanied by increased expectations of you. The "attorney" can do anything they wish and on the spot – therefore after an hour or so calling you "lawyer" it may be difficult for the client to accept the fact that there is something that you do not know, that you must consult, that you will not represent them in court or that you will not write a last resort appeal. Therefore always correct the client (*We are only students*). During the conversation it would be a good idea to have a badge with your first name written on it as that would give the client the alternative of addressing

you with your name (your first name may slip your client's memory after the first time you give it to them during introduction).

It is essential that at the beginning you advise the client of **what the client may expect of you**. Do verify with your clinic what it is that you are authorized to do (are you authorized to accompany the client to the court or an administration office, to meet them outside of the clinic, to answer questions over the phone etc.). Before the conversation, think through which rules it is exactly that you wish to agree with your client upon, discuss these rules with your partner so that the two of you have the same plan of action, and so that one of you does not hastily jump to the merit of the case before that other has established the entire contract. Sometimes you will not manage to establish with the client all formal aspects, often you will not be able to think of all the client's expectations and needs beforehand. Do react as things happen (*You said you expect us to write a last resort appeal. I am sorry we did not advise you of this in the beginning but the Polish law demands that such an appeal be written by an attorney. Since we are just students we will not be able to assist you in this respect*).

One of the most important things to establish with the client in the beginning is the time limitation to your contact. It is much better to tell the client that their time is limited than to fidget and look at the watch, thinking how to politely ask the client out.

*Our duty only lasts an hour. Therefore we have time until 2PM. We will not be able to talk beyond that time because other students have meetings with another client. However, if we do not manage to discuss all your problems within that time, we will be able to arrange for another meeting with you.*

After an hour we can happily recall the above limitation (*Regrettably we have run out of time today. We must vacate the room for another client. Let us arrange to meet again*). Giving warning of time limitation will not only allow you to conclude the contact, it will also place the responsibility for the effective use of time on the shoulders of the client (*We do not mind your coming late. I must however warn you that we must finish our meeting at 2PM, because we have another client scheduled for that time; We are running out of time, let us recap the information we have obtained; I understand that this is a really important problem for you, however we have only 10 minutes left, let us try to use that time to discuss your core problem, which is...*). Paradoxically, the limiting of the time to the client's disposal results in the information being transferred more quickly and in greater volume. Against all appearances, if you allow the client to extend the conversation over another half an hour, you will not receive much more strictly case-related information.

**Try to recall** how quickly you do things when your time is limited (for example when you are studying for an exam which is to take place in three days' time, you are writing a paper for the next day, together with a friend you are preparing a conference program, when there is only thirty minutes left to your date). Do you do these things more quickly or more slowly when your time for the same tasks is unlimited? Why?

If nevertheless you have **problems with concluding the meeting with the client** by an established time, ask someone from the clinic to interrupt your conversation five minutes after your duty is over (for example by knocking on the door and saying: "*I am very sorry, you must wrap up because another client is already waiting*"). You must remember, that if you show the client that they set the duration of the contact, they will expect the same at the next meeting and, what is more, they may even attempt to manipulate other aspects of your contact, using the fact that you already made one concession. In such situations it is always worth emphasizing how unique a given situation is and to recall the rule, or establish it had you not done so before (*Today we devoted to you an hour and a half because we wanted to fully explain this important matter. However, I would like our future meetings to finish sharply at 2PM. We have classes after that time, I would hate to be late for them again*).

The **confidentiality of your conversation with the client** is indeed a very delicate condition of your contact. According to the regulations you need to advise the client that you are not bound by the lawyer-client confidentiality, and that – in case you are summoned – you will bear witness before the court of law or law enforcement organs of what you learn from the client. It would also be advisable to warn the client that you are under enforceable legal obligation to report certain crimes. Try to pass that information on indicating unequivocally that it is an exception to a binding obligation not to disclose the information obtained from the client. Tell the client clearly that without their consent nobody will know that they are a client of the clinic (the spouse in particular if the case refers to family-related matters), and that copies of documents the client leaves with the clinic are perfectly safe. To allow the client to express themselves freely they must feel safe. This is particularly important in reference to victims of in-family violence who, due to having been abused by those closest to them, will often find it difficult to trust another person and to open up to them.

In order to create a feeling of safety, apart from the issue of secrecy, the client must also have the feeling of not being condemned. This refers to the history, the choices, as well as the way the client expresses themselves and behaves. Therefore, try not to make comments or judgments, irregardless of what you really think about your client and their actions, or how annoying you find them. You must keep in mind that your negative opinion of the client will be reflected in your

nonverbal communication (the facial expressions, the tone of your voice, your gestures). This is very hard to control, however do try to contain such reactions, in particular outbursts of laughter, sarcasm, meaningful glances at the partner etc. However, if you are unable to refrain from such reactions and you do burst into inappropriate laughter at a client's particularly tragic problem, then you must simply directly apologize to the client (*I apologize, I should not have reacted that way, you surprised me with your story but I do understand how important this is to you*). Also apologize for the possible inappropriate behavior of your partner, if the partner is unable to find a way out of the situation (*Please forgive my partner's behavior*).

It may also happen that a client will **throw you off balance**, making you angry, irritated, frustrated, filled with disgust, feeling of helplessness or other negative emotions. I do not encourage to negate one's emotions, however it is worth learning how to live these emotions without affecting your behavior toward the client, your opinion of the client or the quality of your legal advice to them (breathing exercises are not noticeable to the client, and yet they are soothing). You may also introduce yourself into a state of relaxation through initiation of alpha waves (electric waves which dominate in the brain in the dreamless phase of sleep) – all you need to do is for a few minutes to make the infinity sign – „∞” (with your pen on a piece of paper, but just as well with your eyes, head or foot). When you really can not bear it any more, you had best leave the client for a moment (for example go to make a photocopy, tea or check your next appointment in the calendar), leaving the conversation to your partner. When you make such a decision pay special attention to your partner's mental condition – do not leave them alone with the client if they are in the same frame of mind as you.

Once you have gone through the initial phase of the conversation – you have agreed with the client on the contract, you may move on to the merits of the case.

#### **4.4.5. What can I do for you? – active listening**

In this part of the interview you should collect information regarding the client's legal problem, and then establish what their expectations to the solution of that problem are. The main communication tool that is going to assist you in this task is problem clarification, in other words the asking of correctly formulated and sequenced questions.

**Clarification.** It is fundamental that the questions be understood by the client, therefore they must be asked in a language adapted to the client's way of expressing themselves. This does not imply that you must use simple language and avoid legal vocabulary at all times. It is wrong to assume that you will never deal with clients who have extensive knowledge and express

themselves in a sophisticated manner. Listen carefully to how the client expresses themselves and try to address them using their own vocabulary, assuming of course you understand it. Do not hesitate to ask the client for the meaning of words they use, in particular if they use slang, dialect or if you suspect that they give certain words a different meaning than you would. However, make sure you do so in a way that is inoffensive to the client, and that you do not imply that they express themselves incorrectly (*I would like to make sure that I understand your problem correctly, do explain to me what you mean by saying...*).

Similarly, if after you have asked a question and you have the impression that the client did not understand, **reformulate** it using different words. When doing so suggest that it was you who made a mistake or were imprecise (*In other words, what I wanted to say was ...*). Avoid asking the same question over and over again using the same words. We do in principle become attached to the expressions we use and often we are at a loss trying to find synonyms. When we are not understood we tend to repeat our own words only a little slower and louder. This technique is appropriate only in case of people with hearing problems – those who can understand the meaning of words provided they actually hear them. This is no solution in case of people who find our vocabulary excessively complicated (for example poorly educated people who have limited vocabulary or foreigners who have mastered only the basics of our language).

If you have trouble finding a synonym which the client could understand, try to approach the problem creatively. You can give the client an example, show them a given object or draw it for them (the method of using symbols is very good for example in case of intellectually disabled people). Drawing is an excellent way of communicating as it adds one more channel of communication – the visual channel, which is usually more convenient to the client as most of us have visual memory. Drawing together with the client will, on one hand, help us to verify that both parties have the same understanding of a situation, on the other hand it serves to order the description and identify missing information. It is good to sketch the complex sets of facts of the case – for example car accidents, genealogical trees in inheritance cases, real-estate in cases of division of property or neighbor disputes. Writing down information together with the client may serve the very same purpose ("written discussions" will also allow to communicate with deaf and mute people without the assistance of an interpreter).

**Try to imagine** that you are talking with a child of five. Try to explain to them using examples what a claim, a promissory note, endorsement, stock-exchange, electoral law are. Now imagine that this child has been a victim of sexual abuse. How would you ask questions so that they

would tell you what happened? What words would you use to describe sexual acts? Would you use some objects, drawings and such? If so, then which ones?

As soon as you are certain that the client understands you, you must **give them time to answer**. As a rule people are uncomfortable and embarrassed with silence in a conversation. Therefore, if the client is not answering your question for some time we automatically feel the urge to say something to release the tension. In such cases we usually repeat our question or inundate the client with more questions. The first reaction is effective only if the silence results from the client's failure to understand the question. In all other cases – when they have trouble answering because it is too difficult for them – putting pressure on the client may have adverse result. We are risking that the client will not deliver an answer at all or, what is more, that they will react with aggression or other agitated emotions (for example with tears of despair or with apathy). Asking further questions will not help us either, in particular if they are unrelated to the subject. This will give the client an opportunity to escape a troubling question – they will select a safer one and will deliver an answer to that question. We will lose a vast amount of information and a chance to obtain it as returning to the subject will be much more difficult.

Therefore, when you ask the client a question they will consider difficult and after which **silence** falls, try to wait it out. It is generally assumed that in a conversation parties take turns to speak, the client will feel the pressure to say something. The longer the silence the greater the pressure on them to speak. It is highly probably that the client will then provide you with an answer, even if their reaction is accompanied by intense emotions (shortly we will discuss how to deal with such emotions).

Complex questions, i.e. those incorporating more than one question (for example *Do you visit your children a lot, do you take them to the movies or the circus, do you buy them presents and pay alimony?*), will cause the reaction of evading a difficult subject, similarly to when the client is given too little time to answer a question. Usually, the client will answer only the last question or the one that is the easiest to them. The worst case scenario would be for the client to answer such a question with a "yes", as this in practical terms would give us no information at all and we would need to repeat every question individually to find out which part the "yes" referred to.

**Leading questions** bring as little information as complex questions. Sadly we overuse leading questions because we would rather see the hypotheses we formulate in a given situation confirmed. Therefore, as soon as we develop an idea of what the client's problem consists in – even if we do so without all the information – we tend to continue asking questions in a way that would encourage answers conforming with our vision, a vision which in itself is usually a result of

a stereotype of a client situation (for example *Is it not true that you do not visit your children because your ex wife does not allow you to?*). Life is so rich that we will never be able to predict a client's situation, therefore you should keep on the safe side by asking questions that would give the client the opportunity to falsify your hypothesis, and it would be best if you allowed them to express themselves freely and refrain from interfering with their statements.

The form of question that allows the imparting of the greatest amount of information is an **open question**, i.e. a question that starts with a particle such as "when", "how many/how much", "how", "why" etc. In principle, an open question will not suggest any answer (*How often do you see your children?, Why do you not see your children?*). An open question will encourage the client to express themselves freely and to shape the conversation – the number of words they speak and the information they impart. By asking **closed questions** we risk to miss the answer which rarely is an exclusive alternative, and at the same time to deprive ourselves of a great many pieces of information (instead of asking in turns: *Are you married?; Are you single?; divorced?; widow/widower?*, it is better to ask *What is your marital status?*).

If we ask open questions in a sequence the client will speak more and more – this is an automatic mechanism and almost imperceptible to the interlocutor. As a rule this effect will prove beneficial to the conversation with the client, as people who call on a lawyer usually feel they are expected to give precise answers to questions and not to take up too much time. Therefore, they expect the lawyer, as a specialist, to know exactly what questions need asking and assume that all the matters not covered by these questions are irrelevant. For this reason, rarely do they take over the initiative in giving information.

There are of course many people who are always talkative. Such people might flood you with information, often unrelated or only loosely related to the subject matter at hand. By allowing such clients to continue to talk freely you will risk to lose yourself amid all the information and to be unable to identify information of true significance from the point of view of the problem with which the client has come to you. It would be rude to interrupt such clients or to point out to them that they speak not to the point, particularly if you are dealing with your elder who would be used to younger people keeping silent and nodding their assent in proof of deference.

As it has already been said, the manipulation of the "open-closed" question is usually imperceptible to the interlocutor. Open questions open the mouths of people, closed question shut them. Therefore, if you are dealing with a talkative person ask them a series of closed questions (i.e. those starting with "do you...?").

Unfortunately, our unconsciousness will tell us differently. When we deal with a person who speaks little we automatically switch to closed questions so as to force them to at least answer



"yes" or "no." By doing so, we are shutting that person's mouth even further. By contrast, when we deal with people who are talkative, if only we managed to interrupt the flood of their words, we construct an open question that will allow them to expand on the topic even further. The moment you have a problem on your hands – either because your client speaks too little or too much – try to force yourself to ask a question opposite to the question you would naturally feel inclined to ask – an open question to a quiet person and a closed question to a talkative person. One question will quite obviously make little difference. A quiet person will not jump into a frenzy of a multi-sentenced answer to an open question, but may mutter only a word or two. A talkative person will not limit themselves to answering a closed question with a simple "yes" or "no", but will happily treat you to another tirade. Nevertheless, with every open question the replies of a quiet person will become more and more substantial, and with every closed question the replies of a talkative person will reduce in size, thus returning the control over the conversation – its content and time - to you.

**Observe** in a conversation with a friend how open and closed question function. For example, over a given period of time answer them monosyllabically (of course without warning them of such behavior beforehand). Observe how their questions are constructed. You may also take the opportunity of a conversation with somebody close to you when they are agitated. Try to change the way they are expressing themselves – to reduce when they speak too much, or to increase when they speak hardly a word. Consciously force yourself to manipulate the form of question.

You should start the part of the interview where you **collect information on a problem** with a general open question (*What does your problem consist in?, What can we do for you?, What would you like us to talk about?* etc.). To ask a different type of question at the beginning would make little sense as you know nothing of the client, their knowledge, vocabulary, speaking habits, or their problem. It is a rule to start an interview with an open question and then to move on to closed questions, which translates into outlining the problem first and then analyzing detailed aspects thereof.

**Questions should be related to each other** so that not to jump from topic to topic, as this would make the conversation chaotic and cause the client to lose their focus. You would also risk losing important information. Therefore, when you decide to clarify a given element of a situation, focus on it as long as you need to obtain all the necessary information. Only then move on to the next series of detailed questions relating to another issue. After you have clarified all the details of the general picture of the situation given to you by the client in the beginning of the conversation, return to the general question so as to give the client the opportunity to introduce

aspects of the case they did not discuss previously and which you had no chance to clarify. Having obtained new information start asking detailed questions again if you feel they need to be answered for you to find a solution to the client's problem. In the end always give the client the opportunity to complement their account with new information by formulating another general question.

A conversation may look like this for example:

- *Do tell us what it is that we can do for you.*
- *I have a problem with my son.*
- *What is the problem?*
- *My son is an alcoholic. He does not work. He steals money from my purse. He takes things from my house and sells them to pay for alcohol.*
- *What does your son behave like after he has drunk alcohol?*
- *He is very aggressive. He usually drinks with his friends in the street. He comes home late at night. He makes a row in front of the door when I do not want to let him in. So I do let him in so that the neighbors do not call the police.*
- *What is his behavior toward you?*
- *He insults me. Sometimes he hits me. Once he hit me so badly we had to call an ambulance.*
- *How often is your son violent to you?*
- *This happened only once. But he often shakes me and hits me on my face.*
- *Were you examined after the son had beaten you?*
- *No.*
- *What do you do when your son is aggressive?*
- ...
- After you have clarified all issues relating to the violence you may return to the matter of theft and check how the son is able to support himself if he does not work. It would probably be also worth asking of the son's age and marital status. After all the details have been established it would be worth asking if the woman has any other problems.*
- *How do other members of your family react to your son's behavior?*
- .....
- *Is there anything else that you would like to talk to us about?*

In some cases it may be necessary to break away from the above rule relating to the sequence of questions. Some people find it difficult to talk in very general terms. A psychologist would say that such people have **impaired abstract thinking**. They would function at the level of every day events rather than general concepts (for example they know that they do not have a job, that

they run out of money before the next payday, there is no food in the house and the roof is leaking, and that the neighbors are in a similar situation but when asked about unemployment in Poland they will not have an opinion on the subject). Statistically speaking, poorly educated people belong to this group. Considering the fact that a large proportion of clinic clients will have that characteristic, you should pay particular attention after having asked the introductory general questions whether the client is coping with answering them, and if necessary you should be ready to reverse the sequence of questions – from detailed to general.

The above dialogue could therefore take on the following shape:

- *Do tell us what it is that we can do for you.*
- *I have a problem with my son.*
- *What kind of a problem?*
- *Yesterday he came home drunk.*
- *What did he behave like?*
- *He was very aggressive.*
- *What did he do exactly?*
- *He was shouting so loud the whole building could here, he insulted me because I would not let him in.*
- *What did you do then?*
- *I opened the door because I did not want the neighbors to call the police.*
- *How did your son behave after he came in?*
- *He hit me on my face, he broke a cupboard in the hall, then he locked himself inside his room where he shouted and banged on the furniture for a long time.*
- *Was it the first time this happened?*
- *No.*
- *How often would he behave like this?*
- *He is aggressive toward me every time he drinks alcohol.*
- *How often does your son come home drunk?*
- *Two or three times a week. There are times when he does it every day.*
- *What do you do in such situations?*
- *I try not to make him nervous. I hide away from him, so that he can not hit me. Once, when I did not make it in time to lock myself in my room, he beat me so hard we had to call an ambulance.*
- *Does your son's alcoholism cause you problems other than physical abuse?*
- *Yes. He takes things out of the house and sells them to pay for alcohol.*
- *What kind of things has he taken away?*
- ....

As you can see in the example above, both general and detailed questions may be asked in an open and closed form.

**Open – closed/ general – detailed**

**General open question:**

*What can we help you with?,*

*What does this problem consist in?;*

**A general closed question:**

*Is there anything else you would like to talk to us about?,*

*Does your son's alcoholism cause you problems other than physical abuse?,*

**Detailed open question:**

*How often does your son use violence against you?*

*What did you do then?;*

**Detailed closed question:**

*Have you been examined after you had been beaten?,*

*Was it the first time your son beat you?*

The problem consists in the fact that we tend to ask general questions in the open form and detailed questions in the closed form. Do not forget, that a series of closed questions, the more so a series of detailed closed questions, will give the impression of an interrogation and will deteriorate significantly the atmosphere of the conversation. Therefore, make an effort to construct detailed open questions. With such questions you only risk that the client will speak at length, you will not however ruin your contact with the client. The asking of questions in an excessively well-mannered way may be a trap, as such questions – contrary to your intentions – will assume the form of a closed question (*Could you please tell me of your problems with your son?*). The client who finds such a question difficult may dismiss you with a monosyllable. A “yes” answer will force you to ask the question again only this time in an open form, a “no” answer will cause you the problem of having to deal with this fact. If you feel the urge to use sophisticated ornaments in your conversation with the client you had better use affirmative sentences (*Be so kind as to tell us of your problems with your son*).

If the **client is not willing to impart any information at all** you should accept that fact. It may be however that some questions need to be answered to allow you to supply comprehensive legal advice. You must advise the client of this. Make sure the client realizes the consequences of their silence so that they may take a conscious decision in this respect. You must react in a similar

way when you suspect that the client is misleading you. Do not turn their words against them should they start speaking contrary to what they said a moment before. Let the client understand that the responsibility for the truthfulness of their account (as well as its precision) rests on their shoulders, not yours, and the possible lies will only hurt the client (for example *If you prefer we need not discuss the problems with your daughter. However, I would like you to know that our opinion for you will be based on the facts of the case that you provide us with. It will not be detailed and we will not be sure it is entirely appropriate to your situation if you do not provide us with details*). It is the client who must make the final decision how much to tell and whether to tell the truth, therefore the client may not be blackmailed by the threat of nondelivery of advice should they refuse to supply information (or should they supply untruthful information).

If you feel the urge to explain something then rather blame yourself for not understanding (say: *I think I may not have understood, would you kindly explain again how you acquired that plot of land, rather than: You just said you rented that land, and now you are telling us you purchased it. So which was it really?*). People feel the need to be consistent, therefore you are risking to offend the client by accusing them of lying (or being unable to recall), they may even react aggressively and fall into denial thus depriving you once and for all of the knowledge of what is true and what is false.

People often find it hard to give exhaustive and faithful to the objective truth answers to **questions which they find difficult**. In principle this results from their significant emotional involvement which means that speaking of those matters is too mentally demanding. It is also worth realizing that the more painful the experience the greater the problems with remembering it. This mechanism is typical to the way our memory functions, i.e. its failure to absorb stimuli or to absorb them selectively in states of high emotional tension. On the other hand, if the experience is too disturbing, defensive mechanisms (mostly denial) will prevent us from recollecting it. This is particularly evident in case of victims of traumatic events (for example disasters, childhood sexual abuse, torture, war crimes) who are often unable to recall those experiences or give only selective and chaotic account thereof.

It would be good to be internally prepared for an emotional reaction of the client to a tough subject (tears, stuttering, fast and loud speech). These reactions are natural and you should not fear them, they should also not deter you from asking difficult questions. The very reason for people to come to the clinic is to discuss their difficult matters, therefore they are prepared for a possible demanding experience. It is worth asking these tough questions in an appropriate form and place within the conversation, so as to moderate their negative effect.

The basic **rule relating to the order of questions** about awkward and easy matters is to order them in the following sequence: we start with questions that relate to the easy matters and

gradually move on to the more difficult issues, then we ask the most difficult questions in the conversation, and after these have been concluded we gradually move on to easier questions and conclude with questions that relate to easy matters. This rule results from the previously discussed primacy and recency effects. Since people memorize best the beginning and the end of an event these very parts of their conversation with us will be best stored in their memories, and the middle thereof will elude them at least a little. Therefore, if we position the difficult questions in the middle of the conversation the client will leave the meeting with a generally positive impression of the atmosphere of the conversation – some tough issues were discussed, but in essence the meeting was quite pleasant. The worst thing to do would be to terminate the meeting abruptly after the difficult information had been collected and to leave the client in a state of emotional agitation. It is also inadvisable to mix questions relating to difficult and easy matters. Such behavior may cause in the client an even greater swing of emotions. In principle, after a difficult question the client will anticipate to speak of difficult issues for some time. When you suddenly change the subject to an easier one, the client will relax thinking this is the end of the unpleasant part of the conversation. To come back to a difficult question at this point might be even more stressful to the client as they will no longer be prepared for one. It is therefore best to cumulate a series of difficult questions within a given time of the conversation and then to gradually move on to easier matters. Gradually, so that to usher the client slowly out of the deep emotions, since too abrupt a change of subject would be indicative of lack of respect to someone's feelings and may cause a very strong emotional reaction (for example, if you ask a woman if she had trouble finding the clinic immediately after asking her whether she had been raped).

It is certain that asking **a series of difficult questions** is not at all simple. Firstly, you need to make sure their form is appropriate so as to avoid the impression that those questions are being asked for no reason and that you are stepping into someone's life out of sick curiosity. Do tell the client the reason for asking about a given issue. Always give real and concrete reasons (for example *I know that this question is painful to you, but during the hearing the court will ask you questions about your sex life as this issue is essential in the establishing of marriage breakup; When establishing fatherhood the court will take under consideration all the sexual partners of a mother in the period between the three hundredth and one hundred and eightieth day before delivery therefore you need to tell us whether you have had sex with men other than X during that time*). This does not mean that you need to apologize to the client for asking a difficult question. It is not your fault that you need to speak about it, it was the client's choice to come to you with this particular problem. Also, keep in mind that not always what might seem difficult to you will be equally difficult to the client (for example, whereas you

might be embarrassed to talk about sex, your client who is a prostitute will find it natural). It may be that only after you start apologizing for asking a question will the client realize that a given subject is difficult, embarrassing or it doesn't become them (therefore, instead of saying: *Excuse my asking...*, say rather: *I need to ask you a rather personal question, because...*).

Apart from the choice of words **the way you ask a question** is also significant – the intonation of your voice, the facial expression, your posture. Articulation will be indicative to the client whether you are asking a question out of sheer curiosity, ironically, or to obtain concrete information. You must make sure that the question is not perceived as aggressive, judgmental or disrespectful (for example *How could you have let your husband abuse your children for so many years?*). If the client considers such a question an attack, they will either respond with aggression or they will shut themselves out (a woman–victim of abuse may react with remorse and start to defend her husband-abuser because she is used to this kind of attitude). When asking such questions you need to keep a serious posture, face expression and gesticulation. Your attitude is equally important when you are listening to the client's reply (or when waiting for the reply). Leaning toward the client, eye contact and the nodding of the head are proof of how concentrated you are on the client's words (the so-called passive communication). Sometimes you may reassure the client of that and encourage them to answer the next questions by uttering simple monosyllables (*Mhm, Ah; I see, Yes; Interesting*). You should be taking notes from your conversation with the client. The client will be aware of your writing while they speak, and yet they will perceive it as a sign of interest rather than lack of focus. It is always worth sharing roles with your partner – let one of you be responsible for keeping contact and leading the conversation, the other for recording facts and verifying their coherence, as well as making sure a subject has been discussed comprehensively (who of you receives which role will depend largely on the client – the client will select the person they wish to speak to).

**Try to recall** when you last spoke to a friend about an important problem in which you were deeply involved. What did your friend behave like, what did they say? Did you like their attitude? What kind of an attitude and words would have helped you, encouraged you to an honest and comprehensive discussion? Talk to your life partner about what they expect of you in similar discussions and try to behave that way the next time you talk.

It has been said more than once that the client will **experience strong emotions** when discussing issues they consider awkward. The asking of a sequence of questions, even in the

most delicate of ways, is not always the best way to deal with these emotions. We had better give them a chance to settle down a little. Two communication techniques will serve this purpose best – one is to boost the client's self-esteem, the other to reflect their emotions.

**The boosting of self-esteem.** In life only rarely do we hear positive information about ourselves. From very early on children are used to adults' telling them off and punishing them if they misbehave, but their proper behavior usually goes unnoticed – truly great achievements are needed to provoke praise. We are therefore mentally starved of positive information. For this very reason we react positively to every compliment, although we often have a problem listening to them – we are unsure how to react behave or we suspect the interlocutor of having some ulterior motive. Despite that we enjoy being complimented. This very value of positive information may be used as a communication technique in tight spot, when we are quite unsure what to say to the client, because they are, for example, being very emotional. I am not encouraging you to banally compliment every client but to try to boost their self-esteem in order to make them feel better despite their truly difficult situation and to allow the exchange of information to continue.

To say something nice to a person whom we hardly know or whom we dislike is not straightforward – it is difficult to judge what compliment will make the client feel better. It is risky to compliment their appearance and their dress. Firstly we may make a misjudgment (a client looks terrible because she had trouble sleeping three nights in a row and we complimented the paleness of her complexion or a dress she had bought ten years before). The objective truth is of no importance in this case, the only thing that matters is the client's subjective conviction – something we will never be able to predict (exceptionally beautiful women often suffer from complexes about their legs or, even worse, they may be tired of compliments altogether and would wish people stopped looking at them to see super-blondes and start appreciating them for their brains).

It is equally risky to compliment traits of people's characters. As it has already been said when discussing dispositional and situational attribution, we tend to assume that a person's single act is indicative of what that person is in general, an assumption which not always reflects the truth (or at least a person's subjective opinion of themselves). Furthermore, to tell a person that they are nice, hard-working, honest or urbane means to label people. At a later time they will find it more difficult to confess to a difficult situation in which their behavior did not become a nice, hard-working, honest and urbane person. Furthermore, you are building a stereotype of how you are going to perceive and interpret that person and their behavior (which follows from the self-



fulfilling prophecy rule). We are already subject to so many misperceptions that it is not worth creating more misrepresentations.

**What to compliment then to boost the client's self-esteem?** Firstly the things that we may observe – i.e. the client's behavior. You must remember that a client's self-esteem may only be boosted by truthful comments, which means that a given behavior must have indeed taken place and it must have evoked positive emotions in you. Furthermore, it must please the client, not you (for example *I like it when you lend me money*). If you think hard enough you will always find something like that, even in the most disturbing of circumstances:

Terribly excited, the client gives you the account of a conflict with their neighbors for the tenth time in a row: *It's very impressive how involved you are in this matter.*

The client swamps you with documents: *I am impressed with how painstakingly you collect documents.*

All wet, the client barges into the office, a quarter of an hour late: *I appreciate your coming over in such weather.*

Because – as it has already been said – people are often at a loss with how to react to **compliments**, you should expect them to try to deny what you say (this is typical of women who are raised to be modest and therefore to reject compliments). In practical terms, the only method to prevent an answer in the style of: *No such thing, what ever are you saying?*, is to formulate a personal statement aimed at boosting the self-esteem of the client: *I like, appreciate, respect; I enjoy* etc. The client is then unable to say: *It is not true, you do not like it*, because such a statement would be nonsensical.

On the other hand, in order to prevent the client from suspecting that you are trying to extort something from them by saying something nice, the statement aimed at boosting the client's self-esteem should be related to your conversation (if the client is telling you that for twenty years her husband had been abusing her physically and mentally but she endured it so that her children would have a father, then you can say: *I am impressed with how dedicated to the happiness of your children you are* – but only if this statement is true). Do remember to adapt the language of the self-esteem booster to the client. If it sounds artificial or nonsensical the client will not believe it and your efforts to calm the client down, decrease the tension or to create a feeling of safety will fail.

A similar tool, only perhaps more effective in case of clients focused exclusively on their emotions, is the reflecting of emotions.

**The reflecting of emotions.** When the client is in a state of emotional unrest the conversation will fail in its aim – the client will be unable to give objective account of a situation

or to receive information from us. I do not encourage empathy and sympathy to the client because by taking on the client's emotions we lose the emotional distance needed to find a solution to the client's legal problem. However, it is worth telling the client that we see their emotions, that we understand and accept them. The rule of constructing statement that reflect emotions (also referred to as a paraphrase of emotions) is the same as in case of the self-esteem boosters – we talk of our true feelings and name those feelings appropriately to the situation: *I can see that you are in despair; I understand this must hurt; I am aware of the fact that this makes you angry* etc.

The reflecting of emotions serves a number of functions. Firstly, it shows the client that they are listened to and that their experiences are accepted. Secondly, it gives you the opportunity of speaking your line in the dialogue without involving yourself in the client's emotions and without expressing agreement (after: *My husband is a monster*, it is also better to say: *I can see that your marital problems make you suffer*, rather than: *Yes, you are right*). Do not forget that the “my lawyer said so” assumption will give your validation of the client's opinion great significance. You had better avoid such traps just in case, as the client might feel a grudge to you if the legal advice you give to them implies that they were wrong.

Furthermore, the **paraphrase of emotions** which the client expresses nonverbally (they sit hunched, their hands are shaking, they begin to cry, they turn away from you and fix their look somewhere thoughtfully, they stop listening to you etc.) will allow you to verify what the client really feels. There is no general, coherent and unequivocal standard of body language (whatever you have read in text books, particularly those of NLP – neuro-linguistic programming – the human being is not a book to be read from). We all have our individual ways to communicate nonverbally, which may lead to misunderstandings resulting from misinterpretation of the interlocutor's intentions, particularly if we do not know that person very well. It is also important to realize that nonverbal communication depends strongly on cultural models. There is an array of conventional gestures that relate to specific cultures, social groups or professions. This may bring about the risk of misinterpretation of nonverbal signals transmitted by the client. You will be able to verify the hypothesis by naming the things you see (for example *I have noticed that you became sad and quiet when I said the you could enforce your claim through a civil lawsuit. Could you please tell us what made you change your attitude?*). If you leave the client the space to explain their behavior (even if only suggesting it with the intonation of your voice) they will in principle tell you why they behaved in a specific way, and if you misinterpreted their emotions they will name those emotions themselves (if such emotions exist, as it may just as well be that the client went quiet because they did not understand the meaning of the word “claim” and they do not know how to tell you that).

The **paraphrase of emotions** encourages people to consider what they think. Emotions can not be felt and analyzed at the same time. When the client is told: "I am angry" and starts to reflect on that information, the level of their emotions will automatically sink. You will reinforce this mechanism if you name the client's emotion using a word that is a tone lighter in shade (the so-called reformulation of emotions – "I am upset", when you are furious, "I am anxious" when you are terrified, "I am very sad" when you are in despair etc.). Do make sure however that the name is appropriate for if you belittle the client's emotions they may react by escalating them. The worst thing you could do however is to say: *Do calm down*. As a rule the reaction will be reverse, as the real message will read: "Your behavior is incorrect." This message, instead of calming the client down, will deepen their emotions as the client's stress relating to the difficult story they are telling will be complemented by the stress related to their behavior being judged as straying from standards of culture, giving indication of the fact that they are unable to cope with themselves. Therefore, if you do not have a clear idea of how to react to the client's unsettled emotions, you are unsure what to say, just sit quietly for a moment and wait out their outburst. To a woman in tears you can offer some tissues, which are always worth having within reach of hand, or perhaps offer her something to drink. If the client is shouting do not let yourself be carried away by their fury – if you too start shouting the aggression will escalate and the client might even resort to violence. **Apologizing to the client** is often a good method even if you are not personally responsible for the situation so negatively perceived by the client – the client may react paradoxically because they would rather expect you to actively fight their attack off.

Nonverbal communication may also be used to calm the client's emotions, similarly to **reformulation of emotions**. In the beginning we mentioned the rule of adapting nonverbal communication to the client – to assume similar posture, gesticulation, the speed of speech etc. Try to use this rule in a crisis situation, and after a while start changing your nonverbal expression to what you would like the client to assume. For example, if the client hunched in, lowered their head and voice, do the same and then gradually open up your posture, start establishing eye contact more and more often, start speaking up (by analogy, if the client starts to shout, raise your voice at first and then gradually lower its volume). If your behavior is changing gradually and unaggressively the chances are that you will "pull the client along." Inadvertently, the client will assume your behavior and their level of emotions will adapt to that behavior in order to maintain coherence of their expression (it is hard to be furious when you speak in a calm voice, or to be terrified if you sit straight up and keep eye contact).

**Test** this type of manipulation in a conversation with a friend. First adapt to them, and then gradually try to pull them along. I would recommend that you practice – they say that practice makes the master – however, it is essential that you do so consciously.

In your contact with the client, they will not be the only ones to feel emotions. In order not to let **the client's anger carry you away** you should realize that as a rule you are not the reason for their anger and that the anger is not directed at you (even if the client is offending you with harsh words). In order keep proper judgment of the situation psychologists suggest to use a technique called "going to the balcony." Do make an effort to look at the client's behavior from a perspective other than your own – from aside for example (from the perspective of a third party), or – even better – from the client's perspective. If you manage to see the world through their eyes you will find it easier to understand their anger, to learn of its cause and to acknowledge that it is commensurate with their problems, despair, fear, lack of faith in themselves, or hope for the future.

Once you have managed to maneuver the client out of a state of deep emotions, you may revert to the discussion of the facts of the legal problem. Apart from asking questions, the abundance of which will eventually give the impression of an interrogation and thus put you in a dominating position, it is worth using other verbal communication methods, of which the most effective is the paraphrase.

**The paraphrase.** The paraphrase is similar in its construction to the paraphrase of emotions, only that instead of the emotions we restate the information we have just obtained from the client.

*If I understand correctly, ..... (we summarize what the client said using our own words), is it not?*

Such a paraphrase may look artificial, particularly its last part, which is a borrowing from the English language. The idea is to give the client the opportunity to reject an erroneous paraphrase should we have made such. Not always will we be spot on with the paraphrase, in which case the client must be given a chance to tell us that and explain what they really meant. This is one of the fundamental functions of the paraphrase – it verifies whether we have understood correctly the information obtained from the client. If we do not allow the client the opportunity to confirm or disclaim our interpretation, then we will verify nothing. On the other hand, a paraphrase will give the client a feeling of being listened to and accepted. Therefore, in case we summarize the client's words incorrectly and we do not allow them to verify that, we will leave the client with a feeling

that we are putting words in their mouth and we impose on them our interpretation, instead of listening to them.

**Listen** to parliamentary debates, particularly in important and involving matters. Pay attention to what happens when the speaker says „Let me paraphrase the previous speaker...” What can the previous speaker do if the paraphrase is incorrect if they have no opportunity of taking the floor? Consider how you would react and feel in a similar situation.

For the very same reasons we need to use our own words (although adapted to the client’s language) when **summarizing the client’s statement**. If we use the client’s exact words then, first of all, we will be unable to verify whether we understood correctly the client’s words and inferred the correct description of events or of the client’s needs (since the client’s nodding in consent will explain nothing). Secondly, against all appearances, we will not give the client the feeling that we are listening to them, on the contrary – they will have the impression we never listened to them and only when silence fell as the client was awaiting our response we frantically tried to recall the client’s words and we replayed their last words as if from a tape recording. This may lead to irritation and the following accusation: *I just said so, I do not think you have been listening!*

A paraphrase serves functions similar to open questions – it allows the client to speak and to supply further information without constraint, and its lack of aggressiveness lets us avoid the impression of an interrogation which is usually the result of a series of questions. Do keep in mind however, that the paraphrase may not be longer than the statement being paraphrased. When we reiterate all the threads of thought just presented by the client, we again give them the impression that in truth we understood little from what they said. Moreover, we thus lose the next function of the paraphrase – the cutting off of digression. The paraphrase is a good weapon against talkative clients who complement their statements with many unnecessary subplots. Instead of saying to the client: *You are talking off the point; Please go back to the main subject* etc., you had better paraphrase their statement, only limiting yourself to the selected and essential from the point of view of law issues. The client will automatically continue that very issue, without even noticing that we had omitted their digression. Moreover, the paraphrase will allow you to order the information obtained. By paraphrasing a single thread of thought we will be able to conclude it as soon as the client assents to the paraphrase and has nothing further to add. Then we can move on to another issue.

The paraphrase will also let the client hear the information they just conveyed. People often say things without thinking them through and with no wish for their realization. When we repeat

what we heard and give the client the opportunity to reject that information, the client will be able to gracefully withdraw from their previous statement. It is the more important considering what we said earlier – that people feel the need to behave coherently and consistently, i.e. to stick to their opinion. It is therefore probable that they will dig into the ground with the previously stated claims and opinions in order not to ruin their own image of themselves. The paraphrase will serve to them as an elegant way out into a new opinion – for they are not the ones changing their minds, it is we who misunderstood something (for example *My ex wife is exaggerating with her demands. It is unheard of that I should leave her the apartment and pay her as much as 1000 zloty in alimony for her three children! – If I understand correctly you think that 300 zlotys a month is enough to support a child, even if you need to rent an apartment, don't you? – Well, no. What I meant was...*).

When a conflict is escalating, a paraphrase will also serve a function similar to that of the reflecting of emotions – it will allow us to avoid confirming that the client is right. The paraphrase lets us show the client in a neutral way that we hear their opinion, without the need to change our own mind (for example *A child should stay with the mother, don't you think?; If I understand correctly, after the divorce you would like your son to live with you, is that right?*). The paraphrase is generally a great tool to use when we are unsure what to say. A conversation consists in the two parties taking turns to speak. The client will therefore expect you (you or your partner) to speak after they have spoken. To ask a question will not always be a good idea, for example if you wish the client to continue on a subject. A monosyllable may not be sufficient. A paraphrase though will allow you a length of statement similar to that of the client's last statement (which maintains the balance in a conversation), without forcing assent, or the taking of a position, or to ask a question, or to give advice. Moreover, in effect the client will continue speaking on the subject you wish to collect more information about.

However, for a paraphrase to be effective not only must it contain exclusively information conveyed by the client, but also that information needs to be restated in a neutral manner. A paraphrase does not consist in judging the client, or their behavior (*I have no idea why my wife claims I have been unfaithful to her. I simply like women, - Do I understand correctly that you are womanizer?*), or in interpreting the client's words (*Living with my husband is unbearable! – Do I understand correctly that you wish to divorce your husband?*). Also, to paraphrase does not mean to give account of your experience similar to that of the client (*We have problems with our drug addict son – Tell you what, there has been a similar case in my family*). Sometimes you may feel the urge to find such common ground with the client to prove to them that you really do understand the situation they have found themselves in (we, women; we, mothers; we, victims of abuse). This is typical of the way women communicate, but inappropriate in your work with a client as it means the initiative is transferred to you and

you stray from the subject of the client's problem. The client may then feel that you have not been listening to them at all and that you focus on your own problems instead - problems for which the client holds no interest whatsoever (the method "others have it worse or equally badly" is not always effective). On the other hand a typical man's approach would be to give advice immediately after the problem has been defined (*I have a problem with my drug addict son – You should evict him from your apartment*). Do keep in mind that a paraphrase does not consist in giving advice. At this stage you are not yet allowed to give advice, which follows clearly from clinic regulations. Furthermore, before you start giving advice, make sure you know what the problem consists in, i.e. that you are aware of all the facts of the case. **Also, do make sure that the client wishes you to give them advice.** People often ask for advice only to justify the fact that they are taking up your time (particularly that they came to visit a lawyer), but in reality all they want is to complain about their problems or to reaffirm themselves in the conviction that they are in a sorry situation because no solution to their problem is to be found. In such a case you are risking that the client will play with you the "yes, but" game, in other words you give them advice and they find a reason to reject it, and so on to no effect (*I have a problem with my drug addict son – You should talk him into therapy – Yes, but he does not want to be treated – In that case perhaps you should evict him from your apartment – Yes, but he will then go to my mother's – You should talk to your mother and convince her not to take him in – Yes, but she is eighty and she loves her only grandchild very much. She says it is all my fault; etc.*). You must not forget that you are not responsible for your client's choices, let them find their own solutions to their problems, limit yourself to presenting to them the available legal options and tell them what needs to be done in order to achieve a given effect following the procedure.

If we used a paraphrase in the dialogue quoted previously, it could take on the following shape:

- *Do tell us what it is that we can do for you.*
- *I have a problem with my son.*
- *What kind of a problem?*
- *Yesterday he came home drunk.*
- *He was drunk, yes?*
- *Yes, he was terribly drunk and was behaving aggressively.*
- *How did he behave?*
- *He was shouting very loudly, he offended me, because I wouldn't let him in.*
- *He was causing trouble on the staircase, wasn't he?*
- *Yes. I opened the door then because I didn't want the neighbors to call the police.*

- *If I understand correctly you didn't want the police to come.*
- *Yes. It was not the first time this happened. He always behaves like that when he is drunk. The neighbors call the police. They take him to the drunk tank. Then he comes back furious with me, and I also need to pay his stay there.*
- *Do I understand correctly that your son is aggressive toward you even when sober?*
- *Yes, but he raises his hand against me only when drunk. He hits me on my face. He breaks furniture.*
- *What do you do then?*
- *I try not to make him more nervous. I hide away from him, so that he can not hit me. Once, when I did not make it in time to lock myself in the room, he beat me so badly we needed to call an ambulance.*
- *How often does this happen?*
- *Two, three times a week. There are times when this happens every day.*
- *From what you have said I see that your son is an alcoholic, am I right?*
- *Well, yes. Vodka is the only thing he thinks about. He takes things away from the house and sells them to pay for alcohol.*
- *So your son does not only behave violently toward you when drunk, but also steals things from your house, am I right?*
- *Yes, and what is more...*

**Conclusion of interview.** To conclude the interview it would be good to summarize all the hitherto collected information. A summary is in effect a long paraphrase which incorporates all the significant threads of thought which lead to the solution of the legal problem. A summary will first of all allow you to order the information, to verify whether everything was explained and which issues need to be discussed at a further meeting. When summarizing you will also be able to double check that you received from the client (and made photocopies of) all the necessary documents and failing that it will give you the opportunity to write down for the client a list of missing documents. The summary should be done by the one of you who was responsible for taking notes and based on those notes – all the significant aspects of the case need to be written down, or else they will slip your memory. The summary is your last chance to complement your notes. Every issue needs to be summarized item by item, at all times allowing the client to confirm, refute or supplement information. If the conversation covered more than one problem, make a summary of each one before you move on to the next subject so that you don't have to come back to it again. In the end of the meeting it is worth asking the last general question: *Would you like to add anything?*

Once you have collected all the necessary information and before you part company with the client you need to establish what the client's needs and expectations are in relation to the legal solution of their problem (*You have just told us about your marital problems. Do tell us what it is that you*



*expect from us in this situation*). Do not forget that it is the client who decides what actions are undertaken. Only if their demands contradict the law or are legally unfeasible are you obliged to advise the client thereof. In no other situation are you allowed to impose any solution on the client – only they know what is best for them. Of course, if you are of an opinion that their choice stands little chance of success or will bring about significant financial, time or psychological burden you should inform the client thereof. Do so in a neutral and objective manner, so as to avoid the impression that you disagree with their choice or that you consider that choice senseless or stupid. Always leave the last word to the client – you may not refuse to draft a pleading or opinion only because you think it has no real chance of success.

You will also come across **clients who will not know what they want** or what they may want in accordance with the law. Some will expect you – the “lawyer” – to choose the best solution for them. To a client of this type you should offer to present at the next meeting all the options allowed by the legal system in their circumstances. The next time you meet show the client their options, explaining the consequences of each decision (offer alternative solutions – mediation, therapy, group support etc. – let the client know that they have to their disposal solutions other than legal action, particularly that many clients will expect this kind of support instead of or in conjunction with a court case, for example a divorce hearing). Then allow the client time to reflect – best if you would arrange for another meeting with the client (or a telephone conference) during which the client would tell you which option they chose. Then, if it is necessary, you will draft the pleading which corresponds to their wish. Do not let the client maneuver you into making the choice for them, because if you do and the legal measure of your choice fails, you will be responsible for that failure in the eye of the client. Let the client bear the responsibility for their own life.

After an hour of your meeting has lapsed (regardless of whether you have obtained all the necessary information or not) **you should conclude the conversation** as agreed with the client at the beginning of the meeting. To conclude agree to meet or to be in contact otherwise. Write down for the client the things they need to remember – the date and time of the next meeting, the documents they need to supply you with, the telephone number to the clinic, your names and the catalogue number of their case which they should use as reference when calling the clinic. Ask the client distinctly to call to cancel should they be unable to come to the next meeting, so that you can schedule a meeting with another client instead. You should also advise the client what the purpose of the next meeting is – further collection of information, presentation of legal options or the delivery of a legal opinion – so that the client knows what to expect.

It would be only right if you concluded the meeting with the same behavior toward the client as when the meeting was starting – do assist the client in putting on their coat, see them to the door etc. Also do not forget the rules of *savoir-vivre* – being the elder (particularly if the client is a woman) the client will decide whether to part with a handshake (only if the client and you are of the same age may you do it first, in view of your higher status in this relation).

#### **4.4.6. Your problem is truly complicated – the art of giving difficult information.**

If the client has a well defined and rightful claim which may be easily enforced by legal means, your role as the “lawyer” will be limited to the drafting of an appropriate pleading and explaining further procedures – this kind of information being easy to convey. You only have to mind the language you use, in order to make sure that the client understands all the legal terms they will have to use in the future (you must use these terms as the client will come across them within the further procedure, it is therefore your duty to teach them those terms), and the amount of information conveyed, so that the client does not get lost in it. It is good to again make use of two communication channels – to verbally explain to the client step by step what needs to be undertaken, and then to supply the client with that same information in writing, so that they may always come back to it once out of the clinic. Such a written set of directions should be clear (for example an itemized list) and contain all the necessary details, including the name and the address of the court or the administrative office (do use the term “registry office” because people will usually not know that it is to that office, as opposed to a secretary office, that they should deliver documents), the opening hours, the price of court stamps or duty stamps, the number of copies required, the number of attachments, the time limitations etc.

It is so much more difficult to tell the client that they stand little chance of winning or that nothing at all may be done in their case. Refusal to supply advice will also often cause problems, particularly if the circumstances that force us to make such a decision become apparent some time after commencement of work with the client. We also find it difficult to tell the client that there are things about their behavior we do not like, in other words to criticize them. We will discuss these very three situations in the end of this chapter.

**The conveying of difficult information.** When conveying difficult information to the client, make sure you select the right place and time to do so. Do keep in mind that hearing this kind of information may cause strong emotional reaction with the client. Do not permit yourself to attend to this duty in a rushed conversation in the corridor, particularly if either your client or you are in a hurry. You must create safe and intimate conditions and secure your presence for as long

as may be necessary (contrary to what one may expect this kind of conversation may even take longer than the interview itself, and all will depend on the client's emotional reaction as it may happen that in order to secure the client's safety you will not be able to leave them alone). It would be best if you could meet in the same place and in the same conditions as the interview itself, as the client has already become a little accustomed to it. You should not limit yourself to conveying the difficult information to the client in writing as in such a case you would leave the client to themselves and without any support. I do realize that conveying bad information is emotionally demanding also for the party conveying that information, nevertheless do remember that in such cases the client's stress is significantly more important than yours. This is a task you will come across often in your professional life, this is one of the manifestations of the service-orientation of being a lawyer – you are to assist the client to receive and understand the bad news relating to their legal situation in a safe environment.

In this very context two types of difficult information should be distinguished: we will advise the client differently if their situation is not looking promising from a legal point of view, but it is not hopeless, that although there are ways to seek enforcement of the client's claims, the chances of success are small, and if nothing can be done with their case.

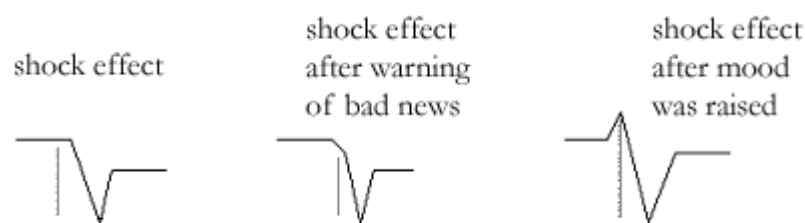
In the former situation **start with the positive information**. Speak of facts but do not comment them, do your best for your description of the situation to be neutral and nonjudgmental. Do not tell your client that it is their fault that a chance to enforce their rights was wasted (for example they missed a deadline) or that they idiotically landed themselves in trouble (for example they signed a consumer consortium, or the so-called Argentine system, agreement without first reading it). However, if it is necessary to make the client aware of where and when they made a mistake then speak of what the client did and not of the client themselves - say what they did (or failed to do), do not say what the client is like. Focus on the benefit that the information is to bring to the client, so that they do not make the same mistake in the future. You must remember that it is always the client who makes the choice whether to undertake further legal action despite the meager chances of success. Your role is to give them information, not to advise them, therefore always present the client with the arguments for and against so that they have full understanding of their situation. Do not exaggerate with the amount of information though. Observe carefully how much information the client is able to take in. Once you have noticed that the client stopped listening, you had better stop speaking.

When, on the other hand, you need to give the client hopeless information do not start with the positive, but warn the client at once that **you have bad news for them**. When doing so you need to make sure that your nonverbal and verbal communication remain coherent. This kind of

an introduction will let you minimize the negative influence of shock which the client is going to suffer when they receive the information (the so-called Spence effect).

What does the Spence effect consist in? The mood of a human being runs at a specific level at any given time. When they receive a piece of important and negative information their mood sinks rapidly. This depression of the mood lasts for some time (which depends on a person's personality, their objective situation and how "tragic" the piece of information was), then it rises and flattens out at an acceptable level, although lower than prior to receiving the negative information. If we warn the client that the news is going to be bad we will cause the mood to sink, thus making the shock effect relatively less felt. And vice-versa, if we artificially raise the client's mood (either with positive information or with cheerful nonverbal communication), the bad piece of information that follows will cause a greater effect of fall of mood.

This may be presented in the following way:



The period of **drastic mood depression** (the greater the relative fall of mood the longer the period, which is shown in the picture above) is a time during which you must not lose contact with the client. Frankly, at that moment the client is quite unaware of what you say or do. They are focused on living their own tragedy. Therefore, to attempt to impart any further information would seem senseless – the client will never become aware of that information. This is also a time when the client is least able to control their own emotions and may (if the tragedy is indeed great) hurt themselves or other people (for this very reason operators of helplines are trained to keep the other person at the phone until they have come to terms with their tragedy). Keep the client company in their despair and let them express their emotions (in line with the principles presented before). When the client is able to listen to you again, you may attempt to diminish the loss they feel by, for example, showing them what remains, by using the "you-the others" contrast, or indicating the positive aspect of the change. Mind the examples you use however, and make sure that they are appropriate to the client's needs. As soon as you realize that your strategy is not working, withdraw from it (for example when the client reproaches you: *What do I care about the misfortunes of others!*).

Before you part company with a client who has experienced this type of shock, always make sure that they have social support of the family, friends etc., people who can give them emotional support, with whom they will be able to discuss their problem. Just in case, have handy a list of institutions which can provide such support (a psychologist, a support group etc.) and give it to the client, suggesting that they could use it. However, make sure you do not make the impression that you consider the client disturbed and therefore that you refer them to a specialist institution. Tell them in a neutral way that those institutions employ specialists who have experience in dealing with the kind of difficult situations the client is going through at the time. The decision whether to go there or not is entirely up to the client.

You should know that **the coming to terms with the loss** must take a certain amount of time. If you are to continue working with the client, arrange for another meeting with them after a considerable amount of time, so as to allow the client to recuperate. Let them decide when it is that you should meet, as only they know how much time they need (also do not be surprised or angered if the client calls you to cancel the meeting – they simply are not ready for it yet).

Whereas difficult information conveyed to the client will usually cause the client to react emotionally, if you present them with your refusal to assist them they may attempt to convince you to change your mind.

**Assertive refusal.** Assertive refusal is a definite and firm statement of refusal to undertake certain action. In order for it to be clear and understandable to the client it must contain the word "no", the description of what we refuse to do and the truthful explanation of the reasons for the refusal to do something.

*We will not extend today's meeting because we have another client waiting already.*

*No, I will not meet you outside of the duty hours, because the clinic regulations do not allow me to.*

*No, we shall not give you legal advice, because you already have an attorney and the clinic regulations do not allow us to attend to cases of people who have the assistance of professional lawyers.*

Assertive refusal is neither an apology (*I am terribly sorry but we will not be able to prepare that pleading in such a short time, we are so busy with cases, exams, papers, and my sister's wedding on top of it all...*), or reproach (*Yet again you bring this decision on the last day we can appeal against it. Do believe me that we are very busy and we can not afford to work under such pressure of time*). Apologizing or offending the client will have no effect. The former encourages the client to pressure us and to attempt to make us change our mind. The latter may cause unnecessary conflict and defensive aggression on the part of the client. The main aim of assertive refusal is to be effective and respectful to both parties. Therefore, I would personally advise you not to use arguments involving the words "I

have to" and "I can not." In truth, these words mean nothing, as we are free to make choices in our lives (the choices will differ in the price we pay for them). Therefore, if there is something that "I can not" or "I have to" (*I can not come to cinema with you because I need to study for a test*) I can always change my mind and stop being unable to do something or having to do something (*I can come to cinema with you although I have a test, but I will study late at night or I will take it unprepared*). Therefore, contrary to appearances, the above verbs will only encourage the other party to attempt to convince you to change your mind, often by suggesting solutions which would be a compromise between the options. If you wish to be effective and prevent a discussion refer to your preference ("I wish", "I wish not") or decisions ("I would rather", "I chose", "I decided"). Assertive refusal is certainly not aimed at making the other party feel offended, therefore if we wish to keep good contact with them for the future (and you feel it may be jeopardized by your refusal) supplement your message with a statement that would allow to extend contact (for example *I will not go to cinema with you today because I have a test tomorrow and I decided to study for it. If you would like, we could go to see a movie tomorrow*).

Despite a clear and firm message to the client, not always will they respect your refusal. You will come across **clients-manipulators** who, despite all, will attempt to wear you down with their request and thus make you change your mind. I would suggest to use the "worn record" technique against such people. It consists in repeating the same message of refusal (accompanied with the same arguments for refusing to do something – the search for new arguments will eventually weaken your resistance) supplemented with active listening techniques:

*I will not go to cinema with you today because I have a test tomorrow and I decided to study for it.*

*I am telling you that I will not go to cinema because I want to be well prepared for the test.*

*I appreciate the fact that you wish to spend more time with me, however I will not go to cinema because the test is very important to me, and I want to be well prepared for it. If you wish we can go to see a movie tomorrow.*

*I can see you are sorry we are not going to cinema, but I already told you the test is very important to me.*

Etc.

Assertiveness is foremostly the skill of defending our boundaries and respecting the boundaries of the other party. Assertive refusal will therefore defend you against invasion of the other party and their groundless demands. Contrary to expectations, if you give in and act on the other party's request (if you act unassertively) often you will gain neither their respect nor gratitude, but only the certainty that in the future they will insist even more on you to meet their requests (and they will be disappointed, or perhaps even outrage, should you refuse).

**Defense of boundaries.** In your contact with clients almost certainly you will come across clients who act offensively (for example *You are too young to know anything!*), shout at you (for example *How dare you patronize me!*) or act in a way that will disturb your work (for example pat you on your shoulder) or irritate you (for example chew a gum when talking with you). Such invasion of our territory will often throw us off balance, causing us to suppress our negative emotions unable to find a way out of the situation, particularly if the other party is an elderly person or a person of higher position in the social hierarchy.

The only effective method of defense is to speak openly about those behaviors and the feelings that they cause. The easiest tool to do so is the "I message." It is composed of four elements: 1) the naming of one's own emotions, 2) description of the other party's behavior that causes the emotions, 3) identification of reason for which the behavior causes such emotions, 4) presentation of expectations as to how the behavior should change in the future:

*I am uncomfortable with your moving the chair closer, it makes it difficult for me to concentrate on the subject at hand, therefore I would kindly ask you to move away a little.*

*I am annoyed with your coming late for the third time in a row, because it makes me feel you have no appreciation for the time we are devoting to you. Next time would you please come on time or let us know of your delay.*

*I feel offended with what you said. I may be responsible for this, but still you have no right to treat me like this. Stop insulting me at once.*

By expressing this kind of opinion remember to speak in the first person – to speak of YOUR feelings, sensations, problems and needs. Refer to the other party's specific behavior. Generalizations (*You are always late*), hints (*Someone is daydreaming today*) and generalized opinions (*Everybody knows you should not do this*) will give you no chance of influencing their behavior. Of course, yet again, you have no guarantee that the client will react to your first message. In such a case gradually move on to stronger tools:

First ask them to change their behavior: *Please, do let me finish.*

Then explain to the other party the consequences of their behavior (feedback): *It irritates me and makes it difficult for me to focus when you keep on interrupting me.*

Failing this, demand respect for your boundaries: *I am not going to have you interrupt me like this.*

Your next step is to warn of sanctions: *If you continue interrupting me, we will terminate this conversation.*

The sanction must be real and burdensome to the client (and not to you) and you must be prepared to implement it (an announced and unimplemented sanction will deprive you of

authority, the best proof of which are spoiled children): *I am very sorry that you are not listening to me. This meeting has come to an end.*

The "worn record" technique will let you repeat each of the above steps before moving on to the next one as long as it moves the conversation along and safeguards you against resigning from your rights or against aggression from the other party.

#### 4.4.7. Useful literature

I am aware of the fact that the chapter you have just read is only an outline of the communication skills and techniques which will come in handy in your contact with the client. I would personally encourage you to practice them (particularly in safe conditions, for example with your family or friends) as long as it takes for them to become natural to you. If you would like to further your knowledge of interpersonal communication I would suggest that you refer to specialist literature. No one in Poland has yet written a textbook of psychology for lawyers, nevertheless there are good books on general communication and very good textbooks for medical doctors which may prove very useful if you consider the similarity of the doctor-patient and lawyer-client relationship. Enjoy the reading and enjoy working with your clients.

Robert Alberti, Michael Emmons, Asertywność. Sięgaj po to, czego chcesz, nie raniąc innych (Your Perfect Right), Gdańsk 2002;

Jarosław Barański, Edmund Waszyński, Andrzej Steciwko, Komunikowanie się lekarza z pacjentem, Wrocław 2000;

Lucas Derks, Techniki NLP w tworzeniu dobrych związków z ludźmi (Spiel sozialer Beziehungen), Gdańsk 2003;

Joerg Fengler, Pomaganie męczy. Wypalenie w pracy zawodowej (Helfen macht müde), Gdańsk 2001;

Thomas Gordon, Pacjent jako partner (Making the Patient Your Partner), Warsaw 1999;

Em Griffin, Podstawy komunikacji społecznej (A First Look At Communication Theory), Gdańsk 2003;

Maria Król-Fijewska, Trening asertywności, Warsaw 1993;

Neil Macrae, Charles Stangor, Miles Hewstone, Stereotypy i uprzedzenia. Najnowsze ujęcie (Stereotypes and Stereotyping), Gdańsk 2000;



Matthew McKay, Martha Davis, Patrick Fanning, Sztuka skutecznego porozumiewania się (Messages: The Communication Skills Book), Gdańsk 2001.

## CHAPTER FIVE – THE METHODOLOGY OF CLINICAL TEACHING OF LAW

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### 5.1. Clinical teaching as a methodology

Clinical programs are often presented as a variation of the "social welfare legal office." The idea of delivering legal assistance to the indigent, those who are unable to afford legal assistance, is deeply rooted in the idea behind the creation and development of the clinical movement<sup>102</sup>. The social orientation of clinical programs stems from the programs of their founders, which were aimed at improving the system to deliver legal assistance to indigent people<sup>103</sup>. The social mission of legal clinics is certainly very important. However, it should not make us blind to the fact that clinical teaching is foremostly the result of the conviction that it is an effective teaching method<sup>104</sup>. There are two fundamental aspects to this method: its effectiveness as a method of learning comprehensive legal skills in a relatively short period of time – by the student, and the social education aspect which transpires through the fact that the student lends assistance to people of modest means thus realizing how the institutions of the state function wherever professional legal assistance does not reach.

By serving the above purpose a clinical program shapes the social awareness of lawyers thus humanizing the legal profession.

Clinical programs developed in the United States under the relatively strong influence of the experience drawn from medical education<sup>105</sup>. Medical education has also exerted its influence on other teaching methods in the USA, in particular the famous case method. There has always been

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<sup>102</sup> See Barry and others, p. 12-16., F. Zoll, *Jaka szkoła prawa*, Warsaw 2004, p. 76.

<sup>103</sup> A. McCutcheon, *Eastern Europe: Funding Strategies for Public Interest Law in Transitional Societies* [in:] M. McClymont, S. Golub, op.cit. p. 233-264.

<sup>104</sup> G. Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology* [in:] *Clinical Education for the Law Student in a Service Setting* (1973), p. 376-379; Barry and others, p. 16-18; M. Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 *UCLA Law Review* (1987), p. 560-594; L. Wortham, *The Lawyering Process: My Thanks for the Book and the Movie*, 10 *Clinical Law Review* 1/2003, p. 405-408; F. Zoll, op.cit., p. 77.

<sup>105</sup> J. Frank, *Why Not a Clinical – Lawyer School*, 81 *University of Pennsylvania Law Review* (1932-1933), p. 917-919; F. Zoll, op.cit., p. 75. It is an altogether different matter whether clinical programs indeed stem from the USA. It would that this type of teaching may have originated from Germany. In 1847 at the Rostock University Professor Rudolf von Jhering read the so-called *Pandekten-Praktikum*. A similar program was initiated in Russia at the Kazan University by a student of Jhering's – Dmitrij Mejer, who provided legal counseling in the presence of students. He was inspired the example of Roman jurists. M. Avenarius, when discussing Mejer, refers to his program as a "clinic" – see M. Avenarius, *Rezeption des Römischen Rechts in Russland: Dmitrij Mejer, Nikolaj Djuvernua, Ioisif Pokrovskij*, Göttingen 2004, p. 24.

a strong conviction that the objective of legal education reaches farther than the simple mastering of the letter of the law<sup>106</sup>. Legal education is to be a process of acquiring professional skills, only a small part of which is the mastering of the knowledge of laws in force.

The very name "clinic" is an obvious reference to the medical model – it is to be an academic institution within which students, under the supervision and care of the faculty professors, would learn to deliver tangible legal assistance by working on real-life cases. This model however is not a variant of legal practice. Clinical education has developed on the premise that law is taught most effectively through accumulation of experience<sup>107</sup>. However, experience in itself will not suffice. It must be incorporated in an educational program that will allow the students to acquire the skill of learning through experience. For such basic skills in the life of a lawyer to be acquired it is necessary to construct a teaching program that will allow for their permanent formation. Experience is collected throughout a legal career. Education will add nothing to it, unless it uses a method that will teach how to use that experience. Therefore, legal clinics which offer such a method are a program which may be realized only within the framework of an academy – teaching is the profession of teachers, practical skills alone do not suffice to become a clinical teacher.

Clinics founded in Poland have come through their first organizational phase<sup>108</sup>. Programs have been launched that provide for relatively safe delivery of legal assistance by students. The time has come however for the second phase of the clinical education movement – the preparation and development of comprehensive clinical curricula, so as to fully utilize the program's intrinsic educational potential. It must be a well thought through program of "becoming a lawyer", i.e. the conscious introduction of a student by a supervisor to the role of a lawyer and the equipping of that student with the necessary amount of critical reflection on the condition of the profession, as well as appropriate formation in the area of professional ethics.

The above implies the prominent role of the supervisor (the teacher of law). Sadly, the role of the supervisor is often reduced to the function of watching over the students' activities. They are to ensure that students make no mistake from the point of view of law. Such a reduction of the teaching function is inadmissible. These supervisors should focus on the carrying out of a pre-established educational program which would incorporate the function of supervision over the students' activities as an element of importance, but only one of many elements. To guarantee the

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<sup>106</sup> J.H. Merryman, *Legal Education There and Here: A Comparison*, 27 *Stanford Law Review* (1974-1975), p. 871.

<sup>107</sup> See F. Bloch, *The Andragogical Basis of Clinical Legal Education* [in:] A.J. Hurder, F.S. Bloch, S. L. Brooks, S.L. Kay, *Clinical Anthology: Readings for Live – Client Clinics*, Cincinnati 1997, p. 50-51; F. Zoll, *op.cit.*, p. 77-78.

<sup>108</sup> For more see F. Zoll, *op.cit.*, p. 95 and following.

security of a clinic's operations is a prerequisite, not a means to an end. The primary task of the clinic is to fulfill its objective – to teach and educate in the most effective way possible.

## 5.2. The lawyering skills to be developed by clinical education

The main objectives of legal clinics are to effectively teach and educate students of law, and to deliver free of charge legal assistance to indigent people.

In fulfilling the former of the objectives, which consists in the teaching and educating of students, clinical work is aimed at developing legal skills and the fundamental values of the legal professions.

Both the list of skills (at this level of generalization) and the catalogue of values are universal. They are independent of any given system of law, although every particular legal order gives these skills a different dimension and distributes the emphasis differently between individual types of skills. However, this does not alter the general opinion – this catalogue may function as a universal point of reference, and serve as indication in formulating teaching curricula for the law faculty as a whole and for the particular clinical educational programs, which are predestined to teach those skills<sup>109</sup>.

The following are a list of basic lawyering skills<sup>110</sup>:

- solving problems;
- legal analysis and legal reasoning;
- to identify and research legal issues;
- factual investigation;
- communicating (the ability to communicate);
- to advise;
- to negotiate;
- knowledge of litigation procedures and alternative dispute resolution;
- organizing and managing practice work;
- identifying and solving ethical problems.

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<sup>109</sup> The list of lawyering skills and the catalogue of values were drafted by a committee of the American Bar Association ABA (known as the MacCrate Committee) who concern themselves with narrowing the gap between academic formation and the requirements of the profession. The MacCrate Report formulates ten groups of fundamental lawyering skills and four groups of fundamental values of the legal profession. On the MacCrate Report see also F. Zoll, *op.cit.*, p. 107 and following.

<sup>110</sup> MacCrate Report, p. 138-140.

The fundamental values of legal professions are as follows<sup>111</sup>:

- competence of representation;
- supporting and promoting justice, fairness and morality in daily legal work;
- commitment to improving the profession;
- continuous self-improvement.

The classical European system of legal education is in principle focused on the teaching of the ability to identify legal issues, which in some cases embraces some aspects of legal analysis and reasoning. Apprenticeship gives the unmethodical opportunity to acquire some experience within the remaining skills, it does not however carry out any program which would indeed serve the purpose of teaching those skills. The focus of the apprenticeship is limited to the skills of legal analysis and identification of legal issues. The remaining skills are, to say the least, neglected in the didactical process. I think that this fact results from the general conviction that these skills are simply acquired with time, by practicing law, and the specific teaching of those skills within educational programs is pointless. And yet, the mastering of all of those skills determines whether a lawyer is prepared to deliver services of high quality or not. The elimination of the bulk of the skills mentioned above from didactical processes predetermines the failure of the educational process – it is unable to fulfill the task of comprehensively educating lawyers and preparing them to deliver legal assistance to the ever more diversified market for legal services.

Clinical education is one of the effective tools that allow to incorporate a complete range of desirable legal skills in the teaching process. It is not the only tool, and a modern law school should reach out for the other methods of teaching a wide range of legal skills, too. It is the clinical education however that allows for the most complete and deliberate introduction of a student to the realm of legal practice.

### **5.2.1. The forms of clinical education**

The purpose of acquiring most of the above mentioned skills (which will be discussed individually later on in the chapter) is served by many a type of activity within a legal clinic. The teaching of students takes one academic year, which makes it necessary for the students and teachers (supervisors) to work hard.

Within one academic year most of the clinics will have carried out the following activities:

- general clinic seminars,

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<sup>111</sup> MacCrate Report, p. 140-141.

- section seminars,
- individual student consultations,
- student duty hours (meetings with clients),
- psychological training,
- specialist training.

The general clinic seminars focus on a few issues.

Firstly, they discuss the work of all legal professions. During the course of the academic year students meet representatives of particular legal professions. During such meetings students learn of the ethical principles of every legal profession, which adequately educates them in the matters of professional ethics. Moreover, during seminars the practical aspects of practicing the particular legal professions, including disciplinary responsibility, are discussed.

Secondly, at the beginning of the academic year, during such seminars students become acquainted with the organization of work in the clinic, i.e. the client case filing system, the functioning of the clinic office.

The third type of activities within the general clinic seminars is related to the clinic's cooperation with nongovernmental and international organizations, such as:

- Office of the United Nations High Commissioner for Refugees,
- Women's Rights Center,
- Office for the Movement of Social Initiatives.

Guest speakers from those organizations present the students with their work, as well as the social and legal problems that they encounter in their every day activities. One of the reasons for such meetings is to sensitize the students to the injustice in the world today.

Section seminars are held once a week by each of the clinic sections. The organizational structure of most of the Polish legal clinics is composed of the following sections:

- the civil law section,
- the criminal law section,
- the labor law section,
- the refugee section.

Section seminars cover a wide range of issues. First of all, the seminar serves the purpose of teaching students the skills to solve the problems which the clients submit to the clinic. A student should come to the seminar ready to present their recommendations: a problem diagnosis, and a draft course of action. The role of the teacher during the seminar is to continually monitor the student's work, and to follow their train of thought. It should not however, despite how difficult that may be, consist in the setting of the direction of actions, thus simplifying the student's work.

At the same time, the problems presented at a seminar are discussed by all the participating students, which gives the opportunity of group discussion and the exchange of knowledge and experience.

It is certain that during such seminars students acquaint themselves with the work of a particular section, although they are aware of how artificial that division is, as despite pertaining to a section that corresponds to a section of the law they are put in charge of cases that relate to legal problems belonging to other areas of law. Due to the fact that the student is unable to represent their client before the institution of justice, simulations should be held during such seminars, of for example a court hearing. During the course of such simulations students learn in practice the details of the regulations of a given area of legal practice, and at the same time they learn the rules of fair legal proceeding, by analyzing the body of rulings of Polish and international laws and the doctrine of law.

During section seminars the teacher should teach the students to continuously strive to improve the profession they will soon become part of, so that it serves to promote the idea. This should be a program which would draw the attention of the students to the need of self-improvement, the betterment of their profession, so that it can serve to promote the idea of justice and not focus on the idea of protecting its members from the market.

Individual consultations with students serve the purpose of discussing particular stages of the concept of assistance that a student/students (students work in pairs within the section) have selected for their client, and their supervisor has approved of. It may happen that the concept of legal assistance recommended by the students differs from the vision of the teacher (although it remains in accordance with the regulations of the law and is professionally diligent). This is a particularly difficult situation to the teacher, as it is the teacher who needs to make the final decision as to the direction of assistance, at the same time remaining aware of the role that they play in the entire clinical education system, and the need to give the student's position due consideration.

Student duty hours are usually weekly one-hour meetings with clients at the clinic office. During such duty hours students hold prearranged client meetings. Such meetings give pairs of students the opportunity to become acquainted in detail with the problem and the facts of the case submitted to the clinic by the client. Apart from the above, during such a meeting a student should also take note of the client's financial status (as it may transpire that contrary to prior declarations the client is not an indigent person), make copies of necessary documents, and if needed ask the client further questions to clarify the prominent issues.

Psychological training allows the students to acquire interpersonal communication skills and other psychological skills needed in their future clinical work, particularly during client conference. The basic psychological skills include: the ability to conduct an effective client interview, the ability to supply legal advice in such a way that it is understood by the client, and the skills to protect one's health and mental integrity.

In consideration of its significance in the process of clinical teaching, the psychological training should take place in the beginning of the academic year and before students commence to meet with clients during their duty hours. In the practice of the Warsaw legal clinic, psychological training has become an essential element which initiates the yearly clinical teaching cycle. Such training assumes the form of a fortnightly workshop organized for all the clinic sections, which is both an intense preparatory course for students to undertake their work with clients and group integration.

Specialist training for students focusing on clinical work should also be organized in the clinics. The Warsaw clinic, for example, organizes training that shows students the mechanisms of creation of stereotype, the problems of intercultural communication which is of particular interest to the refugee section. More and more specialist training in the areas of mediation and negotiating should be held at the clinics.

### **5.2.2. Problem solving skills**

The ability to solve problems consists in<sup>112</sup>:

- identifying and diagnosing the problem;
- formulating alternative solutions and strategies;
- formulating action plans;
- implementing the plan;
- readiness to amend plans in case new information is obtained or new ideas are formulated.

Clinical education seems perfectly suited to deal with such tasks. Students receive a real-life problem to solve (during duty hours when they meet the clients). This problem requires that the real interest of the client be determined. It is then that the student quickly realizes how artificial the division of the legal disciplines is, a division within which the student has learned the law hitherto. In order to assist the client, the student will have to cross the borders of the individual

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<sup>112</sup> MacCrate Report, p. 138 and in detail p. 141-151.



areas of law, and make necessary syntheses. The fact that practical problems are more universal and often will not be enclosed within one legal discipline is a challenge both to the student and to the teacher. The teacher must be particularly vigil in supervising the solutions formulated within the areas of law outside of their specialization. They must also be aware of the fact that the problem extends beyond their competence – which will have to result in either the refusal to accept the case for review or in obtaining professional assistance. Despite this difficulty, the fact of transcending areas of law is one of the many qualities of clinical education. It changes the perspective from which law is contemplated – from the point of view of a teacher of a given section of law to the point of view of a lawyer who must face not an abstract theoretical problem but a real-life problem.

Section seminars as well as individual student consultation serve the very purpose of dealing with problem solving. A student should come here ready to make a presentation of their recommendation for a problem diagnosis, and a thought through strategy concept. They should formulate those propositions on their own (or in cooperation with another student). During the course of the seminar a teacher is tempted to set the direction of actions thus simplifying the student's task. Such assistance should however be used as last resort only. It is the student who should do all the work which will in turn allow them to undertake actions to solve a problem. The effect of such work should be the subject of discussion during a seminar. In Poland one may observe that students are often passive, an attitude which stem from their previous educational experiences, and expect the teacher to present ready solutions. The changing of that attitude is one of the aims of clinical education. It is the student who should perform the analysis and consider variants to find the optimal course of action<sup>113</sup>. The teacher is there only to initiate the discussion over the student's proposals, indicate their weaknesses, suggest the necessity to perform additional analyses or to collect further information. Only if the teacher sees that the lack of progress of a student's work may threaten the interest of the client, may the teacher intervene with greater resolve. It must be realized that everything that the student achieves through independent work, imagination and research, will become fixed in their mind much stronger than anything the teacher may say suggesting a ready-made solution. It is the very essence of clinical education to transform the student from a passive receiver of legal knowledge into an "active" lawyer, who is capable to independently undertake action. Nevertheless, during the course of seminars and individual consultation dedicated to solving a particular case the teacher must at all times verify that the student has performed all the necessary analyses and that they are not making any mistake (legal, strategic or other). The teacher must be fully prepared to

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<sup>113</sup> Cf. A. Schalleck, *Clinical Contexts: Theory and Practice in Law and Supervision* [in:] *Hurder i inni*, p. 39.

follow the student's train of thought – to continually discuss with the student their decisions and ideas and to finally approve the plan and the strategy constructed by the student<sup>114</sup>.

When identifying and diagnosing a problem, the student must undertake many actions. They should acquire full understanding of the client's situation and their real objectives. They must realize that not every feasible and effective legal action will suit the client in view of the specific goals they may be intent on reaching. The recommended solutions must take into consideration the whole of the client's situation – their community, family and professional relations, as well as the influence the solution of the case will exert on the client's various relations. The idea is to prevent an apparently favorable solution to a problem from causing further complications in the client's life, perhaps even greater than the initial problem itself. The student must establish what ways of solving the client's problems are feasible from the point of view of the client's interests and which solution the client would consider the most desirable. It is also necessary to establish which course of action the client will accept and which they will reject (and for what reasons), in spite of the fact that the lawyer may consider both equally effective in attaining the client's objectives. In view of the above, in many cases students should present more than one, previously discussed with their teacher, solution to the problem at hand and they should together choose the best strategy. The student must also set a time framework for finding the solution – which cases would benefit from the point of view of the client from expediting or impeding an action, and what are the ethical limitations for the undertaking of particular actions. The costs of a particular solution must also be established every time. As a rule, the clinic students will deal with people of limited means or very poor people. It is therefore imperative do select methods that are financially feasible to the client. Nevertheless, the client needs to be presented with a full review of their situation. The fact of financial poverty will very often be the deciding aspect of the case. The student must be aware of all the limitations that follow therefrom, they must also be aware of the fact that such a circumstance may be used as an argument in the case and a heavy weapon in negotiations (for example if the client is indebted to a third party).

The next step is to prepare the strategy for the case, i.e. to formulate the alternative ways to solve the problem. The client must of course be aware of the limitations to which the clinic and the student in charge of the case are subject. It is evident that these specific limitations (for example the inability to represent the client before a court) will influence the choice of strategy. The client must be advised that a professional lawyer, for example, would be able to select a more appropriate strategy in a particular case, a strategy which is legally or factually unavailable to the clinic students. In some cases the clinic is altogether unable to undertake legal assistance in a case

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<sup>114</sup> A. Schalleck draws our attention to the need for varied teacher strategies in their dialogue with students, *ibid*.

if it is deprived of the tools of effective problem solving. When defining the various strategies, the student must realize to what degree the undertaking of one of them will influence other possible solutions of the case, for example by eliminating them altogether. The student must duly advise the client thereof and make the final choice depending on the client's decision<sup>115</sup>. Individual action strategies should be considered, evaluated and perfected during the course of section seminars. While preparing the written opinion for the client, the student should make a presentation of the various variants of solutions to the case, and formulate their own recommendations of what they consider the optimal variant.

The next phase of problem solving is the implementation of the action plan accepted by the client and by the clinic teacher. In this phase too must the student cooperate closely with the teacher (usually through individual consultation), and consult with the teacher the undertaking of any action. The student must also strive to promptly obtain information regarding the effects of the undertaken measures so as to maintain flexibility in adjusting the action plan to new circumstances. Needless to say, all the documents drafted by the student in the case need to be approved by the teacher, and previously discussed with them. Their formal correctness as well as their conformity with the strategy need to be verified.

### **5.2.3. Legal analysis and legal reasoning**

Clinical teaching is an effective method for students to become acquainted with legal analysis and legal reasoning. A lecture in its traditional form, presenting only a panorama of a given area of law, is not able to introduce the student to the same method of legal analysis as participating in the clinical program and being in charge of a case. The legal analysis proper – considering all the pros and cons in a situation where every decision entails practical consequences, can only be learned by working on a concrete, real-life example under the instructions of a teacher willing to provide explanations and pointers. Abstract theorizing is replaced by legal thinking and imagining the arguments of the opposing party and the options for one's own argumentation.

The legal analysis and reasoning skills are composed of the following, detailed skills<sup>116</sup>:

- identifying and formulating the legal problem,

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<sup>115</sup> Clinics are the right place to introduce the so-called Client-centered approach to client relations. We are unable to replace the client in their making life choices. We must however be able to indicate to the client the existing options and the probable consequences of each of them. For more on the various client relations models see A.J. Hurder, *Negotiating the Lawyer – Client Relationship: A Search for Equality and Collaboration* [in:] Hurder i inni, p. 162-163.

<sup>116</sup> MacCrate Report p. 138 and in detail p. 151-157.

- formulating relevant legal theories (namely, concepts of problem solution),
- elaborating legal theory (concept of problem solution),
- evaluating that concept,
- criticizing and synthesizing legal argumentation.

Clinical education allows for the most effective acquiring of the above mentioned skills. First of all students must carefully prepare for clinical activities. They must identify the legal issues in a particularly diligent manner – this degree of preparation will allow to discuss the legal problem identified beforehand and to formulate new ones. An academic lecture favors abstract and judge-like analysis of legal problems, i.e. neutrally – independently of the party’s interest. Clinical education forces you to look at the facts of the case from the point of view of concrete interests of the clinic client. It compels a less judge-like and more attorney-like or prosecutor-like view of the case – it forces you to think and construct a strategy to solve the problem, to develop a hierarchy of theories and to evaluate them legally. The necessity of such analysis and study forces you to a more in-depth analysis of the law and will eventually lead you to a more profound understanding of the content of legal standards and the limits of their interpretation. The clinical seminar and the individual consultations with a clinic teacher will allow you to mark out those limits in a correct way, they will also let you develop most comprehensively your legal reasoning and argumentation. The on-going clinical dialog between the student and the teacher and the other students taking part in the clinical seminar will let you paint many pictures of a given problem. It is essential that students independently present the possible theories and evaluate those theories. The teacher should ask questions that would force the student to search for concrete solutions rather than trying to replace the student in the formulating of solution proposals. One may of course assist to direct the student's train of thought onto the right track or to make them realize their mistakes, it is the student however who should eventually independently develop the strategy to solve the client's problem. The teacher should intervene with greater resolve only in case the client's interest are at risk.

#### **5.2.4. To identify and research legal issues**

This is a skill to which the continental legal education has always attached a great deal of importance. Almost the entire university law curriculum, as well as a significant part of the legal apprenticeship program, focus on the need to master the knowledge of the letter of the law in the greatest detail possible<sup>117</sup>.

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<sup>117</sup> F. Zoll, *op.cit.*, p. 25-27.

The ability to identify legal issues is composed of the following<sup>118</sup>:

- the knowledge of the nature of legal rules and institutions;
- the ability to use the most fundamental tools for identifying legal issues;
- the understanding of the process of devising and implementing a coherent and effective plan to identify the legal issues of a given case.

Although these detailed skills are the axis of university teaching, clinics teach those skills more comprehensively than an academic lecture. Adults learn the letter of the law most effectively through experience. Clinic experience, which demonstrates the practical consequences of application of legal norms to a case with which the student identifies emotionally, renders the content and the meaning of a given legal structure the most intelligible and is thus better memorized by the student.

The teacher however bears great responsibility, chiefly that relating to supervising the extent to which the student has studied the legal system in force, the body of rulings of the Polish courts, and the existing doctrine that relates thereto. The experience of clinical activities shows that students often study the legal issues relatively superficially and rather expect the clinic teachers to give them indications that would significantly facilitate their work. And often they do so, in the rush of things. However, such a method is not at all useful from the point of view of the requirements of teaching methodology. At the beginning of clinical activities, usually during a section seminar, the need for thorough and methodical research of the legal issues must be emphasized. Students must be instructed that before an opinion in the case is drafted and initial strategic assumptions are formulated, it is necessary to read appropriate excerpts of commentary, to study the existing rulings and to reach out for textbooks and monographs. Only then may the basic problems of the facts of the case – the legal issues – be identified, which often entails more reading. Only after such preparatory work may the student present their case at a clinical seminar. They should also have developed an opinion of their own in the case. During the seminar the teacher is to force the student by means of asking questions to undertake yet another attempt to critically analyze their opinion, the assumptions made etc. Only then should the teacher give directions and recommend research of additional sources. Often Polish clinics fail to observe this procedure. Students are busy working on too many cases as clinics inspired by their social mission take on more cases than advisable from the point of view of educational requirements. Without denying the importance of the social mission of the clinical movement and its educational effect toward students and future lawyers, it must not be forgotten that the primary

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<sup>118</sup> MacCrate Report p. 138 and in detail p. 157-163.

objective of the clinic is to educate. Students must have the time and the opportunity to perform thorough legal analysis of each of the cases. The role of the teacher is to introduce the necessary corrections and to steer the student's attention onto the aspects they may have omitted. Only this way may the student truly effectively master the skills of identifying legal issues. To relieve them therefrom would significantly limit the effect of clinical teaching. It is also important that students analyze the legal issues in a way that is truly aimed at solving a given problem. It is helpful for the clinic to use timesheets. Students should indicate therein how much time they have effectively spent on a given case. Timesheets should list individual actions, including identification of the legal issues. The teacher should supervise those timesheets, and then discuss with the students the ways for the most effective and time-efficient ways of identifying the legal issues of a case. The teacher should be able to assess whether the strategy adopted by the student was optimal, whether the right sources were selected, whether the student indeed read the body of rulings relating to the case or contented themselves with reading just the theses of rulings. The teacher should draw their attention to how important the various sources are to the court, and show them how often the thesis of the ruling does not reflect the essence of the ruling or of the argumentation.

Usually the students who come to the clinic are proficient in using electronic databases. The teacher should verify that this is true of all the students, and lend assistance to those lacking that skill. At the same time students must be warned against absolutizing this kind of database as the only or major source of information about legal issues. Truly they can be helpful, and yet often the real key to solving a case rests in other sources, which may not be found in databases. It should be explained to the students that databases, even those containing excerpts of articles, are a source of information rather than an exact presentation and discussion of all views.

#### **5.2.5. Factual investigation**

In our educational system factual investigation is a skill treated only marginally by lectures on the particular procedures. There too is it analyzed from the perspective of the judge, and also from the point of view of the procedural requirements of the taking of evidence. The teaching of factual investigation from the point of view of the lawyer is missing. Undoubtedly, continental law is not concerned with investigating the facts of the case from the point of view of the client's lawyer as much as the American law. A Polish lawyer bears no responsibility for the truthfulness of the client's account, although they must not present to the court versions of facts which are obviously questionable, or to present information which they know to be untrue. Their liability

for informing of certain facts is incomparably lesser than in case of an American lawyer. Nevertheless, a Polish lawyer must also be able to establish the facts of the case so that they may select the optimal strategy, or else they may easily be surprised by new and unexpected circumstances, thus thwarting the hitherto concept of the case. The client is not always willing to present the whole story. It is inherent to the human nature to want to conceal (also from oneself) uncomfortable or compromising information – also from the person whose advice and assistance one is seeking. A lawyer must be aware of such circumstances. It goes without saying that the bulk of the information obtained by a clinic student originates from the client themselves. A student must nevertheless be constantly aware of situations in which they should not limit themselves to that information in investigating the facts of the case. Despite procedural difficulties a student must not resign from reading court records, reviewing real-estate registers etc. It is an important role of the teacher to make sure that the student uses the time of such research effectively, that they take appropriate notes. It is also necessary to prepare the student for their meeting the client – to develop a strategy to collect information which would give due consideration to that fact that a client often perceives the world in a way different to a lawyer in search of facts that would prove the hypothesis of a given norm. Psychological and specialist training held by teachers in the beginning of an academic year also serve the purpose of preparing students to meet their clients.

The teachers' clinical work with students allows them to acquire the very skill of investigating the facts of the case, a purpose that is not served as effectively by any other academic education. During a meeting with their client it is the duty of the student to correctly establish all the elements of the facts of the case. It is the role of the teacher, on the other hand, to develop this skill in the students.

The ability to investigate the facts of the case consists in the following<sup>119</sup>:

- determining which situations require factual investigation;
- planning factual investigation;
- implementing the investigative strategy;
- memorializing and organizing information in an accessible form;
- deciding whether to conclude the process of fact-gathering;
- evaluating the information that has been gathered.

The acquiring of all of the above detailed skills which eventually leads to the ability of correctly investigating the facts of every case is necessary for the proper execution of the legal

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<sup>119</sup> MacCrate Report p. 138 and in detail p. 157-163.

profession. Despite the many limitations in this respect, it is the role of the clinic to teach factual investigation in the legal and factual reality of Poland. Students must also know how to deal with situations where the information obtained from the client differs significantly from the facts of the case. During student presentation of the assumed facts of the case within the context of evaluating the evidence collected, the teacher should actively follow the train of thought which will then influence the selection of the strategy of assistance to be lent to a given client.

### **5.2.6. Communicating**

The clinic is one of the first places where a student is expected to make a particularly remarkable accomplishment – to master the art of intelligibly communicating with the client, and indeed with all the addressees of their communication. This is quite a remarkable skill for the young (and not so young) apprentice of law, and also particularly demanding to university staff working in the clinic. At the onset of their legal education a student is acquainted with the technical terminology, the specific manner of formulating precise sentences. They study a language that is relatively hermetic and unintelligible to nonlawyers. Perspicuity is sacrificed in the name of preciseness of expression. This process is inevitable in such a system of law. This system has forged entire networks of expressions which serve the purpose of solving particular social conflicts, and we have ventured too far to be able to halt this development. Nevertheless, clinical education teaches that this process of learning the language of the law requires the realization of the need to learn to translate it to a language which is clear and universally understood. Very often does a teacher receive an opinion drafted by a student which is professionally faultless and yet has no value to the clinic's client. It is completely incomprehensible. It is therefore yet another task of the teacher to constantly verify that the message be clear and adapted to the addressee's ability to absorb information. In their every case and working together with their teacher, a student must strive to find the golden mean between precision and comprehensiveness.

The acquiring of the two detailed skills that follow may be helpful in developing the above general skill<sup>120</sup>:

- assessing the perspective of the recipient of the communication,
- using effective methods of communication.

The in-clinic psychological and specialist training described above is extremely helpful in the developing of these skills.

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<sup>120</sup> MacCrate Report p. 139 and in detail p. 172-176.



Moving on to discussing the teacher's supervision over the phase of students' drafting pleadings it must be emphasized that a clinical teacher should pay particular attention to the way they are formulated, particularly those directed to the various institutions, especially to courts. Clinics must be a place where students learn not only how to prepare a pleading that is faultless from the professional and formal point of view, but also to formulate it in a way that would maximize the chances of positive perception of the issues which are of interest to them.

The teaching of the skill to communicate in a way that would be understandable to nonlawyers is methodically demanding of the clinical teacher. Being academic teachers of law they are the keepers of the tradition of the hermetic language of law, and are not the best of instructors of its simplification. Nevertheless, this is a major challenge which the clinical educators are facing. The assistance of other specialists may prove useful here, for example of psychologists. From this perspective, the yearly in-clinic psychological and specialist training may also be useful in the on-going development of skills of clinical teachers, of whom many additional skills may be expected due to the nature of work they do with the clinic.

### **5.2.7. Advising skill**

From the point of view of the clinic's objective and the existing legal limitations, advising is the principal means of assisting clients. The ability to advise is prominent in the legal practice. Until now rarely have lawyers been taught this kind of activity in a didactically thought through manner. It is one of the many lawyering skills which are considered in the Polish reality natural and not needing additional preparation. However, it is not so. Similarly to all other lawyering skills it may be purposely perfected and should not be based exclusively on natural presumption or lawyer's intuition.

The ability to advise is composed of<sup>121</sup>:

- the ability to establish an advising relationship that respects the nature and bounds of a lawyer's role;
- the ability to gather information relevant to the decision to be made by the client;
- the ability to analyze the consequences of the decision to be made by the client;
- the ability to implement the decision made by the client.

Clinics are the program which should particularly strongly emphasize the constructing of appropriate relationship between clients and future lawyers. Students must understand the role of the lawyer as that of a person whose primary duty it is to assist the client in their making the right

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<sup>121</sup> MacCrate Report, p. 139 and 176-184.

decision. They must also realize that although it is the client who must make the final decision in their case, they do so on the basis of advice which indicates to them the options and the consequences thereof. It must also be made sure that the client-student/lawyer relationship does not extend beyond the bounds set for the delivery of legal assistance. Students, who often are very young, tend to be emotional about the case they deal with. They risk to become excessively involved in the client's case and thus cross the boundaries marked out for the client-lawyer relationship. For this very reason students should contact clients only in the clinic offices or offices of public administration. Clients should not know the students' private addresses or telephone numbers. On the other hand, the clinic is a place which should inspire friendly and respectful relationship between the client and the student/lawyer. Combining these two issues is fundamental to the proper functioning of the clinic.

The advice offered by the student to the client must beforehand be accepted by the teacher in charge of the clinic. It is inadmissible that a student give “spur-of-the-moment” advice, i.e. during their first contact with the client and unconsulted with the teacher in charge of the clinic. Such spontaneous advice is burdened with great risk of error. Furthermore, it is often premature – it is not preceded by comprehensive analysis of the client’s actual situation or the range of options of assistance. Therefore, no over-the-phone counseling may take place in the clinics. Such practices are also unfounded from the point of view of the teaching process. The student thus loses the opportunity to work together with the teacher to find the optimal solution. The Polish educational system which forces students to absorb a great amount of information, and the common practice of exams with “the code books shut,” deform the young lawyer to a certain degree. A misconception is formed in the mind of the student that to assist a client means to recall during the meeting with them the legal information which the student memorized during their learning process, and not to obtain as much information as possible and to devise an action plan and a decision making procedure for a given case. It is also the role of the clinic to limit this deforming influence of the teaching process, which gives the impression that the lawyer should foremostly master immense amounts of material and to quote regulations from memory. On one hand, this makes the lawyer feel continuously uncertain whether they memorized everything correctly, on the other it creates the illusion that the student needs not thoroughly analyze the legal issues of the case in which they advise.

The advising strategy should be developed by the student themselves. From that moment on, however, in every case it must be the subject of discussion between the teacher and the student, either during a seminar or individual consultation. The basic lawyering skills given in the beginning of this chapter and discussed herein may serve as a ready made scheme for analyzing

the student's advising. The teacher should use this scheme to evaluate the designed advising program.

The students (preferably in pairs) should deliver advice to the client in the absence of their teacher. Although the teacher thus loses the opportunity to make corrections or to discuss with the students the process of delivering advice, this situation will create a clearly defined situation between the client and the student. At the same time, the developing of the advising skill in the presence of a teacher may take place during section seminars, in the form of prearranged simulations of client conference. An advantage of such simulations in the presence of the whole section team is the opportunity to discuss and analyze the simulated advice by all the students. The role of the teacher is then to perfect the students' skills in this field.

The client must be aware of the fact that the advice is delivered by students and the students must have the feeling of independence. The entire process of preparing for this kind of advice should ensure that the client consultation is faultless. The teacher's presence during conference encourages the client to address the teacher and it makes the clarity of the relationship between the various persons involved vanish. It goes without saying that right from the very beginning the client needs to be informed on more than one occasion, verbally and in writing, that the advice is delivered by nonprofessionals. They must therefore realize all the ensuing limitations (for example those relating to the lack of protection of information supplied to the students who may be forced within certain procedures to disclose it by acting as witness). They must also be advised of the legal limitations of this type of assistance, for example the inability to represent the client before a court. Those in charge of the clinic must ensure that the client receives comprehensive information on the program and its current limitations, which may influence the usefulness of the assistance supplied to the client.

### **5.2.8. Negotiating**

The fact that in principle the students are not allowed to represent their clients before a court often forces to attempt to find an out-of-court solution to the problems. Thus opens a vast field of opportunity to practice one of the key skills of present-day lawyering – i.e. negotiating. In the practice of the Kraków clinic the best results for a client have often been achieved through negotiating the client's debt with banks, housing co-operatives and landlords. Students learned how to turn the client's apparent weaknesses – their insolvency for example – into an advantage, and thus obtain the best possible result in negotiations. Traditional teaching of lawyers in Poland focuses on the institution of court. And yet the court should be envisaged as a certain *ultima ratio*.

Clinical education of students should indicate the multitude of ways that may serve the purpose of solving a legal problem at hand. Negotiating skills and knowledge of negotiating techniques should become as obvious an intellectual skill of every graduate of law as the knowledge of all the individual institution of the legal system.

Negotiating skills consist of the following<sup>122</sup>:

- preparing for negotiating;
- conducting negotiations;
- advising the client about the meaning of the terms obtained from the other side of negotiations and the ability to implement the client's decision.

The skill of preparing and conducting negotiations is often treated by Polish lawyers as natural, i.e. one that does not need any training. Although this false assumption is changing, law faculties in principle continue to fail to offer appropriate courses. It is therefore highly desirable for the student to become acquainted with negotiating techniques during their work at the clinic. It is therefore purposeful to arrange such simulations, too. If need for conducting real-life negotiations arises, it is necessary for the student to determine their plan and to discuss it during the clinic seminar. Realistic boundary conditions need to be worked out together with the client and the client needs to be informed of the possible consequences of such negotiations. A draft settlement also needs to be prepared so that a seemingly successful negotiation does not end in an agreement inconsistent with the client's interest.

### **5.2.9. Knowledge of litigation procedures and alternative dispute resolution**

Contrary to American practice, the clinic students' ability to represent their clients before a court is in principle severely limited, for example to acting as administrator or guardian of a minor. This opportunity should be used to some degree. Despite legal limitations, clinic students have many an opportunity to actively acquaint themselves with the course of court proceedings or to participate therein if only indirectly. They may draft pleadings for the clients and thus obtain relatively considerable, under the Polish conditions, influence on the result of the proceedings. They should also accompany the client to court and observe the proceedings to have detailed and direct information on their course. In particular participating in the proceeding in the role of a guardian allows to live the proceeding in the role of one of the actors. This does once more require of the clinic teacher to undertake appropriate preparatory steps with the student. Even the most obvious of matters, such as the way to address the judge, to rise in the right moment,

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<sup>122</sup> MacCrate Report, p. 139 p. 185-190.

are a problem to the novice student. Teachers should (which often constitutes a problem in the Polish reality) participate in hearings in which their students take an active role. Such circumstances allow for in-depth analysis of the behavior of the student, of the opposing parties, the court and the witnesses, which is necessary to be able to indicate to the student their shortcomings, and to allow them to use their experience in a didactically useful way. In these situations students make use of the experience gained during simulation of court hearings held at section seminars. Clinic assistants should prepare scripts of proceedings and write parts for the various participants. Simulations of proceedings give the opportunity to consider in a safe environment the appropriate techniques for managing the proceeding, examining witnesses, addressing the court etc. It would be most desirable for universities to have mock court rooms. This would let the students better identify with the role of lawyers and make the classes more attractive. In Poland law faculties exist which are in the course of preparing such premises.

In order to be able to satisfactorily act before various organs it is also necessary to acquire the appropriate detailed skills and the ability to resolve disputes by alternative means<sup>123</sup>. A clinical teacher must consider from the point of view of the profile of their clinic which skills they would most wish to transfer to their students, and they should prepare an appropriate program. The institutional mediating procedures which are being progressively introduced into the Polish law should, for example, be of particular interest to those involved in the clinical movement. In the USA legal clinics exist that concern themselves with mediation. It is certain that our clinical programs should consider the role of the mediator, discuss the ethical regulations and the nature of the relation to the mediating parties. It should also be considered how a client's lawyer should relate to the mediating procedure. These issues are new to our law and our practice of law. Clinics are the right place for developing sound standards of conduct for such proceedings.

#### **5.2.10. Practice organization and management**

A clinic should be organized similarly to a small law firm. Students advise free of charge which is one of the fundamental principle of the clinical movement. Nevertheless, clinics are a good place for students to learn how to effectively manage a "clinical corporation." Clinics should be managed so that the best quality advice is supplied at the lowest possible cost. Students must be taught how to best manage their time as if they were dealing with clients paying for the time effectively spent on their case. Often a student will have spent hours reviewing files in court, will not have refrained from taking notes and yet they would not have acquired sufficient

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<sup>123</sup> MacCrate Report p. 139 and 191-199.

understanding of the case. It is therefore advisable for the clinic to keep a register of the type of work and the time dedicated to a given case. It is essential that the effective management of the "clinical corporation" be a subject of discussion during clinical seminars. Students must obtain the opportunity to consider how to optimize the organization of clinical work.

The ability to organize and manage is composed of the following<sup>124</sup>:

- the ability to formulate goals and principles for effective practice management;
- the ability to develop systems and procedures to ensure that time, effort and resources are allocated efficiently;
- the ability to develop systems and procedures to ensure that work is performed and completed at the appropriate time;
- the ability to develop systems and procedures for effectively working with other people;
- the ability to develop systems and procedures for efficiently administering a law office.

It is of course the role of the head of the program to organize the clinic in such a way that such procedures exist and could be implemented. It is one of the tasks of the clinical program to supply students with information on what procedures to develop, how to implement them and how to observe them. In the Polish reality these skills are rare. We artificially restrict the market for legal services, thus in part giving attorneys and legal advisers the comfort of not needing to consider such matters. Nevertheless, it is evident also on our market that only the legal undertakings which are organized efficiently will be able to continue to operate. A clinic may become a laboratory dedicated to developing optimal organizational standards for small law firms.

#### **5.2.11. The ability to identify and solve ethical dilemma**

Only rarely and on the margin of university curricula does professional ethics become the subject of academic lectures. At the earliest, future lawyers may acquaint themselves with the basics of professional ethics during their apprenticeship. This is certainly too late a time. Also, it is essential that students learn professional ethical standards from the academic perspective – which in principle is far more critical than the discussion of professional ethical standards by the members of the profession itself<sup>125</sup>. Students must also learn to analyze what ethical problems arise or may arise in every case they deal with. Clinical work should begin with an introduction to

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<sup>124</sup> MacCrate Report, p. 140 and 199-203.

<sup>125</sup> See L. Wortham, *Nauczanie odpowiedzialności zawodowej w studenckich poradniach prawnych w świecie*, "Klinika. Czasopismo Uniwersyteckiej Poradni Prawnej UJ" Issue 1/2000, p. 187-194. Also F. Zoll, *op.cit.*, p. 121.

the legal profession ethics. Students must be acquainted with standards of deontology, be able to adapt these standards to the clinical reality. Clinical teachers should formulate a program which would discuss the basic issues of professional ethics, focusing firstly on confidentiality, the standards relating to conflict of interest, the scope of duties securing comprehensive protection of the client's interest etc. Students should be aware of the source of professional ethical duties, and what control systems exist to enforce them. Clinics are one of very few places where free of charge legal assistance may be obtained. It may often happen that disputing clients apply for assistance of different sections of the same clinic. Clinics must therefore operate systems which would allow them to identify conflict of interest between clients. Students must know what needs to be done should such a conflict arise.

### **5.3. Clinical program as an educational program**

The clinical movement was created as a teaching program, nevertheless it was always accompanied by the conviction that the proper education and formation of lawyers is a means of strengthening the justice systems around the world. The clinical program is aimed at educating lawyers who are sensitive to the injustice of the world today. It should be a program which draws the attention of the young lawyers to the need of continuous self-development, the improvement of the profession into which they will soon be incorporated, so that it can serve the promotion of the idea of justice, and not concentrate on the idea of protecting its members from the market. The clinical program is to explain to students that once they are lawyers they will have to continue striving to maintain appropriate standards of professional competence. Clinical students must in particular graduate from the program with the awareness of the duty to support "justice, fairness and morality" in the field of their practice<sup>126</sup>. They must graduate from the program with the conviction that it is the duty of a lawyer to ensure access to competent legal assistance also to those who can not afford to pay for it. The clinical program is a special opportunity for the academy to influence the formation of the future lawyers and thus the quality of the functioning of the justice system, and in turn of the state itself<sup>127</sup>.

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<sup>126</sup> See MacCrate Report p. 140-141 and p. 207-221.

<sup>127</sup> See also F. Zoll, *op.cit.*, p. 97.

## 5.4. Summary

A clinical teacher in Poland faces a particularly challenging task. To realize the assumptions presented herein demands exceptional dedication of time and effort. In Poland clinical teachers can not afford to focus exclusively on that program. The law faculty authorities have little appreciation for the importance of these programs. They are often treated as welfare programs which means that university authorities doubt whether it is the university's duty to execute them. And yet we are discussing one of the most effective educational programs, which greatly influences the entire educational offer of a law school. A clinical teacher, aware of all the limitations, should regardless of all design an educational program for the clinic. Spontaneous approach, in other words a situation where teachers limit themselves to consulting on cases handled by the clinic, is improper. Right from the very beginning the teacher must determine what skills they wish to teach their students. And they should consistently realize such a program<sup>128</sup>.

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<sup>128</sup> Obviously it is extremely difficult to fulfill all the postulates of the MacCrate Report. Every teacher must decide which of those postulates is the most important. See also J. Rose, 'The MacCrate Report's Restatement of Legal Education: The Need for Reflection and Horse Sense [in:] Hurder i inni, p. 20-21. The author criticizes the Report by saying that it fails to indicate which of the lawyering skills are the most important. Nevertheless, the vision of the Report is correct. It does indeed indicate the skills with which a lawyer should be equipped. A clinical teacher must however make a choice – considering their own skills, the skills of their students etc., they must focus on the skills which may realistically be taught.



## **CHAPTER SIX – THE LEGAL CLINICS FOUNDATION – THE CREATION, THE OBJECTIVES AND AN OUTLINE OF ACTIVITIES**

### **Filip Czernicki, President of the Legal Clinics Foundation**

The legal clinics program, which is growing fast in Poland (fifteen clinics have been established over a period of five years), has reached a phase in which forward thinking and consolidation of objectives are of great importance. For this very reason, at the turn of the year 2001 and 2002 the legal clinics and the people involved in the clinical movement decided to call into being the Legal Clinics Foundation, which would take on the duty of strengthening the structure, and constructing a platform for cooperating and shaping the future of the clinical movement. The objectives assumed provide not only for ensuring financial stability of the clinical movement, but also to constitute a forum that would bring together the efforts to enhance the clinics' position in the academic and legal community, and would search for a formula to inscribe legal clinics into the Polish legal system.

### **6.1. History in outline**

The first Polish legal clinic was established at the Law Faculty of the Jagiellonian University in Kraków on October 1, 1997. Prior to that, a conference on the clinical teaching of law organized by the American Embassy and the Polish office of the Organization for Security and Cooperation in Europe was held at the Jagiellonian University. In the beginning of the year 1998 the Faculty of Law and Administration of the Warsaw University started a lecture entitled "Legal clinic" thus calling to life a second legal clinic in Poland.

The European Law Students' Association ELSA Poland has also had considerable influence on the development of the law education system. In May 1998 in Szczecin, ELSA organized a conference entitled "Reform of Legal Education. The Development of the Idea of Legal Clinics", which saw a serious discussion concerning the development of clinical teaching in Poland. The seminar served well to publicize the idea, as it was organized together with the National Convention of the Polish Lawyers' Association and the National Convention of the Law Faculty Deans. The Szczecin meeting gave an impulse to the development of the idea of the clinical movement in Poland. At present clinics operate at the Law Faculties in: Kraków, Warsaw, Białystok, Toruń, Poznań, Lublin – the Maria Curie-Skłodowska University, Lublin – the Catholic University of Lublin, Rzeszów, Katowice, Opole, Słubice, Gdańsk, Wrocław, Łódź and Szczecin.

On June 11, 2001 during a meeting of the representatives of all Polish legal clinics it was first proposed to establish a foundation. In accordance with the agreed working time schedule, in the fall of that year, a foundation statute was drafted by a team of the Legal Clinic of the Jagiellonian University in Kraków, which was then submitted to all the legal clinics for consultation.

In December 2001 three representatives of the Polish legal clinics were invited to participate in a study visit to the Republic of South Africa, where the clinical teaching program had been successfully developing for the past 30 years. The visit was designed and organized by the Public Interest Law Initiative (PILI) affiliated with the Columbia University in New York and financed by the Ford Foundation. The trip resulted in the devising of a strategy for the development of the Polish legal clinics program based on the experience of the Republic of South Africa, and consequently in the establishment of the Legal Clinics Foundation.

With the financial, logistical and professional assistance of the Stefan Batory Foundation (in particular the legal program headed by Grzegorz Wiaderek) the plan to establish the Foundation was realized over a period of one year. On February 15, 2002 the founders appointed (unanimously) Łukasz Bojarski (the Helsinki Foundation for Human Rights) Chairman of the Foundation Council, and the other three founders, i.e. Katarzyna Hebda (Secretary of the ELSA Lawyers Society, Office of the Committee For European Integration), Magdalena Olczyk (Office of the Ombudsman) and Jakub Bogatyński (the Stefan Batory Foundation) members of the Foundation Council. Furthermore, the founders passed the Foundation statute<sup>129</sup> and elected the members of the Board: Filip Czernicki – President of the Board, Izabela Gajewska-Kraśnicka of the University of Białystok, Dr. Piotr Girdwoyń of the Warsaw University, Dr. Paweł Wiliński of the Adam Mickiewicz University in Poznań, and Attorney-at-Law Filip Wejman of the Jagiellonian University in Kraków. The founders (at the onset of the Foundation's activities they were the only members of the Foundation Council) established the Foundation by a notary deed dated February 28, 2002.

The Foundation was registered in the National Court Register on June 3, 2002, it was assigned the REGON statistical number and the NIP tax number, and opened bank accounts at the Bank Pekao S.A. On June 30, 2002 the Foundation Council passed Regulations for the Foundation's financial management, standards, a yearly financial plan, and the composition of the Advisory Board. Since the establishment of the Foundation, the Board met one time a month on the average, collectively making all the operational and strategic decisions.

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<sup>129</sup> See statute attached – annex 1. .

## 6.2. The Foundation Objectives and Means of Their Attainment

Apart from the task of financing legal clinics in Poland, the Legal Clinics Foundation serves to strengthen the potential of the clinical program for the future. For this purpose efforts are made to standardize and to maintain adequately high functioning standards of clinical education. In accordance with the statute, the Foundation achieves its objectives in particular through: supporting cooperation between clinics, supporting international cooperation in the field of practical legal education, organizing trainings, conferences, presentations, publishing activity, collecting and processing statistical data about the clinics' activities, collecting and disseminating know-how in the field of clinic organization, propagating the idea of free of charge legal assistance.

One of the Foundation's first projects was the organization of the Fifth Regional Conference of Clinical Law Teaching which was held on November 15-16, 2002 in Warsaw and concerned itself with the development of the idea of legal assistance in our geographical region. The conference was organized by the Open Society Justice Initiative, the Columbia Law School's Public Interest Law Initiative and the Legal Clinics Foundation in cooperation with the Szpitalna NGO Center, and it was sponsored by the Open Society Institute. The main topic of the conference were the prospects for development and the devising of a strategy for the future of the legal clinics program. The participants focused on the analysis of the various legal clinic models, they made an attempt to develop a method to support them and to strengthen existing clinics. Approximately 70 people participated in the conference from countries such as: Albania, Angola, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Lithuania, Latvia, Macedonia, Mongolia, Mozambique, Romania, Russia, Slovakia, Turkey, the Ukraine, Uzbekistan, Hungary. Lectures were given by guests from Hungary, the Czech Republic, Argentina and the USA. Representatives of legal clinics operating in Poland were also present, among representatives from Kraków, Białystok, Toruń, Rzeszów, Lublin, Szczecin, Poznań, Łódź and Warsaw.

In December 2002 the first meeting of the legal clinics representatives was organized under the auspices of the Foundation at the Szpitalna NGO Center. In December 2002 representatives of the Foundation participated also in the "European forum of citizens' advice services" conference held in Brussels. In April 2003 a seminar was organized entitled: "Lawyers in *pro-bono* work."

During the eighteen months after its incorporation, the Foundation focused on fulfilling its duties relating to providing financial and professional support to legal clinics. A wide-scale fund-

raising campaign was undertaken. It resulted in the obtaining of means to finance the First Polish Legal Clinics Conference (held between October 24 and 26, 2003) and the publishing of the first in Poland and the region textbook on the clinical teaching of law (translated into English). Furthermore, the Foundation obtained valuable in-kind donations which were allocated to the most needing clinics as a result of a competition (two second-hand computer sets from the Baker & McKenzie law firm, Lex Omega software from Polskie Wydawnictwa Profesjonalne publishing house, fifteen sets of Legalis legal information software from Wydawnictwo C.H. Beck. publishing house).

In the year 2003 the first edition of a grant competition targeted at the legal clinics which had met the accepted operational standards was held. The grants for which the clinics applied were used to finance the employment of persons in charge of the clinic secretary offices, to cover administrative and office overheads and to purchase fixed assets.

Apart from grant-related activities, the Foundation undertook a number of educational and other activities aimed at strengthening the legal clinics. As early as in the beginning of the year 2003 a web portal was inaugurated: [www.fupp.org.pl](http://www.fupp.org.pl), which is intended as a channel of communications and of disseminating knowledge on the legal clinics movement. The Internet website contains information not only on the Foundation itself but also about related programs and the activities of the legal clinics. Current information is moreover distributed through the [kliniki@yahoo.com](mailto:kliniki@yahoo.com) newsgroup.

Another important step was a series of clinic visitations. All clinics welcomed the members of the Foundation Board and at the same time declared to have many questions and concrete issues they wished to discuss. These meetings were an opportunity to discuss the requirements to meet operational standards, to consult on solving current organizational and formal problems, as well as to build a stable position within the faculty structure. The cycle of meetings with the clinics enhanced clinic management skills and strengthened the clinics' position for the future.

Furthermore, in cooperation with the Helsinki Foundation, the Legal Clinics Foundation initiated research into the possibility of inscribing legal clinics into the Polish law order. A team was set up for this purpose, which was set the task of gathering and compiling legislative propositions that would consider various levels of "deepness" of the proposed changes of laws. At present the draft law on legal clinics is being consulted with the Foundation Advisory Board and the Ministry of Justice.

After consultation with the Stefan Batory Foundation, the Helsinki Foundation for Human Rights and the Polish-American Freedom Foundation, the Legal Clinics Foundation prepared an activation program and a program to propagate the idea of *pro publico bono* work among practicing

lawyers. Within the framework of that program nearly 20 meetings were held with the largest law firms in Poland, the President and the members of the Presidium of the Bar Council, and the President and the Presidium of the National Council of Legal Advisers. These meetings instigated broad interest in the issue of involvement of lawyers in *pro publico bono* work and the possibility of patronage of the Bar Council and the National Council of Legal Advisers of the next notable initiative of the program, namely, the “*Pro bono Lawyer*” Competition. A few dozen nominations were submitted to the competition, 35 of which were qualified for consideration by the Competition Jury. At a session held on March 3, 2004 in which the following members of the Jury participated:

- Professor Andrzej Zoll – the Ombudsman,
- Professor Marek Safjan – President of the Constitutional Tribunal,
- Professor Roman Hauser – President of the Supreme Administrative Court,
- Attorney-at-Law Andrzej Kalwas – President of the National Council of Legal Advisers,
- Attorney-at-Law Zenon Klatka – Vice President of the National Council of Legal Advisers,
- Attorney-at-Law Stanisław Rymar – President of the Bar Council,

a winner was selected. The winner was Szczepan Styranowski, a retired judge from Olsztyn, nominated by the Olsztyn division of the Polish Committee for Social Welfare. The Jury also decided to honor seven persons. The official announcement of the competition results was made on March 29, 2004 in the seat of the “*Rzeczpospolita*” daily – the co-organizer of the competition. The winner received a statuette funded by the Minister of Justice, and diplomas were presented to the honored persons.

It is also worth mentioning that the Board of the Foundation coordinated visits of guests from abroad, such as Daniel Magida, who visited Poland in November 2002 to research the development of the clinical program in Poland. In April 2003 a number of Polish cities were visited by a group representing the newly formed clinic in Podgornica in Montenegro. In June 2004 a delegation from China visited Poland to learn not only of the development of the clinical movement but also the activities and the role of nongovernmental organizations as such. In July 2004 it is planned to receive in Poland a large group of legal clinic staff from the university centers in Russia.

### 6.3. The main achievements of the Foundation

Building the position, image and the formal framework for the clinics and the Legal Clinics Foundation:

1. very quick and effective incorporation of the Foundation itself,
2. constructing and integrating a network of legal clinics in Poland,
3. the instigation of a feeling of unity among the clinics,
4. legal clinics are presented in the mass-media ever more often through interviews and reports from the various projects,
5. cooperation is tightened between the legal clinics and nongovernmental organizations, and legal clinics become permanently inscribed in that sector (although they do not directly belong to it),
6. in a very short time the Foundation gained a strong position among the nongovernmental organizations (a leader of the Nongovernmental Advisory Platform and member of the Board of the Polish NGO Federation),
7. obtaining of letters of support from the President of the Bar Council and the President of the Council of Legal Advisers,
8. conducting a session dedicated to legal clinics during the Convention of Deans of Polish Law Faculties in September 2003,
9. institutionalization and tightening of cooperation with the Ombudsman,
10. raising and enforcing operational standards among all (!) legal clinics (in the year 2003 nearly all legal clinics signed civil liability insurance agreements, whereas in the year 2002 only two clinics had such an insurance!),
11. the drafting of the law on legal clinics and participating in a team called by the Ministry of Justice to develop the law on legal assistance (with the stipulation to give due consideration to the character and regulations governing the work of legal clinics);

Projects carried out:

12. the members of the Board visited all clinics in existence in Poland, holding repeated meetings with representatives of clinics and university authorities,
13. organization of the first convention of legal clinics representatives in December 2002 under the auspices of the Foundation,
14. organization of an international conference dedicated to the clinical education in November 2002,

15. organization of the First Polish Legal Clinics Conference in Kazimierz in October 2003,
16. conducting the first Polish “Lawyer *pro bono*” Competition,
17. undertaking efforts to publish the first in Poland and in the region textbook – a legal clinics manual;

Fund-raising:

18. obtaining support from the Stefan Batory Foundation which allowed to conduct the cyclical regranting competitions for clinics (in the year 2003 eight clinics were granted subsidy),
19. as a result of efforts of the Foundation, the European Law Students’ Association ELSA Poland, which is the legal owner of part of the clinics’ equipment (on the basis of a subsidy it obtained over the past years from the Stefan Batory Foundation), has undertaken to formally transfer that equipment to the clinics (universities), furthermore the Foundation enforced the execution by ELSA Poland of its obligation to a number of clinics,
20. clinics from 12 cities will receive computer equipment of considerable value from the Ministry of Justice,
21. the Baker & McKenzie law firm donated two computers to legal clinics in Poland, which were adjudicated to the two most needing clinics as a result of a competition,
22. the Polskie Wydawnictwa Profesjonalnie publishing house donated LEX Omega software, which was given to a clinic after a competition,
23. the Linklaters international law firm decided to delegate its five lawyers to *pro bono* work in a clinic,
24. the Wydawnictwo C.H. Beck publishing house donated 15 sets of legal information software (sets of laws with commentaries) to legal clinics.

The total value of the financial means, equipment and computer software donated and contracted by the Legal Clinics Foundations to the legal clinics amounted to 220,000 PLN.

## 6.4. Activities planned for the future

After more than two years of work relating to incorporating the Foundation, carrying out a number of important projects and realizing objectives relating to supplying financial and professional support to legal clinics, beside granting activities, the Foundation will undertake a number of educational and other activities aimed at strengthening the legal clinics. These initiatives will focus on:

- 1) professionalizing and standardizing the clinics' operations,
- 2) publishing activity,
- 3) coordinating and perfecting cooperation between clinics,
- 4) keeping an archive of publications relating to legal clinics and keeping statistical data,
- 5) improving the supply of IT and other equipment,
- 6) promoting legal clinic activities,
- 7) forging and strengthening international cooperation,
- 8) lobbying for reforms of legal corporations,
- 9) works aimed at incorporating legal clinics into the Polish legal system,
- 10) monitoring of the application of law and quality of new laws,
- 11) complementing the clinics' activities with cooperation with the Stefan Batory Foundation in relation to the phenomenon of corruption,
- 12) broadening the scope of clinics' activities by introducing advising to women and nongovernmental organizations,
- 13) training on citizen rights and duties in relation to Poland's membership in the European Union.

**Professionalization and standardization of clinic activities** - this is scheduled to be the key objective for the future. Reaching this objective will first of all strengthen the position of the individual clinics and secure them with a stable future and appreciation within the legal community. This objective will be accomplished through subsidizing training, conferences, seminars and publications.

**Publishing activity** – following the first manual entitled: „The Legal Clinic – the Idea, Organization, Methodology,” the Foundation is planning to publish a textbook focusing



exclusively on the methodology of teaching law in legal clinics. The textbook will be created within a year and will be edited by Dr. hab. Fryderyk Zoll.

**Coordinating and perfecting cooperation between clinics** – this objective will be reached mainly through the participation of clinic representatives in country-level meetings and the personal contacts of the Board of the Legal Clinics Foundation with the staff of the various clinics (for example all clinics will be visited on a regular basis, in Warsaw cyclical training of clinic staff will be held). Moreover, the Board of the Foundation wishes to maintain the tradition of organizing one yearly Polish Legal Clinics Conference.

**Keeping an archive of publications relating to legal clinics and keeping statistical data** – the Board of the Foundation shall collect all materials relating to the activities of legal clinics in Poland and abroad thus building an archive of publications and articles. Collecting of half-yearly and yearly reports and of statistical data on the activities of the clinics will make it possible to obtain comparative data, and to determine the trends and directions in which legal clinics should evolve. This data will also present a statistical profile of clients, which will make it possible to determine whether clinics make correct choices as to the type of advice and legal information they offer.

**Improving the supply of IT and other equipment** – regranting subsidies and in-kind donations from corporations and law firms will allow to organize grant competitions for legal clinics in Poland. The equipment purchased will be supplied to developing and newly forged clinics.

**Promoting legal clinics activities** – fulfilling this objective will both serve the clinics (building a positive image) and enhance the clinics' ability to reach clients. To this end leaflets will be printed to inform of the activities and the addressed of legal clinics in Poland, cooperation will be forged with the largest law firms and legal corporations and the website will be continued and updated. It is also important to continue the information campaign about legal clinics targeted at local governments and state administration, so that legal clinics are considered a permanent and serious institution. Administration offices should learn to trust and appreciate legal clinics, which will encourage them to lend the students every assistance when students approach those offices on behalf of their clients.

**Forging and strengthening international cooperation** – the Polish program of clinical teaching of law is at present one of the leading programs of the kind in our region, it should therefore share its experience and initiate the creation of new clinics in the region. In the near future it should be considered to invite guests from other countries of Central and Eastern Europe to participate in trainings, courses and study visits. Representatives of the Foundation take part in international clinic-related conferences. Plans for the future include the organization of weekly or fortnightly courses/scholarships to the USA for clinic supervisors. This project would allow scholarship holders to learn at first hand how the clinical program functions in the USA, to learn the methodology of clinical work and the program of strengthening the clinic's position at the faculties of law. The American partner in this project is the New York Columbia University and the Catholic University of America in Washington. This objective demands long-term preparation and the acquiring of significant financing resources.

**Lobbying for reforms of legal corporations** – this objective will be realized mostly in cooperation with the Helsinki Foundation for Human Rights and is related to a legal campaign currently under preparation to lobby for changes in a number of regulations that hinder the functioning of legal advising organizations in Poland. Furthermore, our Foundation would like to carry out a program to encourage practicing lawyers to undertake *pro publico bono* work. This program is also to be carried out in cooperation with the Helsinki Foundation for Human Rights and is a long-term undertaking. It will require lengthy preparation and will be preceded by a pilot program in which selected nongovernmental organizations will be prepared to receive the assistance of practicing lawyers and to conscientiously cooperate with the regional lawyers' legal advisers' corporations. Moreover, this objective is already being fulfilled by the organization of the yearly "*Pro bono* Lawyer" Competition.

**Works aimed at incorporating legal clinics into the Polish legal system** – on the basis of a first draft law on legal clinics, prepared in 1998 by the Legal Clinic in Kraków, the Foundation Board has presented an amended version thereof to the Ministry of Justice and was invited to participate in the creation of the draft law on access to legal assistance. In its principle the new law shall give due consideration to the character of clinical work and shall furnish it with special rights.

**Monitoring of the application of law and the quality of new laws** – a task of great importance indeed, and one that requires special attention and thorough preparation. We hope

that the realization of this idea will be related to the “Third Sector” program of the Stefan Batory Foundation – established on the basis of a grant obtained from the Trust for Civil Society in CEE. The first segment of that project comprises the monitoring of law, the very function our Foundation intends to perform. A similar objective has been assumed by the Nongovernmental Advisory Platform, of which our Foundation is one of the leaders. Therefore, this task may become significant not only to our Foundation but also to cooperating organizations. To aid the effective fulfillment of this task, the Board has prepared a preliminary tool in the form of a reporting questionnaire to be filled out by the clinics.

**Complementing the clinic’s activities with cooperation with the Stefan Batory Foundation in relation to the phenomenon of corruption** – the Legal Clinics Foundation sees the need to join the efforts to monitor the phenomenon of corruption. It will be possible to collect information on conditions that provoke corruption and on cases of corruption from the network of clinics in Poland. For this very reason this issue was included in the Questionnaire to report on the application of the Legal Clinics Foundation subsidy. After the questionnaire is collected it will be possible to analyze and publish its results in the form of a report.

**Broadening the scope of clinic’s activities by introducing advising to women and nongovernmental organizations** – this issue is already present in the clinics’ activities. The Questionnaire to report on the application of the Legal Clinics Foundation subsidy makes the distinction between female and male clients, so that after the questionnaires are collected it is possible to generate information on female clinic clients and their problems. A similar solution has been applied to the issue of cooperation with nongovernmental organizations. The information collected will give us additional information on the needs of nongovernmental organizations. At the same time we wish to activate clinics and encourage them to deliver assistance to the organizations of the third sector. To the above effect we are planning to broaden our cooperation with the Academy for the Development of Philanthropy in Poland and the SPLOT Association.

**Training on citizen rights and duties in relation to Poland’s membership in the European Union** – after accession to the European Union many rules have changed and been modified, first of all in respect to court ruling. The ruling process and the interpretation and formal methods were supplemented by: the principle of primacy of Community Law, the principle of direct applicability of Community Law, the principle of direct effect of Community

Law, the principle of interpretation in line with Community Law, the principle of liability of the Communities and Member States for damages, and an entire system of preliminary rulings. It is worth giving future lawyers a broader training therein and make them aware of the fact that the Community law is an important point of reference for our legal order, and disseminating this knowledge among citizens as widely as possible.

## **6.5. The anticipated effects of Foundation's activities**

Legal clinics will certainly not solve the existing problem of lack of access to free of charge legal assistance, they are nevertheless the only program that supplies free of charge legal assistance on the basis of reliable and highly professional academic staff. Along with the development of the program in Poland, the academic community and the community of practicing lawyers are becoming ever more sympathetic to social problems and – as the work of the persons delivering advice is free of charge – the voluntary service is growing ever stronger.

Representatives of groups to which the program is addressed will therefore obtain additional assistance with the matters of their daily lives, which will moreover be conscientious and comprehensive.

We hope that the actions undertaken by the Board of the Legal Clinics Foundation will support the organizational potential and independence of the individual clinics. We also count on strengthening the network of legal clinics and the contacts between them. Training, conferences, exchanges and publications will support the perfecting of methods and regulations governing the clinics operations.

The new comprehensive reporting program will result in better management and will allow for on-going monitoring and research into the social needs in respect to the services rendered by the clinics. Additionally, we will obtain information on the efficiency and effectiveness of our actions.

The hitherto research demonstrates that approximately six thousand people a year obtain legal assistance as a result of the work of legal clinics. The recipients of these services are representatives of the weakest social groups, such as the unemployed, the homeless, pensioners, disabled people, crime victims, women in crisis, foreigners and refugees. Nearly 1,000 students and 100 faculty members participate in the program every year (a few dozen of whom are also practicing lawyers).

One of the ambitions of the Foundation is to establish legal clinics in all Polish academic centers. The planned activities of the Board of the Legal Clinics Foundation are aimed at building the most numerous network of clinics in Poland, and in the region. It is envisaged that in the year

2004 legal clinics will operate in all academic cities of Poland. It is assumed that subsequently additional clinics will be created in the cities where private universities also operate.

## **6.6. Epilogue**

In the times of fast and multidirectional economic and social changes a significant part of the citizens have found themselves in a dire financial situation. At the same time the state, burdened with a multitude of problems, is often unable to see the needs and expectations of individuals. Free of charge legal assistance belongs to the basic and yet often inaccessible services within the scope of every-day life problems.

Our courts provide free of charge legal assistance only within legal proceedings before a court of law. Free of charge legal assistance may not be obtained in pre-trial procedure, also there is no institution which would provide citizens with free of charge information about their rights and duties. Organizations of the third sector need to assume this duty. It is probably for this very reason that that legal clinics observe rising demand for the services they render and win ever greater appreciation in the eyes of the students and of the faculty. A few thousand people on the average obtain assistance of legal clinics every year. This number is growing all the time.

On the basis of its program the Legal Clinics Foundation has the opportunity to support and organize a new perspective for the legal clinics in Poland, in which they train the new generations of lawyers using the latest educational methods and, at the same time, they play a complementary role in the state administration system, educating citizens about their rights and duties.

**Annexes:**

1. The Statute of the Legal Clinics Foundation
2. The Standards of the Polish legal clinics' activity
3. The Deontological Code of the Warsaw University Legal Clinic
4. A set of forms handed out to legal clinic clients – University legal clinic information form
5. Periodical reporting forms – Report on the legal clinics' activity
6. Financial Regulation of the Legal Clinics Foundation
7. Application for financing clinical activity
8. Samples register of cases – example repertory
9. Legal clinics in Poland - addresslist

## **Annex 1. The Statute of the Legal Clinics Foundation**

### **The Statute of the Legal Clinics Foundation**

By the notarial deed re. A nr 291/2002 delivered on the 28<sup>th</sup> of February 2002 in the presence of the public notary Małgorzata Nowosielska in the Notarial Office in Warsaw in Poznańskiej street number 23 flat 2, the Founders: Katarzyna Hebda, Magdalena Olczyk, Łukasz Bojarski, Jakub Boratyński have established Fundacja Uniwersyteckich Poradni Prawnych (Legal Clinics Foundation), hereinafter on “Fundacja” (Foundation).

#### **I. General Provisions**

##### **§ 1**

1. The Foundation’s name states as “Fundacja Uniwersyteckich Poradni Prawnych”.
2. In relations with foreign subjects the Foundation might as well, use the translation name: Legal Clinics Foundation.
3. The Foundation holds a status of a legal person.
4. The Foundation conducts its activity according to the provisions of the 06.04. 1984 Foundations Act (Dz.U. Nr 21, poz. 97) and the present statute.
5. The time of the Foundation’s existence is unlimited.
6. The Foundation acts on the territory of the Republic of Poland and outside its borders.

##### **§ 2**

“Uniwersyteckie Poradnie Prawne” (Legal Clinics) shall be understood as clinics active under the supervision of the faculty teachers, in which the students provide free of charge legal advice for the poor members of the community and thus realize the didactical goal of their study.

##### **§ 3**

1. The domicile of the Foundation is set in the city of Warsaw.

## II. Goals of the Foundation's activity

### § 4

The Foundation effectuates the following goals:

- 1) Financial support of the legal clinics' activity and other programs of practical legal education;
- 2) Elaboration and promotion of the legal clinics' activity standards;
- 3) Elaboration and propagation, in the cooperation with the organs of legislative, executive and judicial authority, of the legal regulations and their drafts covering legal clinics' activity.

### § 5

The Foundation exercises its goals, in particular through:

- 1) Gaining financial means and their distribution among legal clinics and other subjects supported by the Foundation;
- 2) Coordination of the cooperation among the clinics;
- 3) Supporting international cooperation in the field of practical legal education;
- 4) Cooperation with public institutions and non-governmental organizations;
- 5) Contacts with the universities and other educational organizations;
- 6) Organization of the professional schooling, conferences, presentations, publications;
- 7) Gaining and processing the statistical data concerning legal clinics' actions;
- 8) Gaining and distributing *know-how* concerning legal clinics' actions;
- 9) Propagation of the idea of legal advice for poor persons;

## III. Property, income and the financial economy of the Foundation

### § 6

1. The property of the Foundation includes:

- 1) Initiation fund of 500 (five hundred) PLN, that is financial means and property laws remitted by the Founders in the foundation act.
- 2) Means acquired by the Foundation in other ways, in particular:



- a) grants, that is contracts delivering the objective sources for the statutory goals with the obligation for accounts;
  - b) donations;
  - c) successions and legacies;
  - d) interests form the Foundation's financial means;
  - e) fund-raising and public events
- 3) Guarantee fund created from:
- a) 10% of the initiation fund;
  - b) 10% of the sources from the donations, successions and grants which include such possibility in the contract with the grantor, counted off as the sources come in, until the sources reach the value of triple annual own expenses of the Foundation.

2. The guarantee fund is dedicated to the cover of the Foundation's own expenses in the years of special reduction of income or to the compensation of losses and it is deposited on a separate banking account.

#### **IV. Organs of the Foundation**

##### **§ 7**

Organs of the Foundation include:

- 1) Board of the Foundation (Board),
- 2) Council of the Foundation (Council),
- 3) Advisory Board.

#### **Council of the Foundation**

##### **§ 8**

The Council holds the deciding and control rights.

##### **§ 9**

The Council consists of the following groups of members:

- 1) Academies having legal clinics operating according to the standards and accredited by the Foundation;;
- 2) Subjects supporting the Foundation's activity

## § 10

1. Academies shall be understood as institutes, according to the provisions of the 12.09.1990 Higher Education Act (Dz.U. 1990, Nr 65, poz. 385, amended), holding the right to confer the title of master of law. The academies are represented by the directors of the clinics or by their proxies.
2. The subjects supporting the Foundation's activity acquire the membership by the resolution of the Council of the Foundation adopted by the simple majority of votes in the presence of at least half members of each group entered into the composition of the Council of the Foundation.
3. Academy, at which the accredited clinic acts, acquires the membership without the resolution, as a result of submitting to the Board a written statement concerning the entrance to the Council of the Foundation. The acquirement of the membership occurs one month after the delivery of the statement to the Board.

## § 11

1. The membership in the Council of the Foundation expires as a result of death, liquidation, handing of the resignation.
2. The membership of the academy in the Council of the Foundation expires also as a result of Council's resolution regarding the inconformity of the clinic's activity with the Standards. Such a resolution requires the majority of 75% votes given in the presence of the members of the Council representing at least 75% of the votes.
3. The membership of the subject supporting the Foundation expires also as a result of recall. The recall occurs through a resolution of the Council of the Foundation adopted by the simple majority of votes in the presence of at least half of the members of each group entered into the composition of the Council of the Foundation. The subject does not vote and its absence is not taken into the consideration when counting number of the members required to adopt the recall resolution.
4. In case of expiry of the membership of all the members of given group, other groups acquire an equal percentage status in voting.

## § 12

1. The Council of the Board elects from its members a President through a resolution adopted by the simple majority of votes in the presence of at least half members of each group entered into the composition of the Council of the Foundation. The cadency of the President lasts for 3 years. The President of the Council can hold his function for more than one cadency.
2. The President of the Council of the Foundation chairs the proceedings of the Council, represents the Council, concludes and dissolves labor contracts with members of the Board.
3. In case of a transient obstacle to hold his function, President of the Council appoints a person to fulfill his duties. If the President does not appoint such a person, it is done by the Council of the Foundation in course provided in p. 1. 15, p. 5 does not apply.
4. § 19, p. 5-7 apply in case of the expiry of the President's mandate.

## § 13

Assignments of the Council include:

- 1) Setting of the Foundation's activity programs, after consultation with the Advisory Board;
- 2) Setting of the Board's assignments along with their time limit;
- 3) Establishment of the Board members' salaries;
- 4) Supervision over the Board's actions;
- 5) Acceptance of the Foundation's annual financial plans;
- 6) Acceptance of the Board's annual reports on the Foundation's activity annual financial reports and the right of the exoneration of the Board;
- 7) Establishing the value of the salaries fund for the employees employed by the Foundation;
- 8) Adopting the rules of the Foundation's financial sources management.

## § 14

Every member of the Council has an individual right of control over the Board's actions. This right includes: investigation of all the Foundation's documents, demand from the Board,

employees, and persons cooperating with the Foundation of explanations on the Foundation's actions.

## § 15

1. The Council of the Foundation assembles at least once a year, at a routine session convened by the Board.
2. A special session of the Council can be convened by the Board in justifiable cases, as well as on the written motion of at least 1/5 of the Council's members, submitted to the Board latest of 14 days before the proposed date of the session. If, within 3 working days from the day of the submission to the Board, all of the notifications about the special session are not sent out, the proposers of the motion become entitled to convene the session according to the procedure established for the Board.
3. The Board notifies the Council's members about the time and place of the session in written, with acknowledgement of receipt sent at least 14 days before the fixed date of the routine session. In case of special session, this time is limited to 7 days.
4. The notification of the session includes in particular:
  - a) date, time and place of the session;
  - b) agenda;
  - c) projects of resolutions to be put to the vote;
  - d) manner of voting for the particular resolutions.
5. The resolution is invalid if adopted outside the agenda, or if its project has not been introduced in the notification of the session.
6. Provisions of p. 5 do not apply, if all the members of the Council are present at the session and they agree, by the simple majority resolution, to put to the vote the project not included in the agenda.
7. The Council of the Foundation can appoint Commissions from its composition.
8. Subject which acquires the membership in the Council of the Foundation, informs the Foundation within 14 days about the address to which all the letters can be successfully delivered. If there is no such information, the President immediately calls the subject to the completion, and in case of longer than 14 days delay, successful delivery can be done in the subject's domicile or in the place where the subject's managing organ is situated. If the above data is impossible to establish, the letter can be left, with the result of delivery, to the Board's disposition. Required information can be completed any time.

9. No more than one mandate can be held in by one person.

## § 16

1. Unless the Statute states otherwise, Council of the Foundation adopts the resolutions at the session, in open vote, by simple majority of given votes. There are only for and nay votes.
2. Every member group holds 50% of votes. The pool of votes falling to the particular group is divided equally among its members.
3. In case of the equal number of votes for and nay, the position of the President of the Council or his proxy is deciding.

## § 17

1. The following procedures of voting are feasible:
  - a) simple: at the presence of the voting members of the Council of the Foundation;
  - b) written: by sending the letter personally signed or via electronic mail; use of electronic mail requires the statement to be provided with secure electronic signature verified by the valid qualified certificate as understood in the 18.09.2001 Electronic Signature Act (Dz. U Nr 130, poz.1450).
  - c) Validity of the vote in the procedure described in p. 1b depends on the answer's delivery within 14 days from the day of the resolution project' s delivery.

## **The Board**

## § 18

The Board manages affairs of the Foundation and represents the Foundation

## § 19

1. The Board consists of 5 persons
2. The cadency of the Board lasts for 2 years. Every member of the Board can held his/her function for more than one cadency.

3. The Board is appointed by the Council. The appointment takes place with the resolution voted by the simple majority of votes in the presence of at least half of the members from each group included in the Council. The Council appoints the President of the Foundation from the members of the Board.
4. Any member of the Council or any representative of such member, can not have a seat in the Board. Acceptation of such position is tantamount to the suspension of the person's membership in the Council for the period of the function.
5. The expiry of the mandate of the member of the Board during the cadency takes place in the consequence of death, resignation or removal.
6. Removal of the Board or particular members of the Board, can take place in every time and can be voted with the absolute majority in the presence of at least half of the members from each group included in the Council. The mandate of the Board's member appointed before the end of the Board's cadency, expires along with the expiry of the other members' mandates.
7. Existing Board or Board's member functions until the new elected Board or Board's member takes over the duties.
8. Whenever the Board's cadency ends or member's mandate expires, every member of the Council has the right to convene the Council's session in order to appoint a new Board or new member of the Board.

## § 20

Assignments of the Board include in particular:

- 1) Gaining the sources for the Foundation's activity;
- 2) Management of the Foundation's property according to the rules provided in the regulations adopted by the Council of the Foundation, including distribution of the means to the subjects using the financial support of the Foundation;
- 3) Preparation of the annual drafts of the Foundation's financial plans;
- 4) Preparation of the annual reports of the Foundation's actions and their presentation to the Council, Advisory Board and to the applicable national education affairs Minister, Minister of Justice, as well as to the public opinion;
- 5) Execution of the Council's resolutions;
- 6) Control of the legal clinics' actions and their conformity with the standards mentioned in § 26;

- 7) The right of the motion for the ascertainment of the clinical activity's conformity or inconformity with the standards;
- 8) Creation of the organizational units of the Foundation;
- 9) Establishing the rules of employment, salaries and other gratification for the employees of the Foundation as well as for other persons cooperating with the Foundation;
- 10) The right of motion for changing the amount of the salaries fund.

## § 21

1. Actions of the Foundation's affairs are led by the President of the Board.
2. The Council's sessions are convened by the President of the Board, who can commit this action to a member of the Board.
3. Matters exceeding the scope of regular functions require a previous resolution of the Board. Such matters include in particular:
  - a) matters described in § 20, p 3,4,7,9;
  - b) matters concerning the property of the Foundation – including contracting the obligations – which object exceeds equivalent of 2000 EURO.
4. The President of the Board notifies the members of the Council about a resolution conferring or declining financial support of the Foundation or conferring the sources to the subject which uses the financial support of the Foundation or applies for it. Within 30 days from the delivery of the resolution's text to all its members, the Council can, by the resolution adopted by the majority of 75% votes at the presence of the subjects representing at least 75% of the votes, reverse the Board's decision. Until the day of resolution's adoption or the time-limit to do so, the Board does not take any actions to enforce the resolution.
5. The Board carries the resolution, by simple majority of votes in the presence of at least 3 members.

## § 22

1. The President of the Board himself or two members of the Board acting together are entitled to present the declaration of will on behalf of the Foundation.
2. Cooperation of the President of the Board and at least two members of the Board is required when the resolution of the Board is required.

## **The Advisory Board**

### **§ 23**

The Advisory Board states as consultative and advisory body.

### **§ 24**

1. Persons whose competence and authority are essential to the Foundation's activity can be members of the Advisory Board.
2. The Advisory Board's members are appointed and dismissed by the Council by the vote of absolute majority in the presence of at least half of the members of every Council's group.
3. The Advisory Board's members receive the Board's reports on the Foundation's activity mentioned in § 20, p.4.
4. Every member of the Advisory Board has an individual consultative and advisory right.

## **V. Finance of the legal clinics and other subjects**

### **§ 25**

1. The legal clinics and subjects contesting for the financial support of the Foundation file applications for financial grants on the realization of the program's assignments and the costs of the activity.
2. The Board verifies these applications considering the advisability of the costs as well as the previous years' effectiveness and reliability in financial grants management.
3. The Board forms consolidated applications for financial grants to the Founders and donators.
4. Acquired means are distributed by the Board among the applicators. If acquired means can not cover all the applicators' requests, the Board reduces amount falling on every accredited legal clinic according to the reliability rule.
5. Legal clinics file annual financial reports which are offered to the Founders and donators.
6. Legal clinics' obligation mentioned in p. 1 does not exclude the Board's individual right of application for the financial grants to the Founders and donators, independently form the clinics' applications.



7. The Council of the Foundation, within 3 months from the day of valid registration of the Foundation, adopts the regulations of the financial sources management. Regulations will establish particular rules of the Foundation property's management and the distribution and clearing of the sources granted to the subjects using the financial support of the Foundation.

8. Foundation can not provide financial support to the clinics, which activity is not consistent with the Standards. Present provision does not exclude a single financial support for the establishment of a new clinic.

## **VI. Legal clinics accreditation**

### **§ 26**

1. The Board establishes a draft of the legal clinics activity's standards (Standards) with regard to the following requirements:

- a) legal clinic assures reliability of the offered services;
- b) legal advice offered in the legal clinic is free of charge;
- c) legal clinic assures necessary confidence regarding its services;
- d) legal clinic assures safety of the documents committed by the clients; legal clinic does not accept the original copies of documents;
- e) legal clinic runs a secretariat according to the extent of its activity;
- f) before accepting the case, legal clinic informs the client in written about the rules of the clinical services, in particular stating that:
  - student is a person taking the case,
  - student and the legal clinic's worker can not refuse to give evidence or answer a question of the court, prosecutor or any other authorized organ,
  - legal clinic does not take cases in which an advocate or counsel of law already participates,
  - the client has a right to turn any comments on the given legal advice to the Board of the Foundation,
  - legal advice is given in written;
- g) legal clinic sets a qualifying procedure regarding their clients which is to assure that the client can not afford payable legal advice; in case of circumstances showing that the client can afford such a service offered by an advocate or counsel of law, legal clinic immediately resigns the case;

- h) legal clinics sets, according to the proper rules of law, information system on the clients which is to guarantee minimal risk of the conflict of interests;
  - i) legal clinic is obligated to conclude an insurance contract on the liability for damages, the guarantee amount can not be lower than 10.000 EURO;
  - j) legal clinic assures the supervision of the Faculty's workers over the clinic's activity.
2. Before creating the draft of the Standards, the Board will call the Council and the Advisory Board to submit, in 3-months period, their proposals of the Standards.
  3. The Council of the Foundation adopts the Standards.
  4. There may be a transition period included in the Standards for the legal clinics to adapt their activities to the proper requirements.
  5. On application of the 1/3 of the Council's members representing at least 75% of the votes, the Council may pass a resolution concerning the changes of the Standards.

## § 27

1. On application of a registered clinic, the Board opens the procedure controlling the conformity of the clinic's activity with the Standards. After examining whether the clinic fulfils the requirements described in § 2 and § 26, the Board submits to the Council of the Foundation an application to approve the conformity of the clinic's activity with the Standards.
2. The Council of the Foundation passes a resolution on the approval of the conformity or inconformity of the clinic's activity, on the application of the Board. The university, at which the legal clinic accredited by the Foundation operates, acquires the membership in the Council according to the procedure provided in the § 10, p. 3 of the Statute.
3. In case of inconformity of the clinic's activity with the standards the Board can, at any time, introduce to the Council of the Foundation an application for exclusion from the Council.
4. The right to introduce an application mentioned in p. 3 applies also to every member of the Council. The application is submitted to the Council and the Board investigates, at appropriate time, the conformity of the clinic's activity with the standards and on this basis draws an opinion including its own attitude towards the case. The opinion is attached to the application.
5. In order to consider the application, the Board immediately calls the Council's session. If the application of the Council's member is not submitted to the Council within 30 days from its submission, every member of the Council acquires the right to call the session.

6. In order to investigate the conformity of the clinic's activity with the Standards, clinical regulations, reports, statements and other documents can be required to present and, if needed, the Board can control the activity of the clinic directly.

7. The Council of the Foundation provides the concerned clinic with a possibility of an active participation in the procedure regarding the conformity of the clinic's activity with the Standards. The Council allows the clinic to comment on the collected materials and the application before passing the resolution.

8. The Board delivers the resolution along with the interpretation concerning the conformity with the Standards to the concerned clinic and members of the Council of the Foundation.

## **VII. Cooperation with legal clinics**

### **§ 28**

In order to achieve the statute goals, the Foundation may commit realization of the particular affairs to the legal clinics, assuring the means to cover necessary costs.

## **VIII. Temporary and Final Provisions**

### **§ 29**

1. During the first year of the Foundation's activity, the Council of the Foundation consists of the Founders as temporary members. Other members are regular members.

2. The Founders' mandates expire within a year from a day of a valid registration of the Foundation.

3. After admission of the first regular members to the Council, the Founders create a temporary group with 50% votes in the Council. The other votes belong to other members of the Council. In every group, the votes of all its members have the same proportional value. Each member of the Council votes individually.

4. Until the expiry of the Founders' mandates, the resolutions of the Council are adopted by the simple majority of votes, when at least half of the Founders and half of other members vote. In case of the equal number of votes for and nay, the deciding votes belongs to the Founders.

5. In period of one month from the expiry of the mandate mentioned in p. 2, the Founder can submit to the Council a declaration of accession to the Council as a regular member. Presentation

of such a statement in given time causes the Founder to become a regular member – that is a subject supporting the Foundation’s activity as understood in § 9.

### § 30

The assignments of the Council of the Foundation during the first year of its activity include in particular:

- a) adoption of the standards of clinical activity
- b) appointment of the first Board
- c) granting the membership in the Council of the Foundation
- d) adoption of the regulations concerning the rules and methods of the financial sources management of the Foundation, including the criteria of the distribution of such sources among the clinics and other subjects.

### § 31

1. The statute can be changed by the resolution of the Council of the Foundation adopted by the absolute majority of given votes, in the presence of at least half members of each group included in the Council.
2. The change of the statute can not concern the goals stated in the founder’s act.

### § 32

1. The Council of the Foundation decides upon the liquidation of the Foundation in the resolution adopted by the  $\frac{3}{4}$  majority of votes in the presence of all the members.
2. The Board is the liquidator of the Foundation.
3. The duties of the liquidators include:
  - a) submission of the liquidation petition to the register court,
  - b) calling, in way of press announcements, of the Foundation’s creditors, to report within the 3 months from the announcement date,
  - c) drawing a balance of the liquidation opening and the list of creditors,
  - d) drawing a financial plan of the liquidation and the plan of satisfying the obligations,
  - e) recovering the debts, fulfilling the obligations and realizing of the Foundation’s property,

f) remitting to the indicated subjects property means left after the creditors had been satisfied,

g) submission to the register court of the liquidation's completion along with the petition to erase the Foundation from the register.

4. The property means created after the liquidation of the Foundation shall be delivered, in equal parts, to the legal clinics which are members of the Council to continue their didactical activity.

## **Annex 2. The standards of the Polish legal clinics' activity**

### **1. Legal clinic assures reliability of its services.**

A. At least once a week (according to the academic calendar) seminars are conducted to discuss cases being currently worked on by the clinic or its organizational units.

B. The clinic does not allow its students or supervisors to be overburden by the number of cases in a way which could threaten the quality of the clinical service. The director of the clinic sets a maximum number of cases to be taken by 1 student at a time.

C. The clinic provides its students with trainings regarding legal ethics.

### **2. Legal clinic assures supervision of the faculty teachers over the students.**

A. Director of the clinic, who is an independent faculty member, manages the clinic's activity. His supervision includes the merits of the clinical service.

B. Director may appoint other faculty members, candidate doctors or students to some of the supervisory actions.

C. Director of the clinic or persons appointed by him according to 2B, may also use the assistance of other persons. The assistance however may be only of a technical and organizational nature.

### **3. Legal advice provided by the clinic is free of charge.**

### **4. Legal clinic assures the necessary confidentiality of its services.**

During seminar classes names of the clients remain confidential, unless their relevance is indispensable.

### **5. Legal clinic assures the protection of the documents submitted by the clients; legal clinic does not accept original copies of the documents.**

Case documentation is stored in a safe place accessible only to the director and persons appointed by him.

### **6. Legal clinic establishes secretary office according to the scope and characteristics of its activity.**

A. Legal clinics runs its office according to the best of its financial ability; however:

- there is a place where clients can obtain all information concerning their cases; clinical office works at least 1 hour every weekday; or if it is not possible, it has regular working hours, not less than 1 hour twice a week. Legal clinic notifies its clients about its working hours,
- there is at least one person responsible for the overall administration of the clinic.

**7. Before accepting the case, legal clinic informs the client in written about the rules of the clinical service, in particular stating that:**

- student is a person taking the case,
- student and the legal clinic's worker can not refuse to give evidence or answer a question of the court, prosecutor or any other authorized organ,
- legal clinic does not take cases in which an advocate or legal counsel already participates,
- client has a right to turn any comments on the given legal advice to the Board of the Legal Clinics Foundation,
- legal advice is given in written only,
- legal clinic service is offered only for those whose financial situation does not allow for the payable legal advice.

A. Before accepting the case, legal clinic provides the client with the above information in written and receives a statement signed by the client confirming that the client accepted the information.

B. Legal clinics provides the client with the proper documentation containing the above information.

C. The information form contains present address, e-mail address and fax number of the Legal Clinics Foundation.

D. Legal clinics does not provide oral advice, even in emergency or trivial cases.

**8. Legal clinic carries out a qualifying procedure regarding their clients which is to assure that the client can not afford payable legal advice; in case of circumstances showing that the client can afford such a service offered by an advocate or legal counsel, legal clinic immediately resigns the case.**

A. Before accepting the case, the client submits the statement that his/her financial situation does not allow for the payable legal advice.

B. In case of any doubts as of the reliability of the client's statement, legal clinic asks for additional explanation and possible documentation. If the client refuses to do so, legal clinic resigns the case.

C. While examining the client's financial situation, legal clinic includes not only the value but also the liquidity of the property. It is permissible to provide legal advice to a person whose property is not liquid even if its value is substantial. Lack of liquidity occurs upon at least one of the following prerequisites:

- disposal of the client's property items would cause essential existential difficulties for him/her or closely related persons (i.e. client's apartment; items necessary for work);
  - legal advice is needed immediately and the client proves that it is not possible to dispose the item other time;
- and the client does not own any other property items.

**9. Legal clinic sets, according to the proper rules of law, information system about the clients, which is to guarantee minimal risk of the conflict of interests.**

A. Legal clinic runs the record of its hitherto and present clients.

B. Before giving the advice, legal clinic determines whether the conflict of interests occurs in the case. If the risk of such conflict appears legal clinic does not accept the case. If the clinic still runs the case of the other party of the conflict, it resigns it as well. In exceptional cases legal clinic may not resign formally accepted case if one of the following prerequisites occurs:

- Legal clinic has not obtained any essential information about the case from the other party of the conflict;
- The other party of the conflict has moved for to the clinic in order to cause the conflict.

C. Legal clinic does not take the cases in which the conflict of interests between the client and following institutions may occur:

- the university at which the clinic exists,
- member of the clinic's staff or student of the clinic,
- employee of the law faculty of the university at which the clinic exists.

**10. Legal clinic is obligated to conclude an insurance contract on the liability for damages, the guarantee amount can not be lower than 10.000 EURO**

A. The insurance contract is concluded by the academy as an insurer.

B. The academy, students and the clinic's staff are insured.

C. Before accepting the case legal clinic receives from the client a written statement confirming that the client agrees to exclude the liability for damages unless the damage was caused by intentional guilt.

D. The given guarantee amount concerns the liability for damage in every individual case.



### **Annex 3. The Deontological Code of the Warsaw University Legal Clinic**

On the basis of the above legal ethics code, legal clinics have undertaken to create their own ethical code. The below deontological code of the Warsaw University Legal Clinic may serve as an example.

#### **The Deontological Code of the Student Legal Assistance Center at the Faculty of Law and Administration of the Warsaw University, the "Legal Clinic"**

##### **Art. 1**

Students and supervisors (hereinafter referred to as Clinic coordinators) shall protect the clients' best interest audaciously and honorably, and without consideration to any consequence to themselves or any other party.

##### **Art. 2**

The students' and coordinators' attitude shall express willingness to lend assistance to the client.

##### **Art. 3**

In the delivery of legal assistance students and coordinators shall observe the rules of conscientiousness and diligence, they shall produce their work in a timely manner.

##### **Art. 4**

Students and coordinators shall not disclose and keep secured from dissemination and wrongful use any information obtained during the course of their participation in the Clinic's activities. This obligation is not limited in time.

##### **Art. 5**

The Clinic may not attend to cases where the client's interest conflicts with that of:

1. A person who is or has been a client of the Clinic;

2. A person who is or has been a client of a person who acts in the Clinic as a student, coordinator or member of the administrative staff; a person who is or has been a client of an entity within the framework of which the persons mentioned above delivered or participated in the delivery of legal assistance.

#### **Art. 6**

Clinic students and coordinators shall not undertake legal assistance:

1. if its result could concern themselves or their property;
2. if they previously delivered legal assistance to the opposing party in the same case or a related case or acted as witness;
3. against a close person or a person with whom they are in a serious personal dispute;
4. to clients with conflicting interests, also despite the clients' consent. Should conflicts of interest manifest themselves within the course of delivery of legal assistance the student is obliged to inform his client of their inability to continue its delivery.

#### **Art. 7**

Students who deliver paid legal assistance in another entity shall not be Clinic students.

#### **Art. 8**

Students and coordinators shall not deliver legal assistance that would facilitate committing a crime or would indicate the possibility of avoidance of criminal responsibility for crime that would be committed in the future.

#### **Art. 9**

Students shall not provide false information in any legal opinion or any pleading they draft.

#### **Art. 10**

Clinic students and coordinators shall not justify violation of ethics with suggestions made by a client.

**Art. 11**

Clinic students and coordinators shall observe the rule of substantiveness in delivering legal assistance.

**Art. 12**

In delivering legal assistance, Clinic students and coordinators shall consider legal and non-legal aspects of problems identified from the point of view of the client, as well as the client's system of values. When conferring with clients, students shall take into consideration the need to deliver moral support to the client.

**Art. 13**

Students shall actively include the clients in reviewing options to solve the problem, and conscientiously present them with the legal options for protecting their rights.

**Art. 14**

Students shall inform the clients of any action undertaken within the framework of legal assistance delivered to them and of their result, they shall also promptly deliver answers to clients' questions.

**Art. 15**

Students shall refuse legal assistance to clients whose trust they lost.

**Art. 16**

Students shall not deliver legal assistance to persons who are unauthorized to receive such assistance.

**Art. 17**

At client's request, the Clinic shall surrender all documents supplied by the client and copies thereof.

**Art. 18**

The Clinic rests under no obligation to incur costs relating to the delivery of legal assistance, such as court fees.

**Art. 19**

Clinic students and coordinators shall accept no financial profit or personal benefit in return for delivery of legal assistance.

**Art. 20**

Student and coordinator relations shall be marked by friendliness and the desire to help others.

## Annex 4. University legal clinic – Information Form

- page 1 -

**University Legal Clinic**  
at the University .....

**Office:** ..... , **phone./fax.:** .....

**Business hours:** .....

Legal Clinics Foundation  
ul. Szpitalna 5, lok. 5, 00-031 Warszawa,  
phone. (022) 828-91-28, Fax (022) 828 91 29, e-mail: biuro@fupp.org.pl

### INFORMATION FORM

Date of registry:	Section :
Date of closure:	Student's name:
Number:	Supervisor:

Name and Last Name

Address

□□□-□□-□□

Home phone number (if other – please specify)

Clinic annotations:

<p>1. Type of case:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"><input type="checkbox"/> penal</td> <td style="width: 50%; border: none;"><input type="checkbox"/> civil</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> family</td> <td style="border: none;"><input type="checkbox"/> inheritance</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> labour</td> <td style="border: none;"><input type="checkbox"/> social aid</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> administrative</td> <td style="border: none;"><input type="checkbox"/> housing</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> financial</td> <td style="border: none;"><input type="checkbox"/> women's rights</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> refugee</td> <td style="border: none;"><input type="checkbox"/> disability</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> health care</td> <td style="border: none;"><input type="checkbox"/> NGO</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> other, please specify</td> <td style="border: none;"></td> </tr> </table> <p>.....</p>	<input type="checkbox"/> penal	<input type="checkbox"/> civil	<input type="checkbox"/> family	<input type="checkbox"/> inheritance	<input type="checkbox"/> labour	<input type="checkbox"/> social aid	<input type="checkbox"/> administrative	<input type="checkbox"/> housing	<input type="checkbox"/> financial	<input type="checkbox"/> women's rights	<input type="checkbox"/> refugee	<input type="checkbox"/> disability	<input type="checkbox"/> health care	<input type="checkbox"/> NGO	<input type="checkbox"/> other, please specify		<p>2. How the client learnt about the clinic:</p> <table style="width: 100%; border: none;"> <tr> <td style="border: none;"><input type="checkbox"/> family member</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> friend</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> newspaper</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> brochure</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> radio</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> TV</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> internet</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> other:</td> </tr> </table> <p>.....</p>	<input type="checkbox"/> family member	<input type="checkbox"/> friend	<input type="checkbox"/> newspaper	<input type="checkbox"/> brochure	<input type="checkbox"/> radio	<input type="checkbox"/> TV	<input type="checkbox"/> internet	<input type="checkbox"/> other:	<p>3. Has the client used professional legal assistance before:</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<input type="checkbox"/> penal	<input type="checkbox"/> civil																									
<input type="checkbox"/> family	<input type="checkbox"/> inheritance																									
<input type="checkbox"/> labour	<input type="checkbox"/> social aid																									
<input type="checkbox"/> administrative	<input type="checkbox"/> housing																									
<input type="checkbox"/> financial	<input type="checkbox"/> women's rights																									
<input type="checkbox"/> refugee	<input type="checkbox"/> disability																									
<input type="checkbox"/> health care	<input type="checkbox"/> NGO																									
<input type="checkbox"/> other, please specify																										
<input type="checkbox"/> family member																										
<input type="checkbox"/> friend																										
<input type="checkbox"/> newspaper																										
<input type="checkbox"/> brochure																										
<input type="checkbox"/> radio																										
<input type="checkbox"/> TV																										
<input type="checkbox"/> internet																										
<input type="checkbox"/> other:																										

**To obtain a legal opinion:**

- This form along with a short description of the problem and xero copies of related documents (no originals will be accepted) should be submitted at the clinic's office.
- Based on the form and documents the clinic will decide if an opinion can be prepared on the case.
- The clinic will contact the applicant. If the clinic decides to accept the case, the meeting with the applicant will be scheduled.

**Opinion rules:**

- Opinions are given in written only and according to the above procedure. No phone or oral advise will be given.
- Submitting this form does not guarantee that the client will receive an opinion.
- Opinions are prepared by the students.
- Opinions are free of charge.
- Preparation of opinions serves educational goals.
- Student and the supervisor can refuse to give testimony related to the case and answer the question of the court, prosecutor or other authorized institution.
- The clients can inform the Board of the Legal Clinics Foundation about the service they received from the clinic.

**Statement:**

- I hereby certify that my financial situation does not allow to cover the costs of the professional legal assistance. The legal clinic will immediately refuse to prepare or continue to prepare an opinion if it is informed about any professional assistance (legal adviser, advocate) being granted to the client
- I do understand that the opinion is prepared by the student and only at the risk of the person's applying for the opinion. The clinic can decide not to prepare an opinion at any time. In case of any damage caused by the opinion or lack of the opinion, the liability of the university, its employees and students is excluded unless the damage was intended.
- I do understand that the students and the employees of the University are not bound by the rule of confidentiality analogous to the one of the advocates and thus they will be obliged to reveal any information if requested by the court.
- I agree to reveal my personal data if the case is directed to the Ombudsman's Office. Such a procedure is possible only upon the request of the client.
- I agree to the above conditions for the preparation of the opinion.
- I agree that the University Legal Clinic can process my personal data, including data revealing my descent, political views, religious or philosophical beliefs, religious, party or union membership as well as the information on my health, genetic code, addictions or sexual life. The data is to be used in correlation with the legal opinion received from the legal clinic and with the educational objectives of the process.
- I declare I was informed that the hereby statement is discretionary, that the ..... Legal Clinic is the administrator of the data base, according to the art. 24, par. 1.3 of the Law on the personal data protection. I have the right to inspect my data and to change it. My data will not be a subject of further processing inconsistent with the objectives described in the statement (art. 26, par. 1.2) nor will it be made available to other subjects.

....., date .....	..... (signature) (name and last name)
-------------------	---

## Annex 5. Report on the legal clinic's activity

### Report on the legal clinic's activity

Report: *(check the proper one)*

6 months

Final

Name of the legal clinic:

Contract dated on.: *(if applicable)*

Amount of donation received : *(if applicable)*

Accounting period: *(if applicable)*

#### A. Financial report

*(Fill in the attached application )*

#### B. Statistics of the problems:

1. Legal clinic accepted  cases in the accounting period

2. Category	Number of cases		5 specified examples
	women	men	
criminal law (including the offenses and temporary custody)			
general part of civil law (including obligations and property law)			
family law (divorce, alimony, fatherhood establishment)			
law of succession			
labor, social security and unemployment law			
social aid			
administrative law and procedure			
housing law (including the homelessness and eviction)			
financial law (including tax, debts and loans)			
women violation			
refugees and foreigners law			
rights of disabled persons			

health care system		
legal aid for NGOs	(number of consultations and opinions)	(Please list all the organizations provided with legal assistance).
other, please specify .....		

3. Additional questions:

- a) How many students work at the clinic?
- b) How many supervisors work at the clinic?
- c) How long does it take to solve the problem (weeks, months, years)?  
How many cases require a short information and explanation only?

Time	Number of cases	% of the cases
Short case (1-2 visits, up to 2 weeks)		
Several visits (between 2 weeks and 2 months)		
Between 2 months and one year		
More than one year		
Total:		

4. How did the clients learn about the clinic (in %)

Source of information	Women	Men
Family member		
Friend		
Newspaper		
Information brochure		
Radio		
TV		
Internet		
Other		

5. Have the clients received any professional, payable legal service before? (in %)

	Women	Men
Yes		
No		

6. Monitoring of the law quality and corruption cases

- a) Please list the problems observed during the clinical work concerning the interpretation, application and possible novelization of law as well as the “gaps” in legal system. Keep the following order of the information:
- Case description.
  - Provisions dealt with
  - Suggested solutions
- b) Please list the cases accepted by the clinic in which the corruption process was observed. Keep the following order of the information:
- Case description.
  - Provisions dealt with



- Suggested solutions

7. **Most important achievements and successes of the clinic.**
8. **What does the clinic need in the near future to develop?**  
Please list the examples with explanations (i.e. financial means, trainings, equipment, books, relations with corporations, faculty's support, changes in law)
9. **When will the clinic be able to function without the Legal Clinics Foundation's support?**
10. **Comments and suggestions concerning the activity of the Legal Clinics Foundation.**

## **Annex 6. Financial Regulations of the Legal Clinics Foundation**

### **I. General principles**

1. § 6 of the Foundation's Statute describes the property statement
2. Assignments of the Board concerning financial management include:
  - a) gaining of the sources for the Foundation's activity,
  - b) management of the Foundation's property,
  - c) preparation of the drafts of the Foundation's annual financial plans,
  - d) organization of the contests concerning the legal clinics' financing, evaluation of the applications and the distribution of the sources.

### **II. Passing the budget**

3. The annual financial plan of the foundation comprising the period from the 1<sup>st</sup> of January until the 31<sup>st</sup> of December, is submitted to the Council of the Foundation no later than October 30<sup>th</sup> of the year prior to the year related to in the financial plan. To pass the budget the Board of the Foundation convenes the Council's session.
4. The Council of the Foundation adopts the foundation's budget in time of the 30<sup>th</sup> of November of the year prior to the year related to in the financial plan. If the budget can not be adopted in due time, financial management of the foundation is carried on based on the financial plan introduced by the Board.
5. Annual financial plan of the Foundation includes:
  - a) On the income side:
    - a. all of the planned sources gained by the Foundation,
    - b. surplus from the previous years.
  - b) On the expenses' side:
    - a. costs of the Foundation's activity,
    - b. sources assigned for clinic's financing,
    - c. required contribution to the guarantee fund.
6. The expenses of the Foundation can not exceed its income.

### **Usage of the guarantee fund**

7. In case of the expected, particular decrease of the income (at the time of the financial plan's drafting) or in case of the arisen loss (after the budget's adoption), the Board passes a resolution to apply to the Council of the Foundation for the guarantee fund's sources. At the same time the Board summons a

special session of the Council. The resolution concerning the usage of the guarantee fund sources requires the approval of all the Board's members.

8. A written application in this matter along with its motivation is introduced to the Council of the Foundation.
9. The Council of the Foundation in one month time since the delivery of the application passes a resolution concerning the granting of the guarantee fund sources.
10. In case of the rejection of the application, the Board modifies the financial plan adjusting planned expenses to the decreased income and presents the revisal of the plan to the Council of the Foundation.

### **Budget surplus**

11. The Board submits to the Council report on the budget realization, based on which the Council passes the exoneration.
12. In case of the budget surplus the Board submits the application concerning the designation of 70% of this amount. 30% of the surplus is managed by the Board.

## **Regulation of the legal clinics' financing**

### **General provisions**

1. Financing of the legal clinics' activity includes delivery of the financial sources on the realization of the program assignments and the cover of the activity costs of the following subjects:
  - a. Legal Clinics described by the Statute of the Foundation,
  - b. Other subjects – not legal clinics - carrying on activity of the legal education
2. Distribution of the financial sources concern in particular legal clinics accredited by the Foundation, and depending on the amount of additional sources – might concern also other subjects mentioned in p. 1a and 1b.
3. Financing of the clinic's activity comprises period of its annual or semi-annual activity.

### **Applications**

4. Evaluation of the applications for financing of the clinic's activity takes place twice a year in annual and semi-annual cycles
5. **Annual cycle** Time limit for the application expires on the 30<sup>th</sup> of June.

6. The Foundation evaluates the application and announces the amount of the money granted no later than August 31<sup>st</sup>. Payment of the financial sources is done after the applications' evaluation procedure is completed, however no later than 31<sup>st</sup> of September.
7. Legal clinic is obliged to submit:
  - a. semi-annual report of the financial activity no later than 31<sup>st</sup> of January of the year following the one in which the application was submitted,
  - b. annual (final) report of the financial activity no later than 30<sup>th</sup> of June of the year following the one in which the application was submitted.
8. **Semi-annual cycle** Time limit for the application expires on the 15<sup>th</sup> of October.
9. The Foundation evaluates the application and announces the amount of the money granted no later than November 30<sup>th</sup>. Payment of the financial sources is done after the applications' evaluation procedure is completed, however no later than 31<sup>st</sup> of January of the year following the one in which the application was submitted.
10. Legal clinic is obliged to submit the final report of the financial activity no later than 31<sup>st</sup> of July of the year following the one in which the application was submitted :
11. In case of repeated application for the financing from the Foundation legal clinic is obliged to submit an initial final report covering the costs from the end of the accounting period until the 30<sup>th</sup> of April of the year following the one in which the application was submitted.
12. Applying for the clinic activity's financing is done only on the special forms provided by the Foundation or published in Internet.
13. Applications submitted after the deadline will not be considered.
14. The application form should include:
  - a) short description of the clinic's activity, its main goals and forms of action,
  - b) legal status of the clinic or the subject entitled to negotiate contracts on the behalf of the clinic,
  - c) list of persons employed at the clinic (regardless of their legal title),
  - d) list of students participating in the clinic activity,
  - e) list of coordinators;
  - f) cost-estimate of the activity in the time period included in the application
  - g) information about:
    - i. Fulfilling the standards of the Foundation,
    - ii. Number of the cases accepted by the clinic in the period of academic year previous to the application's submission, including number of closed cases,
    - iii. Number of didactical hours realized by the clinic,
    - iv. Other financial sources of the clinic
15. The Board has the right to demand, at any time, organizational and financing information concerning the clinic's activity.

### **Qualification procedure**

16. The division of the sources is done through a contest. The results of the contest are given not later than 31<sup>st</sup> of August for the annual cycle and 30<sup>th</sup> of November for the semi-annual cycle.
17. Qualification procedure proceeds as follows:  
The Board prepares:
  - a) list of applications
  - b) proposal of the sources' distribution among the clinics taking into account the propriety of the borne costs as well as the efficiency and reliability of the management of the sources granted by the Foundation in pervious years based on the criteria mentioned in p. 14.
18. In case, when gained by the Foundation sources dedicated to the clinic's activity can not cove the entire amount which the clinic had applied for, the Board reduces the amounts falling on each clinic according to the principle of purposefulness, taking into account among other things: scope and field of activity of the applicant, its experience, annual average number of the clients, reliability of the substantive and financial reports as well as the plan of the further activity and financing.
19. The division of the sources is discussed by the Board during a closed meeting. If, after distribution of all of the sources, a free amount is left, the distribution resolution includes provisions concerning such an amount. The Board is not obliged to motivation for its attitude toward the grantees.
20. The Board's resolution concerning the distribution of the sources is overt. The adoption of the resolution requires the majority of 4 votes.

### **Shifting the sources**

21. It is allowed to shift the sources of the budget included in the application in the amount not exceeding 10% of the grant. To shift more than that, the Foundation's written (under penalty of invalidity) consent must be obtained.

### **Reports and accounts**

22. The clinic is obliged to present financial activity reports in times given above. Final reports are available for the Founders and donors.
23. Unused sources in the budget year are returned to the Foundation and supplies the reserve fund until its full value is reached. After the reserve und is established the unused sources come back to the Foundation's budget and are counted as the income of the Foundation.

### **The contract on the grant's transfer**

24. The financial sources granted by the Foundation will be transferred to the grantee based on the contract. A sample of such contract is attached to the present Regulations. The contract may include additional conditions of the money transfer based on the particular contract between the Foundation and its grantor.

### **Final provisions**

25. In particularly justified situations the Board may, based on the consent of all its members, retract from the deadlines established in the present Regulations.
26. The present Regulations are of the exclusively internal nature and can not be the ground for any claims toward the Foundation. They do not limit or exclude the obligations (included in the financing contracts) imposed on the subjects using the Foundation's support.

## Annex 7. Application for financing clinical activity

### APPLICATION FOR FINANCING CLINICAL ACTIVITY

Please, prepare the application for financing precisely according to the following instructions and requirements:

- the application must be typed legibly (handwritten application will not be considered)
- when filing the application for financing, the arrangement of the questions and the space provided for the answers must stay as they are

#### I. GENERAL DATA

1. Director of the clinic/Responsible person:

*(name, surname, private address, phone, e-mail)*

2. Name and address of the place where clinic is situated:

3. Time limit for the realization of the project 12 months.

4. Planned time to begin ..... to complete .....

5. Time of the project's commencement:	6. Time of the project's completion:
--	--------------------------------------

*(gray spaces are filled by the FUPP)*

7. Planned outlays (PLN) total .....	8. Granted sources (PLN) total .....
---	---

*(gray spaces are filled by the FUPP)*

#### II. DESCRIPTION OF THE FOUNDATION'S ACTIVITY

a. Short description of the activity, its main goals and forms of action *(max. 1/2 page)*

- b. Legal status of the clinic or the subject entitled to negotiate the contracts on behalf of the Foundation:

--

- c. List of persons rendering the services to the clinic (independently from the legal title)

No.	Name and surname	Kind of employment (P-labor contract, Z –message, D- work contract)		
		P	Z	D
1.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- d. List of the students participating in the clinic’s activity:

No.	Name and Surname	Study year
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		



e. List of the coordinators:

No.	Title/degree	Name and Surname	Specialization
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

f. Information about:

i. Fulfilling the standards provided by Foundation

It is declared hereby that *(write the name of the clinic)*:

Fulfils the standards provided by the Foundation, which was confirmed by the Board of the Foundation

Applies for the approval of the clinic's activity in consistency with the Standards

Does not apply for the approval of the clinic's activity in consistency with the Standards

*(mark the right space)*

ii. Numbers and the costs of the cases taken by the clinic in period of calendar year previous to the submission of the application, including the number of the closed cases

Since the beginning of the year *(put the year)* legal clinic *(put the name of the clinic)* has led *(put the number of the cases)* cases, including *(put the number of closed cases)* closed cases. Average cost of the case was *(put the average cost of the case – quotient of the receipts and the number of the cases)*.

iii. Number and the average cost of the cases taken by the clinic since the beginning of the calendar year in which the application is submitted, including number of the closed cases.

In the year *(put the year)* legal clinic *(put the name of the clinic)* has taken *(put the number of the cases)* cases, including *(put the number of closed cases)* closed cases. Average cost of the case was *(put the average cost of the case – quotient of the receipts and the number of the cases)*.

iv. Number of the didactical hours realized by the legal clinic.

The clinic carries on didactical courses of ..... hours/academic year. *(put the number of the hours)*

**COST CALCULATION OF THE CLINIC'S ACTIVITY IN THE PERIOD COMPRISED BY THE APPLICATION.**

1. Particular positions of the calculation given in present prices (PLN).

Position	Planned costs in the budget year		
	200...	200...	Total
1. Salaries and the like/derived including those from FUPP			
2. Office/computer equipment with the software including those from FUPP			
3. Impermanent materials and objects (paper, toner) including those from FUPP			
4. Other services (translations, xero) including those from FUPP			
5. Foreign cooperation costs (conferences, symposium, congresses) including those from FUPP			
6. Other direct costs (national trips) including those from FUPP			
7. Total costs including those from FUPP			

2. Expected financing sources.

Categories	Number of the sources	Proportional participation in total cost
Applicant's own contribution (in cash):		
Material contribution (in present pricing):		
1.		
2.		
3.		

Sources from other sponsors, name the sponsors:		
1.		
2.		
3.		
Applied subsidy amount from FUPP		
<b>GENERAL COST OF THE PROJECT</b>		<b>100 %</b>

2. List of the office/computer equipment including computer programs. Total amount ..... zł  
*(name the particular positions according to the given schema):*

a/ name of the object:

basic technical parameters:

planned cost ..... zł, planned time of purchase (month, year) .....

b/ name of the object:

basic technical parameters:

planned cost ..... zł, planned time of purchase (month, year) .....

3. Essential motivation for the purchase :

4. Information about the expected purchase of the impermanent materials and objects Total amount.....zł

*(give the expected cost of the most important groups of impermanent materials and objects)*

5. Information about other, expected services. Total amount..... zł

*(give the character of the service and the motivation for its use)*

6. Information about the foreign cooperation costs necessary to provide a proper activity of the clinic.

Total amount ..... zł.

a. Planned cost of the foreign guests' visits in the clinic ..... zł.

b. Planned foreign trips.

*(give the year, country – institution, goal of the trip, planned amount in zł)*

I take cognizance of the fact, that submitting a false or incomplete information might be a reason for refusal of the application's consideration. I commit myself to present additional information concerning the organization and activity of the clinic in time requested by the Board of the Legal Clinics Foundation.

Place and date .....

Signature of the clinic's director/ the proxy.....

## Annex 8. Example repertory

Name of the clinic, year												
REPATORY OF THE LEGAL CLINIC'S CASES IN .....												
NR	CASE NUMBER	NAME, LAST NAME	F/M	DATE OF REGISTRY	DATE OF ACCEPTANCE	STUDENT RESONSIBLE	CASE CLOSED	TYPE OF CASE *	HOW THE CLIENT LEARNED ABOUT THE CLINIC *	HAS THE CLIENT USED PROFESSIONAL LEGAL ASSISTANCE BEFORE	* TYPE OF CASE	* HOW THE CLIENT LEARNED ABOUT THE CLINIC
1.	1/2004/C	Kowalski Jan	M	2003.01.01	2003.01.05	Nowak Damian	2003.02.25	Penal	Family member	Yes	Penal	Family member
2.	2/2004/P	Adamska Katarzyna	F	2003.01.02	2003.01.05	Piotrowska Ewa	2003.02.03	Civil	Friend	No	Civil	Family member
3.	3/2004/U	Pawłowski Wojciech	M	2003.01.03	2003.01.05	Nowak Damian	2003.02.15	Family	Newspaper	No	Family	Friend
4.	4/2004/C										Inheritance	Newspaper
5.	5/2004/C										Labor	Brochure
6.	6/2004/A										Social aid	Radio
7.	7/2004/P										Administrative	TV
8.	8/2004/A										Housing	Internet
9.	9/2004/C										Financial	Other
10.	10/2004/K										Women's rights	
11.	11/2004/C										Refugee	
12.											Disability	
13.											Health Care	
14.											NGO	
15.											other	

## **Annex 9. Legal clinics in Poland – addresslist**

### **Białystok (University in Białystok)**

Studencka Poradnia Prawna  
Wydział Prawa  
Uniwersytet w Białymstoku  
ul. Mickiewicza 1 pok. 119; 15-213 Białystok, Poland  
tel/fax.: (+48 85) 745 71 94

### **Białystok (Białystok School of Public Administration)**

Koło Naukowe Centrum Informacji Administracyjnej przy  
Wyższej Szkole Administracji Publicznej w Białymstoku  
Ul. Dojlidy Fabryczne 26 pok. 1; 15-555 Białystok, Poland  
tel.: (+48 85) 732 12 93 wew.32  
e-mail: [cia@wsap.bialystok.pl](mailto:cia@wsap.bialystok.pl)

### **Gdańsk**

Studencka Uniwersytecka Poradnia Prawna  
Wydział Prawa i Administracji  
Uniwersytet Gdański  
ul. Jana Bażyńskiego 6; 80-309 Gdańsk, Poland  
tel.: (+48 58) 552-99-75,  
e-mail: [suppug@wp.pl](mailto:suppug@wp.pl)

### **Katowice**

Studencka Poradnia Prawna - Koło Naukowe  
Wydział Prawa i Administracji  
Uniwersytet Śląski  
ul. Bankowa 14, pok. A; 40-007 Katowice, Poland  
tel.: (+48 32) 258 24 41 wew. 1422

### **Kraków**

Uniwersytecka Poradnia Prawna  
Wydział Prawa i Administracji  
Uniwersytet Jagielloński

al. Krasieńskiego 18; 30-101 Kraków, Poland  
tel/fax. (+48 12) 430 19 97

**Lublin (Catholic Lublin University)**

Uniwersytecka Poradnia Prawna  
Wydział Prawa, Prawa Kanonicznego i Administracji  
Katolicki Uniwersytet Lubelski  
Al. Raclawickie 14; 20-950 Lublin, Poland  
tel./fax: (+48 81) 44 53 752

**Lublin (Maria Curie-Skłodowska University)**

Uniwersytecka Studencka Poradnia Prawna  
Wydział Prawa i Administracji  
Uniwersytet Marii Curie-Skłodowskiej w Lublinie  
ul. Radziszewskiego 17 p.3; 20-036 Lublin, Poland  
tel/fax: (+48 81) 537 58 22 w. 102  
[prawo.umcs.lublin.pl/instituty/organ/usp.html](http://prawo.umcs.lublin.pl/instituty/organ/usp.html)

**Łódź**

Studencki Punkt Informacji Prawnej  
Wydział Prawa i Administracji  
Uniwersytet Łódzki  
ul. Narutowicza 59a pok. 25; 90-131 Łódź, Poland  
tel.: (+48 42) 635 46 32

**Olsztyn**

Studencka Poradnia Prawna  
Wydział Prawa i Administracji  
Uniwersytet Warmińsko-Mazurski w Olsztynie  
ul. 1 Maja 3; 10-900 Olsztyn, Poland  
tel.: (+48 89) 527 52 46

**Opole**

Poradnia Społeczno-Prawna

Międzywydziałowy Instytut Prawa i Administracji  
Uniwersytet Opolski  
Świetlica "Iskierka"  
ul. Jana Bytnara Rudego 19; 45-245 Opole, Poland  
tel./fax: (+48 77) 454 33 94, Tel.: 458 00 92

### **Poznań**

Studencka Uniwersytecka Poradnia Prawna  
Wydział Prawa i Administracji  
Uniwersytet im. Adama Mickiewicza w Poznaniu  
Al. Niepodległości 26; 61-714 Poznań, Poland  
tel.: (+48 61) 829 39 10

### **Rzeszów**

Uniwersytecka Poradnia Prawna  
Wydział Prawa  
Uniwersytet Rzeszowski  
ul. Grunwaldzka 13; 35-068 Rzeszów, Poland  
tel/fax: (+48 17) 862 92 75

### **Słubice**

Koło Naukowe Studencka Poradnia Prawna  
Collegium Polonicum w Słubicach  
ul. Kościuszki 1/153; 69-100 Słubice, Poland

### **Szczecin**

Centrum Edukacji Prawnej "Studencka Poradnia Prawna"  
Wydział Prawa i Administracji  
Uniwersytet Szczeciński  
ul. Narutowicza 17a pok. 02; 70-240 Szczecin, Poland  
fax. (+48 91) 444 28 59

### **Toruń**

Uniwersytecka Poradnia Prawna

Wydział Prawa i Administracji  
Uniwersytet Mikołaja Kopernika w Toruniu  
ul. J. Gagarina 11; 87-100 Toruń, Poland  
fax: (+48 56) 611 47 50, 611 41 10

**Warszawa (Warsaw University)**

Klinika Prawa, Studencki Ośrodek Pomocy Prawnej  
Wydział Prawa i Administracji, Uniwersytet Warszawski  
ul. Krakowskie Przedmieście 26/28, 00-927 Warszawa, Poland  
tel./fax: (+48 22) 552 43 18, tel.: 552 08 11  
[www.klinika.wpia.uw.edu.pl](http://www.klinika.wpia.uw.edu.pl)

**Warszawa (Leon Koźmiński Academy of Entrepreneurship and Management)**

Studencka Poradnia Prawna  
Wyższa Szkoła Przedsiębiorczości i Zarządzania im. Leona Koźmińskiego, Kolegium Prawa  
ul. Jagiellońska 59 pok. A-23; 03-301 Warszawa, Poland  
tel. (+48 22) 519 22 28

**Wrocław**

Koło Naukowe "Uniwersytecka Poradnia Prawna"  
Wydział Prawa, Administracji i Ekonomii  
Uniwersytet Wrocławski  
ul. Więzienna 10/12, p.110 c; 50-138 Wrocław, Poland

**Academia Iuris Foundation**

ul. Hozjusza 2,  
01-565 Warszawa, , Poland  
tel. (+48 22) 839 32 08  
[www.academiaiuris.pl](http://www.academiaiuris.pl)

**Warszawa**

1. Centrum Usług Opiekuńczo-Socjalnych "Ośrodek Nowolipie", ul. Nowolipie 25B
2. Parafia Rzymsko-Katolicka pw. św. Stanisława Kostki, ul. Hozjusza 2
3. Stowarzyszenie Otwarte Drzwi, ul. Targowa 82



4. Parafia Rzymsko-Katolicka pw. św. Kazimierza, ul. Chełmska 21a
5. Fundacja Świat na Tak, Al. Szucha 27
6. Parafia Rzymsko-Katolicka pw. św. Jakuba, ul. Grójecka 38
7. Ośrodek Interwencji Kryzysowej, ul. Dalibora 1
8. Parafia Rzymsko-Katolicka pw. Nawrócenia św. Pawła Apostoła, ul. Kobielska 10
9. Parafia Rzymsko-Katolicka pw. Błogosławionego Władysława z Gielniowa, ul. Przy Bażantarni 2
10. Polski Związek Niewidomych, Okręg Mazowiecki, ul. Jasna 22
11. Ośrodek Pomocy Społecznej, ul. Dembińskiego 3

### **Piaseczno**

1. Gminny punkt konsultacyjny, Plac Piłsudskiego 10

### **Kraków**

1. Parafia Rzymsko-Katolicka pw. św. Anny, ul. św. Anny 11

### **Lublin**

1. Centrum Duszpasterstwa Młodzieży przy kościele Ducha Świętego, ul. Krakowskie Przedmieście 1