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Clinical Essay

WHY IN-HOUSE LIVE CLIENT CLINICS WON'T WORK IN ROMANIA: CONFESSIONS OF A CLINICIAN EDUCATOR

RODNEY J. UPHOFF*

Romanians eat our Big Macs, wolf down pizza slices at Pizza Hut, and guzzle Coca-Cola. They wear baseball caps, Nike clothing, and tennis shoes. They listen to American rap and pop music, see American movies with Romanian subtitles, and watch all of our old television shows. Romanians of all ages, but especially the young, hunger and thirst for all things Western, particularly from the United States. Doesn't it follow, then, that Romanian law schools ought to have – and, indeed, Romanian law professors would want – that symbol of an innovative, modern American law school curriculum: a live client clinical program?

The answer is a resounding no. Most Romanian educators are not familiar with clinical legal education and are too busy to be seriously interested in any curricular reform. Those professors who are knowledgeable about clinical education generally believe that in-house live client clinics are completely unworkable in the Romanian context. From my perspective, these Romanians are absolutely correct. Given the existing structure of Romanian education, the nature of the Romanian system, and the limited resources available to Romanian law schools, pedagogically sound in-house live client clinics are not feasible.

Nevertheless, Romanian legal educators – and those of other countries of the region – are being pressured and cajoled by some American consultants and outside funding entities to add in-house live client clinics to their curriculum. Based upon my experiences as a CEELI¹ Legal Specialist in Romania, I believe the Romanians should

* Professor of Law and Director of Clinical Legal Education, University of Oklahoma College of Law. I would like to thank Don Bogan and Peter Joy for their helpful comments as well as Kim Marchant and Lori Ketner for their able assistance in the preparation of this article. I also would like to thank Laura Bucher, a CEELI liaison, and the wonderful people I met in Romania for helping me to learn about this fascinating country and for making my stay in Romania so rewarding.

¹ CEELI is the Central and East European Law Initiative, a program set up by the

resist the pressure to add live client clinical programs and instead focus on developing other badly needed courses that will provide their students the skills and values they need to be good lawyers. The development of such courses will not, however, be easy.

This essay begins by examining why in-house live client clinic programs are, indeed, not viable in Romania or in most of the other economically struggling countries of the region. The essay next highlights some of the serious hurdles facing a country such as Romania seeking to achieve meaningful legal education reform. Finally, it concludes by reminding American educators promoting American-style clinical legal education in other countries of the limits of their role and by urging potential donors to provide funding that promotes, rather than frustrates, meaningful curricular reform.

I. LESSONS FROM ROMANIA: "TOTO, I HAVE A FEELING WE'RE NOT IN KANSAS ANYMORE."²

As clinical teachers, we regularly force our students to reflect on their lawyering experiences so that they may learn from those experiences and become reflective practitioners.³ As a clinical teacher, I also have tried to force myself yearly to evaluate my teaching, my courses, and the overall structure of the clinical program I direct, to see if there are changes that I can make to improve my teaching or the program. Sadly, however, my good intentions are often frustrated by the reality of the time pressures with which all clinicians must cope. Rarely do I find sufficient time to be appropriately self-reflective about my clinical work.

Although clinical conferences provide a wonderful opportunity to engage in this self-reflection, they are over too quickly. The chance to serve as a CEELI Legal Specialist, therefore, provided me with a special opportunity, not only to help others learn about clinical legal education, but also to be more reflective about my own teaching and clinical program. Just as I have learned more about interviewing from having had to break down that skill and to explain it step by step to

American Bar Association in 1992 to promote the rule of law in the former communist states of the region.

² Dorothy to Toto, *WIZARD OF OZ* (Metro-Goldwyn-Mayer 1939).

³ Almost every recent article on clinical teaching stresses the importance of teaching students the skill of critically evaluating their own performances. Indeed, the "mantra of clinical pedagogy" is "reflection, reflection, reflection." See Abbe Smith, *Carrying on in Criminal Court: When Criminal Defense Is Not So Sexy And Other Grievances*, 1 *CLIN. L. REV.* 723, 728 (1995). For a detailed look at how a teacher or mentor helps an aspiring professional become a reflective practitioner, see DONALD A. SCHÖN, *EDUCATING THE REFLECTIVE PRACTITIONER* (1987), DONALD A. SCHÖN, *THE REFLECTIVE PRACTITIONER* (1983).

new law students with few preconceived notions of the task involved, explaining clinical legal education and the workings of my own program forced me take a harder look at what I teach, how I teach, and why I teach the way I do. The probing inquiries from professors and students from another educational system and culture are even more challenging than those posed by our own students and colleagues. Thus, I highly recommend the experience of serving as a CEELI volunteer. I want to share, however, some lessons I learned from my experiences in Romania and some concerns I have about Westerners spreading the gospel of clinical legal education.

A. *Serving as a CEELI Volunteer in Romania*

In the fall of 1998, CEELI sent me to Romania for a six week stint as a Clinical Legal Specialist. CEELI, the American Bar Association's Central and East European Law Initiative, has spearheaded efforts to reform legal education in the region.⁴ CEELI's efforts include sending American law professors to work with educators in the host country to expose them to teaching methods designed to foster active student participation, analytical skills, and critical thinking. My mission was to work with the faculty at various Romanian law schools to assist them with their new clinical programs, to aid in the development of new clinics including in-house live client clinics, to help them develop teaching materials, to provide training in clinical teaching methods, and to offer suggestions on issues such as grading, course structure, student selection, and the supervision and training of externship supervisors. Given my fourteen years of clinical teaching experience⁵, I felt prepared for my assignment. In addition to reading the background material provided me on Romania, I previously had taught in Germany and had traveled often in Western Europe. I also had spent time in Asia and in Russia. Thus, I was well aware that the educational system and life in Romania would be far different from that in the United States.

Nonetheless, I was not prepared for how vast the differences are between Romania and the West. Romania is a very poor country with most Romanians lacking many of the conveniences that the majority

⁴ The United States Agency for International Development, through programs such as CEELI and the Fulbright Program, has sent a number of American educators to East and Central Europe and to the states of the former Soviet Union. The Open Society Institute, a program funded by the Soros Foundation, also has provided considerable financial assistance to improve legal education in these countries.

⁵ During my fourteen years of law teaching, I have directed in-house live client criminal defense clinics at both the University of Wisconsin and the University of Oklahoma College of Law. At Oklahoma, I also have directed an externship clinic, a judicial clinic, an in-house live client civil clinic, and taught in a prisoners' rights clinic.

of people in the United States and in Western Europe take for granted⁶. It is not, however, just a matter of economics. Almost fifty years of communist rule have affected the attitude and work habits of many Romanians.⁷ Whereas we in the West commonly react to a problem by developing alternative means to address the problem, Romanians tend to be very fatalistic. That is, many Romanians accept conditions, their situation, or the law as a given that they are powerless to change.

From the Romanians' perspective, it was pure folly to even discuss starting a live client clinic because Romanian law forbids anyone but a licensed lawyer from giving legal advice or appearing in court.⁸ When I suggested the possibility of an amendment exempting certified law students from this ban, I was told that the Romanian bar would never agree to such an amendment and that this opposition could not be overcome. From an American clinician's perspective, the need for legislative change and the opposition of a vested interest group are familiar, but not necessarily insurmountable, hurdles. My initial reaction was to strategize about ways to overcome these hurdles – working with local young lawyers associations to build an alliance for change, lobbying appropriate government officials, proposing first a limited exception for students working in prosecutors' offices – but the Romanian professors with whom I was working were unenthusiastic.

Initially, I found this lack of enthusiasm perplexing.⁹ The more I

⁶ Romania's gross domestic product per capita in 1997 was \$1,545 compared to \$3,505 for Poland, \$4,502 for Hungary, \$13,412 for Spain and \$23,309 for Finland. The gross domestic product per capita for the United States in 1997 was \$28,789. See Statistics Division of the United Nations Secretariat, *Indicators on Income and Economic Activity* (visited Aug. 24, 1999) <www.un.org/Depts/unsd/social/inc-eco.htm>. For a look at the serious economic and political problems confronting Romania, see Robert D. Kaplan, *The Fulcrum of Europe*, THE ATLANTIC MONTHLY, Sept. 1, 1998, at 4.

⁷ See Cezar Birzea, *The Dilemmas of the Reform of Romanian Education: Shock Therapy, The Infusion of Innovation, or Cultural Decommunization*, 8 HIGHER EDUC. IN EUR. 321, 325 (1997). For a more in-depth look at how attitudes and habits formed during the communist era affect legal education in Romania, see George A. Critchlow, *Teaching Law in Transylvania: Notes on Romanian Legal Education*, 44 J. LEGAL EDUC. 157, 158-59, 161-62, 164-65, 173-74 (1994). But see C. Nicholas Revelos, *Teaching Law in Transylvania: Notes from a Different Planet*, 45 J. LEGAL EDUC. 597, 601-03 (1995) (criticizing Critchlow's negativism and arguing that many former Romanian Communists are diligently working for change). See also William D. Meyer, *Remnants of Eastern Europe's Totalitarian Past: The Example of Legal Education in Bulgaria*, 43 J. LEGAL EDUC. 227 (1993) (describing extent to which the transformation of the Bulgarian system of legal education is hindered by ideological intransigence).

⁸ Romanian Law 51 of 1995.

⁹ At first, I thought that this lack of enthusiasm was explained by the fact that Romanians generally are reluctant to challenge existing authority and are more willing to acquiesce in or to accept limiting conditions. See Critchlow, *supra* note 7, at 161-65, 173-74. Like Critchlow, I spoke with a number of Romanians who voiced such attitudes. In this case, however, I believe the Romanians simply saw that the enormous effort involved in

learned about Romania, however, and the more I listened to Romanians talk about their legal system, their educational system, the resources of their law schools, and the economic and social climate of their country, the more evident it became that the Romanians' lack of enthusiasm for in-house live client clinics was fully warranted. As a staunch proponent of the pedagogical value of in-house live client clinics,¹⁰ it is not easy for me to dismiss completely this alternative. If an in-house live client clinical program is to flourish, however, it needs the right conditions. Unfortunately, the conditions in Romania simply do not allow for the creation of cost effective, pedagogically sound live client clinical programs.

B. Romanian Legal Education: Difficult Conditions, Different Structure

First, there is the issue of resources. Simply stated, Romanian schools at all levels, including university law departments, are woefully underfunded.¹¹ This funding crisis generally hampers needed educational reform. Indeed, Romanian law schools struggle within their present budgets to offer even the basic required courses.¹² Moreover, given the serious structural problems facing the Romanian economy and the tremendous needs of every segment of Romanian society, Romanian law schools cannot expect any significant infusion of resources in the foreseeable future.¹³

obtaining a legislative change was not worth the fight, especially given the long odds that such a fight would succeed and the lack of resources to create such clinics even if the law could be changed.

¹⁰ As the director of in-house live client clinical programs at the University of Wisconsin and the University of Oklahoma, I have advocated vigorously for more resources for such clinics. My writing reflects my support for in-house live client clinical legal education. See Rodney J. Uphoff, James J. Clark & Edward C. Monahan, *Preparing the New Law Graduate to Practice Law: A View from the Trenches*, 65 U. CIN. L. REV. 381, 412-19 (1997).

¹¹ See CESAR BÎRZEA ET AL., *MINISTRY OF EDUCATION, THE REFORM OF EDUCATION IN ROMANIA: CONDITIONS AND PROSPECTS* (1993); ANDREI MARGA, *THE REFORM OF EDUCATION IN 1999* (1998); ANDREI MARGA, *GUIDELINES FOR THE REFORM OF EDUCATION IN ROMANIA* (1999). Law schools in the other countries of the region face similar budgetary problems. See, e.g., Jeremy T. Harrison, *Legal Education in an Eastern European Law School*, 7 J. INT'L L. & PRAC. 263 (1998) (describing problems at Kiev State University of Trade and Commerce in the Ukraine).

¹² My observations of the conditions at six Romanian law schools – the University of the West (Timisoara), Tibiscus (Timisoara), Vasile Goldis (Arad), Banat (Timisoara), Babes-Bolyai (Cluj), and the University of Bucharest – along with discussions with faculty members and administrators at these schools indicate that little has changed since George Critchlow made his observations in 1993 of the serious funding problems at the University of Sibiu, see Critchlow, *supra* note 7, at 163-165, 169, and the Ministry of Education published its report describing serious funding problems for Romanian schools, see BÎRZEA, *supra* note 11.

¹³ See BÎRZEA, *supra* note 11, at 14, 39-43, 68.

It is difficult for most Americans to appreciate how scarce resources are for Romanian law schools. Cramped and dated facilities, with antiquated heating and air conditioning, are the norm. Courses do not have any required texts because textbooks are rare. Even photocopying is done sparingly. The law school libraries look like small town libraries in the U.S. circa 1960 and contain few new volumes. Computer access is severely limited for students and only slightly better for faculty members. Audiovisual equipment is virtually non-existent. For example, at the University of the West in Timisoara, a state school of over 10,000 students, there was only one video cassette recorder.

These problems are not a result of resources being unfairly diverted to faculty salaries. Indeed, the average assistant professor at a Romanian law school makes between \$50 to \$100 a month and even the most senior faculty member at the University of the West makes only \$220 a month.¹⁴ As a result, almost every faculty member teaches at two or more schools and practices law or serves as a judge just to generate a modest income. Although the professors work very long hours with full course loads, much of their time is spent away from the law school. Professors, therefore, are often unavailable to their students.

Who, then, is to do the clinical teaching? Undoubtedly, live client clinic programs, especially in-house clinics, demand more resources than any other course in a law school curriculum. Above all, such clinics require experienced teachers with sufficient time to devote to their clinical responsibilities in order to ensure that students get the close supervision needed to provide a quality educational experience. In-house live client clinical courses are so labor intensive that most American clinical teachers involved in such courses devote much of their entire work week supervising, on average, eight students.¹⁵

Although even American critics of in-house live client clinics concede their pedagogical worth,¹⁶ some question whether American

¹⁴ Interview with Professor Gheorghe Mihai, Law Faculty University of the West, in Timisoara, Romania (Oct. 26, 1998).

¹⁵ See AMERICAN BAR ASSOCIATION SECTION OF 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 250 (1992) [hereafter MACCRATE REPORT]. For an in-depth look at the issues involved in the operation of in-house live client clinical programs, including the heavy workload of clinical supervisors, see *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 551-73 (1992) [hereafter *In-House Clinic Report*].

¹⁶ See, e.g., John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157-97 (1993).

schools really can afford this expensive form of skills education.¹⁷ American law schools can and, I believe, should offer such clinics.¹⁸ And yet, while in-house live client clinics are desirable, but expensive, components of a well-rounded American law school curriculum, such clinical programs are cost prohibitive in Romania – and for the other countries of the region as well. Romanian law schools lack the funds needed to furnish even a modest in-house clinic much less hire new professors or adjuncts to supervise students working in that clinic. Nor do Romanians have the money to pay their current law professors to give up their other employment and to devote the requisite time to such clinical teaching, especially when so few students would be served by such a course.

Thus, aside from the need for a statutory amendment allowing law students to give legal advice,¹⁹ seemingly the biggest obstacle preventing the Romanians from starting in-house live client clinics is a lack of financial resources to set up such a clinic and to pay those doing the clinical teaching and supervision. Such a hurdle is not unusual. Most law schools and would be clinical teachers around the world face significant financial problems. Even many law schools in the United States have relied – and still rely – on outside funding.²⁰

¹⁷ See Curtis J. Berger, *Teaching "S&V" Beyond the Live Client Clinic: We Can Do Far More Without Spending For More*, in THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM 69, 70-72 (Joan S. Howland & William H. Lindberg eds., 1994); William R. Trail & William D. Underwood, *The Decline of Professional Legal Training and a Proposal for its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201, 240-44 (1996).

¹⁸ A simulation course provides a cost-effective vehicle for teaching professional skills. Such courses are not as effective, however, in teaching professional values because they cannot replicate the pressure and tension faced by students grappling with real decisions that affect actual clients in a live-client clinic. A full defense of the importance of live client clinics in preparing law students for the profession is beyond the scope of this essay. For a sampling of the arguments extolling the merits of live client clinics, see, e.g., Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 346-53 (1982); Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981); Gary Laser, *Significant Curricular Developments: The MacCrate Report and Beyond*, 1 CLIN. L. REV. 425, 432-37 (1994-95); Patricia M. Wald, *Teaching the Trade: An Appellate Judge's View of Practice-Oriented Legal Education*, 36 J. LEGAL EDUC. 35 (1986); *In-House Clinic Report*, *supra* note 15, at 511-17. For a discussion of the need for American law schools to provide better practical training, including improved access to clinical programs, and a proposal to fund that training, see Uphoff et al., *supra* note 10, at 400-03, 412-13.

¹⁹ See *supra* note 8 and accompanying text.

²⁰ Indeed, many American clinics were started by grant money received from the Ford Foundation, the United States Department of Education, and the Legal Services Corporation. Some American clinical programs also continue to rely on private bar donations. See, e.g., *Legal Clinic News and Notes*, (Northwestern University School of Law), Spring 1997, at 44-46 (listing individuals, businesses and foundations who contributed to the support of the clinic).

Arguably, if Romanian law schools cannot fund live client clinics themselves, other sources such as the private bar or foundations may be able to provide the necessary funding.

Once again, however, there are significant differences between the United States and Romania. Romanian law schools cannot look to wealthy alumni nor generous corporate sponsors for sizeable contributions. Nor can Romanian law deans turn to the private bar. Unlike the United States, there are very few Romanian law firms of more than three lawyers. Rather, the vast majority of Romanian lawyers are struggling solo practitioners. No Romanian with whom I spoke saw any realistic prospects of securing any significant financial contributions from the Romanian bar to support clinical legal education.

Neither can Romanian legal educators count on grants from government agencies or private foundations to fund fledgling clinical programs. Local donors are rare. Only a few Western foundations or outside donors are earmarking any money for Romania, and those that do provide funding can address only some of the many problems plaguing Romanian society. Law schools are competing with all of the other underfunded sectors of the fragile Romanian socioeconomic system for limited funds. It is highly unlikely, therefore, that Romanian law schools will secure the financial assistance needed to start and to maintain a viable live client in-house clinic.

Nevertheless, if some funding becomes available, Romanian educators may be tempted to accept that funding to launch an in-house live client clinic. Although outside funding can be useful as seed money to get a clinical program off the ground, rarely will such funding be sufficient to sustain a program once that funding ends. American clinicians are painfully aware of the costs of relying heavily on outside funding. The elimination of federal grant money has caused many American law schools to cut back or even eliminate some clinical programs. For Romanian law schools, reliance on outside funding is even more problematic because these economically-strapped schools do not, and will not, have the ability to shift resources to continue a clinical program following the loss of outside funding. Given the severe economic problems confronting Romanian law schools, it is extremely unlikely that these schools would be able to find alternative funding sources to continue programs once outside funding runs out.

More importantly, it is not merely a matter of money. Even if a donor could be found to ensure long-term funding for an in-house clinic project in a given Romanian law school, both the donor and the school would be making a very poor investment. Although they may

be willing, Romanian students simply are not ready or able to reap the educational benefits of such a clinic. Indeed, the very nature of the Romanian system of higher education is incompatible with the development of meaningful, educationally sound in-house live client clinics.

Law school in Romania – and for the other schools of the region – is substantially different from the post-graduate professional training provided students in the United States. American law students have already completed at least four years of undergraduate education and are generally twenty-two or twenty-three years old before they enter law school. Indeed, many American law students are even older because they chose to work for a period of time before starting their legal education. In Romania, however, law students usually come directly from high school and most are eighteen or nineteen years old when they enter law school. As in other European countries, Romanian law students do not obtain an undergraduate degree or generally take other university level courses before entering law school. Because this is their first – and for the overwhelming majority only – university degree, Romanian law students face a demanding course load. In addition to courses about substantive law and legal theory, students are exposed to history, economics, political science, philosophy and psychology. Not surprisingly, during their four year law school career, these eighteen to twenty-two year old students must spend up to thirty-five hours a week in class.²¹

Absent a complete overhaul of the Romanian educational system, it is unimaginable that the Romanians would – or should – add to their law school curriculum an in-house live client clinical course structured anything like that offered by American schools. There are far too many basic courses that must be covered in a first degree curriculum to warrant carving out a significant block of time for a clinical course involving the representation of actual clients. Because of the significant time demands of such a course, it is difficult enough for many American law students to take a live client clinical course.²² Romanian law students must cope with even fuller schedules and simply cannot devote the time necessary to make a live client clinical experience worthwhile.²³

²¹ Interview with professor Gheoghe Mihai, Law Faculty University of the West, in Timisoara, Romania (Oct. 27, 1998). See also Critchlow, *supra* note 7, at 167. For a look at the substantial number of credit hours and required courses demanded of Ukrainian law students, see Harrison, *supra* note 11, at 264-70.

²² Numerous students at the University of Oklahoma have told me that they have had to forego taking a live client clinical course because they cannot take such a time-consuming course and still hold a clerking job.

²³ In addition, most Romanian law students must hold outside jobs to afford food, clothing, and housing further limiting the time these students have available for a live cli-

Furthermore, I seriously question whether the Romanian students – or the vast majority of eighteen to twenty-two year old students studying for their initial university degree – should be placed in the position of representing actual clients. Although there is tremendous educational value in allowing a properly supervised student to work with live clients and to learn about lawyering while in role,²⁴ clinical theorists recognize that their student lawyers must possess sufficient knowledge, maturity, and skills in order to learn from their experiences.²⁵ Equally important, this learning needs to occur without clinic clients suffering any undue harm.

In the United States, students generally are not allowed to practice law in a clinical setting until they have completed at least half of their law school requirements.²⁶ Even then, most clinical teachers insist that students be closely supervised and only begin representing actual clients after they have received additional skills training – usually provided at the beginning or during the semester. Again, absent a total restructuring of the Romanian educational system, these young law students would be placed in the unenviable position of trying to function as a lawyer without an adequate understanding of the lawyering role or their own legal system and without an adequate skills foundation. Putting unprepared law students in a live client clinic, especially without an experienced clinical teacher, often means frustrating, negative experiences for the students.²⁷ Even worse, clinic clients may be irreparably harmed.

Ultimately, therefore, even if the Romanians were to secure some outside funding or were able to reallocate some money to introduce skills and values instruction into the curriculum, those funds ought not be spent on an in-house live client clinical program. Romanian law students simply cannot be properly prepared to participate meaningfully in an educationally sound in-house clinic without adversely affecting the students' other educational needs. Moreover, in light of

ent clinical course.

²⁴ See Peter T. Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277, 283-92; *In-House Clinic Report*, *supra* note 15, at 512-15.

²⁵ See, e.g., Lasar, *supra* note 18, at 10-11. Admittedly, some of the Romanian law school graduates will go on to practice law at a much younger age than their American counterparts. They still must pass an additional licensing examination and serve a one year apprenticeship, however, before actually representing clients.

²⁶ See, e.g., RULES OF OKLA. SUP. CT. ON LEGAL INTERNSHIP, OKLA. STAT. tit. 5, ch. 1 app. at 6 (1991).

²⁷ See Kreiling, *supra* note 18, at 287-88, 300-37 (thoughtful discussion of the importance of a properly structured supervisor – student relationship to maximize student learning and to minimize negative lessons); Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 431-36 (1971) (describing some of the potential negative consequences students face in a poorly supervised clinic).

the number of Romanian law students and their limited exposure to any practical legal education, it is indefensible to invest a school's very scarce resources in a program that, at best, will only expose a handful of students to the real world of lawyering.²⁸ Right now, Romanian students rarely are required to write, do any reading assignments, or actively participate in class. Rather, they are typically spoon-fed massive amounts of information in mind numbing lectures.²⁹ Although skills and values instruction is needed, Romanian students must first learn to think critically, to argue persuasively, and to write effectively.

Educational reform is needed in Romanian law schools, but those reform efforts ought not begin with the introduction of an in-house live client clinic into the curriculum. In fact, the creation of such clinics will be counterproductive and only impede meaningful reform. Instead of live client clinics, the Romanians should focus on broader curricular reform and develop courses that provide a larger number of students access to the professional skills and values they so badly need.

II. ACHIEVING MEANINGFUL EDUCATIONAL REFORM: A ROLE FOR CLINICAL LEGAL EDUCATION?

If in-house live client clinic programs are not viable in a country like Romania, then the question becomes what role, if any, is there for clinical legal education in these resource-starved countries? The answer, in short, is a limited but important role. Romanian law students desperately need courses that challenge them to think critically and to participate actively in the learning process.³⁰ Well-designed clinical courses undoubtedly would benefit the Romanian law students and enhance the quality of their legal education. The addition of such courses must fit in, however, with the Romanian system of higher education and the limitations imposed by available resources. At the very least, Romanian law professors should be encouraged to utilize clinical teaching methods in their basic courses. Yet even achieving modest reform of the Romanian system will not be easy. Significant hurdles will have to be overcome.

²⁸ At the beginning of the school year 1998-1999, there were 57,294 registered law students in public and private universities in Romania.

²⁹ For similar observations, see Critchlow, *supra* note 7, at 163, 169 (describing situation at University of Sibiu); Meyer, *supra* note 7, at 239-41 (describing conditions in Bulgarian law schools). See also BIRZEA, *supra* note 11, at 62 (calling for an equilibrium between specialized lectures and the development of professional skills in Romanian institutes of higher education).

³⁰ For a discussion of the importance of active learning in developing a person's ability to think critically, see Bloch, *supra* note 18, at 331-340.

A. *Entrenched Attitudes and a Failure to Understand Clinical Legal Education*

Unquestionably, Romanian teachers and students face a formidable challenge. Not only are there too many subjects to be covered in a four year period, but the lack of books or required texts means that most information has to be provided orally. Moreover, Romanian professors must teach their students about a civil law system that is a mixture of European codes and law, of monarchical legislation passed before World War II, of forty years of socialist legislation, and of recent legislation geared to a modern market economy.³¹ Their task is further complicated because the state of Romanian law is in considerable flux, and there is no compilation or codification of the laws now in force.³²

Virtually everyone agrees that the Romanian curriculum overemphasizes theory and contains virtually no discussion of the actual practice of law. Professors deliver long lectures while students passively take copious notes. Students neither ask nor are asked questions so almost no dialogue takes place in class. All of the Romanian students and lawyers I met – as well as many of the law professors – cried out for more practical training in law schools and courses that better prepare the students for law practice.

For meaningful reform to occur, however, Romanian educators have to be willing to take a serious look at law school curricula. More is needed, of course, than just talk of change. Real curricular change requires real commitment. Yet, of the six law schools I visited, only at two schools was there any evidence that any administrators or law professors were engaged in any discussion about the need to integrate practical education into the curriculum.³³ Absent such a dialogue, it is difficult to believe that clinical legal education will ever establish a real presence in a school or contribute significantly to the education of Romanian law students.

Unfortunately, the allure of outside funding – particularly when it is tied to the creation of a live client clinic – reinforces misperceptions of the function of clinical legal education and diverts attention from the real issues: can the Romanians really add practical training to an already full curriculum and, if so, how should that training take place? The prospects of securing a substantial outside grant has caused some

³¹ See Thomas H. Reynolds & Arturo A. Flotes, FOREIGN LAW: CURRENT SOURCES OF CODES AND BASIC LEGISLATION IN JURISDICTIONS OF THE WORLD, Vol. II A, II Romania 6 (March 1988 Release) (AALL PUBL. SERIES NO. 33, 1994).

³² See *id.* at 7.

³³ The only serious curricular discussions regarding practical skills education were taking place at Tibiscus and at Vasile Goldis.

Romanian administrators and law professors to throw together ill-conceived courses modeled on American clinical courses with little thought about the goals of such a course, without any experienced teacher to direct the clinic, without any consideration of or attention to the preparedness of students for such a course, and without any discussion of the integration of clinical courses into the overall curriculum. Rather than sparking real curricular reform, the lure of outside funding has distorted the meaning of clinical legal education and created false notions of the essence of a clinical program.

An example best illustrates the problem. A senior professor of the University of the West insisted vigorously that clinical legal education would never work in Romania because the faculty lacked the time, interest, and resources to implement such an expensive program. He claimed, however, to be very supportive of creating a clinical program at his school and wanted me to teach a clinical course that semester. I protested that my visit was too short to offer any course and, more importantly, that clinical education was a method or methods of teaching, not a substantive law course offered in a vacuum. He was unfazed. No matter, he replied, I should teach whatever I wanted as long as the students received a certificate of some sort.

In talking with this professor and with other Romanian professors, deans, administrators, students, and lawyers, it became obvious that many of them did not appreciate what the term "clinical legal education" encompasses. This is not particularly surprising. Many members of the legal establishment in the United States, including a significant number of law professors and deans, have only a limited grasp – and at times a very wrong notion³⁴ – of clinical legal education. Unfortunately, for many Romanians, clinical legal education is merely seen as an American invention involving either an in-house clinic with students involved in the representation of real clients or as an American teaching technique performed in a mock courtroom fully

³⁴ For example, Professor Alex Johnson criticizes clinical programs for being too narrowly focused on skills instruction and not informing students about the nature of law practice or preparing them for the time demands and pressures that law practice entails. See Alex Johnson, *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL L. REV. 1231, 1256 (1991). Although I share many of Johnson's views about the inadequacies of American legal education, his critique of clinical legal education is badly dated and out of touch with the prevailing theory and practice of clinical educators. Most clinical educators focus on trying to push their students to become reflective practitioners. Few, if any, focus exclusively on skills training. Rather, clinical educators "teach students how lawyer skill practices were constituted, how they intersected with and helped define substantive legal rights and obligations, and how lawyer skill, as an independent variable, contributed to the just and fair operation of the American legal system." Robert J. Condlin, *Learning From Colleagues: A Case Study in the Relationship Between "Academic" and "Ecological" Clinical Legal Education*, 3 CLIN. L. REV. 337, 340 (1997).

equipped with the latest technology.

This narrow view of clinical education results in many Romanians wrongly viewing clinical programs as “glitzy,” marginalized courses with fancy bells and whistles. Thus, some Romanian educators too quickly dismiss clinical education altogether as an expensive American model ill-suited to the resource poor Romanian system. For others, clinical education is only seen as a vehicle to gain badly needed resources. For example, the University of the West planned to apply for Soros funding to start a live client clinic. University administrators had not selected any goals, settled on a course structure, or made any decisions regarding course content; all of these matters were to be worked out later. In their view, the key was that outside funding would allow them to buy computers and presumably – although never stated – to pay some lawyers to do the actual work. The course was to be taught by a teaching assistant who was a law student and a PhD candidate. The suggestion was brushed aside that the person was wholly unqualified to supervise students performing lawyering tasks or to teach a course on practical lawyering. The University of the West needed computers and other hardware so it was willing to throw together the semblance of a clinical program in order to secure the outside funding needed to obtain that hardware.

Clinical education is not, of course, about hardware. Computers – and even more so, videotaping equipment – can enhance the experience of the students in a well-designed clinical course. Such tools are not, however, necessities. Rather, the essence of clinical legal education is a teaching methodology used by competent, experienced educators who attempt through lectures, discussions, exercises and real experiences to help students learn about the interplay between theory and practice as well as gain the skills and values they need if they are to become competent lawyers. The clinical methodology is not limited to in-house live client clinics but can be employed in different formats.³⁵ Not technology, but good teachers with experience, interest, and time are essential to making clinical legal education work.

B. Alternative Forms of Clinical Education

The Romanians who recognize the need for change usually point to their school's lack of resources as the obstacle preventing them from implementing clinical teaching. Scarce teaching resources are a significant problem, but only limit the form and number of clinical courses to be offered. The Romanians do possess the resources, if

³⁵ For a look at a variety of different courses employing the clinical method, see, e.g., Linda F. Smith, *Designing an Extern Clinical Program: Or As You Sow, So Shall You Reap*, 5 CLIN. L. REV. 527, 528-50 (1999).

they choose to use them, to offer courses employing more effective teaching, including exposing their students to skills and values education. They can offer skills courses such as an interviewing and counseling course and add simulation exercises to existing seminars so that students are forced to think critically about lawyering and the issues they will face as lawyers. Or, for example, a legislation course that requires students to critique existing laws and to draft new ones could be added to the curriculum to help develop independent, analytical thinking.

If the Romanians cannot afford to hire professors with the time, interest, and experience to supervise students and expend the resources needed to create in-house clinics, externship clinics arguably provide a more affordable alternative. Although an externship clinic is somewhat less expensive than the in-house model, it also demands an experienced teacher with the time and energy to devote to monitoring the educational experiences of the clinical students if those experiences are to be pedagogically sound.³⁶ Once again, hiring the professor to direct the externship clinic takes money, money the Romanians do not have. Yet, it is not just a lack of money in the law school budgets that blocks the creation of viable externship clinics. Other aspects of the Romanian system hamper the development of workable, sound externship clinics.

³⁶ See AMERICAN BAR ASSOCIATION STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS, Standard 306(c), Interpretation 2 (Oct. 1993) (insisting upon faculty supervision of externship clinics); MACCRATE REPORT, *supra* note 14, at 334 (should be faculty involvement in the design, supervision, and evaluation of extern programs and faculty oversight of such programs). Some argue that students can learn much even absent close supervision by law professors. See, e.g., Daniel J. Givelber, Brook K. Baker, John McDevitt & Robyn Milano, *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1 (1995). The Romanian students are not placed, however, in work situations anything like those of the Northeastern students discussed in the Givelber article nor permitted under Romanian law from learning by being in role, see *supra* note 8 and accompanying text. Thus, the Romanian students will not “learn in context by engaging in meaningful and appropriate work under the routine guidance of expert practitioners and collaborative peers.” *Id.* at 43. Although I agree that some law students learn much even absent faculty supervision, Larry Hellman’s article on the unsavory lessons learned by law students working in law offices raises serious questions about the dangers of loosely supervised placements. See Lawrence R. Hellman, *The Effects of Law Office Work on the Formation of Law Students’ Professional Values: Observation, Explanation, Optimization*, 4 GEO. J. LEGAL ETHICS 537 (1990-91). Finally, even those who champion the learning in placement programs and question the wisdom of the ABA’s externship regulations, acknowledge that meaningful faculty involvement with the externship students is essential to ensure that a critical perspective is brought to the students’ learning. See, e.g., Conclin, *supra* note 34, at 430-39; Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2 CLIN. L. REV. 413, 449-451 (1996); Smith, *supra* note 35, at 542-46.

1. *Limited Placement Opportunities*

Currently in Romania, all law students must participate in a mandatory practicum. The present practicum requires students throughout their law school careers to spend several hours a year observing practice in the courts, in prosecutors' offices and in lawyers' offices. The program generally is ungraded and essentially unsupervised. Romanian students, lawyers, and professors were unanimous in denouncing the present program as a waste of time except for the rare student who finds a lawyer – usually a relative or family friend – willing to take the time to provide the student a meaningful experience.³⁷ In fact, I was told that a number of students fulfill this minimal obligation by simply finding a lawyer to sign the student's practicum form even though the student had not bothered to do any of the required observations.

According to several professors, the mandatory practicum worked well before 1989 when the total number of Romanian law students involved in the program was under 100 and the placement supervisors were required to take the time to work with the law students.³⁸ Now there are over 57,000 Romanian law students looking for placement opportunities but few offices where the lawyers or judges involved have the time – or choose to spend their time – to provide the students a worthwhile experience. It is not unusual for American clinical teachers to have to scramble to find quality lawyers willing to take the time to supervise law students. The problem is aggravated in Romania – and other countries in this region as well³⁹ – because most Romanian lawyers are struggling to survive economically and simply do not have extra time to devote to a law student. The problem is compounded by the fact that most Romanian lawyers also lack sufficient office space with many lawyers working out of their homes. Indeed, I was told that in Timisoara, a city of about 350,000 with five law schools, that there were only two lawyer's offices big enough to accommodate a student or several students.⁴⁰

³⁷ For a similar negative assessment of this practicum obligation, see Critchlow, *supra* note 7, at 169. See also Meyer, *supra* note 7, at 240 (describing lack of supervision or instruction for students in Bulgarian practicum).

³⁸ Interview with Professors Adriana Corhan and Mirodora Vladu, Law Faculty Tibiscus University, in Timisoara, Romania (Oct. 19, 1998). As in other communist states, Romania only had a handful of law schools and a limited number of law students before the revolution in 1989 because, under the communist system, few lawyers were needed.

³⁹ A number of the participants at the CEELI sponsored Regional Legal Education Workshop held in Opatija, Croatia on March 25-27, 1998, spoke of the difficulty of finding appropriate placements for externship students. See CEELI REGIONAL LEGAL EDUCATION WORKSHOP, DRAFT WORKSHOP REPORT: STRATEGIES FOR IMPLEMENTING PRACTICAL LEGAL EDUCATION PROGRAMS (1998).

⁴⁰ Interview with Laura Farcasiu, lawyer and lecturer at Tibiscus University, in Timi-

The difficult task of finding enough suitable placement opportunities to operate an externship clinic is further complicated because after graduation, prospective Romanian lawyers are required to serve a probationary period as an apprentice before they can become licensed to practice.⁴¹ Sadly, all the Romanians with whom I spoke, indicated that this requirement only served to provide lawyers with indentured servants who receive virtually no pay and no meaningful experiences during this apprenticeship period.⁴² This postgraduate requirement, however, further limits opportunities for law students competing for space in cramped offices and for access to suitable tasks.

The success of externship clinics ultimately depends on the willingness of supervisory lawyers to open their practice and themselves to the externship students so that those students can learn from the process of critically observing law in action.⁴³ American students benefit from the fact that many American lawyers find it rewarding to mentor young law students. Most American lawyers enjoy showing students how the profession really works and explaining things allegedly not taught in law school.⁴⁴ Apparently, this attitude is shared by only a few Romanian lawyers. Unlike many of their American counterparts, Romanian lawyers tend to guard jealously their professional secrets and are reluctant to let law students see how they operate.⁴⁵

soara, Romania (Oct. 1, 1998).

⁴¹ Romanian Law 51 of 1995.

⁴² For a similar appraisal of the Bulgarian apprenticeship system, see Meyer, *supra* note 7, at 240.

⁴³ Most clinicians contend that good supervision, including critical feedback on student performance, is essential if students are to maximize the educational benefits of their lawyering experiences. See, e.g., Hoffman, *supra* note 24, at 279-81; Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 191-94 (1989); *In-House Clinic Report*, *supra* note 15, at 512. Although many critics question whether most practitioners provide suitable supervision, see, e.g., MACCRATE REPORT, *supra* note 15, at 271; Stephen Wizer & Dennis Curtis, "Here's What We Do": *Some Notes About Clinical Legal Education*, 29 CLEV. ST. L. REV. 673, 681-82 (1980); *In-House Clinical Report*, *supra* note 15, at 511; some commentators argue that practitioners can be very effective role models and facilitate ecological learning. See Givelber et al., *supra* note 36, at 19-48; Stephen T. Maher, *The Praise of Folly: A Defense of Practice Supervision in Clinical Legal Education*, 69 NEB. L. REV. 537, 582-84 (1990).

⁴⁴ I use the work "allegedly" because many practitioners are unaware of the changes in American legal education and do not know that there are schools and courses where students are exposed to the real world of lawyering. See MACCRATE REPORT, *supra* note 15, at 4-7.

⁴⁵ This point repeatedly was made by Romanian professors, law students, and lawyers. Interestingly, Meyer observed that Bulgarian law professors also were very guarded in sharing information with others. Meyer, *supra* note 7, at 238. See also Peter J. Sahlas & Carl Chastenay, *Russian Legal Education: Post-Communist Stagnation or Revival*, 48 J. LEGAL EDUC. 194, 213 (1998) (reporting widely held perception of Russian students that their professors jealously guarded information and knowledge).

This attitude – a product of the culture, the prior political system, and the economic realities of Romanian life – further restricts the number of meaningful placement opportunities for Romanian law students.

2. *Ensuring Quality Faculty Supervisors*

Given the proper attention, however, adequate placement opportunities may be found, especially using government agencies and prosecutors' offices, for some upper level students. These extern students still will be able to perform only a few lawyering tasks – gathering facts or conducting some interviews – and thus, will have only limited opportunities to function in the role of a lawyer. Nevertheless, the extern students will have a useful vantage point to observe law in action. The challenge, then, is to structure these limited experiences to maximize student learning. Because it is very unlikely that the students will receive much attention from their supervising attorneys, especially from overworked government lawyers, faculty involvement is critical to ensure that this externship experience is, in fact, meaningful.⁴⁶ Yet, once more, the question becomes can Romanian law schools afford to provide faculty supervision?

Funding any curricular change will not be easy. To offer a quality externship experience, to develop new skills courses, or to improve existing seminars by employing innovative but time consuming teaching methods requires professors with time, interest, and experience. There is no money to add faculty so the new courses will have to be taught by existing faculty members. Fortunately, many of the Romanian professors are very experienced lawyers. Indeed, as a group, they are more grounded in practice than their American counterparts and, thus, have the experience to teach about lawyering.⁴⁷ It is unlikely, however, that they have the time or sufficient interest.

Undoubtedly many professors would find the time if schools would pay them for teaching an extra course. Law school budgets, however, are already stretched; no money exists to pay for additional courses. Moreover, because of the students already heavy schedules, it is not possible merely to add more required courses. Rather, if new courses are to be added to the curriculum, some current courses will

⁴⁶ For two excellent discussions of the importance of actual client representation and close faculty supervision to effective adult learning, see Bloch, *supra* note 18, at 346-350 and Hoffman, *supra* note 24, at 283-92.

⁴⁷ Almost every Romanian law professor not only has considerable practice experience, but is still regularly practicing law or working as a judge. Although some American law professors have considerable practical experience based on actual law practice, many do not. See Trail & Underwood, *supra* note 17, at 210-11; Robert J. Borthwick & Jordan Schua, Note, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191 (1991).

have to be dropped. It may be quite difficult to convince faculty members to drop existing required courses and replace them with new clinical courses. This is especially so given the abysmal salaries Romanian law professors earn.

As already noted, Romanian professors are so poorly paid that they generally hold two or three jobs.⁴⁸ Many have taught their pet courses for years, using the same lecture notes. Few, if any, senior Romanian law professors are likely to be interested in developing new courses which require them to spend time re-tooling and learning new teaching methods when they need that time to earn money outside of the law school setting.⁴⁹ If Romanian law schools cannot afford to pay their professors adequately, it is highly unlikely that they will find the money in their existing budgets to entice established professors to develop or to teach these new, more demanding courses.

Admittedly, I did meet some extremely committed Romanian professors – some with considerable teaching experience – who were interested in experimenting with the clinical teaching methodology. Nevertheless, I believe these are very rare individuals. They are rare because each of them will be compromising his or her opportunity for professional advancement – and to earn additional income – by spending time developing and teaching clinical courses. Even more so than in the United States, professional advancement in Romania is based on scholarship.⁵⁰ Quality teaching is undervalued in most American law schools; it is valued even less in the Romanian system. Because clinical teaching requires more time than other teaching – and has large start up costs for the individual teacher without experience with this teaching methodology – it is unrealistic to expect many Romanian professors to volunteer for such a teaching assignment. Even the dedicated teachers I met will be hard pressed to continue clinical teaching if it means long-term financial sacrifice and a failure to secure promotions.

Certainly there are American clinicians who accept second class status and marginal salaries because they enjoy teaching. Despite ABA Standard 405(c), too many American law schools still operate clinical programs on the backs of these underpaid, under appreciated

⁴⁸ See *supra* note 14 and accompanying text.

⁴⁹ Senior faculty members with whom I spoke often raised this point.

⁵⁰ Indeed, Professor Veronica Rebreanu of Babes-Bolyai University told me that she was called “a sucker” by an older colleague for agreeing to teach a clinical course, a decision the colleague claimed would adversely affect her academic career. Although she acknowledged that promotions were based solely on scholarship, Professor Rebreanu still wanted to try clinical teaching “for the sake of her students.” Interview with Professor Veronica Rebreanu, Law Faculty Babes-Bolyai University, in Cluj, Romania (Oct. 7, 1998).

non-tenure track clinicians.⁵¹ The Romanian situation, however, is markedly different. A Romanian teacher simply cannot survive solely on a teaching salary. It is not just a sacrifice, it is almost suicidal for a Romanian assistant professor making \$50 a month to embrace clinical teaching as a career. Absent significant changes in the Romanian system, few assistant professors will rush to become clinical teachers.

III. STIMULATING EDUCATIONAL REFORM

A. *Internal Factors Affecting Curricular Reform*

Institutional or systemic change in Romania as in other countries is not accomplished quickly. Few law teachers are eager to embrace major curricular change.⁵² Curricular reform takes time, time for discussion and reflection. It also takes professors who are open to change. It is doubtful that many Romanian professors are interested in overhauling their curriculum. They have little time and little incentive to invest in curricular improvements. Law school administrators and faculty members, most of whom are survivors of the communist regime, will need to be prodded to initiate any serious reform.⁵³

Perhaps the Romanian Ministry of Education, the agency that oversees legal education,⁵⁴ will be persuaded of the need for more practical legal education so that law schools can produce lawyers better able to assist Romania in successfully competing in the global marketplace. Most Romanians are eager to become more Western and many are sensitive to the need to modernize in many different areas if the country is to move forward. Thus, state law schools may be pressured from the top to change.

Change may occur more quickly, however, at some of the new private Romanian law schools. There are a number of such schools springing up in Romania and they primarily compete for the students

⁵¹ See *In-House Clinic Report*, *supra* note 15, at 551-59.

⁵² See BIRZEA, *supra* note 11, at 16-18 (describing difficulties of achieving educational reform given resistance of those in the system); Meyer, *supra* note 7, at 234-241 (discussing faculty resistance to reform in Bulgaria). This phenomenon is not limited to law faculties in Eastern Europe. See Richard A. Matasar, *The MacCrate Report from the Dean's Perspective*, 1 CLIN. L. REV. 457, 460 (1994).

⁵³ Although I agree with Professor Revelos that a lack of resources represents a greater problem for the Romanians than a lack of will, I saw little evidence to support his claim that most Romanian legal educators are committed to major curricular reform. See Revelos, *supra* note 7, at 602. Unlike Revelos, most observers of the Romanian system see faculty resistance and change as serious obstacle to educational reform. See *supra* note 7; George A. Critchlow, *Comments in Reply*, 45 J. LEGAL EDUC. 604 (1998).

⁵⁴ For a discussion of the role of the Ministry of Education in setting educational policy and stimulating reform at Romanian institutions of higher education, see BIRZEA, *supra* note 11, at 49-65. For another perspective of the Ministry's role, see Critchlow, *supra* note 7, at 166-67.

who did not get into one of the state law schools. Because these schools charge tuition, they may, in some cases, be in slightly better financial shape than their state supported counterparts. They also are competing for students so these private schools may be more sensitive to the need to offer a curriculum that appeals to prospective students.⁵⁵ Finally, faculty members at these private schools tend to be younger and less established because many started teaching only after the 1989 revolution. Accordingly, these faculty members may be more receptive to curricular change and new teaching methodologies.

Perhaps even more importantly, of the schools I visited, the administrators at two private schools, Tibiscus and Vasile Goldis, were the most receptive to curricular change, particularly the integration of clinical courses into the curriculum. In fact, Dean Ion Deleanu, the new dean at Vasile Goldis, left Babes-Bolyai, a more prestigious state school in Cluj, because he felt that educational reform could be achieved faster at a private school.⁵⁶ Vasile Goldis was in the process of becoming the first Romanian law school to switch to a credit system that would allow Western European law students to study for a time at Vasile Goldis and then transfer credits back to their law school. Dean Deleanu was anxious to start a mandatory, graded clinical program and had selected an enthusiastic, experienced teacher, Professor Petro Ciacli, to implement the program.

The trouble with Dean Deleanu's plan, however, was that he and Professor Ciacli put the proverbial cart before the horse. Professor Ciacli wanted to make the "clinical course" mandatory for all third year students and first semester fourth year students. Unfortunately, there were over four hundred such students and he alone would be doing the bulk of the teaching. It was even more disconcerting to learn that Ciacli had only vague ideas of what was to be included in the course. He had not identified his course goals nor had he determined the structure or content of the course. I was amazed to discover that he considered my talk to the entire first year class of over 300 students – over three weeks into the semester – as the "official start" of their clinical program.

Some of these problems are fairly easily overcome. Professor Ciacli and I spent considerable time discussing course design, the selection of goals, and teaching techniques to employ when dealing with a large class. Other problems, however, will prove more difficult. The

⁵⁵ Certainly many American law schools, including some schools which accord second class status to their clinical teachers, highlight their clinical programs in the brochures they provide to prospective students.

⁵⁶ Interview with Dean Ion Deleanu, Dean of the Law Faculty, Vasile Goldis University, in Arad, Romania (Nov. 3, 1998).

prospect of additional staff is unlikely so Ciacli will have to design his course or courses, put together all of his materials, and teach the course by himself. Teaching skills to several hundred students without any assistance will be an awesome task. It is even more daunting since Ciacli also is planning a new civil law course and working on a textbook for that class.

My experiences at Tibiscus University, however, offer more hope. I met for several hours with Professor Augusta Anca, the university's founder and chair of its governing council, together with her senior administrators. They were very interested in CEELI's help in designing a clinical program for the school. Refreshingly, they were not interested in securing computers nor in any financial assistance. We discussed many different aspects of clinical legal education, especially the importance of finding the right person or persons with the background, the time, and the interest to do clinical teaching. Professor Anca seemed to appreciate the need for program continuity and for appropriate administrative support of such a program.

When I returned to Tibiscus several weeks later, Professor Anca had asked three faculty members to participate in the planning of a clinical program for the school. Over the next eight days, I met often with Professor Adriana Corhan, Professor Mirodora Vladu, and a teaching assistant, Laura Farcasiu.⁵⁷ We identified course goals, devised a structure, worked on course content, and discussed different evaluation programs.

Based on our discussions, Professors Corhan, Vlada and Farcasiu presented a proposed clinical program to Anca. They recommended a mandatory, graded course for all third year students – over 300 of them – and for students in the first semester of their fourth year. The program is designed to replace the mandatory practicum now in their curriculum.⁵⁸ Tibiscus' new program will continue to require students to observe practice in different settings. The students still will not be able to participate actively in these placements, but they now will be required to attend a classroom component consisting of lectures, discussions, and simulation exercises designed to make them digest, discuss, and reflect upon their real world observations. The course will

⁵⁷ Although Ms. Farcasiu is a young lawyer with limited teaching experience, the other two are senior lecturers with many years of experience in teaching and in practice. Professor Corhan continues to work as a judge on the Court of Appeals and Professor Vladu still works as a prosecutor. Moreover, both Corhan and Vladu have had significant experience working with students in field placement settings. Indeed, as both described their experiences with students, it became clear that each had done considerable clinical teaching already even though such teaching had never been specifically identified as "clinical teaching."

⁵⁸ See *supra* note 37 and accompanying text.

be graded to ensure that the students take it seriously and will cover three different areas – the role of the court, of the prosecutor, and of the lawyer. Each professor will teach in their respective area of speciality and will share overall responsibility for the course.

The program is ambitious – perhaps overly so – but the three teachers were anxious to initiate a program that semester even though the fall term had already begun. I expressed concern that they were trying to do too much with too many students too quickly, but I encouraged them to learn from their experience and to modify the program accordingly. As the three professors recognized, however, this would be a time-consuming project and each of them was already extremely busy.⁵⁹ They asked for additional compensation for teaching this new course, but as of the time I left Romania, Professor Anca had not yet made any financial commitment. The three teachers decided to teach the course that semester regardless of Anca's decision. They indicated, however, that they would give up the experiment in the future unless they received additional compensation.⁶⁰

The prospects for more practical legal education and modest curricular reform are reasonably bright, assuming that law school administrators like Anca are willing to reallocate some teaching resources within their limited budgets. Progress largely depends on the willingness of some Romanian professors to volunteer to teach new courses and to try new techniques. Long-term reform, however, depends on law school administrators providing these innovative clinical teachers with a sufficiently light teaching load to enable them to produce the scholarship necessary to stay in the teaching field. Alternatively, compensation packages as well as tenure and promotion standards need to be modified so that innovative teachers are not penalized for developing and teaching clinical courses. It remains to be seen if the Romanians – and law school administrators from other economically depressed countries of this region – have the will to make such accommodations.

B. The Role of the American Clinical Consultant

1. Practicing and Modeling What We Preach

An increasing number of lawyers, judges, and law professors are being sent to Eastern and Central Europe as well as to the states cre-

⁵⁹ Ms. Farcasiu, for example, has an active law practice with her father, teaches several seminars each week and has just started a PhD program.

⁶⁰ Alternately, perhaps, Professors Corhan and Vladu could be released from other teaching duties to concentrate on this clinical program, but that means finding – and paying – other people to teach their other courses. Furthermore, neither professor was willing to give up their regular course assignments.

ated by the dissolution of the Soviet Union to aid these former communist countries in the development of democratic institutions. The premise is that this American assistance will help these countries build a sound legal system which is essential to the creation of an effective, accountable democratic state.⁶¹ A healthy legal system, however, requires competent, independent lawyers, a relatively scarce breed in the former communist states. Not surprisingly, then, much American assistance has been focused on improving legal education in these countries.

I have no quarrel with the premise. Countries like Romania surely need more forward thinking, independent-minded lawyers and right now, Romanian law schools are not providing their students with a curriculum that teaches them to think critically, much less one that prepares them to function as competent lawyers.⁶² American educators can help, but only if they prepare properly, maintain an appropriate attitude, and remember the limits of their role.

On reflection, I was not properly prepared for my assignment. I did read all of the materials CEELI provided me on Romania, including several years of reports by CEELI liaisons and specialists in Romania. Yet I did not have an adequate understanding of the Romanian system of higher education nor of its legal system. This lack of preparation meant I had to spend a great deal of my limited time asking the Romanians to explain basic aspects of their system.

This need to ask questions, though, was not all bad. I spent much time listening, letting the Romanians with whom I was dealing play the role of expert educating me about their country. This enabled me to emphasize that I was there to learn as well as to share some of my experience. Getting the Romanians to tell me about aspects of their country reinforced this point. Clearly the Romanians appreciated my willingness to listen and not to lecture. They told me that several previous visitors had lectured them excessively about changes they need to make. Not surprisingly, they did not appreciate such lectures, especially when those visitors lacked an adequate understanding or appreciation of the conditions in Romania.⁶³

⁶¹ See Phillip S. Anderson, *Planting the Seeds of Law*, A.B.A. J., Sept., 1998, at 8 (observing that CEELI is helping to establish legal reforms that will lead to move stable governments and an independent judiciary in Central and Eastern Europe and the newly independent states of the former Soviet Union).

⁶² See Critchlow, *supra* note 7, at 167-69; see also Sahlas & Chastenay, *supra* note 45, at 209-10 (Russian legal education does not encourage critical thought or develop skill of thinking like a lawyer).

⁶³ A patronizing attitude is seldom appreciated. Most trial lawyers have had the experience of dealing with an expert witness with a condescending manner. Such an expert is often a disaster on the witness stand because he or she never listens to the question and displays an attitude that grates on the jury. So also, there are lawyers who give legal advice

To serve as an effective consultant on clinical legal education, it is useful to remember the approach most of us try to teach our students. The good lawyer listens to his or her client and tries to provide options to address the client's legal problem based on the goals and interests defined by the client, not by the lawyer.⁶⁴ Similarly, an American educator in a foreign country ought to be assisting law professors in that country to define pedagogical goals and to select appropriately designed courses consistent with those goals and available resources. A consultant who provides information about different courses, alternative teaching methodologies, and the relationship between various teaching strategies and the attainment of particular pedagogical goals renders helpful assistance. That consultant or expert, however, should not be telling foreign professors what to teach.

Admittedly, some of the Romanian professors with whom I worked sounded just like some of my clients. Just tell me what I should teach and how I should teach it was one such request. Although it takes more time empowering the client – or in this case, the law professor – to make his or her own decisions, it is critical that anyone acting as a consultant resist the temptation to make decisions for the foreign professor. Indeed, modeling client-centered decision-making⁶⁵ – and other aspects of good clinical teaching – is one of the most useful things a clinical legal education specialist can do.

It is critical that anyone serving as a CEELI consultant prepare and listen in order to gain the best understanding possible of the circumstances of the legal and educational system of the country in which a consultant is working. Only then will one's expertise about clinical legal education be useful. Lawyers and clinical teachers appreciate the importance of context in structuring solutions to a client's problem. Failure to understand context may render a lawyer's or a consultant's advice misleading or even counterproductive.

Having read *The Ugly American*⁶⁶ as a college student, I was well aware of past mistakes made by American foreign policy specialists and advisors based on a failure to appreciate cultural and other differences in foreign countries. Because I did not feel I had an adequate

to their clients without spending the requisite time to listen to their clients describe their problems or to understand fully their clients' circumstances.

⁶⁴ Active listening is an essential part of the client-centered approach to lawyering. See, e.g., DAVID A. BINDER, PAUL BERGMAN & SUSAN E. PRICE, *LAWYERS AS COUNSELORS: A CLIENT CENTERED APPROACH* 46-68 (1991). Regardless of one's decision making approach, a lawyer needs an adequate understanding of a client's situation if that lawyer is to assist the client in resolving his or her problem.

⁶⁵ For a detailed look at the client-centered approach to decisionmaking, see generally Robert D. Dinerstein, *Client Centered Counseling: Reappraisal and Refinement*, 32 *ARIZ. L. REV.* 501 (1990).

⁶⁶ See WILLIAM J. LEDERER & EUGENE BURDICK, *THE UGLY AMERICAN* (1958).

understanding of the Romanian context, I often was reluctant to make specific recommendations. When I did make suggestions, I frequently reminded my Romanian colleagues that techniques or approaches that worked in the U.S. may not work or may need to be modified significantly to be effective in the Romanian context.⁶⁷

For example, one legal specialist designed a clinical course that included simulations featuring American style cross-examination. Students were somewhat familiar with such cross-examination techniques from American movies and thoroughly enjoyed the exercises. The problem is that the role of the Romanian trial lawyer is substantially different from that of the American trial lawyer. In the non-adversarial Romanian system, no lawyer would be permitted to engage in the kind of cross-examination being taught in this course. In the process of learning a skill of limited utility, the students gained a distorted understanding of their own system and the role of the advocate in that system.

American educators abroad also need to recognize that unless they speak the language of their host country, much will be lost in the translation.⁶⁸ Other than a few words I picked up during my stay, I do not speak Romanian and had to rely on translators or on the English fluency of the Romanian with whom I was speaking. Unquestionably, nuances – sometimes critical ones – get lost in the translations. I am convinced that some of the misunderstandings I encountered based on so-called promises of prior CEELI liaisons and specialists were, in fact, the product of translation problems.

Once again, an example highlights the problem. A Romanian teaching assistant who insisted she understood English “perfectly” told us that “we will have a clinical program next year for sure probably.” Despite repeated attempts to determine if she meant the program was definite or only probable, she continued to vacillate between “for sure” and “probably.” Perhaps she was merely expressing the notion that almost everything in Romania – scheduled meet-

⁶⁷ Stuart Cohn drew a similar conclusion based on his work in Uganda, see Stuart R. Cohn, *Teaching in a Developing Country: Mistakes Made and Lessons Learned in Uganda*, 48 J. LEGAL EDUC. 101 (1998) (warning that U.S. laws and models may be wholly inapplicable given local conditions in a foreign country). Numerous other commentators have warned of the dangers of attempting to impose American ideas, attitudes, and models on another country with a very different culture and legal system. See, e.g., John Henry Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline and Revival of the Law and Development Movement*, 25 AM. J. COMP. L. 457, 479-83 (1977).

⁶⁸ On the value of teaching in a foreign language instead of English, see Janet Ellen Stearns, *Reflections on Teaching in Chile*, 45 J. LEGAL EDUC. 110, 119 (1998). Although desirable, it is very unlikely that most consultants will have the time to become sufficiently proficient in the language of their host country so as to be able to communicate effectively in that language.

ings, class times, and trains – are subject to change, often without any notice. Nonetheless, I often found it difficult to be sure if such inconsistencies were a product of translation problems, cultural subtleties, or intentional.

Even more troubling was the practice at some Romanian schools of limiting access to a clinical course to those students who were proficient in English. It is somewhat understandable because most of the limited clinical materials the Romanians possess are in English.⁶⁹ Yet it is disconcerting to learn that access to skills education for Romanian students turns on their understanding of English. Certainly Americans should not be doing anything to foster limiting access to clinical legal education to English speaking students. Sadly, a recent moot court competition in Romania organized by an American professor was conducted solely in English, ostensibly because the judging was to be done by Americans. It is hardly a surprise that a number of Romanian students were miffed by the structure of the competition.⁷⁰

2. *Empowering Romanian Clinicians*

An American educator offers valuable, useful assistance by helping foreign law professors organize an intra or inter law school moot court competition. That competition is particularly meaningful for the students if it is based on a current legal problem confronting that country, the competition is conducted according to the procedures appropriate for that country, and it is judged by local judges or law professors. Moreover, it is critical that the competition be conducted in that country's language so that all students are eligible to compete. We ought to be encouraging broader exposure to advocacy experiences, skills training, and practical legal education, not limiting such experiences to a select few.⁷¹

CEELI and American consultants also can render important aid by helping to build a community of teachers interested in clinical

⁶⁹ Although the CEELI office in Bucharest worked feverishly to translate into Romanian the materials I provided them, no one in Romania could direct me to any articles in the Romanian language on lawyering or skills such as interviewing and counseling.

⁷⁰ Arguably, it was necessary to hold this moot court competition in English because the winning team was to compete in a European competition that was to be conducted in English. The students with whom I spoke were not provided that explanation, however, nor were they told why no Romanian law professors were involved in judging the competition.

⁷¹ At some point, outstanding Romanian students should be given the opportunity to compete in regional or international moot court competitions. Given the expense involved in sending a Romanian team to a foreign competition, however, I strongly believe that for symbolic and economic reasons, these initial moot court competitions in Romania should be organized based on Romanian problems, using Romanian procedures, and conducted in Romanian.

teaching in each country, by facilitating communication among interested professors within a country, and by helping those who are beginning clinical teachers to connect with other clinicians in the region and around the world. American clinicians certainly have benefited greatly from the strong clinical network that has developed in the United States. So too, the Romanians need to be able to draw upon the support and the experiences of fellow Romanian teachers as they struggle to find the models and methods that will work best given their circumstances. Access to teaching materials and articles about teaching will speed up the development process and prevent the Romanians from having to spend precious resources re-inventing the wheel. By providing such materials, CEELI and American educators will be rendering valuable assistance at minimal cost.⁷²

C. *A Place For Outside Funding?*

Significant change in Romanian law schools is unlikely to occur, however, without the infusion of new funds. That new funding need not be a substantial sum of money. Given the depressed salaries paid to Romanian professors even a modest grant would allow a school to pay attractive stipends to encourage creative teaching and to permit professors with energy and with talent to experiment with new teaching methodologies and courses.

For the most part, Romanian law schools will have to look to outside sources for the funds needed to stimulate these teaching initiatives. Absent exceptional circumstances, neither the Romanian government nor the law schools themselves will be able to generate additional funding to support such teaching incentives. Certainly American clinicians, many of whom are well-versed in grant writing, can assist in developing well-conceived grant proposals. They also can share their concerns based on their positive and negative experiences with different donors.

There are non-profit organizations and foundations interested in promoting law reform, including legal education reform, in Romania and the region. Indeed, the Constitutional and Legislative Policy Institute (COLPI), an arm of The Soros Foundation, was created specifically by George Soros to support legal reform in Central and Eastern Europe and the former Soviet Union.⁷³ Soros has provided grants to law schools throughout the region to foster reform in legal education. Soros grants have led to live client clinics actually being started in

⁷² For example, I proposed to CEELI that they provide back issues of the *Clinical Law Review* to interested Romanian law teachers.

⁷³ See Christina Zampas, *Advancing the Rule of Law Through Legal Education*, Open Society News (Open Society Inst.), Winter/Spring 1997, at 12-14.

some countries in the region.⁷⁴ Furthermore, Soros earmarked \$50,000 in 1999 for assistance for legal education reform in Romania, with a strong preference that this money be spent for the creation of in-house live client clinics.⁷⁵

Outside funding, however, should not be used to create live client in-house clinics. Donors like Soros understandably are anxious to promote positive societal change and mistakenly believe that in-house legal clinics represent a badly needed vehicle for achieving that change. Certainly there are well-intended proponents of change who argue that for certain underrepresented groups, poorly trained law students are better than the alternative – no representation at all.⁷⁶ Moreover, they argue, exposing the law students to the needs of these individuals may encourage needed reform or, at least, stimulate these students to work for the disadvantaged following graduation.⁷⁷

Unquestionably, there are significant unmet legal service needs in Romania and the other countries of this region. Nevertheless, relying on unprepared law students to meet those needs is a poor, half-baked solution. The money used to create in-house legal clinics that can only serve a handful of clients would be better spent dealing directly with the legal needs of the poor. Alternatively, if funds are to be earmarked for improving Romanian legal education, then that money should be spent in a manner that affords more appropriate skills and values training to a much larger group of students. Thus, the Romanians should resist the temptation to create in-house legal clinics to address the needs of the poor and instead provide students with the educational foundation they need to become socially conscious, competent lawyers.

CEELI, the Soros Foundation, and others interested in funding

⁷⁴ See RICHARD N. BLUE, SILVY CHERNEV, ROBYN L. GOODKIND & SIEGFRIED WIESSNER, EVALUATION OF THE RULE OF LAW PROGRAM IN CENTRAL AND EASTERN EUROPE AND THE NEW INDEPENDENT STATES: THE AMERICAN BAR ASSOCIATION/CENTRAL AND EAST EUROPEAN LAW INITIATIVE (ABA/CEELI) - FINAL REPORT 3 (January 28, 1999) (noting that at least eight legal clinics had been established by the program).

⁷⁵ Interview with Ms. Simona Butoi, Regional Program Co-ordinator for Soros, in Timisoara, Romania (Oct. 1, 1998).

⁷⁶ In-house clinics in the United States in the 1960's and 1970's were seen by some as an important means of providing badly needed legal services to the poor. See Monrad Paulsen, *Involvement and Clinical Training: An Evaluation*, 41 U. COLO. L. REV. 461 (1969); William Pincus, *Programs to Supplement Law Offices for the Poor*, 41 NOTRE DAME L. REV. 887 (1966). But see Gary Bellow & Earl Johnson, *Reflections on the University of Southern California Clinical Semester* 44 S. CAL. L. REV. 665, 670-71 (1971) (warning that nature of clinical work and students' educational needs severely limits service benefits produced by a clinic).

⁷⁷ This argument commonly was raised by those promoting funding for in-house clinical programs at American law schools during the 1960's and 1970's. See Howard R. Sacks, *Remarks on Involvement and Clinical Training*, 41 U. COLO. L. REV. 452, 453-54 (1966).

clinical legal education in a country such as Romania can play a critical role in transforming legal education in Romania – and, in turn, the Romanian legal system and institutions – by providing some financial assistance. That assistance, however, ought not be in the form of grants to create showcase live-client clinics educationally incompatible with the Romanian system and counterproductive to meaningful curricular reform. Rather, donors willing to fund Romanian legal education should be open to initiatives that promise lasting change, not just short run flash. In-house legal clinics offer considerable flash, but they will burn out quickly given the reality of Romanian law school budgets. As the United States Agency for International Development, the primary funding source for CEELI, recognizes, Romanian law schools cannot afford to develop an unhealthy dependency on Western funding.⁷⁸ In the long run, outside funding will not sustain clinical legal education in Romania or in the other countries of Eastern and Central Europe. Rather, if clinical courses are to play a positive role in Romanian legal education, those courses must be affordable given the limited resources available to Romanian law schools.

Accordingly, limited outside funding will be helpful if such funding enables law schools in these economically depressed countries to provide the financial carrot needed to encourage professors to invest the considerable time and energy required to design and to teach a clinical course for the first time. Teaching any new course takes extra time. The pressure on the new clinical teacher to learn new teaching techniques and to plan simulation exercises only adds to the burden. Thus, the need for outside funding to provide the prospective clinical teacher a modest stipend to kick start the program is compelling. Indeed, such funding is desirable even in the face of the legitimate concern that these clinical programs, in the long run, must be financially sustainable without outside assistance. Absent a stipend to offset the professor's lost compensation for agreeing to spend the time to design and to teach a clinical course, it is difficult to see why any Romanian professor would take the stressful, demanding leap into clinical teaching. A modest stipend, on the other hand, may allow a Romanian professor to give up his or her second teaching job and to focus on getting a clinical course started. It also will enable that professor to develop and to produce suitable materials. Without such outside funding, it will be the rare Romanian law school that will ever be able to launch a well-designed, educationally sound, clinical course.

Admittedly, it may be difficult to convince outside donors of the

⁷⁸ Interview with Roberto Figueredo, Director of the Bucharest Office for Democracy, Energy and Environment, an arm of the United States Agency for International Development, in Bucharest, Romania (Nov. 2, 1998).

merits of this approach. Americans – and foundations as well – tend to look for the quick fix solutions or one with high visibility. In-house live client legal clinics provide visibility and public relations opportunities. Modest grants to stimulate creative teaching have little dramatic effect. Real change in the Romanian system, however, requires improving the underlying educational structure. That change will take time and patience.

CONCLUSION

With some modest outside funding or because of an innovative administrator, some Romanian law schools will be able to experiment with some clinical courses. It is likely that the Romanian law students, eager for a change from their steady diet of lectures about theory, will find the courses stimulating and clamor for more.⁷⁹ Student demand coupled with pressure from dissatisfied law graduates may pressure law schools to offer more practical legal education. Competition among private schools for students also may help. Finally, growing dissatisfaction among younger faculty over the out-of-date curriculum – a phenomenon not exclusive to East and Central Europe⁸⁰ – may add to the pressure for educational reform.

It remains to be seen if most Romanian law schools will be willing to squeeze enough out of their limited budgets to support significant curricular change. It is not enough for schools just to reallocate scarce resources or to secure outside funding to add an exciting, stimulating clinical course open as an elective only to a handful of students. If that is clinical legal education's contribution to Romanian legal education, few Romanian law students will benefit. If, on the other hand, Romanians can develop clinical courses that bring skills and values education to larger numbers of students, then clinical legal education can make a positive difference in Romanian law schools. American educators who are mindful of the Romanian context certainly can help in this effort.

In the end, clinical legal education in Romania will succeed only

⁷⁹ My experience in Arad at Vasile Goldis provides dramatic evidence of the enthusiasm of the Romanian students for new teaching methodologies. I spoke to the entire first year class – over 400 students – for an hour about clinical legal education using examples, engaging some students in a dialogue, and doing some role-playing. As the bell rang, one student asked Professor Ciaci if I would speak for another hour because the entire class had a one hour break until their next lecture. I agreed and virtually the whole class stayed, giving up their lunch hour, to hear me talk about and demonstrate clinical teaching.

⁸⁰ The law faculty at Karl-Franzens University in Graz, Austria recently overhauled their traditional, heavily theoretical curriculum and replaced it with a new, more American style curriculum, designed to force students to become active learners. The professors I spoke with at Karl-Franzens University were very critical of the traditional Austrian law school curriculum.

if enough dedicated, quality Romanian law teachers are willingly to step forward and take the plunge into the risky sea of clinical law teaching. The challenge the Romanians face is to create adequate professional opportunities for those professors willing to take that plunge so that they – and others after them – continue to be interested in clinical law teaching. Given their system and their resources, the Romanians face a daunting challenge.