

From the Field

Clinical Legal Education in the Philippines: Towards Institutionalization, Pedagogy, and a Professoriat

Eduardo. R.C. Capulong

University of Hawai'i at Manoa

Edgardo Carlo L. Vistan II

University of the Philippines Diliman

Abstract

The 2019 revised law student practice rule mandating clinical training has reenergized Philippine clinical legal education. Despite the pandemic that followed its promulgation, the revised rule spurred law schools to launch programs serving a range of marginalized communities. The new programs follow a long history of skills education and access-to-justice programs in the country. In this article, the authors trace the development of Philippine clinical legal education and, drawing on local, regional, and international experience, call on educators and reformers to harness the momentum created by the revised rule and deepen its institutional and pedagogical foundations and create a dedicated clinical professoriat.

Keywords: Student practice rule, Rule 138-A, Legal Education Board, University of the Philippines.

I. Introduction

In 2019, the Philippine Supreme Court revised its law student practice rule to require clinical legal education of all law graduates. Recognizing the need for law students to undergo such training, beginning 2023, law graduates seeking admission to the bar must have taken at least two credits of an experiential course designed to promote social justice and serve marginalized communities.¹ The revised rule is part of a U.S. government-sponsored, multi-year rule-of-law initiative that has mobilized leaders of the academy, bench, and bar and energized reformers of the country's legal education system.² Fostering wide-ranging curricular reform, the initiative has forged a national consensus and,

¹ Supreme Court, Republic of the Philippines, *En Banc* Notice A.M. 19-03-24-SC, "Revised Law Student Practice Rule 138-A" (June 25, 2019) [hereinafter "revised Rule", "Rule", or "Rule 138-A"]. The two-credit requirement is the Legal Education Board's interpretation of the revised Rule. Legal Education Board, Republic of the Philippines, Memorandum Order No. 23, Series 2020 (December 21, 2020) & Memorandum Order No. 24, Series 2021 (June 30, 2021).

² The five-year, 2018-2022, "Strengthening Rule of Law through Legal Aid Clinics in the Philippines" initiative is a project of the U.S. Office of International Narcotics and Law Enforcement Affairs (INL), in partnership with the

with it, produced a wealth of resources, including conventions and materials devoted to clinical legal education.

In this article, we examine these developments and propose next steps. In part II, we summarize the history of clinical legal education in the Philippines. In part III, we take a close look at the revised rule and rule-of-law initiative and the developments they catalyzed. In part IV, we analyze key aspects of these developments and outline next steps. Finally, in part V, we conclude with a vision of clinical legal education as embodying the purpose of and as the future of legal education in the Philippines and beyond.

II. Clinical Legal Education in the Philippines: A Brief History in Global Context

The story of clinical legal education in the Philippines may be traced through the story of skills education at the University of the Philippines College of Law (UP Law). While the records to which we have access are incomplete, it appears that UP Law has the longest-running documented skills— or experiential, clinical legal—education³ program in the country, dating back to the 1918-19 term. More recently, other schools have adopted programs with the involvement of international clinicians and regional and international organizations, in particular the Bridges Across Borders South East Asia Community Legal Education Initiative (BABSEACLE) and the Global Alliance for Justice Education (GAJE). In this section, we sketch a brief history of Philippine clinical legal education in regional and international context.

A. The University of the Philippines College of Law

The University of the Philippines (UP) is a state-funded, multi-campus national university system that traces its origins from a unitary university established in the City of Manila in 1908 during the U.S. colonial period.⁴ UP Law was established three years later in 1911. For historic reference, the post-Spanish-era Philippine Supreme Court that figures prominently in this article was established in 1901.

Based on documents from the first decade of UP Law's existence, it appears that some form of practical training was incorporated in the curriculum early on through courses, on trial technique and advocacy in which students assisted in the handling of actual cases. For example, a course offered in 1913, called Practice Clubs, was described in the course catalogue as *“(a)rgument and decision of*

Asia Foundation, Philippine Legal Education Board, and the Philippine Supreme Court. See U.S. Supports Advances in Philippine Legal Education with PHP 126-Million Program, U.S. Embassy Manila, <https://ph.usembassy.gov/u-s-supports-advances-in-philippine-legal-education-with-php126-million-program/> (last visited October 12, 2024). Other partners include the Integrated Bar of the Philippines, Philippine Association of Law Schools, and Philippine Association of Law Students.

³ In this article, we both conflate and distinguish “skills”, “clinical”, “experiential” and “practical” legal education, as appropriate.

⁴ The Philippines was a U.S. colony from 1902 to 1946, following the Filipinos' defeat in the Filipino-American War of 1898-1902. See RENATO CONSTANTINO, *THE PHILIPPINES: A PAST REVISITED* (1975); LUIS H. FRANCIA, *HISTORY OF THE PHILIPPINES: FROM INDIOS BRAVOS TO FILIPINOS* (2014). The Philippines had been a colony of Spain from 1565 to 1898. *Id.* Filipino revolutionaries, led by the Kataastaasan, Kagalanggalan, Katipunan ng mga Anak ng Bayan (KKK), vanquished the Spaniards in 1898 and formed the first Philippine republic, which lasted from 1898 to 1902. *Id.*

*cases on agreed statement of facts.*⁵ These early skills courses coincided with and were likely influenced by the first wave of clinical legal education in the United States.⁶

A former dean and associate justice of the Philippine Supreme Court, Irene Cortes, described in one of her many essays on legal education that UP Law:

*established a Legal Clinic in 1918-1919 under the supervision of a professor who taught procedural courses and another who had control of the clinic. Members of the senior class assisted in the conduct of cases, preparing them for trial by drawing up pleadings and looking up the law. This clinic must have operated for years since it was still on the U.P. Catalogue in 1929-1930.*⁷

After the Second World War, this clinic was eventually replaced by a legal aid desk in which students volunteered to assist law professors who were approached for legal assistance by people or members of the community who could not afford to hire lawyers. This informal but nonetheless school-sanctioned legal aid operation was literally a desk in a corridor outside one of the rooms of the law school building. UP Law professors advised clients at this table. Based on anecdotes, the inclusion of students in this activity was a subsequent addition aimed at providing them with practical experience in handling actual court cases. UP Law eventually formalized this legal aid desk by including it in the curriculum in 1974 as the UP Law Office of Legal Aid or “UP Law OLA”.

At UP Law, students in their fourth and final year of law school are required to take two semesters of law practicum—or clinic. Students used to be able to fulfill this practicum requirement exclusively through an internship with UP Law OLA. Eventually, the school allowed students to intern with the Office of the Solicitor General. In 2019, UP Law also began to systematically add more practicum options that included other, more specialized legal aid clinics and internship opportunities with other government agencies.

UP Law’s primary approach to clinical legal education has been to provide practical training through an apprenticeship with a law professor or an experienced lawyer. UP Law strives for a certain level of standardization of the content and methodologies of our clinical program offerings. But it also allows significant space for a supervising lawyer to incorporate his or her own style of supervision and law practice experience. UP Law OLA, which marked its 50th year of existence in 2024, is a living testament of a student-powered legal aid operation that has had a significant impact in providing access to justice and legal assistance in the country—and even to Filipinos abroad. Because of its longevity and size, other law schools have benchmarked their clinical programs to it.

B. Rule 138-A, Other Law Schools, International Clinicians, BABSEACLE, and GAJE

Nineteen eighty six marked not just the overthrow of the Marcos dictatorship in the Philippines but also—and perhaps not coincidentally—strides in clinical legal education. Following the “People Power Revolution” in February of that year,⁸ the Ateneo de Manila University School of Law (Ateneo Law) founded its human rights center, which, along with the “alternative law groups”—public interest law organizations—that sprang up in that era, would become the school’s first clinical placement. In

⁵ UNIVERSITY OF THE PHILIPPINES CATALOGUE, 1913-1914 ANNOUNCEMENTS 1914-1915 280 (1914).

⁶ Margaret Martin Barry, et al., *Clinical Legal Education for this Millennium: The Third Wave*, 7 CLIN. L. REV. 1 (2000); see also Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 112 DICKINSON L. REV. 551 (2018) (hereinafter Joy, *Uneasy History*).

⁷ IRENE CORTES, ESSAYS ON LEGAL EDUCATION 51-52 (1994) (hereinafter CORTES).

⁸ See Eduardo R.C. Capulong, *The People Power Revolution of the Philippines, 1986*, ENCYCLOPAEDIA OF ACTIVISM & SOCIAL JUSTICE (Russell Sage 2007).

addition, in December that year, the Philippine Supreme Court institutionalized clinical legal education by promulgating Rule 138-A, which allowed law students to represent clients in court.⁹

Filipino clinical legal education received another boost at the turn of the 21st century, when collaboration among local and international clinicians and legal education reformers increased. The American attorney, Bruce Lasky, and the organization he founded, “Bridges Across Borders Southeast Asia Community Legal Education Initiative” (BABSEACLE), set in motion various initiatives in this period. Funded by the Open Society Institute and based then in Cambodia, Lasky visited the Philippines to study the clinics at UP Law and Ateneo Law in 2004.¹⁰ Lasky found two distinct models: UP Law OLA’s large-scale legal aid operation and Ateneo Law’s “immersion” model, a program in which students lived with underprivileged families to “develop the soul.”¹¹ One year later, in 2005, Filipino legal educators attended the first Southeast Asia conference on clinical legal education in Phnom Penh, which BABSEACLE hosted. Two years thereafter, in 2007, Lasky and South African clinician David McQuoid-Mason led the first Southeast Asian clinical legal education teachers’ training at Ateneo Law.¹² The training featured workshops on clinical teaching methods, interviewing and counseling skills, negotiation, mediation, and litigation.¹³ The following year, in 2008, the Global Alliance for Justice Education (GAJE), an international organization of clinicians, held its annual conference in Manila. The conference featured sessions on community lawyering, street law, professional responsibility, pro bono, interdisciplinary collaboration, and the global clinical legal education movement.¹⁴

C. The Legal Education Board: First Steps Towards Compulsory and Standardized Clinical Legal Education

These developments took place in a period when law schools were loosely regulated by the then Department of Education, Culture and Sports and eventually the Commission on Higher Education, and when a standard law curriculum was non-existent. The idea of law curriculum standardization and greater regulation of legal education in general was introduced through the creation of the Legal Education Board (LEB) by a 1993 statute called the “Legal Education Reform Act of 1993” (Legal Education Reform Act).¹⁵ The LEB was empowered “to prescribe the basic curricula for the course of

⁹ CLEP COMPANION VOL. II: LAW CLINIC EXECUTIVE MANAGEMENT 15 (2022) (hereinafter CLEP COMPANION VOL. II).

¹⁰ Interview with Bruce Lasky (June 26, 2023) (interview notes on file with authors) (hereinafter Lasky interview); see generally, Bruce A. Lasky & M.R.K. Prasad, *The Clinical Movement in Southeast Asia & India: A Comparative Perspective & Lessons to be Learned* in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR JUSTICE 37-51 (2011) (Bloch, F.S., ed.); see also RICHARD J. WILSON, THE GLOBAL EVOLUTION OF CLINICAL LEGAL Education (2018).

¹¹ Lasky interview, *supra* note 10. For a discussion on professional identity formation, generally, see, e.g., Eduardo R.C. Capulong, et al., *Antiracism, Reflection, and Professional Identity*, 18 HASTINGS RACE & POVERTY L.J. 3 (2021).

¹² See First Southeast Asian Clinical Legal Education Teachers’ Training, Open Society Justice Initiative, https://www.justiceinitiative.org/uploads/4a241f3f-93e1-4544-a074-def770720775/clinic_20070206.pdf (last visited October 12, 2024).

¹³ *Id.*

¹⁴ Professor Capulong organized a panel for this conference, “The University of the Philippines College of Law: Case Study in Developing and Mainstreaming Justice Education,” December 9, 2008, with the late human rights lawyer and International Criminal Tribunal for the former Yugoslavia Judge *Ad Litem* Romeo T. Capulong; former UP Law Dean and International Criminal Court Judge Raul Pangalangan; and UP Law Professor Ibarra Gutierrez.

¹⁵ An Act Providing for Reforms in Legal Education, Creating for the Purpose a Legal Education Board, and for Other Purposes, Rep. Act No. 7662, 90:3 OG 340 (Jan. 17, 1994).

study aligned to the requirements for admission to the Bar, law practice and social consciousness.”¹⁶ In line with the statutory policy of requiring legal apprenticeship,¹⁷ the LEB was also empowered

*to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months.*¹⁸

The LEB’s actual organization or constitution—a process wherein the Supreme Court played a role through the Judicial and Bar Council—was significantly delayed due to problematic provisions of the Legal Education Reform Act that ostensibly encroached on the domain of the Supreme Court, particularly into the latter’s power to promulgate rules concerning admission to and the practice of law itself. A committee of the Supreme Court that considered these issues officially transmitted proposed amendments of the statute to both the Senate and the House of Representatives, but these have not been acted upon as of this writing. At any rate, and since the need for the LEB to regulate the legal education system was recognized, the Supreme Court eventually authorized the Judicial and Bar Council to commence the process of appointing the chair and members of the LEB.

The LEB was eventually constituted in 2009 and in April 2011 it issued the first major regulation on legal education: Legal Education Board Memorandum Order (LEBMO) No. 1, Series of 2011, entitled “Policies and Standards of Legal Education and Manual of Regulations for Law Schools.”¹⁹ LEBMO No. 1 recognized two basic law degrees or programs—the Bachelor of Laws (LI.B.) program and the Juris Doctor (J.D.) program—and prescribed a minimum 152-unit, four-year curriculum for the LI.B. program and a 168-unit, four-year curriculum for the J.D. program. Only the prescribed J.D. curriculum included the statutorily required apprenticeship in the form of a summer apprenticeship course. However, both the LI.B. and the J.D. programs can include an elective clinical course.

LEBMO No. 1 described the J.D. program’s summer apprenticeship course as a “*condition for graduation*” that must be undertaken for a minimum period of 240 hours.²⁰ The students were to “*perform apprenticeship work in accredited law firms, government agencies, public or private legal assistance agencies and in courts*” under a qualified, supervising attorney who will “*assist the students in the actual practice of law.*”²¹ The supervising attorney is tasked with evaluating the student’s performance and recommending to the Dean whether academic credit can be granted based on the evaluation of the student’s performance. The apprenticeship could be completed “*in one or two summers after a student completed his [sic] second year.*”²² In the two-summer mode of completion, the student must complete 120 hours each summer.

On the other hand, the clinical course elective made available in both the LI.B. and J.D. programs is an apprenticeship course undertaken in the law school itself. The elective is described as

¹⁶ *Id.* § 7(c).

¹⁷ *Id.* § 2.

¹⁸ *Id.* § 7(g).

¹⁹ LEB MEMORANDUM ORDER NO. 1, § 58.2 (2011).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

(s)upervised student practice under Rule 138-A (Law Student Practice Rule) of the Rules of Court including conference with clients, preparation of pleadings and motions, appearance in court, handling of trial, (and) preparation of memorandum.²³

This elective may be taken in lieu of the required courses Practice Court I and II, which were classes where students are taught the practicalities of appearing in court and the handling of trials through the simulation of court hearings in the classroom.

It is notable that the statute that created the LEB expressed a policy preference for apprenticeships in work environments outside the law school as the modality of clinical legal education. This idea was not new in Philippine legal academia as institutions like the Ateneo Law School incorporated a similar apprenticeship requirement way before LEBMO No. 1 was issued. Since there is no extant source for the rationale behind this preference for external apprenticeship training, we can only surmise that one major reason for it is the limited capacity of most law schools to provide the desired apprenticeship experience, which made looking outwards to law firms, legal aid groups, courts and other government agencies the more realistic option. This capacity limitation because of a shortage of clinical faculty or lawyers willing to supervise law students—an enduring problem that prevented many law schools from providing practicum courses even before the LEB was created. This problem has been consistently voiced by law schools after the Supreme Court entered the clinical legal education fray with the promulgation of Revised Rule 138-A in 2019.

The external apprenticeship or externship approach, however, was not without inherent problems. Foremost is the difficulty of imposing pedagogical and other standards that the law school would want the supervising attorney to implement. After all, the supervising attorney was not in the employ of the law school and any control or supervision that the supervising attorney allowed the law school over the apprenticeship was heavily consensual on the attorney's part. The fact that most of the entities tapped to provide the apprenticeship did not really need to take in the students as apprentices adds to the problematic nature of this prescribed approach to providing clinical legal education.

In the meantime, the developments narrated in the following section were transpiring and led to the Supreme Court's eventual promulgation of the Revised Rule 138-A in 2019. This rule, in essence, required all law schools to establish a clinical legal education program and required completion of such a program by anyone who would apply to take the bar examination. Admission to the bar was the exclusive domain of the Supreme Court under the Philippine's 1987 Constitution,²⁴ which is why the apprenticeship requirement under Section 7(g) of the Legal Education Reform Act—crafted as a pre-requisite for taking the bar examinations—was one of the provisions that the Supreme Court wanted amended. The LEB recognized this infirmity and cloaked the apprenticeship course as a requirement for graduation²⁵ rather than for taking the bar examination.

Since lawmakers have not heeded the Supreme Court's proposal to amend the Legal Education Reform Act, Section 7(g) was struck down as unconstitutional by the Supreme Court in *Pimentel v. Legal Education Board*—a decision on consolidated petitions seeking the invalidation of the Legal Education Reform Act and the creation of the LEB.²⁶ While the Supreme Court had many prior objections to the statute, it did not go as far as the petitioners in the case wanted. The Supreme Court nonetheless

²³ *Id.*

²⁴ CONST. (1987), art. VIII, § 5(5) (Phil.).

²⁵ LEB MEMORANDUM ORDER NO. 1, § 58.2 (2011).

²⁶ *Pimentel v. Legal Education Board*, G.R. No. 230642, 862 Phil. 120. Sep. 10, 2019. See <https://law.upd.edu.ph/wp-content/uploads/2021/11/Pimentel-vs.-Legal-Education-Board..pdf> (last visited October 12, 2024).

made pronouncements that would significantly impact future reforms in legal education and clinical legal education in particular.

In hindsight, the LEB's apprenticeship requirement had a ticking time bomb under it that eventually exploded. The explosion, however, led simply to a change in the casting of the main actors. Taking the place of the LEB apprenticeship requirement was the Supreme Court's clinical legal education reform delivered through Revised Rule 138-A. As the succeeding sections will show, the new rule left many of the same practical problems and questions encountered by law schools unanswered.

III. "Paradigm Shift": The U.S. Rule-of-Law Initiative and Revised Rule 138-A

A. "Strengthening Rule of Law through Legal Aid Clinics" Initiative

The 2018-2022 "Strengthening Rule of Law through Legal Aid Clinics in the Philippines" initiative was the latest—and arguably most successful—in this long history of curricular reform efforts. Led by the U.S. Embassy in the Philippines' Office of International Narcotics and Law Enforcement Affairs and the Asia Foundation, the P126-million²⁷ initiative was a "*criminal justice sector project ... designed to enhance criminal defense efforts and access to justice in the country.*"²⁸ Partnering with a wide group of institutional actors—including Supreme Court justices and other leading judges, the LEB,²⁹ lawyers, law school deans, professors, and students—the initiative began with a "*learning visit*" in the fall of 2018 by Supreme Court Justices Lucas Bersamin and Alexander Gesmundo and others to three U.S. law schools: Harvard, Suffolk, and Georgetown.³⁰ As Justice Bersamin later would write, the visit:

*convinced our delegation that the current approaches to Philippine legal education were now possibly inadequate, or were even outdated, and by all means needed to be enhanced. We understood that it was high time that the Philippines' directions in the education and training of future lawyers should now shift from the knowledge-based or purely Socratic approach long in vogue with us to the experiential process of learning the law.*³¹

Justice Bersamin was appointed Chief Justice shortly after his return and, upon his assumption of the office, called for a national summit on legal education and appointed a working group to study and recommend revisions to Rule 138-A.³² The working group held seven regional consultations with stakeholders in Luzon, Visayas, and Mindanao.³³ The consultations focused on five aspects of legal

²⁷ Approximately US\$2.2 million in 2024.

²⁸ *U.S. Supports Advances in Philippine Legal Education with PHP 126-Million Program*, U.S. Embassy in the Philippines (Oct. 14, 2021), <https://ph.usembassy.gov/u-s-supports-advances-in-philippine-legal-education-with-php126-million-program/> (last visited October 12, 2024). One might ask why the United States, and the Office of International Narcotics and Law Enforcement Affairs in particular, and the Asia Foundation, an entity closely tied with the U.S. government, are leading these efforts. We leave this inquiry for another day and focus here on Rule 138-A and clinical legal education. For background on the Asia Foundation, see <https://asiafoundation.org/>.

²⁹ The Philippine Supreme Court promulgates and enforces rules concerning, *inter alia*, "pleading, practice and procedure in all courts," "admission to the practice of law," and "legal assistance to the underprivileged." 1987 Constitution, Article VIII § 5(5). There is a conflict, however between the Supreme Court's authority over legal education under the Constitution and the Legal Education Board's authority to do the same under RA 7662. See Dean Sedfrey M. Candelaria, "Reviewing the Regulatory Powers of the Legal Education Board," in *SHIFTING PARADIGM: REMODELING LEGAL EDUCATION IN THE PHILIPPINES* 45 *et seq.* (2019) (hereinafter *SHIFTING PARADIGM*).

³⁰ *SHIFTING PARADIGM*, *supra* note 29 at 54.

³¹ *Id.* at 55.

³² *Id.*

³³ *Id.* at 5.

education—curriculum, instruction, the bar examination, law administration, and the LEB—and yielded a host of insights, which it presented at the national summit in mid-2019.³⁴ The working group also proposed revisions to Rule 138-A, which the Supreme Court adopted on June 25, 2019.

Assessing those insights, former UP Law Dean Fides Cordero Tan came to a harsh conclusion: Philippine legal education, she summarized, is a failure. Despite a long-standing bar-centric curriculum, for example, Dean Cordero Tan observed that, on average, 75% of graduates fail the exam.³⁵ Those who do pass, she noted, were not practice-ready: “a recurring lament from our trial judges,” she wrote,

*was the inability of new bar passers to stand confidently before a court, much less argue before it, many of them locked in grammatical discord without evidence of organized thought process.*³⁶

She and others also pointed to serious administrative and pedagogical failures. LEB Commissioner Josefe Sorretera-Ty noted that “[m]ost law schools ... only have the dean as the lone administrator ... [and] [m]ore than half of ... faculty are part-timers,” most lacking pedagogical training.³⁷ Commissioner Sorretera-Ty also bemoaned an “unrealistic salary and ranking scheme” among law school faculty and staff and the lack of law school facilities and student services.³⁸ The result, among other consequences, Supreme Court Justice Filomena Singh observed, is student disillusionment.³⁹

Participants at the 2019 summit—Justice Bersamin foremost among them—called for a “paradigm shift.”⁴⁰ The goal, wrote Justice—later Chief Justice—Alexander Gesmundo, is “to move Philippine legal education forward toward a globally competitive and service-oriented legal practice” and “provide Philippine law students the edge in the international legal stage.”⁴¹ The summit forged consensus on the need to overhaul Philippine legal education. Among the changes stakeholders prescribed: a new model curriculum, a re-examination of the bar examination, a shift to outcomes-based education, the use of reflection, a focus on empathy, psychological or emotional preparedness or “soft skills,” and practical training.⁴²

B. Revised Rule 138-A

Revised Rule 138-A took effect on August 9, 2019.⁴³ Shortly thereafter followed a series of orientations and trainings sponsored by the LEB.⁴⁴ The Covid-19 pandemic, which began in March 2020, stalled the process, however. Hence, it was only in December 2020 that the LEB issued

³⁴ *Id.* at 5.

³⁵ *Id.* at 9.

³⁶ SHIFTING PARADIGM, *supra* note 29 at 9. This observation is sadly similar to a remark made by U.S. Chief Justice Warren Burger in 1973. Calling on law schools to expand their curricula to provide more skills training, he observed that “from one-third to one-half of the lawyers who appear in the serious cases are not really qualified to render fully adequate representation.” Joy, *Uneasy History*, *supra* note 6 at 567.

³⁷ SHIFTING PARADIGM, *supra* note 29 at 40.

³⁸ *Id.*

³⁹ HON. MARIA FILOMENA D. SINGH, THE CLINICAL LEGAL EDUCATION PROGRAM & PREPARING THE ETHICAL LAWYER 3 (2022) (hereinafter SINGH, CLEP & ETHICAL LAWYER).

⁴⁰ SHIFTING PARADIGM, *supra* note 29 at 5, 17.

⁴¹ *Id.* at 7.

⁴² See generally SHIFTING PARADIGM, *supra* note 29, & SINGH, CLEP & ETHICAL LAWYER, *supra* note 39.

⁴³ Office of the Court Administrator, Republic of the Philippines, Circular No. 130-2019 (July 22, 2019).

⁴⁴ THE FIRST OF A THOUSAND VOICES: STORIES OF CLEP IN THE FIRST YEARS OF THE REVISED RULE 138-A 54 (2022) (hereinafter FIRST OF A THOUSAND VOICES).

implementation guidelines during what it called a “transition period.”⁴⁵ In January 2021, the orientations and trainings shifted online,⁴⁶ and in June 2021, following up on the 2019 summit, the Board issued an order adopting a revised model curriculum.⁴⁷

Revised Rule 138-A requires law schools to “[d]evelop and adopt a Clinical Legal Education Program” and “[d]evelop and establish at least one law clinic in its school.”⁴⁸ The Rule defines a “Clinical Legal Education Program” as:

*an experiential, interactive and reflective credit-earning teaching course with the objectives of providing law students with practical knowledge, skills and values necessary for the application of the law, delivery of legal services and promotion of social justice and public interest, especially to the marginalized, while inculcating in the students the values of ethical lawyering and public service.*⁴⁹

Law schools can comply with the Rule by placing students either in a “law clinic,” which it defines as “a component of the law school’s clinical legal education program”⁵⁰—presumably an in-house clinic— or in an externship with courts, the national bar association, government offices, and non-governmental organizations.⁵¹ The Rule currently requires students to take two clinical legal education program credits, which they can do after their first year and/or during the second semester of their third year.⁵² Students who opt for the former are provided a “Level 1 certification,” which permits them to interview, advise, and negotiate on behalf of and represent clients before quasi-judicial or administrative bodies; draft legal documents; engage in policy formulation, implementation, and advocacy; and “[p]rovide public legal orientation.”⁵³ Students who opt for the latter are provided a “Level 2 certification,” which allows them to perform all these aforementioned activities and, in addition, assist in depositions and the preparation of judicial affidavits of witnesses; appear “at any stage” of a proceeding before “any court, quasi-judicial or administrative body”; in criminal cases “appear on behalf of a government agency in the prosecution of criminal actions”; and on appeal, prepare pleadings.⁵⁴ Students granted Level 1 and 2 certifications are “law student practitioners,” who are bound, *inter alia*, by court rules and the code of professional responsibility.⁵⁵

Law student practitioners must be supervised by an attorney, who is charged with primary supervisory responsibility.⁵⁶ Under the revised Rule, a supervising lawyer must be “a member of the Philippine Bar in good standing” and authorized by the school.⁵⁷ He/she/they are tasked with supervising and

⁴⁵ Legal Education Board, Republic of the Philippines, Memorandum Order No. 23, Series of 2020 (December 21, 2020) (hereinafter LEB Memo 23).

⁴⁶ FIRST OF A THOUSAND VOICES, *supra* note 44 at 54.

⁴⁷ Legal Education Board, Republic of the Philippines, Memorandum Order No. 24, Series of 2021 (June 30, 2021) (hereinafter LEB Memo 24).

⁴⁸ Supreme Court, Republic of the Philippines, A.M. No. 19-03-24-SC, Rule 138-A, Law Student Practice Rule, §§ 9(a), (b) (hereinafter Rule 138-A).

⁴⁹ *Id.*, § 2(a).

⁵⁰ *Id.*, § 2(c).

⁵¹ *Id.*, § 2(b). Private law firms are not included in the list of allowable externship placements.

⁵² LEB Memo 24, *supra* note at 47 at 18. In the Philippines, a LL.B/JD is a four-year course.

⁵³ Rule 138-A, *supra* note 48 at § 4. The Rule does not define “provide public legal orientation.” Here, we presume it means to conduct legal information sessions or trainings.

⁵⁴ *Id.* § 4.

⁵⁵ *Id.* § 2, 6. The prior rule only allowed fourth-year students to represent clients in court.

⁵⁶ *Id.* § 4.

⁵⁷ *Id.* § 2(e).

approving all of a student’s work.⁵⁸ In addition, a supervising attorney is tasked, among other things, with supervising “such number of certified law student practitioners as far as practicable”; “[p]ersonally appear with the law student practitioner in all cases pending before the second-level courts and in all other cases the supervising lawyer determines that his or her presence is required”; “assume personal responsibility” for any work performed by the student; and “[r]ead, approve, and personally sign any pleadings, briefs or other similar documents” prepared by the student.⁵⁹ In contrast, the revised Rule only mentions “clinical faculty” in one section and sentence, providing that “[l]aw schools shall have such number of faculty members to teach clinical legal education courses as may be necessary to comply with this Rule.”⁶⁰ All services provided under a clinical program must be rendered *pro bono*.⁶¹

The revised Rule took effect in the academic year 2020-21 and applied to bar examinees beginning 2023.⁶² The transition period, which ended in 2022, allowed law schools to integrate, substitute, or create a new course to comply with the new rule—meaning schools could (and did) canvas their offerings and decide whether existing offerings complied with the mandate.⁶³ Beginning AY 2022-23, however, schools must offer new courses that comply with the revised Rule.

C. Clinical Legal Education Movement? Programs, Resources, and Momentum

The revised Rule has spurred the creation of a variety of programs. For instance, the Ateneo de Naga School of Law (a different Ateneo Law than the one previously mentioned) created a migrant workers’ desk.⁶⁴ During the academic year 2020-21, 24 clinic students staffed the desk to assist 13 victims of human trafficking in Syria learn about their rights and draft affidavits for use by the Philippine Overseas Employment Agency to file cases against illegal recruiters.⁶⁵ In Leyte, students at the Saint Paul School of Professional Studies assisted tenant farmers draft leasehold agreements, as well as advised them of their rights under the Comprehensive Agrarian Reform Program.⁶⁶ At the Xavier University College of Law in Cagayan and Mindanao State University in Marawi, students founded virtual law clinics that provided legal advice.⁶⁷ In Baguio, the Saint Louis University School of Law created a mediation clinic that draws on indigenous dispute resolution as a model for resolving conflict.⁶⁸

The initiative also produced a wealth of resources. In addition to various trainings and instructional videos are books on pedagogy,⁶⁹ law clinic management,⁷⁰ and externships;⁷¹ manuals for clinic and externship supervisors;⁷² and brochures on clinic protocol and office management. The first academic journal—the Journal of Clinical Legal Education in the Philippines—also issued in March 2023.

⁵⁸ *Id.* § 4.

⁵⁹ *Id.* § 11. Students also “may sign briefs, pleadings, letters, and other similar documents which the student has produced under the direction of the supervising lawyer.” *Id.* § 7.

⁶⁰ *Id.* § 12.

⁶¹ *Id.* § 13(v).

⁶² *Id.* § 14.

⁶³ Email from LEB Commissioner Josefe Sorraera-Ty, June 6, 2023 (on file with authors).

⁶⁴ FIRST OF A THOUSAND VOICES, *supra* note 44 at 10-12.

⁶⁵ *Id.* at 10.

⁶⁶ 1 JOURNAL OF CLINICAL LEGAL EDUCATION IN THE PHILIPPINES 1 *et seq.* (March 2023).

⁶⁷ FIRST OF A THOUSAND VOICES, *supra* note 44 at 28 *et seq.*

⁶⁸ *Id.* at 13 *et seq.*

⁶⁹ CLEP COMPANION VOL. IV: CLINICAL PEDAGOGY TRAINING COURSE HANDBOOK (2022).

⁷⁰ CLEP COMPANION VOL. II, *supra* note 9.

⁷¹ CLEP COMPANION VOL. III: EXECUTIVE COURSE ON EXTERNSHIPS (2022).

⁷² TOOL KIT: LAW CLINIC & EXTERNSHIP TOOLKIT (2022); FIELD PLACEMENT SUPERVISION MANUAL (2022).

At the “First [Philippine] Clinical Legal Education Summit” held in December 2022—which concluded the five-year initiative—law schools showcased programs, shared emerging practices, and discussed the development of networks, materials, and pedagogy. The Supreme Court has kept the momentum by promising in its 2022-27 strategic plan “to eradicate bar-centricity and prioritize skills training and ethical responsibility in legal education”⁷³ and “institutionalize the Clinical Legal Education Program (CLEP) in law schools.”⁷⁴

The initiative has since continued to bear fruit. In addition to Filipino academics’, regulators’, and jurists’ continuing attendance at regional and international conferences (most recently the Externships Conference in Malibu in 2022 and the AALS Clinical Conferences in San Francisco in 2023 and Baltimore in 2025), another delegation, composed mainly of law professors from the University of Santo Tomas Faculty of Civil Law, visited five law schools in New York in September in 2023—the City University of New York School of Law (CUNY Law), Brooklyn Law School, Fordham Law School, New York Law School, and Cardozo Law School—to observe their clinical programs. Another delegation visited CUNY Law later that term.⁷⁵

IV. Next Steps

These developments are undoubtedly a milestone, and they mark an exciting era for Filipino clinical legal education. Forging consensus on key issues, they lay the foundations for the potentially rapid growth of clinical legal education in the country. Yet prodigious as they are, as the Supreme Court’s 2022-27 strategic plan observes, they are only “the first step”⁷⁶—or perhaps more accurately as we discussed in Section II, the latest, if arguably the most significant, step in the country’s long tradition of clinical training. In this section, we focus on areas that we believe are priorities in the next phase of development.

A. Institutionalization

We can say safely that, through the revised Rule and its implementation, clinical legal education has been institutionalized in the Philippines. As mentioned above, *all* of the country’s law schools must now offer and law students are now required to take a clinical course. The next step, then, is to strengthen these institutional foundations. In our mind, this requires a substantial increase in the number of required clinical credits; the creation of adequate administrative infrastructures to ensure the healthy administration and development of clinical programs; their regular assessment; and adequate funding.

- *Increase the number of required credits.* There is a glaring disconnect between the aspiration to produce “practice-ready” lawyers and the requirements of the new model curriculum. Under the revised model curriculum, a J.D. degree requires 135 credits, 120 of which are “mandated core courses.”⁷⁷ Yet only two of these credits are devoted to clinical education.⁷⁸ In other words, less than two-tenths of one percent of the mandated courses are devoted to experiential learning. This hardly reflects the “paradigm shift” stakeholders have called for. Despite rhetoric to the contrary, the revised model curriculum also is unfortunately still bar-

⁷³ Supreme Court of the Philippines, “Strategic Plan for Judicial Innovations 2022-27” at 15 (hereinafter Supreme Court Strategic Plan 2022-27).

⁷⁴ *Id.* at 25.

⁷⁵ Professor Capulong organized these visits with Judge Rigor Pascual of the University of Santo Tomas Faculty of Civil Law.

⁷⁶ Supreme Court Strategic Plan 2022-27, *supra* note 73 at 25.

⁷⁷ LEB Memo 23, *supra* note 45.

⁷⁸ *Id.*

centric. A higher minimum number of credits—we would recommend 16—should therefore be mandated, preferably by further revision to the Rule, as opposed to, say, by LEB implementing memorandum.

- *Bolster administrative infrastructure.* As mentioned, administrators and students have lamented the lack of administrative support, which of course is key to any clinical program. To ensure success, law schools must provide adequate administrative support, which includes the appointment of clinic directors or deans as well as support staff. In the U.S., for example, the 2014 American Bar Association (ABA)-mandated six-credit experiential course graduation requirement led to the growth of a class of administrators—experiential program deans and directors—who now oversee the experiential arc of the curriculum.⁷⁹
- *Assess implementation—regularly.* As mentioned, the LEB is the body tasked with ensuring that law schools comply with the revised rule. During the transition period, the LEB required schools to submit documentation evidencing initial compliance. That period is now over, *i.e.*, schools must now “[d]evelop and establish at least one law clinic.”⁸⁰ However, there is significant leeway as to what this means. For example, must schools establish an in-house clinic? Or would externships do? What about hybrid programs or even simulation courses? While we would support a variety of options, the LEB, in our mind, should ensure general compliance and clarify and detail program(s) that would meet the mandate—and it should do so on a regular basis.
- *Guarantee adequate funding.* None of these recent developments would have been possible without funding. Indeed, what differentiates this effort from previous, less successful, ones is that it was backed by a substantial amount of money (from the U.S. and the Asia Foundation). In the U.S., the birth and institutionalization of modern clinical legal education in the 1960s and ‘70s would not have happened without sustained funding from the Ford Foundation and Council on Legal Education for Professional Responsibility (CLEPR).⁸¹ We therefore call for sustained funding for clinical programs and associated efforts—visits, meetings, conferences, trainings, resources, publications, etc. We also call for an increase in funding for the LEB, which, with this rule, has vastly increased its regulatory reach.

B. Pedagogy

The renewed focus on clinical pedagogy is an exciting development. Our rich understanding of clinical legal education—as evidenced by the revised Rule and the materials produced by the initiative—is a deep well from which to draw. Our review of these materials shows consensus on the essentials of the clinical method: social constructivism, the andragogical basis of clinical education, reflection, collaborative lawyering, and public service, among others. This developing canon is a far cry from what heretofore has been an apprenticeship model. As Ateneo de Naga College of Law Dean Domina Rances observed, apprenticeships are passive, unsystematized learning experiences that prioritize case outcomes and the needs of the supervising attorney.⁸² Clinical legal education, on the other hand, is structured and prioritizes student learning. To transform apprenticeships into clinics and

⁷⁹ See Allison Korn & Laila L. Hlaas, *Assessing the (R)Evolution*, 65 VILL. L. REV. 713 (2020) (hereinafter Korn & Hlaas).

⁸⁰ Rule 138-A, *supra* note 48 at §§ 9(a), (b).

⁸¹ See, e.g., J.P. “Sandy” Oglivy, *Celebrating CLEPR’s 40th Anniversary: The Early Development of Clinical Legal Education & Legal Ethics Instruction in U.S. Law Schools*, 16 CLINICAL L. REV. 1, 9-18 (2009).

⁸² CLEP COMPANION VOL. I: REVISED RULE 138-A & CLINICAL LEGAL EDUCATION PROGRAM BASICS 25 (2022).

create new courses that are truly “clinical” requires sustained engagement with clinical pedagogy— itself an evolving practice. We highlight a few priorities here:

- *Define what counts as practical experience and prioritize legal work.* Despite consensus on the term, uncertainty remains as to what counts as “clinical legal education.” Lawyers of course engage in a variety of professional tasks. For this reason, we subscribe to an expansive view of clinical legal education as including “legal literacy activities, policy reform and development, and other community-based initiatives that are geared towards legal empowerment.”⁸³ At the same time, we believe that law students should do *legal work*—that is, engage in activities that *only members of the bar* can undertake, such as client representation, litigation, document drafting, legal advice, and the like.
- *Provide litigation and court representation experience.* The revised Rule defines clinical legal education as simulation, externship, and in-house clinic courses. These, however, are distinct pedagogies serving different purposes.⁸⁴ Moreover, under the current rule, students can graduate without ever actually interacting with or representing a client—an outcome that, we believe, defeats the purpose of the Rule. As Roy Stuckey, a leading U.S. clinician and legal education reformer, has observed, “*it is only in the in-house clinics and some externships where students’ decisions and actions can have real consequences and where students’ values and practical wisdom can be tested and shaped before they begin law practice.*”⁸⁵ Therefore, while we believe that non-litigation and out-of-court clinic work are valuable and, indeed, necessary, we also believe that *all* students should be given the opportunity to litigate and represent clients in court.
- *Create in-house clinics.* The revised rule explicitly mandates the creation of in-house clinics, which remain the gold standard for clinical training. This is so because in-house clinics are experiences specifically tailored for student learning and are supervised by faculty whose primary task is to teach. As required by the revised Rule, therefore, law schools must create or have at least one in-house clinic.
- *Develop professional identity formation curricula.* Clinical legal educators long have recognized that students best develop their professional identity—their professional values and other moral, social, or political commitments—when they engage in actual client work. Professional identity formation curricula therefore must be developed alongside clinical courses’ skills-centered foci—particularly given the revised Rule’s social justice/public interest focus.⁸⁶
- *Incentivize clinical scholarship.* Clinical legal education—indeed legal education generally—has been understudied in the Philippines (and elsewhere); legal scholarship traditionally has focused on doctrine. Hopefully, the institutionalization of clinical legal education means a more expansive acceptance of what counts as legal scholarship. We encourage schools to incentivize faculty—with compensated time, grants, stipends, work release, etc.—to research and write in this area.

⁸³ Guiller-Kristoffer Lamug, “The Legal Aid Project: Strengthening Rule of Law through Legal Aid Clinics in the Philippines” in *FIRST OF A THOUSAND VOICES*, *supra* note 44 at 53.

⁸⁴ See LEAH WORTHAM, ET AL., *LEARNING FROM PRACTICE: A TEXT FOR EXPERIENTIAL LEGAL EDUCATION* (2016); DEBORAH MARANVILLE, ET AL., *BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD* (2015)

⁸⁵ ROY STUCKEY, ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* 114 (2007).

⁸⁶ See WILLIAM M. SULLIVAN, ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007) (hereinafter the Carnegie Report). Relatedly, in 2022, the American Bar Association mandated U.S. law schools to provide “substantial [curricular] opportunities ... for the development of professional identity’ and ‘education ... on bias, cross-cultural competency, and racism.” ABA Standard 303(b)(3), (c), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2024-2025/2024-2025-standards-chapter-3.pdf (last visited October 12, 2024).

Rich as the literature is in this field, we would call specifically on Filipino scholars to detail and reflect on local experiences to enrich the clinical canon.

- *Ensure a proper faculty/supervising attorney to student ratio and limit the number of students under a supervising attorney.* The revised rule recognizes for the first time “clinical faculty” as a category or specialty among law faculty.⁸⁷ And as summarized above, the Rule also details the role of the supervising attorney. Here, the partnership among law schools, the Supreme Court, and the Integrated Bar of the Philippines (IBP) to recruit IBP members as supervising attorneys is a promising plan as doing so would accomplish the twin purpose of training law students *and* fulfilling the bar’s commitment to public service. But as recognized by the Rule itself, there is a difference between a “supervising attorney” and “clinical faculty”: the primary task of the supervising attorney is to handle the specific legal matter and the primary task of clinical faculty is to attend to the educational aspects of the experience. Of course, both can be—and are—done in in-house clinics, where caseloads and work rhythms are intentionally lessened and graduated to prioritize the learning process. The Rule does not recommend a clinical faculty to student ratio, however, and provides, concerningly, that supervising attorneys shall “[s]upervise such number of certified law student practitioners *as far as practicable.*”⁸⁸ To ensure best practices, schools should limit the number of students taught by or supervised by clinical faculty and supervising attorneys. In the U.S., for example, the recommended in-house clinical faculty-student ratio is 1:8.
- *Encourage innovation and experimentation.* Beyond the classical models of in-house clinics, externships, and simulations are endless others. In the U.S., for example, Allison Korn and Laila Hlaas found the emergence of new models, such as hybrid clinics, practica, and labs, following the 2014 American Bar Association mandate.⁸⁹ The new programs created to comply with the revised Rule follow in this tradition of innovation and experimentation. We encourage schools to support them even as they offer courses in more traditional molds.

C. Professoriat

Few law professors in the Philippines teach full-time; most are full-time practitioners with adjunct faculty status. We therefore are cognizant of this larger challenge in calling for a dedicated clinical professoriat. Nonetheless, because we believe that clinical legal education is key to the future of legal education *writ large*, we believe that the creation of a dedicated professoriat is essential.

- *Found an independent organization of clinical law professors.* In many countries, clinical law professors have been the engine powering this movement. In the U.S., for example, the Clinical Legal Education Association and the American Association of Law Schools Section on Clinical Legal Education⁹⁰ have led these efforts. In Spain, a network of clinicians have been stewarding the propagation of experiential curricula.⁹¹ While we applaud the general consensus among stakeholders—the bench, bar, academy, and law school administration—we also recognize our motives and interests may diverge. As an organization whose *primary*

⁸⁷ Rule 138-A, *supra* note 48 at § 12 (“Clinical Faculty. – Law schools shall have such number of faculty members to teach clinical legal education courses as may be necessary to comply with this Rule.”).

⁸⁸ Rule 138-A, *supra* note 48 at § 11(a) (emphasis added).

⁸⁹ See Korn & Hlaas, *supra* note 79 at 738-749.

⁹⁰ Professor Capulong is active in both organizations and was co-chair of the AALS Section in 2016-17.

⁹¹ Interview with Pilar Artiach Fernandez (April 12, 2023) (interview notes on file with the authors).

if not only purpose is the advancement of clinical legal education, therefore, an organization of clinical law professors, to us, would be its most steadfast, most reliable champion.

- *Provide ongoing trainings.* The trainings sponsored by the initiative have had tremendous impact. They have deepened understanding of clinical legal education practices and processes. As implementation continues and schools develop their programs, ongoing trainings are key. Applying experiential pedagogy, our own experiences in this regard, after all, are the concrete bases from which to learn and grow.
- *Hold annual conferences.* Finally, regular meetings or conferences are key to regional and national development. Not only do we share experiences and learn from each other at these gatherings, we also build community in them.

V. Conclusion: Clinical Legal Education, Curricular Reform, and the Purpose of Law School

The reform of Philippine legal education is long overdue.⁹² For decades, critics have decried its many failings—from its inability to prepare students for the bar exam to the failure to train them for actual law practice, to shortcomings in the teaching of professional ethics. Revised Rule 138-A and the revitalization it has stirred provide us with a unique opportunity not only to reform the legal curriculum but also to reflect on our larger project: what is the purpose of law school? Is it to ensure our graduates pass the bar? To make them more practice-ready—and therefore more globally competitive? To make them more ethical? To train leaders?

We had the opportunity to ponder this question at the Second Asia Clinical Law Conference in Chiang Mai, Thailand, in May 2023. With LEB Commissioner Josefe Sorrera-Ty, UP Law Professor Ted Te, De La Salle Law Professor Justin Sugang, and CUNY Law graduate Patricia Padrinao, we discussed these developments, the core law school curriculum, and the basic premises of law school and higher education in general.

The answer, we agreed, is all the above. But beyond them, we observed, is also training for public citizenship and democratic governance. These two premises were foundational in the creation of UP Law and UP, in fact—albeit during the period of colonization. As U.S. law professor Etienne Toussaint observed:

An emphasis on market-based notions of practice-readiness in legal education can overshadow the importance of deep critique of political economic structures, and can even justify apolitical classroom discourse that shuns debate on the morality of legal institutions that further inequality. Even more, an aversion to “moral activism” among lawyers can prompt formalistic experiential learning courses in law school that commoditize the lawyering practice and subvert law school’s role in provoking broad structural reform.⁹³

With myriad interrelated crises besetting and sharpening before us in full view—war, climate change, racism, authoritarianism, governmental impunity, poverty and intractable economic and social inequality—we need lawyers to use their skills and training to promote active citizenship and champion democracy—in its commitment to marginalized communities and social justice, an objective recognized by the revised Rule. In law school, there is no better way to do that than to be

⁹² See CORTES, *supra* note 7; see also Justin D.J. Sugang, “A Problem Bigger Than Law Schools: Reforming Philippine Legal Education Through an Institutional Approach,” (unpublished thesis) (April 2014).

⁹³ Etienne C. Toussaint, *The Purpose of Legal Education*, 111 CAL. L. REV. 1, 10 (2023) (internal citation omitted).

exposed to real problems and real clients dealing with real challenges. At its best, clinical legal education not only promotes access to justice and prepares students for actual practice, it also develops their sense of purpose and engages them in collaborative, transformative relationships with their clients and others. As the Brazilian educator—and experiential education theorist, Paulo Freire, put it:

Education either functions as an instrument that is used to facilitate the integration of the younger generation into the logic of the present system and bring about conformity to it, or it becomes the 'practice of freedom,' the means by which men and women deal critically and creatively with reality and discover how to participate in the transformation of their world.⁹⁴

We hope the resurgent clinical legal education movement in the Philippines makes strides in all these goals.

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⁹⁴ Paulo Freire, PEDAGOGY OF THE OPPRESSED 34 (1968).