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# THE ROLE OF CLINICAL LEGAL EDUCATION IN DEVELOPING THE RULE OF LAW IN RUSSIA

*John M. Burman\**

## I. INTRODUCTION

Anyone with any significant exposure to Russia quickly comes to appreciate Winston Churchill's observation that Russia is a "riddle wrapped in a mystery inside an enigma."<sup>1</sup> Not only has Russia been shielded from outsiders for centuries, it is the world's largest country, making any attempts at generalizations inevitably inaccurate. Any one person's observations will necessarily, therefore, be both limited and

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This article is an expanded version of a speech Professor Burman delivered at the University of Wyoming College of Law on March 2, 2001. Thanks to Chris Scott, Elena Kroujalova, Serguei Khizhnyak and James Whiting, for reviewing and commenting on a draft of this article. Their suggestions were valuable. Thanks, also, to the George W. Hopper research fund at the College of Law for its financial support.

1. Winston S. Churchill, radio broadcast, BBC 1959, *quoted in* QUOTATIONARY, 746 (Leonard Roy Frank, ed., Random House 2000).

distorted by his or her preconceptions and experiences. Despite those inherent limitations, let me suggest that while the development of a rule of law in Russia is decades away, at best, and may never happen, the West has a role in trying to foster that development. Part of that role involves legal education. And part of legal education involves clinical legal education. Further, there is a need for a discussion of what the role of clinical legal education should be, and how that role should be played.

## II. MY EXPERIENCES IN RUSSIA

Aside from a brief family trip to the former Soviet Union in 1990, when the cracks in the edifice were both obvious and enlarging rapidly, Russia had never been a central, or even a significant part, of my consciousness. Having come of age during the coldest parts of the Cold War, Russia and the Soviet Union (they were interchangeable to most of us), I had a rather vague, subconscious impression of Russia as Ronald Reagan's "Evil Empire," a hostile and forbidding place bent on world domination. That all changed in April of 1996 when Dean Gaudio<sup>2</sup> asked if I would be interested in traveling to Saratov, Russia to participate in some judicial training. Since I have a firm policy of never rejecting foreign travel without a good reason, I said yes. Little did I know what would result from my first professional exposure to the endlessly fascinating mystery which is Russia.

After participating in a judicial training seminar on jury trials<sup>3</sup> for judges in the Saratov Oblast (province), my interest and involvement in Russia turned to legal education, clinical legal education in particular. My endeavors since that initial trip have been devoted exclusively to that development of clinical legal education in Russia. Not only is clinical legal education my passion, the education of Russia's young people, rather than the re-education of existing lawyers and judges is, in my view, the most effective way we, or any outsiders, can hope to have an effect on the long-term development of a rule of law in Russia.<sup>4</sup>

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2. At that time, Arthur R. Gaudio was the dean of the University of Wyoming College of Law. He is now the dean of Western New England School of Law.

3. The Russian Constitution provides for jury trials to the extent specified by the Duma. The law provides for jury trials only for serious crimes and in nine regions of the country, including the Saratov Oblast. The first jury trial to be held in Russia since before the Revolution was held in Saratov in December of 1993. Gennady M. Danilenko and William Burnham, *LAW AND LEGAL SYSTEM OF THE RUSSIAN FEDERATION* 530 (1999).

4. There is a generational chasm between Russians over about age thirty-five, who came of age under the Soviets, and those under that age. The former are, ultimately, survivors. Changing their ideas and attitudes will be difficult, at best. The latter are often suffused with energy, enthusiasm, and, at least some, optimism. *See, e.g.*, Law-

My most extensive exposure to Russia and Russian legal education came in the fall of 1998, when I spent nearly five months in Russia. Courtesy of a teaching fellowship from the Fulbright Foundation, my wife and I spent a semester in Petrozavodsk, the capital of the independent republic of Karelia, one of the eighty-nine administrative units of the Russian Federation.<sup>5</sup> Located in northwestern Russia, some two-hundred and fifty miles northeast of St. Petersburg, Petrozavodsk is the home of Petrozavodsk State University. A law faculty was added to the University in the early 1990s.<sup>6</sup> Russia's first clinical program opened at the University in 1995 with the help of Americans.

Karelia has had a sister state relationship with Vermont since the early 1990s. Jim May, a professor at Vermont Law School, helped organize the clinic as part of that relationship.<sup>7</sup> When I arrived in Petrozavodsk in the fall of 1998, therefore, the clinic was up and running. In appearance and operation it was very similar to an American law school's clinic. Its clientele was different, of course, and plenty of work remained to be done to help the clinic represent its clients and educate its students efficiently and effectively.

My next exposure to clinical legal education in Russia came the following year when I was asked to join an international team of experienced clinicians who were the faculty for clinical teacher training seminars sponsored by the Ford Foundation. Young clinicians from northwestern Russia were invited to St. Petersburg for a three-day, intensive seminar on teaching methods, with an emphasis on interactive and clinical methods. The seminar was then repeated in Stavropol for clinicians from southwest Russia. At each seminar, some twenty-five or thirty young clinicians eagerly devoured our ideas for teaching law students how to be lawyers using different methods than these teachers had ever seen or experienced. When asked to prepare lessons and present classes, they did so with alacrity and enthusiasm, well aware that their educations had not prepared them to teach the next generations of Russia's lawyers. While a three-day seminar will not an experienced clinical

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rence M. Grossberg, *Clinical Education in Russia: "Da and Nyet,"* 7 CLINICAL L. REV. 469, 480 (2001) ("Most law professors over the age of thirty-five have their positions primarily because they were loyal Communists.").

5. The Russian Federation consists of twenty-one autonomous republics, forty-nine oblasts (provinces), one autonomous oblast, six territories, ten autonomous regions, and the cities of Moscow and St. Petersburg, which have separate status at the oblast level.

6. In Russia, the term "law faculty" is roughly analogous to "law school" or "law college" in America.

7. James C. May, *Creating Russia's First Law School Legal Clinic*, 23 VT. B.J. & L. DIG. 43 (Aug. 1997).

teacher make, one could not help but be optimistic. The teachers' enthusiasm for clinical teaching was almost unbridled. The Ford Foundation repeats the seminars twice each year, now with Russian instructors.<sup>8</sup> Over the last several years, a gradually expanding cadre of clinical teachers is gaining important experience. Having Russians train Russians is obviously preferable to having foreigners do so.

My most recent prolonged exposure to Russian legal education came last summer. In June and July of 2000, I served as the Clinical Legal Education Specialist for the American Bar Association's Central and Eastern European Law Institute ("CEELI") in Moscow, Russia.<sup>9</sup> During that time, I developed an evaluation protocol for clinical legal education programs in Russia, traveled to nine cities in Russia, and evaluated fifteen existing or proposed clinical programs.<sup>10</sup> Naturally, I met scores of law school professors, clinical teachers, students, judges, lawyers, and others affiliated in some way with the legal system or legal education. Some clinical programs were well organized and occupy facilities comparable to those in an American law school. Others had literally nothing but enthusiasm and energy. All were having an impact, though, both on the education of law students and the provision of legal services to under-served populations. In some way, each was unique, and often extraordinary. Collectively, they represent an important step forward in the transition of Russian legal education, a transition which is fundamental to the development of a rule of law in Russia.

### III. THE RULE OF LAW

Nearly two-hundred years ago, Chief Justice John Marshall authored the opinion in *Marbury v. Madison*, the seminal decision in which the United States Supreme Court held that Congress may not pass laws which conflict with the Constitution. When that happens, he wrote, "it is emphatically the province and duty of the judicial department to say what the law is."<sup>11</sup> In the same opinion, Marshall declared that "[t]he

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8. Lawrence M. Grossberg, *Clinical Education in Russia: "Da and Nyet,"* 7 CLINICAL L. REV. 469, 492 (2001) ("The Ford Foundation has been a central force in organizing and administering [teacher training] conferences").

9. For a discussion of CEELI's role, *see id.* at 475-77.

10. The term "clinical" is not clearly defined, either in America or Russia. I use it to describe a broad array of activities which involve law students gaining practical experience through the supervised practice of law, whether in an American-style in-house law school clinic, or an externship program in which a student is placed with a practicing lawyer or judge. The critical element is proper supervision by a qualified attorney. (The word "clinic" which has long been used in Russian to refer to medical clinics is now routinely used to describe law school clinic).

11. *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

government of the United States . . . [is] a government of laws, and not of men."<sup>12</sup> In the United States, in other words, the rule of law, as interpreted by the judiciary, should reign supreme. The promise of *Marbury* has come to fruition.

Almost two centuries later, the United States Supreme Court was called upon to decide what became the critical issue of the Watergate scandal. Must President Nixon obey a *subpoena duces tecum* in a criminal case requesting that the president surrender to the Watergate special prosecutor audio tape recordings of conversations between the president and his aides?<sup>13</sup> Quoting Marshall's maxim that "it is emphatically the province and duty of the judicial department to say what the law is," the Court said the law is that the president is not above the law and must, just as any American, obey it.<sup>14</sup> He must, therefore, deliver the tapes to the special prosecutor.<sup>15</sup> Nixon, the most powerful man in the world, and the commander-in-chief of the most powerful military force in the world, complied. He complied even though delivering the tapes would reveal his role in the scandal and ultimately force him to resign the presidency in disgrace.

Last December, the same Court ordered a halt to the recount of ballots in Florida, ensuring that Texas Governor George W. Bush would defeat Vice-President Albert Gore, Jr., in that state and thereby emerge victorious in the Electoral College.<sup>16</sup> Two days later the Vice-President conceded the election in a nationwide speech: "Now the U.S. Supreme Court has spoken," he said, "[l]et there be no doubt, while I strongly disagree with the court's decision, I accept it."<sup>17</sup> With those words, the longest, closest presidential election in over a century was over, the bitter dispute resolved without a shot being fired, resolved by the judiciary through its interpretation of what the law is. While a peaceful result was expected by Americans, such an outcome is neither common nor accepted in many other countries, including Russia.

In 1993, Russian President Boris Yeltsin decided the country should have a new constitution. He issued a presidential decree, which contained a plan for constitutional reform. The decree also dissolved the

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12. *Id.* at 163.

13. *United States v. Nixon*, 418 U.S. 683 (1974).

14. *Id.* at 703.

15. *Id.* at 713-14.

16. *Bush v. Gore*, 531 U.S. 683 (2000).

17. Al Gore's Concession Speech, <http://www.msnbc.com/news/503093?cp1=1> (Dec. 13, 2001).

Congress of People's Deputies.<sup>18</sup> The Constitutional Court of Russia pronounced the Decree unconstitutional. As did Vice-President Gore, Yeltsin disagreed strongly with the nation's highest court. Unlike Mr. Gore, he did not accept the ruling. Instead, Yeltsin issued a decree stripping the court of critical powers and ordering the Court "not to convene its sessions until the adoption of the new Constitution of the Russian Federation."<sup>19</sup> Just as Mr. Gore's actions were expected in America, Mr. Yeltsin's were expected in Russia. Why the markedly different results in this country and Russia? The rule of law is alive and well in America; it is not and has never been in Russia.

When the Soviet Union collapsed in 1991, many in the West believed that a democratic, free-market society would quickly and inevitably emerge. After all, that is the system which had won the Cold War, and it was believed to be the only logical and reasonable path for Russia to follow.

Western aid poured into Russia in the early 1990s, along with advice about how to best transform Russian society. Some of the aid was stolen and much of the advice proved to be disastrous.<sup>20</sup> Some of that aid and some of that advice was directed at inculcating a rule of law, the precondition to economic reform.<sup>21</sup> Given the enormity of the task of developing a rule of law, it should have been no surprise that developing a rule of law in Russia has come very slowly and erratically.<sup>22</sup> As one participant in law reform in Russia recently observed, "[l]egal reform is occurring in Russia, although the progress gets far too little acknowledgment in the West."<sup>23</sup>

One area critical to the development of a rule of law, which gets virtually no acknowledgment, is the transformation of Russian legal education. While slow and erratic, that transformation takes many forms;

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18. Gennady M. Danilenko and William Burnham, *LAW AND LEGAL SYSTEM OF THE RUSSIAN FEDERATION* 70 (1999).

19. *Id.*

20. For a discussion of the mostly disastrous effects of the rapid privatization of Russia's economy, see Bernard Black, Reinier Kraakman, & Anna Tarassova, *Russian Privatization and Corporate Governance: What Went Wrong?* 52 *STAN. L. REV.* 1731 (2000).

21. See *id.* at 1735 ("[D]evelopment of a decent legal and enforcement infrastructure must precede or at least accompany privatization of large firms.").

22. The vastness of Russia makes change difficult, at best. John Dooley, *Aid That Works*, *MOSCOW TIMES*, <http://www.themoscowtimes.com/stories/2001/02/15/006-Print.html> (Feb. 15, 2001). In 2000, 16,742 Russian judges disposed of some five and a half million cases. *Id.*

23. *Id.*

among them is the introduction and growth of clinical legal education. And while the importance and value of that transformation is difficult to measure, and the payoff will be years, if not decades, in coming, the importance of the development is difficult to overstate. Without it, a culture of law, the prerequisite to a rule of law, may never develop.

#### IV. THE AMERICAN CULTURE OF LAW

Shortly after President Clinton was ordered to be deposed in the Paula Jones case, I was in Russia. A Russian judge asked me how a judge could order the president to be deposed, and how could that judge enforce the order? As I groped for an answer, the chasm between America's legal culture and Russia's became clear. I began by trying to explain the independence of the judiciary. Then, I tried to explain that the president obeyed the court because a court order is the law. Neither concept made sense to my Russian acquaintance. As I have pondered the question since then, I have concluded that the answer lies in what we take for granted. The president obeyed because of the American culture of law.

The American culture of law did not, of course, develop overnight, or even over several years. Rather, that culture has been growing and maturing for centuries.

Even before its birth as a nation, the United States was a society founded on the rule of law. The "rule of law" can be defined in a variety of ways, but ultimately whether a society adheres to a rule of law involves three functional questions: Is the society governed by laws openly enacted, equally enforced, and voluntarily accepted by the governed?<sup>24</sup> While it sounds simple, relatively few of the world's nations have truly lived under the rule of law, perhaps because the conditions necessary for the concept to prosper seldom coalesce, and transplanting the rule of law from one society to another has proven to be difficult, at best.<sup>25</sup>

In colonial times, the American colonies were part of the British Empire, the head of which was the British King or Queen. Since King

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24. The rule of law exists, according to John Adams, when "the first citizen and the last, are equally subject to the laws." 1 THE FOUNDERS' CONSTITUTION 97 (Philip B. Kurland & Ralph Lerner eds. 1987), available at <http://Press-Pubs.uchicago.edu/founders/documents/v1ch41.html>.

25. See Black *et al.*, *supra* note 20 at 1797-98. Similarly, transplanting a free market has proven to be difficult since "Western-style capitalism is more fragile than we thought." *Id.* at 1797.



John signed the Magna Carta in 1215, however, the absolute rule of English monarchs had been gradually curtailed. "No freeman," proclaimed the Magna Carta, "shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed . . . except by lawful judgment of his peers."<sup>26</sup> The rule of law, in other words, had taken root in the shade of the gracious oaks of Runnymede. From that day to this, law in England has been something very different. Instead of a means for the government to control the governed, law became a means for the governed to control the government.

The rule of law was solidly entrenched by the time Parliament passed the British Bill of Rights in 1689, declaring that "[t]he pretend power of suspending of laws or the execution of laws by regal authority without consent of Parliament is illegal."<sup>27</sup> Not surprisingly, the idea of rule by one's peers, another way of describing representative government, was a central tenet of many colonists.<sup>28</sup> Each of the thirteen American colonies soon had some form of an elected, law-making body, such as the House of Burgesses in Virginia.<sup>29</sup> It should not have been a surprise, therefore, that when King George III attempted to impose taxes on the colonies without their approval, that effort was met with stiff resistance by colonists accustomed to having a say in their government. "No taxation without representation" became the rallying cry for those opposed to the King's efforts.<sup>30</sup>

The rule of law was so ingrained in America by the last quarter of the eighteenth century that King George III's actions led to rebellion. As one would expect, the new nation which emerged was founded on the rule of law. The nation and the notion have flourished ever since. By contrast, the Soviet Union, and the various permutations of the Russian Empire which preceded it, were founded on the rule of men (or women), often culminating in a cult of personality.

## V. THE RUSSIAN CULTURE OF LAWLESSNESS

Russia has a markedly different history. From its inception, Rus-

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26. MAGNA CARTA, WYO. STAT. ANN. (LEXIS 1999).

27. BRITISH BILL OF RIGHTS, United Kingdom Parliament, available at <http://www.parliament.uk/commons/lib/fs39.pdf> (February 9, 2001).

28. See, e.g., 1 THE FOUNDERS CONSTITUTION 41 (Philip B. Kurland & Ralph Lerner eds., Univ. of Chicago Press 1987).

29. See JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 72 (Carolina Academic Press 1987).

30. QUOTATIONARY, 849 (Leonard Roy Frank, ed. Random House 2000).

sia has been ruled by despots; it has "no tradition of the rule of law."<sup>31</sup> Before the 1917 Bolshevik Revolution, Tsars had reigned autocratically for centuries. After the Revolution, the Communist Party, generally acting through its rather innocuous sounding General Secretary, assumed absolute control. Under either system, the law had a place. Whether wielded by a Tsar or the General Secretary of the Communist Party, law in Russia and the Soviet Union was a method of control; it was used by the government to control the governed.<sup>32</sup> Far too often it became a tool of repression.<sup>33</sup>

Law, to Marx and Engels, was simply a tool. In bourgeois society, it was just one more prop of the fundamentally and fatally flawed capitalistic economic system.<sup>34</sup> When the proletariat revolution came, they predicted, it would "sweep away by force" that society.<sup>35</sup> Ultimately, the workers of the world would unite in a glorious, classless society, in which nations became relics of the past.<sup>36</sup> Until that wonderful and inevitable day, however, it would be necessary for the proletariat to organize as the ruling class.<sup>37</sup> As the ruling class, it would need law as a means of control.

The classless, one-world nirvana which Marx and Engels predicted never arrived. And the dictatorship of the proletariat became the despotism of a series of ruthless Communist party bosses. They governed, at least ostensibly, pursuant to constitutions which guaranteed all manner of human rights. Despite the Soviet Constitution's flowery guarantees, the Soviet legal system became an important method of government control, not a method of controlling the government through protecting and promoting human rights.<sup>38</sup>

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31. David Hoffman, *A State of Lawlessness: Corruption, Coercion Reign in Russia*, WASH. POST, Sept. 9, 1999 at A10, *quoted in* Grossberg, *supra* note 4, at n. 3.

32. Gennady M. Danilenko and William Burnham, *LAW AND LEGAL SYSTEM OF THE RUSSIAN FEDERATION* 453 (1999)

33. *Id.* ("There is evidence that Soviet criminal procedure made some colossal blunders . . . . And it is no accident that these blunders favored the state . . . .").

34. K. Marx and F. Engels, *THE COMMUNIST MANIFESTO*, 70 (Signet, 1998) ("[Bourgeois] jurisprudence is but the will of [the bourgeois] class made into a law for all . . . .").

35. *Id.* at 76.

36. *Id.* at 79.

37. *Id.* at 75.

38. G.N. Danilenko and W. Burnham, *Law and Legal System of the Russian Federation* 235 (1999) ("One of the lessons of the communist past is that constitutional and legislative provision on human rights can be meaningless if the enforcement of human rights is not secured by adequate institutional arrangements.").

The Soviet Constitution is compelling proof that the rule of law is more than words. A comparison of the constitutions of the Soviet Union and the United States show many similarities.<sup>39</sup> Both guarantee a variety of personal liberties. American and Soviet citizens had constitutional rights to: Free speech;<sup>40</sup> freedom of religion;<sup>41</sup> equality before the law,<sup>42</sup> and privacy.<sup>43</sup> The Soviet constitution actually guaranteed a number of rights which Americans do not have. Soviet citizens enjoyed constitutionally protected rights to health care,<sup>44</sup> education,<sup>45</sup> and housing,<sup>46</sup> none of which are guaranteed by the U.S. Constitution. In the Soviet Union, “[w]omen and men [had] equal rights” under the constitution.<sup>47</sup> An equal rights amendment, of course, was proposed, but failed to win ratification in the United States. Other provisions of the Soviet constitution give pause. “Citizens of the USSR,” for example, “are obliged to preserve and protect socialist property.”<sup>48</sup> Even so, one who read and compared the Soviet and United States constitutions in a vacuum could well conclude that the Soviet Union had a better rule of law in place than America. When placed in historical context, however, nothing could have been further from the truth. The rights guaranteed by the Soviet Constitution were, unfortunately, literally not worth the paper on which they were written.

Fast-forward to 1991. The Soviet Union has collapsed. After seventy-five years of Communist rule, preceded by centuries of Tsarist rule, Russia lurches uncertainly into an uncharted future. Not prepared by custom or culture for a society founded on the rule of law, Russia and its legal system face breathtaking challenges. Virtually every aspect of society, including the legal system, is in need of fundamental reform if Russia is to survive as a nation and become a functioning part of the

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39. The Soviet Union had four constitutions. The last one was adopted in 1977. All references in this article are to the 1977 constitution which was adopted by the Seventh Special Session of the Supreme Soviet of the USSR on October 7, 1977.

40. U.S. CONST. amend I. RUSS CONST. (1977 Constitution of the Union of Soviet Socialist Republics), ch. 6, art. 50, *available at* <http://www.departments.bucknell.edu/-russian/const/1977toc.html> (Dec. 27, 2001).

41. U.S. CONST. amend I. RUSS CONST. (Constitution of the Union of Soviet Socialist Republics), ch. 6, art. 34 (1977).

42. U.S. CONST. amend XIV, Section 1. RUSS CONST. (Constitution of the Union of Soviet Socialist Republics), ch. 6, art. 34 (1977).

43. *Griswold v. Connecticut*, 391 U.S. 479, 485 (1965). RUSS. CONST. (Constitution of the Union of Soviet Socialist Republics), Ch. 6, Art. 56 (1977).

44. RUSS. CONST. (Constitution of the Union of Soviet Socialist Republics), Ch. 6, Art. 42 (1977).

45. *Id.* at art. 45.

46. *Id.* at art. 44.

47. *Id.* at art. 35.

48. *Id.* at art. 64.

increasingly global community.<sup>49</sup> Expecting a rapid transformation to a capitalistic, democratic society, America and other Western countries rush to “help,” pouring billions of dollars and mountains of advice into Russia.

Ten years later, Russia is, arguably, worse off than it was under the Soviets. Instead of a democratic, free-market society governed by a rule of law, Russia is astonishingly corrupt,<sup>50</sup> a society which one observer has aptly described as “robber capitalism.”<sup>51</sup> The grossly uneven economic effects of “robber capitalism” are evident. A few individuals have amassed obscene wealth, generally through illegal or sweetheart deals with the government.<sup>52</sup> As a result, downtown Moscow exudes money, Mercedes Benz cars abound, luxury high-rise apartments proliferate, and renovation of pre-Bolshevik buildings is everywhere. By contrast, life for the great majority of Muscovites, and life for the vast majority of Russians outside the capital city, is visibly depressed and depressing. Not surprisingly, the great majority of Russians are not happy with their new lives. A recent public opinion poll revealed that seventy-nine percent of Russians surveyed regret the fall of the Soviet Union, up from sixty-nine percent in 1992.<sup>53</sup> Nevertheless, positive changes are occurring in at least some of Russia's eighty-nine regions, often unnoticed by the Western media.<sup>54</sup>

Whither Russia now? At best, “Russia's medium-term prospects are only so-so.”<sup>55</sup> Without fundamental changes, Russia “risks going the way of Nigeria—another oil-rich country whose government is thoroughly corrupt and its population impoverished.”<sup>56</sup> And one can make the case that “Russia is finished . . . [; it is on] an unstoppable descent into social catastrophe and strategic irrelevance.”<sup>57</sup> So what should we

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49. See Black *et al.*, *supra* note 20 at 1731, 1753.

50. *Id.* at 1738.

51. George Soros, *quoted in* Jane M. Picker and Sidney Picker, Jr., *Educating Russia's Future Lawyers—Any Role for the United States*, 33 VAND. J. OF TRANSNAT'L L. 17, 21 (2000).

52. For a description of selected deals which led to large fortunes, see Black *et al.*, *supra* note 20 at 1742-48.

53. The poll was taken by the Public Opinion Foundation; the results were cited in Deborah Seward, *Russia's Freedom a Mix of Wealth, Pain*, DEN. POST, Aug. 19, 2001 at 11A.

54. In the Novgorod region, for example, the gross regional product has been rising at four percent per year since 1995. Nicolai N. Petro, *A Russian Model of Development: What Novgorod has to Teach the West*, Keynote address to the symposium on Civil Society and the Search for Justice in Russia, Baylor University, February 1-3, 2001.

55. See Black *et al.*, *supra* note 20 at 1733.

56. *Id.* at 1798.

57. Jeffrey Tayler, *Russia Is Finished*, ATLANTIC MONTHLY, May 2001 at 35.

(in the West) do?

The conviction that economic and democratic reforms would occur rapidly in Russia has been replaced with the realization that change will come much more slowly and differently than westerners expected. That realization, coupled with the American penchant for instant results, has led powerful voices to urge the U.S. to reduce its commitment of time, energy, and money.<sup>58</sup> To do so now, however, is both simple and simplistic; it ignores both the changes which have occurred, and the time which will be necessary for a rule of law to emerge.

## VI. CREATING A RULE OF LAW IN RUSSIA

It is easy to say that attempts to create a rule of law in Russia have failed; and while some have, some have not. The more difficult, and more important, questions are: (1) What conditions need to exist before the rule of law can become a reality? (2) Have previous and/or current efforts been so unsuccessful that we should collectively wash our hands of future attempts? and (3) Assuming we should not, what should we do?

A rule of law will not become a reality, in my view, unless and until four, interrelated conditions coalesce. First, Russia must have sound laws. Second, Russia must have an independent judiciary, which is allowed to interpret and enforce those laws. Third, Russian lawyers must become something more than fighters for communism, or any other "-ism." They must become skilled professionals who are respected by the judiciary, their clients, and society, in general. Fourth, and most difficult, a culture of law must take root and grow in Russia. Any one of those is a tall order; taken together it is tempting to say it is too tall.

Others, although not nearly enough, have chronicled the successes and failures of efforts at reforming Russia's law and judiciary.<sup>59</sup> I will not address this critical subject directly, although legal educational

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58. E.g., Condoleezza Rice, now the National Security Advisor for President George W. Bush, has been very critical of the role of the U.S. under President Clinton. "I think that what is called for," she has said, "is a major disengagement from Russian domestic policies . . . . What we now face in international politics is a Russia more dangerous than it has been, because it is coming apart." *Quoted in* John Lloyd, *The Russian Devolution*, N.Y. TIMES MAGAZINE, Aug. 15, 1999 at 34, 52. Similarly, a *Washington Post* editorial recently argued that "[t]he Bush administration should cut all democratic and economic aid to the state and redirect those funds to Russian society." Michael McFaul, *Moscow, Misreading Bush*, WASH. POST, Jan. 23, 2001 at A17.

59. See, e.g., John Dooley, *Aid That Works*, MOSCOW TIMES, <http://www.themoscowtimes.com/stories/2001/02/15/006-Print.html> (Feb. 15, 2001).

reform will, inevitably, affect both laws and the judiciary, as the graduates of reformed legal education assume positions on the bench. Similarly, efforts at retraining lawyers are beyond the scope of this article, except, again, to the extent that education reform will, one hopes, significantly alter the face of the legal profession in Russia. And changing societal attitudes is a long-term and difficult prospect. Yet one thread binds all areas together. The thread is legal education. The education of the lawyers and leaders of tomorrow is, in my view, the most effective way of creating a culture of law.<sup>60</sup> The reason is simple. Retrained judges or lawyers may have ten or twenty years left to practice their professions, and are they really reformed? After all, they may well have been ardent communist party members for decades, anyway. How much they really will change is very open to debate; they are, after all, ultimately survivors, not reformers. A law student has three or four decades ahead of him or her, and students entering law school today were eight years old when the Soviet Union fell. They did not grow up learning that the United States was the evil empire and are much more receptive to American and Western ideas, such as the rule of law.

Reform of Russian legal education has many important components. One of them, the introduction and development of clinical legal education, brings together changes in law students, judges, lawyers, and society, in general. How and why that occurs is the heart of this article.

## VII. THE GAP BETWEEN LEGAL EDUCATION AND LEGAL REALITY

Legal education in Russia today must overcome two large, but not insurmountable, hurdles. First, the abysmal legacy of Soviet legal education must be cast aside. Second, law schools need to educate many more and very differently trained lawyers.

### A. *Soviet Legal Education*

The constitutionally mandated “supreme goal of the Soviet state” was to build a “classless communist society in which there would be public, communist self-government.”<sup>61</sup> Education was simply a method of achieving that goal. The Soviet constitution called for “a uniform system of public education [that] . . . serves the communist education and intellectual and physical development of the youth, and trains them for

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60. In Russia, as in America, it is common for lawyers to be political leaders. For example, both Mikhail Gorbachev and Vladimir Putin are law school graduates.

61. RUSS. CONST. (Constitution of the Union of Soviet Socialist Republics) pmb1. (1977).

work and social activity.”<sup>62</sup> In accordance with that mandate, legal education was closely regulated by the Soviet Ministry of Education in Moscow; it was, accordingly, both uniform and uniformly directed toward the goal of creating a communist society.<sup>63</sup> Not only were teaching materials prescribed and published by the Ministry of Education,<sup>64</sup> faculty research had to be ideologically consistent with communist doctrine.<sup>65</sup> It was hardly an environment in which critical thinking, legal skills training, or respect for the law would or could thrive.

Legal education under the Soviets had a primary goal of training active fighters for communism. Not surprisingly, the curriculum of Soviet law schools included large doses of socialist propaganda. Courses such as political economy, Marxist philosophy (dialectical and historical materialism), and scientific communism were part of the required curriculum.<sup>66</sup>

The methods of instruction also furthered the ideological goal. Students were simply vessels into which the teacher poured prescribed, ideological correct lectures. The Russian phrase for teaching a class reflects the methodology. Instead of “teaching, a class,” a university professor “reads lectures.” The lecture methodology is both ineffective and boring. Perhaps the best description of it is “the method by which the teacher’s notes become the students’ notes without passing through the minds of either.”<sup>67</sup>

The lecture method still predominates in Russian law schools. A Russian friend, who has studied and received law degrees from both a Russian law school and an American one, compared the lecture system and the American system this way: “[I]n the U.S. I had to come prepared for class, in Russia—no need to read anything . . . only professor will be speaking and s/he gives you necessary information.”<sup>68</sup> The American system of legal education, he concluded is “more democratic.”<sup>69</sup>

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62. *Id.* at ch. 3, art. 25.

63. Peter J. Sahlas & Carl Chastenay, *Russian Legal Education: Post-Communist Stagnation or Revival?*, 48 J. LEGAL EDUC. 194, 203 (1998).

64. *Id.* at 211.

65. *Id.* at 213.

66. See Sahlas & Chastenay, *supra* note 63 at 205.

67. William Burnan, Promoting Legal Reform the Former Soviet Union, Panel of Legal Education, Russian East European Forum at Yale University (unpublished manuscript on file with the author).

68. E-mail from Vlandislav Talantsev (Feb. 19, 2001 2:14 a.m. MST). Mr. Talantsev is a graduate of the law faculty at Petrozavodsk State University, and the recipient of an LLM from the University of Minnesota. He works and lives in Moscow.

69. *Id.*

Law examinations were face-to-face oral exams (still the common method of testing in Russia). While oral exams are useful, and I use them in my classes, a complete reliance on them can and does lead to fears, probably well-founded, that grading is unfairly subjective.<sup>70</sup> All in all, the legal education system prepared lawyers to perpetuate the Soviet system, not lawyers trained to solve problems through creative thinking, legal analysis, and skillful legal representation.

### *B. The Need for More and Differently Trained Lawyers*

The need for the Soviet legal system, an important prop of the Communist dictatorship, disappeared with the collapse of the country it had been designed to support. The Soviet Union fractured into fifteen independent nations, each remarkably different from the communist society it replaced, and each with very different legal needs and a need for many more lawyers. Russia was no exception.

With the advent of private property, the privatization of commercial enterprises, private commercial transactions, intra- and international business ventures, and the recognition and enforcement of at least some human rights, lawyers were both in short supply and ill-trained for their new roles. They possessed neither the substantive knowledge nor the practical legal skills to function effectively in the new order. The few existing institutions of higher legal education were in need of massive reforms, both in curricular offerings and teaching methodologies, and even with those reforms, could not meet the dramatically increased demand for lawyers. With increased demand, law became a potentially very lucrative career, and the number of students seeking admission to law schools skyrocketed.

Not surprisingly, new law schools sprang up. Those public universities which did not have a law faculty opened one, and private law schools proliferated—there are now reportedly over three hundred law schools of some kind in Russia. The problem of quality controlled is becoming acute.

The law school deans and directors of law departments in universities met in Moscow in November of 2000. The report they produced articulates the problem. Lawyers, it says, are now “trained in technical,

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70. Project, Tatiana Levina, Maria Lizorkina, and Dennis Ryhakov, *Problems of Legal Education in Russia*, (unpublished Advanced Legal Writing Project) (unknown year) (on file with the author).



agricultural, and other educational establishments;" the variety and, in some cases, poor quality of some of the programs is casting a shadow over legal education.<sup>71</sup> Law classes may even be taught by non-lawyers. The problem may be self-correcting. As the supply of lawyers meets or exceeds the demand, which I have been told is already the case in some areas, marginal schools will close for lack of students. So where does clinical legal education fit in?

With myriad new legal issues, education which focused on the rote memorization of ideologically correct dogma is clearly inadequate. While such education may have been sufficient for preparing fighters for communism, it neither prepares lawyers to function in a free society—or at least in a society which is something of a free-for-all—nor fosters the development of a rule of law. Changing the names and content of courses to eliminate now-discarded communist ideology is a start, but it is wholly inadequate, too. A massive change in society necessitates a correspondingly massive change in legal education. That change needs to be institutionalized by the Ministry of Education through the establishment of and insistence on appropriate standards for accreditation of law schools, and standards for continuing legal education requirements.

#### VIII. THE ROLE OF LAWYERS—IN AMERICA OR RUSSIA

Any discussion of legal education should begin with a consideration of what lawyers actually do. Only after answering that question is it possible to discuss intelligently how lawyers should be trained. And while lawyers in America and lawyers in Russia will always operate in vastly different cultures, good lawyers in either country will share important, essential attributes.

At the end of the day, lawyers are problem solvers. A would-be client consults a lawyer because he or she has a problem, which is perceived to have a legal aspect, and the would-be client hopes the lawyer can help solve it. Solving a client's legal problem requires much more than knowing the law and/or the ability to think like a lawyer (the oft-heard bromide used to describe and justify legal education in America). A competent lawyer<sup>72</sup> must be able to identify and analyze a client's

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71. E-mail from Sergey Khizhnayak (Feb. 11, 2001 4:07 a.m. MST) summarizing THE FEDERAL PROGRAM FOR THE DEVELOPMENT OF LEGAL EDUCATION IN RUSSIA, Saratov State Academy of Law (Trans. by Sergey Khizhnyak) (on file with the author). New, private law schools are not all bad. They are often more willing than state affiliated institutions to "experiment" with innovative ideas, such as clinical education, and encourage new teaching methodologies.

72. "Competent representation," according to the ABA, "requires the legal knowl-

problem, help the client develop potential solutions, consult with the client about the desired solution to the problem, and take the legal steps necessary to implement the client's desired solution.<sup>73</sup> While an American law student who has sat through three years of law school classes has developed some ability to identify and analyze legal problems, and to formulate some legal solutions, he or she is no more prepared to take the legal steps necessary to effectuate the client's desired goal than a medical student with theoretical knowledge of heart surgery is prepared to perform it on a live patient. Simply put, the law student who has no experience may have learned something about the law, but he or she has not learned to be a lawyer. The only way to do that is to practice law, either during or after law school.

Several years ago, the American Bar Association appointed the Task Force on Law Schools and the Profession. It produced a report, known generally as the Macrate Report, which described the gap between legal education and law practice and included recommendations on how to narrow that gap.<sup>74</sup> The Task Force developed a "Statement of Fundamental Lawyering Skills and Professional Values."<sup>75</sup>

The Macrate Report identified ten "fundamental lawyering skills." Lawyers should be able to engage in: (1) Problem solving; (2) legal analysis and reasoning; (3) legal research; (4) factual investigation; (5) communication (oral and written); (6) counseling; (7) negotiation; (8) litigation and alternative dispute resolution procedures; (9) the organization and management of legal work; and (10) recognizing and resolving ethical dilemmas.<sup>76</sup> The report also identified four "fundamental professional values. Lawyers should:" (1) Provide competent representation; (2) promote justice, fairness, and morality; (3) promote the legal profession; and (4) engage in continuing self-development.<sup>77</sup> Unfortunately, law schools do not make a concerted attempt to teach students all, or even many, of the ten fundamental skills or the four fundamental

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edge, skill, thoroughness and preparation reasonably necessary for the representation." MODEL RULES OF PROF'L CONDUCT, R. 1.1 (2001).

73. Just as the problem is the client's, so, too, the solution should be the client's, arrived at after consultation with the lawyer. *See, e.g.*, MODEL RULES OF PROF'L CONDUCT, R. 1.2(a) ("A lawyer shall abide by a client's decisions concerning the objectives of the representation . . ."); and R. 1.4(b) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions . . .").

74. TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (July 1992).

75. *Id.* at 135.

76. *Id.* at 138-140.

77. *Id.* at 140-41.

values.

#### IX. TRAINING LAWYERS TO FULFILL THEIR ROLES COMPETENTLY

Legal education in America focuses on three and a half of the ten "fundamental legal skills:" (2) Legal analysis and reasoning; (3) legal research; (5) written, but not oral, communication; and (10) recognizing and resolving ethical dilemmas; and one of the "fundamental values:" Providing competent representation. I do not mean to suggest that other of the skills and other of the values are not part of the "regular" law school curriculum. Many of them are. The introduction of so-called "non-substantive" courses such as trial practice and lawyering skills is a critical step in the right direction, a step which has been taken at Wyoming. These courses, however, are electives. A student can graduate from this, or most law schools in America, without ever having been exposed to at least several of the fundamental skills and values identified by the Macrate Report. The good news, however, is that all the skills and at least three of the four fundamental values are part of a good clinical legal education program.<sup>78</sup>

The education law students receive in their first two years of law school is critical. It teaches them the fundamental skills of legal analysis and reasoning and legal research, skills without which they could not competently represent clients, even with good supervision. Most third-year students, however, have never interviewed a prospective client or a client, counseled with a client about the client's objectives and the means to be used to achieve those, or the legal or other consequences from the client's proposed course of action. Most have never talked to or written a letter to another lawyer or tried to negotiate a settlement or a contract. Most have never drafted a legal document, or filed one with a court, or served another party, or appeared on behalf of and represented a client in court. Many have never seen the inside of a courtroom. Yet these are all things lawyers do every day. Unless a student is in a clinical program, though, he or she can graduate, pass the bar, and obtain a license to practice law without ever having learned several of the fundamental skills lawyers need. That new lawyer may be lucky and land a job with a law firm or other employer that provides the training and guidance which we have not required the lawyer to receive at law school. Many, unfortunately, do not. They learn at the expense of clients.

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78. Value four, continuing professional self-development is, at least arguably, not part of clinical legal education. I argue that it is because a good clinical supervisor must continually engage in self-development, and that should be apparent to the students.

Finally, learning to be a lawyer is more than acquiring the fundamental skills necessary to represent a client competently. Values, too, are a fundamental part of clinical legal education. Clinical students scrutinize and imitate their supervisor. If he or she is ethical, in word and deed, the students will be, too. If not, they will not be.

Ultimately, a law student must learn to be a professional. A professional may be defined in many ways. I like Justice Sandra Day O'Connor's definition:

One distinguishing feature of any profession . . . is that membership entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market. There are sound reasons to continue pursuing the goal that is implicit in the traditional view of professional life. Both the special privileges incident to membership in the profession and the advantages those privileges give in the necessary task of earning a living are means to a goal that transcends the accumulation of wealth. That goal is public service . . . .<sup>79</sup>

A lawyer, in short, must not just learn to think like a lawyer, he or she must learn to behave like a lawyer. Behaving like a lawyer means being a professional. And a professional has a deep and abiding respect for his or her profession and the rule of law within which the profession operates. That is what students learn in a clinic—how to behave like a lawyer. How do they learn?

#### *A. The Role of Clinical Legal Education in Training Lawyers*

New lawyers or law students, as anyone else, learn by watching and imitating. They watch and imitate other lawyers. It is only natural, therefore, that a budding lawyer watches most carefully and imitates most closely the first lawyer with whom he or she comes into significant professional contact. While it is true that law professors are, for better or worse, role models,<sup>80</sup> much of the modeling we do in the classroom has

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79. *Shapiro v. Kentucky Bar Association*, 486 U.S. 466, 489 (1988) (O'Connor, dissenting).

80. *See, e.g.*, AALS Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities, Section I., Responsibilities To Students, available at <http://www.aals.org/> (July 9, 2001) (law professors have an "inevitable function as role models").

little or no direct relationship to the practice of law. What clinical supervisors do, by contrast, has a direct bearing on the practice of law because that is what we are doing. Whether we want to be or not, we are often the first, and therefore the most important, lawyer in a new lawyer's life. Everything we say or do makes an impression, and often an indelible one, on our students. Although some twenty years have passed, I, for example, still recall the words and actions of Jim Peterson, the faculty supervisor of the Legal Assistance to Minnesota Prisoners clinic in which I participated during my last year of law school. His respect for clients, convicted felons all, the law, and the legal system left an indelible impression on me, an impression which has stayed with me for two decades, and which I hope has been passed on to the hundreds of students who have passed through the Legal Services Program since I arrived in 1989.

Students in a live-client clinic perform all the tasks lawyers perform, except billing and collecting fees from clients. They interview prospective clients, counsel with clients, negotiate with lawyers, represent their clients in court or in ADR proceedings. They learn how to organize and manage a legal practice, and resolve ethical dilemmas, an almost daily occurrence. A student in the Legal Services Program (a civil practice clinic), summed up the experience this way:

Incredible learning experience. We learned how to counsel clients, interview witnesses, negotiate with attorneys, file pleadings & motions, present testimony, prepare exhibits, cross examine, present opening & closing statement . . . . I wish law school was about practical, clinical experience.<sup>81</sup>

Although clinical legal education has a long history in America, it has really only come of age in the last thirty or forty years. It has become a central part of legal education at virtually every American law school, largely as the result of two forces. First, law students and graduates of law schools became increasingly dissatisfied with the lack of practical training to supplement the almost purely theoretical education which had come to dominate American legal education by the middle of the twentieth century. They were clamoring for change. Second, as American society became more concerned about the legal rights and needs of groups which had been traditionally underserved by the legal system, groups such as the poor and minorities, law schools were viewed

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81. Student Evaluation from the University of Wyoming Legal Services Program (Spring 2001) (on file with author).

as a repository of untapped legal assistance. The marriage has been a successful one. Not only do law students receive critical training in how to practice law, they provide countless hours of assistance to persons who would otherwise be unable to obtain legal representation. But can that be transplanted to Russia? Yes. It can. And it is happening.

When the Russian law school deans and directors met in November of 2000, they recognized the need for reform. Their report describes the "modern requirements for the legal profession." A lawyer in Russia should: (1) Possess abilities of legal thinking; (2) be able to apply the law creatively; (3) be able to analyze administrative and judicial practice; (4) understand the problems of a market economy; and (5) should have substantive knowledge of a wide spectrum of legal subjects.<sup>82</sup> The report also recognized several barriers to erecting a system of legal education which can provide the requisite training: (1) The absence of clear government policy on legal education; (2) inadequate funding for law schools; (3) low salaries for faculty members; and (4) the proliferation of law schools of doubtful quality.<sup>83</sup>

Despite the hurdles, the deans proposed some solutions. Among them: (1) Develop regional legal teaching methodological centers; (2) use foreign experience; and (3) develop relations with foreign law schools.<sup>84</sup> Perhaps the most important recommendation is the need to "transform the informative character of education into [a] creative one."<sup>85</sup> To that end, the methods of teaching should be changed to involve discussions, rather than lectures, and active learning, such as through the use of role-plays.<sup>86</sup> Clinical legal education fits the bill to a "T" in Russia, just as it does in America.

Clinical legal education not only prepares lawyers for real life, it has an effect outside the walls of the law school. Persons who would otherwise be unable to obtain legal representation, and are often steamrolled by the system, have a means to obtain representation and fight for their rights.

Clinical legal education today has two general objectives. First, in a controlled environment, law students are exposed to real clients with real problems and assist them in arriving at real solutions. Second, as the

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82. THE FEDERAL PROGRAM FOR THE DEVELOPMENT OF LEGAL EDUCATION IN RUSSIA, *supra* note 71.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

law students gain valuable experience, the clients, invariably for the first time, have a positive experience with the legal system. Rather than imposing yet another burden on them, the legal system often provides them with relief. Even if the clients did not “win,” they received something new and different: Due process. And, the perception of having been treated fairly, of having had one’s day in court, is often more important than the result. One by one, therefore, clients gain some respect for the legal system. With that respect comes one more victory, however small, in the struggle to create or maintain a culture of law.

*B. The Role of Clinical Legal Education in Promoting a Culture of Law*

Although a person in America accused of a crime generally has a right to an attorney provided by the government if the person cannot afford one, no such right exists in civil cases. Accordingly, a person with a civil legal problem, such as a domestic relations case involving the custody of his or her children, has three options. First, a person may always represent him- or herself (proceed *pro se*). Second, one can try to find a lawyer to provide low cost or free representation (*pro bono*). Or third, obtain representation from a legal services lawyer.

Proceeding without a lawyer is dangerous, at best. Even a well-informed person with little or no knowledge of the legal system can foul up his or her life for years to come. Lawyers perform a large amount of free or reduced-fee work. The ABA estimates, however, that only fifteen to twenty percent of the legal needs of low-income Americans are being met, suggesting that what is done is far from adequate.<sup>87</sup>

Government-funded legal services are far from adequate. The federally funded Legal Services Corporation, the primary provider of civil legal services to low-income persons, faces almost annual attacks on its very existence and is funded at a level far from adequate to meet the need.<sup>88</sup> Since neither the government nor the private bar meets the need for legal services for low-income persons, the only remaining option is law school clinical programs. And many law school clinics, such as the Legal Services Program at the University of Wyoming, have

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87. ABA COMMITTEE REPORT SUPPORTING 1993 AMENDMENTS TO RULE 6.1, excerpts *reprinted in* S. GILLERS AND R.D. SIMON, REGULATION OF LAWYERS 2001 STATUTES AND STANDARDS 325 (2001).

88. In Wyoming, for example, the Legal Services Program employs a total of nine lawyers, who have offices in Cheyenne, Casper, and on the Wind River reservation. An estimated 50,000 Wyomingites fall below the federal poverty level, to which eligibility for legal services is tied.

stepped into the breach.<sup>89</sup>

In Albany County, for example, the University of Wyoming Legal Services Program is the only provider of free civil legal services to low income persons. While having a law school clinic is a good thing, the demand is so high that we have a waiting list of one to two years for non-emergency matters.

Nevertheless, the clients who do receive representation from a law school clinic often come away from the experience with dramatically different views than they had before. Many low-income persons have had significant contact with the legal system, but their experience has usually been negative. Representation by a clinic is often the first positive experience with the system that a low-income person has. For once, the person receives the additional measure of respect which legal representation often provides. And not infrequently, legal representation alters the outcome favorably for the client. At a minimum, a person receives due process. Such positive experiences are critical to the maintenance and development of a culture of law. Only when the legal system is thought to be worthy of respect will its decisions be respected and obeyed.

Thankfully, we no longer content ourselves with teaching students to think like lawyers. Rather, we understand that our mission is much broader. Law schools need to help train students to be lawyers. An integral part of that training is helping students to become professionals. At the same time, clinical programs provide a vital method of inculcating respect for the law among non-lawyers.

## X. CLINICAL LEGAL EDUCATION IN RUSSIA

Clinical legal education is not just an American phenomenon. Such programs have been introduced and thrived around the world in such diverse locales as Poland and India.<sup>90</sup> Wherever planted, clinical legal education has grown and prospered, providing valuable experience to law students and much needed legal assistance to under-served populations. Given the changes that have occurred in Russia over the last

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89. The person to be represented shall meet the income and asset criteria within the poverty guidelines of a legal services corporation in Wyoming. RULES OF THE SUPREME COURT OF WYOMING PROVIDING FOR THE ORGANIZATION AND GOVERNMENT OF THE BAR ASSOCIATION AND ATTORNEYS AT LAW OF THE STATE OF WYOMING, Rule 12(b)(iii) (LEXISNEXIS 2001).

90. I have met and discussed clinical legal education with colleagues from Poland and India, all of whom spoke English fluently.



decade, it is not surprising that the interest in and need for clinical education has grown dramatically in the world's largest nation. A few examples illustrate the positive effects which clinical legal education is having, both on law students and society, in general, in Russia.

Several clinics in Russia are now well-established, both as part of the educational curriculum and as an important provider of legal services.<sup>91</sup> In Petrozavodsk, for example, the clinic, with grant assistance from Vermont, USAID, Soros,<sup>92</sup> and others, has facilities, which allow the students in the clinic to interview clients, prepare documents on computers, and access legal databases. The clinic is integrated into the law school curriculum. Experienced lawyers in the area provide close supervision to students. Other courses at the school, such as advocacy training and legal writing, complement the clinic, making it a well-rounded experience for students. And students line up to enroll, even if they will not receive academic credit. As do American law students, they crave the training and experience they will receive. A Russian lawyer who was a student in a clinic before graduation, helped to supervise it afterwards, and then earned an LL.M in America, found his clinical experience to be so valuable that he "would make clinics . . . an obligatory course" in Russian law schools.<sup>93</sup> And as described above, the clinic is having an effect far beyond its critical role in training lawyers.

The clinic at Petrozavodsk represents clients in a variety of matters: Domestic relations, employment-related matters, and assisting displaced war victims obtain financial assistance. In each case, clients, for the first time, experience the law as at least potentially beneficial. Instead of being victims of the legal system, clients often benefit from it. And even if they do not "win," they receive some measure of due process. As each client is treated with respect by the system, that person's view of the law begins to change.

A clinic may operate under the auspices of a non-governmental organization (an "NGO"), a law school, or both. In Saratov, for example, the Saratov Region Legal Reform Project Center ("the Center") has been

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91. In the summer of 2000, I visited and evaluated twelve clinics or proposed clinics in nine Russian cities, including the three described in this article. Conditions may well have changed since my visits. I spent four months in Petrozavodsk in the fall of 1998 and visited the clinic again in 2000.

92. The Soros Foundation, founded by philanthropist George Soros, includes the Open Society Institute, which is dedicated to the building of open societies. The Soros Foundation, at <http://www.soros.org/> (Dec. 27, 2001).

93. E-mail interview with Vladislav Tanlantsev (Feb. 21, 2001 9:13 a.m. MST). Mr. Talantsev is a graduate of the law faculty at Petrozavodsk State University and a recipient of an LL.M from the University of Minnesota School of Law.

in operation since 1995 as part of an NGO.<sup>94</sup> Two years after it opened, the center began involving law students from Saratov's law schools through an Inter-institutional Project. Working with the lawyers at the center, law students help to represent clients with a variety of legal problems, including: Housing, pension, consumer, property, and employment issues.<sup>95</sup> As any good clinic, the center combines "legal aid to the socially unprotected citizens . . . with training intern students the skills of advocates' work."<sup>96</sup> And its influence has been significant. Since it opened, the center has provided legal consultations to over six thousand persons or legal entities.<sup>97</sup> The center's next project is to expand its activities to include a focus on defending human rights.<sup>98</sup>

As it develops, the center is pursuing three interrelated goals: Education, research, and the defense of human rights.<sup>99</sup> It provides educational opportunities for law students and lawyers; lawyers at the Center conduct research and publish articles on legal issues of regional, national, and international interest, which are distributed free of charge, to law schools, the judiciary, and bar associations. And the Center provides representation to persons who would otherwise be without representation in legal proceedings that will effect fundamental human rights.

Other clinics operate on a shoestring. Ufa, for example, is the home of Bashkir State University, several hundred miles east of Moscow. Naturally, it has a law faculty. Remarkably, it has a clinic.<sup>100</sup> A hand-lettered sign marks the door to the room in which the clinic is housed. Inside are some student desks and chairs. And that is it. The clinic has no computer, no printer, no copier, no filing cabinet, not even a telephone (students make necessary calls from their homes). Although students receive credit for the time they spend doing clinic work, the three women who supervise the clinic receive nothing. They each have a regular teaching load of eight to ten hours per week. The clinic is extra

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94. Saratov is the name of a city and a region. The Saratov Oblast is several hundred miles southeast of Moscow on the Volga River. Approximately one million persons live in the City of Saratov.

95. Unpublished Grant Proposal, entitled "Inter-institutional Legal Clinic" by Marina V. Nemytina (Oct. 27, 2000) (on file with the author). The Report was provided to me by colleagues at the Saratov State Academy of Law. I also had an extensive meeting with the Center's Director, Mariana Viktorovana Nemytina in July of 2000 in Moscow.

96. *Id.*

97. Unpublished Grant Proposal of the Project Legal Professionalism and Defense of the Rights of Man, by Mirana V. Nemytina, p. 1 (2000).

98. *Id.*

99. *Id.* at 2.

100. I visited the clinic in June of 2000. Conditions may have changed since then.

work for which they receive nothing. And why should they? Each receives a salary of twenty dollars a month (upon hearing this, I thought I must be mistaken, so I asked the translator if I had understood it correctly. I had, she said.) To make ends meet, faculty members moonlight (although many things are cheaper in Russia, twenty dollars per month is far less than enough to survive). I cannot imagine similar commitment from American law professors.

By contrast, Samara is a city of a million inhabitants, which occupies the east bank of the Volga River southeast of Moscow.<sup>101</sup> It is the home of a branch of the Saratov MVD Academy. Many prosecutors, criminal investigators, and other law enforcement personnel in Russia receive legal training under the auspices of the Ministry of Internal Affairs at an MVD academy.

An MVD academy is operated as a military school with a dose of law thrown in. In addition to course work in history, literature, and law, "cadets," as they are called, wear military-style uniforms, are subjected to strict discipline, and participate in military drills, including practice using automatic weapons. Ninety percent of the cadets are male, and they are required to spend their first two (of five) years residing in barracks, where twenty-eight students sleep cheek by jowl.

The dean of the MVD Academy in Samara is three-star general Ivan Karpov. He has the bearing and demeanor of a general, and is treated with the respect and deference of which an "ordinary" dean can only dream. I suspect the MVD Academy in Samara is a typical MVD Academy, except in one respect, which reflects General Karpov's unique character. It has a legal clinic providing free legal services to low-income clients.

In the summer of 1999, the general learned about law school-based clinics, which provide free legal services to indigent persons. He immediately embraced the idea. Law students, he believed, should receive more practical training. In addition, he felt that the academy should provide assistance to low-income residents of Samara, especially children. Accordingly, he issued an order. The Academy would establish

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101. On older maps you will look in vain for Samara. During the Soviet period, the city was renamed Kubishev, after a Communist party functionary. When the Germans invaded the Soviet Union in World War II and threatened to capture Moscow, the government was moved to Kubishev, which served as the capitol of the Soviet Union during the war. The name Samara was restored shortly after the collapse of the Soviet Union. The Oblast of Samara, of which the City of Samara is the capitol, is between Saratov and Moscow.

a clinic. The clinic would focus on representing children who have been abandoned or neglected by their parents, a group which is both large and largely unrepresented in Russia.

Less than a year later, the clinic at the academy opened its doors to clients. Its director has asked that the ABA's Central and Eastern Europe Law Institute to provide advice and technical assistance on the operation of the clinic, so students and clients can obtain the maximum advantage from the clinic. Imagine the effects of this clinic. Prosecutors and investigators will represent indigent children, a profound, and potentially life-changing experience. Throw-away children will have received free legal assistance. And if it can happen at an MVD Academy, it can happen anywhere.

In addition to the twin objectives of American clinical education, providing representation to indigent persons and training law students, law school clinics in Russia have a third important role to play. Properly trained and supervised law students in clinical programs can influence the legal system, in general, by elevating the level of practice in Russian courts. They can also assist in monitoring the performance of courts in promoting and protecting human rights.

Having a clinical program has become a good thing for a Russian law school. It is safe to say, however, that the quality of the clinics in the forty law schools which claim to have them varies widely. Rather than focusing on the number of clinics, however, we should concentrate on the number of good programs. Clinics should be encouraged and assisted to develop training programs to help prepare students for the practice of law. Clinics, which provide only legal consultations, should be encouraged to represent clients in court. And law schools need to officially incorporate clinical programs into their curricula, so that both students and teachers receive credit for participating in clinics.

It should not be a surprise that clinical legal education has taken root and flourished in the regions, rather than in Moscow. The diversity among Russia's eighty-nine regions is enormous. While the media tends to focus on Moscow, at least some of the regions are receptive to change, provide fertile environments for changes such as clinical legal education, and are yielding impressive results.<sup>102</sup> The media's focus on Moscow has given rise to what one observer has described as "a worrisome gap . . . between media portrayals of Russia as a collapsing and humiliated power, and the rather striking economic and political consolidation that

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102. See, e.g., Petro, *supra* note 54.

has taken place . . . .”<sup>103</sup>

Several entities actively promote legal education reform in general and clinical legal education in particular in Russia: The Ford Foundation, USAID, acting through ABA/CEELI and the Russian American Rule of Law Consortium (RARLOC),<sup>104</sup> and Soros. They are coordinating and targeting their efforts. The Ford Foundation concentrates its efforts on providing equipment and training, both for students and teachers. ABA/CEELI is concentrating on the complementary and critical role of providing technical expertise and teaching materials. RARLOC focuses on building long-term relationships between American and Russian law schools. And Soros targets its grants to start or improve promising clinical programs. None of the entities can be effective without the others. Together, they are assisting with the fundamental task of transforming Russian legal education, and with it, the transformation of society.

## XI. SUMMARY

With over three hundred law schools in Russia, and only a small fraction of Russian law students receiving appropriate clinical experiences, it is easy for the naysayers to say just that. It is too little, too late. One only has to spend time with students or graduates of clinics to quickly understand how valuable the experience has been to them, and how it will color their legal careers for decades to come (and since Russian law graduates are often in their early twenties, a career of forty or fifty years will be common).

As lawyers who have had a good clinical experience go through their careers, there is both a definable difference in the preparation they have received, as well as an indefinable difference in their attitudes toward law and the legal profession. Instead of soulless lectures, they have experienced the law as a living, breathing thing which can do great good, even if that good is only making sure that the government acts as it should, which is no small accomplishment.

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103. *Id.*

104. The partnership between the State of Vermont and the Republic of Karelia has evolved into the Russian American Rule of Law Consortium (RAROLC), a non-profit corporation founded and based in Vermont with funding and support from USAID (the United States Agency for International Development). RAROLC now supports five sister state relationships in northwest Russia: (1) Vermont and Karelia; (2) Maryland and Leningrad; (3) Maine and Archangel; (4) New Hampshire and Vologda; and (5) New York and Novgorod. One of the objectives of the program is the promotion of clinical legal education. For a description of the Maine-Archangel program, see [http://www.arkhangelsk.org/programs.htm#Legal Exchange](http://www.arkhangelsk.org/programs.htm#Legal%20Exchange).

The clients, too, are changed. Instead of a monolithic tool of repression, the law became accessible, and potentially, a friend. And with that change comes a slow change in attitude. For the first time, the law becomes worthy of respect, and respect is the prerequisite to a culture of law. In the world's largest nation, with over 150 million people and a culture of lawlessness, change will be glacially slow, and we are fools to think otherwise.<sup>105</sup> We are even bigger fools if we heed the cries of the new generation of "America firsters," and abandon the chance to affect the future by assisting with the development of clinical legal education in Russia.

Whatever the future holds for Russia, the interest in developing and improving legal education is palpable. That interest includes transforming legal education through the continued development of clinical education. Technical assistance, teacher training, and assisting with the development of teaching and practice materials are of great interest to Russians, and we should continue to assist in those areas, as well as others identified by Russians.

Perhaps the most critical mistake we could make is to demand "accountability" through some quick, supposedly objective measurements of success, such as the number of law schools which have clinics. Instead of focusing on numbers of clinics or students enrolled in clinics, we should focus on quality; one good program is easily worth a dozen poor ones. Ultimately, we should continue to provide assistance, content with the knowledge that clinical education will have a positive influence on law students, the legal system, and society in general.

The terrorist attacks on New York City and Washington, D.C., showed unequivocally the importance of building and maintaining strong relations between the United States and Russia. Russian President Putin was among the first foreign leader to contact President George W. Bush after the attacks and pledge his country's support for the United States.

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105. Madison believed that geographical size, alone, is a barrier to democratic government: "The larger a country, the less easy for its real opinion to be ascertained, and the less difficult to be counterfeited . . . This is favorable to the authority of government. For the same reason, the more extensive a country, the more insignificant is each individual in his own eyes. This may be unfavorable to liberty . . ." JAMES MADISON, PUBLIC OPINION, 19 Dec. 1791, PAPERS 14:170, JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 73 (Carolina Academic Press 1987). Time, too, is required. As Jefferson noted in a letter to Lafayette, "more than a generation will be requisite . . . [before the people] will be capable of estimating the value of freedom, and the necessity of a sacred adherence to the principles on which it rests for preservation." THOMAS JEFFERSON TO MARQUIS DE LAFAYETTE, 14 Feb. 1815, *Id.* at 74.

That sentiment appears not to be confined to the government. I received several messages from friends and colleagues in Russia, all expressing similar sentiments. They all sounded one theme: "All Russians are shocked and compassionate to Americans."<sup>106</sup>

We have much to offer each other.

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106. E-mail from Alexander Shibarov (Sept. 12, 2001) (on file with author).