

Knowledge, Skills and Values in Legal Education

By:

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The 21st Century craves a total lawyer, a lawyer who has or shows a sound knowledge of the law and society, a lawyer who shows competence to attend to practical problems, and a lawyer who appreciates ethical values. A lawyer who knows all the law but cannot apply legal principles is no lawyer. And a lawyer who knows the law and can competently apply legal principles but has no ethical values, is, to the society, like a fuel truck whose braking system has failed on the highway. How does the average person in the society see a lawyer? A man who knows the law? A man who practice the law? A man who is rich off his client's brief? Or a man who is committed to the cause of justice? These questions are important because the society is the field where the lawyer practices. The need to integrate Knowledge, Skills and Values into legal practice is invaluable. Thus, the integration of these three into legal education cannot be overstressed. In many jurisdictions, the law school is the last gate that the young lawyer passes through to enter into the legal market. There is, therefore, the need to have these three inculcated in the young lawyer before he is certified to handle client's briefs.

What is knowledge?

Knowledge refers to the facts, information and understanding that a person has acquired through experience or education. It also refers to the awareness of a fact or situation.² It is also not too different from the competence or skill to do or to carry out that which has been learned. Used in relation to legal education, this relates to the established principles of law learnt by students in the university or, in some cases, in the lower level of law school.

What are skills?

This is the learned capacity to carry out pre-determined results usually with the minimum outlay of time, energy or both.³ The face of the world is changing particularly through technology and so are the skills required to do things. As regulator of human relations, every change in society naturally affects the law just the same way the law affects every change in society. For a lawyer, the following skills are invaluable:

- a) Reading skills
- b) Writing (drafting) skills
- c) Communication skills
- d) Problem-solving skills
- e) Interpersonal skills and
- f) Negotiation skills, etc.

What are values?

This is also known as ethics or ethical values. This is different from commercial or monetary values. It has to do with the importance attached to a thing, idea or object. Used in relation to lawyers or legal education, values refer to those ethical considerations which the legal profession

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² Webster's New Encyclopedic Dictionary (Massachusetts: Federal Street Press, 2006) p. 1019

³ See Wikipedia, the free encyclopedia located at <http://en.wikipedia.org/wiki/skill>. a person is said to be skilled when he has acquired mastery of or skill, or competence in something such as a technique or trade.

attaches to the profession and which the controlling bodies prescribe to be taught in law schools to would-be-lawyers.

Of all the three items discussed above, the most important, in my view, is value. In order to properly inculcate the habit of professional ethics, the law school clinic should be encouraged by all authorities involved in legal education. The reason is obvious. Through the experience from the various activities in the law school together with clinic experience through simulations and live clients, the young lawyer would have recognised the profession he has chosen to enter even before he is admitted into it. Some hidden ugly traits or tendencies in the prospective young lawyer would have been detected and pointed out and, where appropriate, admonished before such traits blossom into substantive professional misconduct in the future.

Last week, a friend narrated an experience he had with the police when he went to the police station to secure the bail of another lawyer. What did the other lawyer do? He was informed by a client that she needed a one bedroom apartment. The lawyer informed the client that he (the lawyer) has a 2 year tenancy in his present place and wanted to move out although he has spent only one year. He then asked the client to give him the money (N150, 000.00) so he can vacate the place for her to use the unexpired tenancy. The client gladly and thankfully released the money. The lawyer simply used the money to go and secure a new apartment for himself. When the lady attempted to move into the apartment left by the lawyer, the Landlord revealed to her that the lawyer's tenancy had long expired and that he was facing ejection before he moved out and that the lady cannot move into the apartment. Apart from the criminal nature of this lawyer's conduct,⁴ what he has done also amounts to professional misconduct.⁵ Bringing the lawyer to book in this case is not difficult at all because there are legislations to regulate this kind of conduct.

It is true, professional ethics is taught everywhere. Rules or codes of professional conduct in the legal profession abound in all jurisdictions. But the question remains: can we really adequately legislate ethics (values)? This question is important when viewed against the background that certain misconducts are not only not defined in any rule but are even encouraged by statutes or by judicial interpretations. For example, an Attorney-General is generally regarded as a law unto himself when exercising his powers of public prosecutions. In fact, he is not answerable to any one when he exercises his discretion.⁶ Thus, with ethical values, an Attorney-General, though conscious of the apparent untouchable garb with which the court has clothed him, would still strive to do what is ethical in every circumstance.

Back to the Law School Clinic I mentioned above, virtually every clinician recognizes the intensity of a well structured clinic supervised by a seasoned clinical teacher. As clearly pointed out in the *Future Report*:

⁴ This Act constitutes the offence of Criminal Breach of trust under Section 311 of the Penal Code in Nigeria

⁵ See Rule 23 (1) of the Rules of Professional Conduct for Legal Practitioners, 2007 (Nigeria)

⁶ In *Ex parte Newton* (1855) 4 F & B 869, Lord Campbell expressed this view: "...if he (the Attorney-General) refuses to hear and consider the application for a fiat, we should compel him by mandamus to hear and consider it; but when he has heard and considered and refused, we cannot interfere. The Attorney-General may be made responsible to Parliament. If he has made an improper decision, the crown may and if properly advised, will dismiss him, but we cannot review his decision." Perhaps, to whittle down this near-almighty position of the Attorney-General under the common Law, the draftsman of the 1979 Constitution of Nigeria introduced a new subsection (3) to Section 191. The subsection provides: "in exercising his powers under this section, the Attorney-General of a state shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process." Acting on the decision of the English court in *Ex parte Newton* above, the Supreme Court in Nigeria held that the Attorney-General's powers with respect to *nolle prosequi* cannot be questioned by the court. (See *The State vs. Ilori* (1983) 2 S.C. 155). In that case, the court, per Eso JSC held inter alia: "this common law pre-eminent and incontestable position of the Attorney-General in this regard is still preserved by that provision and notwithstanding subsection (3) thereof, which is a restatement of the law up to 1979, he is not subject to any control in so far as the exercise of his powers under Section 191 of the constitution is concerned, and except for public opinion and the reaction of his appointer, he is still in so far as the exercise of those powers are concerned, a law unto himself (underlining mine).

*We do not just practice law; we do not just teach skill; we do not just pay lip-service to the merger of theory and practice. We, as academic lawyers, strive to expose students to those parts of the lawyering process that is invisible to them or at least difficult to observe in practice. We want to expose students to critical perspectives on the activities of lawyers and the legal system that will enable them to question and challenge practices that entrench injustice.*⁷

A wide range of goals are in the Report including providing professional skills instruction, teaching means of learning from experience, instructing students in professional responsibility, exposing students to the demands and methods of acting in role, and providing opportunities for collaborative learning.⁸ The Law School Clinic will, in no small measure, enhance the integration of Knowledge, Skills and Values in legal education.

According to Peter Joy⁹

The law school clinic is the best place for a student to become acculturated to the ethical practice of law. In the typical legal ethics or professional responsibility course, law students learn the rules of ethics, study related cases and ethics opinion, work through hypothetical cases highlighting ethical dilemmas and discuss lawyer obligations to clients, third parties and tribunals.

Students would need to confront ethical questions in a real life setting to understand what the Rules of Professional Conduct really mean. It is possible as it often happens, that a student can excel in a course in professional ethics and still routinely fail to identify common ethics issues that present themselves in real life.¹⁰ It is gratifying to know that Law schools are committing to teach students in a more integrated form.¹¹ In fact, some schools have reviewed their programs all aimed at presenting legal study as an integrated whole rather than the more traditional segmenting of knowledge/case analysis in the first year followed by separate skills and ethics courses.

This is a most welcome development. With increased focus on integrated teaching of knowledge, skills and ethics, the students get more confident before they leave the Law School and, in fact, are eager to go into practice. While some schools have introduced programs to provide integration of knowledge/skills/roles programs early in the law school program, others have introduced comprehensive evaluation of integrated lawyering later in the curriculum while, yet, others have done both.¹²

⁷ See The future of the In- House Clinic Report 42, J. Legal Educ. 505 511 (1992) otherwise referred to as the Future Report. Here, the case was made for the In-House Clinic. I think that this is very essential for the Law School Clinic too.

⁸ Kimberly, E. O. Leary **Back to the Future: Twenty-Five years after the Inspiration for the Future of the In-House Clinic Report, What Have We Learned about In-House Clinic? P.**

⁹ The Law School Clinic as a Model Law Office 30 WM Mitchell L Rev. 35 (2003)

¹⁰ Quoted in Kimberly, op. cit. p.15.

¹¹ In Nigeria, the Nigerian Law School embarked on an extensive Curriculum Review between 2007 and 2008. Before the Review, six courses were separately taught in the school. These are: 1) Company Law; 2) Legal Drafting & Conveyancing; 3) Criminal Procedure; 4) Civil Procedure; 5) Law of Evidence; and 6) Professional Ethics. Under the new curriculum which was meant to integrate Knowledge, skills and ethics, Company Law was changed to Corporate Law Practice; Legal Drafting & Conveyancing was changed to Property Law Practice; Criminal Procedure was changed to Criminal Litigation, and, like Civil Litigation which replaced Civil Procedure, it encompasses criminal evidence. Thus, the Law of Evidence hitherto taught separately was collapsed into Criminal and Civil Litigation. To further emphasize skills and ethics, a new Module, 'Law in Practice' was introduced to be taken on Friday after the other four modules have been taken between Monday and Thursday. The whole idea is that all the activities undertaken by the student from Monday through Thursday are practicalised on Friday with emphasis on ethical issues that arose during the week in all the modules.

¹² In Nigeria, after the students have finished their class work, they are sent on a 12 week externship, 4 weeks at the court and 8 weeks at the Law Office. It is a requirement that each student at the completion of the externship make a presentation of his portfolio, that is, his/her experiences at the attachments, what he learnt, what assignments were given to him/her, how the assignment was carried out and his own reflections on all that he experienced during the period including his opinion on the entire legal system. It is difficult for the student to present his portfolio successfully if he/she did not take active part in the activities during these 12 weeks. The presentation is done before a panel of at least 2 Assessors. A student must score at least 70% before he qualifies to write the Bar Final Examinations.

It is hoped that with the current tempo on integration of knowledge, skills and values in legal education by law schools across the globe, the mid 21st century looks forward to a complete lawyer in every prospective lawyer.