

2001

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Recommended Citation

7 Clinical L. Rev. 403 2000-2001

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CLINICAL EDUCATION IN RUSSIA: “DA AND NYET”*

LAWRENCE M. GROSBERG**

This essay, which grows out of the author's work with law professors in Russia under the auspices of the ABA's Central and East European Law Initiative (CEELI), examines the role that Western clinical legal educators can play in Russian legal education. The essay begins by briefly describing the historical context for the CEELI project and presenting a profile of the Russian law school. The essay then describes some of the author's experiences in Russia and offers suggestions for future Western involvement in Russian legal education.

INTRODUCTION

The establishment of clinical legal education in Russia can be viewed in many ways as a metaphor for change in Russia. Like much of what is going on in Russia, there are starts and stops, uncertainty, instability, intrigue and an impossible economic context. For most people, life in Russia right now is very difficult at best. The depth of this challenge is often understated by American observers. The complexity of the changes in Russia since 1985 also cannot be exaggerated; nor can the explanations of the changes be easily summarized.¹ Reform of the structures of Russian legal education is but one small piece of these developments. And the initiation of clinical legal education programs is an even tinier slice of the post-Soviet changes. As I discuss these latter developments, it is useful to retain these perspectives.

Law and people's relationship to law and institutions of law have

* I shamelessly borrow this phrase, “Yes and No” (in English) from the title of a book that I found extremely useful during my stay in Russia: YALE RICHMOND, *FROM NYET TO DA, UNDERSTANDING THE RUSSIANS* (1996).

** Professor of Law, New York Law School. I want to thank Doug Freifeld (CEELI) for his unstinting support during my stay in Russia, the many Russian law professors and lawyers with whom I worked and my wife, Susan Rosenthal, for her insight both while in Russia and later in offering helpful suggestions on this essay. I am also grateful to Deans Harry Wellington and Ellen Ryerson and New York Law School for their continuous support of my clinical work.

¹ In a review of eight books seeking to explain all or part of the history of Russia from 1985 on, the reviewer makes it clear that the experts will long debate the causes and implications of the Soviet collapse. Even the principals, he concludes, were at a loss: “Evidently, none of the political actors at the time recognized what was really happening.” Robert V. Daniels, *Was Communism Reformable?*, *THE NATION*, Jan. 3, 2000, at 25, 29.

been drastically altered in Russia. That much is clear. What is much less clear is how further changes will proceed. David Remnick astutely points out that Russian czars were by far the most absolutist of all European monarchs because they owned all property. When the Communists took over, the "property remained property of the sovereign. . . . The Communists were even less inclined to develop a culture of legality—of property rights, human rights, and independent courts—than the last of the Romanovs had been."² The legacy of hundreds of years of a lawless society is a long one indeed.³ It is naive and unrealistic to expect major changes to occur quickly or to be implemented smoothly.

That said, if the initiation of clinical education in some traditional Russian law schools is a sign of some small degree of progress by Russians in adapting their legal institutions to a new political context—in this case, the law schools—then some positive development has occurred.⁴ Most of Russian legal education, however, remains unchanged, steadfast in its adherence to norms and structures that no longer seem to fit the needs of the country or a changing legal profession.

Having worked for three months with law professors in Russia, I very much want to encourage other Western clinicians to follow.⁵ There is a role for us to play in Russia. It is a modest one, but potentially constructive nevertheless.⁶ I participated in an American Bar Association project designed to facilitate the transition to democracy and free markets in the former countries of the Soviet bloc—the Cen-

² DAVID REMNICK, *RESURRECTION* 359 (1998).

³ "Russia has no tradition of the rule of law. . . . Power was exercised ruthlessly and without recourse for its victims. Today's Russia, despite the changes in recent years, still bears the imprint of this history." David Hoffman, *WASHINGTON POST*, September 9, 1999, at A10.

⁴ I am using a broad definition of clinical education; it includes not only live client clinics, externships, other field placement experiences, and lawyering skills courses using simulation (e.g., trial advocacy, negotiating, interviewing and counseling), but also the use of clinical methodology in the traditional law school classroom.

⁵ This essay is also in the tradition of the "How I Spent My Summer/Sabbatical" essays. E.g., John Burman, *Teaching in Russia: You Don't Know What You've Got Till it's Gone*, 22 WYOMING LAWYER 19 (June, 1999); George Critchlow, *Teaching Law in Transylvania: Notes on Romanian Legal Education*, 44 J. LEGAL EDUC. 357 (1994); Lisa Granik, *Legal Education in Post-Soviet Russia and Ukraine*, 72 OR. L. REV. 963 (1993); Jeremy T. Harrison, *Legal Education in An Eastern European Law School*, 7 INT' L L. & PRAC. 263 (1998); James C. May, *Creating Russia's First Law School Legal Clinic*, 23 VT. B.J. & L. DIG. 43 (Aug. 1997); Janet Ellen Stearns, *Reflections on Teaching in Chile*, 48 J. LEGAL EDUC. 110 (1998); Rodney J. Uphoff, *Why In-House Live Client Clinics Won't Work In Romania: Confessions of A Clinician Educator*, 6 CLIN. L. REV. 315 (1999).

⁶ For those who speak Russian, it could be slightly less limited. See notes 104-07 *infra* and accompanying text, regarding the importance of speaking Russian.

tral and East European Law Initiative (CEELI).⁷

In Russia, as I just noted, the transition has been anything but smooth. There are extraordinary ongoing changes in Russia. I often marveled at how the Russians manage to maintain relative calm and equanimity while encountering the kind of turbulence that occurs daily in many facets of Russian life. Reflecting briefly on the events of the past two years makes the point. Beginning in the summer of 1999 when I was in Moscow, I recall vividly the nonchalant response in Russia to President Boris Yeltsin's appointment of his fifth prime minister in eighteen months.⁸ Since then, there have been the apartment bombings, the extraordinary Parliamentary elections in December of the same year, the surprise resignation of Yeltsin followed by the appointment of Vladimir Putin as Acting President and the culminating Putin election in March, 2000. Even law professors, not knowing whether they will receive their next pay check or what its real value will be,⁹ continue to deal with the challenges of re-shaping Russian legal education. For me, it was an impressive display of fortitude, determination, creativity, and ultimately, optimism. It is that idealism and progressive attitude in some of the law teachers with whom I worked, which was most exciting for me to witness.¹⁰ I pass on in this essay some of my experiences that led to that conclusion. As a preface, I summarize briefly the political and historical context out of which the CEELI project arose, a description of the project itself and then a profile of the Russian law school. I conclude with a few unsolicited suggestions for future Western assistance to Russia.

THE POLITICAL AND ECONOMIC TRANSFORMATION OF RUSSIA IN THE 1990's

The Western democracies, and in particular, the United States,

⁷ My task, as a clinical legal education specialist, was to assist those who were trying to establish clinical programs or implement clinical techniques and to bring my experience to Russia and make it available on request. I have been a clinician for twenty-two years and have taught live client clinics, externship courses, simulation courses and more traditional doctrinal courses using clinical methodologies.

⁸ *Yeltsin Sacks Stepashin, Anoints Putin*, MOSCOW TIMES, August 10, 1999, at 1.

⁹ Russian law professors were earning an average wage of \$200/month in 1998, before the ruble was devalued from 5 rubles to the dollar to 25 rubles to the dollar in August, 1998. Marian G. Dent, *Abstract, in What Role for the West? Promoting Legal Reform in the Former Soviet Union*, RUSSIA AND EASTERN EUROPE LAW FORUM 79 (Yale Law School, April 23-24, 1999) [hereafter, *What Role for the West?*].

¹⁰ I realize this runs counter to much of the contemporary commentary about Russian cynicism, lawlessness and corruption. See, e.g., Robert D. Kaplan, *Who Lost Russia?*, N.Y. TIMES BOOK REVIEW, October 8, 2000, at 29 (reviewing two books that highlight both the corruption in Russia and the failure of American policy). But, this is what my personal experience has been with many (but not all) younger lawyers, law professors, and law students.

have assumed a supportive economic and political role toward Russia during the past decade. At least that was the intended result. In the face of vast internal changes in Russia that had begun in the 1980's and continue to date, there is considerable debate whether that policy objective has been achieved. Indeed, there is some controversy as to whether it was even an appropriate goal.¹¹ The Soviet regime began to unravel in the mid-1980's. Under Mikhail Gorbachev's leadership, the Russian society had been opened up through his policy of "glasnost." He promoted a policy of openness in public discussions of current and historical issues.¹² Previously banned books became available. Political prisoners were released. Gorbachev became the first Soviet leader to condemn Stalinist oppression in 1987.¹³ He also established more open and less contentious diplomatic relationships with the United States—a new detente with the U.S. On a personal level, Gorbachev would stop his motorcade and speak with Russian citizens in the fashion of John F. Kennedy.

Gorbachev also implemented similar liberalizing policies on the economic front; "*perestroika*" called for the restructuring of the economy and encouraged more individual initiative and was the beginning of the end of the central control economy.¹⁴ Both of these "reform" movements contributed to world-wide changes that culminated in the fall of the Berlin wall, the demise of communism in the USSR and Eastern Europe and the break-up of the Soviet Union. The tumultuousness of the changes also led to the demise of Gorbachev himself. On Christmas night, 1991, Mikhail Gorbachev resigned and "the red flag over the Kremlin was lowered for the last time."¹⁵ For the remainder of the 1990's, Russia survived the many ups and downs of Boris Yeltsin.

The alterations in the structure of the Russian society as well as in the day-to-day Russian domestic institutions brought on by these revolutionary political and economic changes were enormous. And the

¹¹ See, e.g., Stephen Cohen, *American Journalism and Russia's Tragedy*, THE NATION, October 2, 2000. (Cohen is one of the strongest critics of American policy toward Russia in the 90's. His view, briefly, is that the American presumptuous conclusion that it could transform Russia into an economic clone of America was ill-conceived and has led to a corrupt and unstable society. And worse, it is an unstable country that is armed with an aging nuclear arsenal.)

¹² Thomas M. Magistadt, *Gorbachev and Glasnost—A New Soviet Order? Implications for U.S. Foreign Policy*, CATO INSTITUTE POLICY ANALYSIS NO. 117, March 20, 1989.

¹³ DAVID REMNICK, *LENIN'S TOMB: THE LAST DAYS OF SOVIET EMPIRE* 49, 54 (1994): ". . . glasnost [was] this curious striptease of ideology and language. . . ." [hereafter "LENIN'S TOMB"].

¹⁴ See generally FRANK E. SMITHA, *END OF THE SOVIET UNION AND THE COLD WAR*, Chapter 33 (1998).

¹⁵ *LENIN'S TOMB*, *supra* note 13, at 533.

transition from communism to democracy was anything but smooth. In particular, the role of law, judges and lawyers underwent, and is still undergoing, extraordinary transformations. Under communism, law had played a very limited role. Lenin saw law simply as a "way to consolidate capitalism."¹⁶ There would be and was a dictatorship of the proletariat and the Central Executive Committee of the Communist Party had "absolute control"; the government was "unrestricted by the law."¹⁷ Laws governing commercial and capital transactions did not exist under communism.¹⁸ This general state of affairs continued for the duration of the Soviet Union, until Gorbachev. When Gorbachev became General Secretary of the party in March, 1985, it has been described as "probably the most important moment in recent history of Soviet law, for Gorbachev, a law school graduate, . . . introduced not only perestroika but the beginning of a law-governed system."¹⁹

Unfortunately, most now agree, the foundations for a system based on the rule of law had not been firmly established when the Gorbachev changes were initiated. Nor was the infrastructure in place when Boris Yeltsin continued changes which at least paid lip service to a rule of law.²⁰ One of the results was that large scale corruption accompanied the changes,²¹ and still exists. All of this has significantly affected the efficacy of the support provided by the West to Russia.

With American economic support, Yeltsin oversaw economic "shock therapy"—an attempt to privatize a huge state economy nearly overnight.²² It did not work. "Privatization" of the Russian economy in the 1990's was the single most disastrous failure after the fall of communism and the Soviet Union.²³ It began with laudatory goals, and with widespread support from the West, and from the U.S. in particular. Most of that encouragement of a rapid transition to a free market economy had its genesis in a uniquely American perspective. Some would say an incredibly parochial if not naive

¹⁶ HERMAN SCHWARTZ, THE STRUGGLE FOR CONSTITUTIONAL JUSTICE IN POST-COMMUNIST EUROPE 111 (2000).

¹⁷ *Id.*

¹⁸ Bernard Black, Reinier Kraakman & Anna Tarassova, *Russian Privatization and Corporate Governance: What Went Wrong*, 52 STAN. L. REV. 1731, 1753 (2000) [hereafter cited as "*Privatization*"].

¹⁹ SCHWARTZ, *supra* note 16, at 113 (emphasis added).

²⁰ *Privatization*, *supra* note 18, at 1802.

²¹ "There is not a single field of activity, not a single institution, free of the most brutal sort of corruption." LENIN'S TOMB, *supra* note 13, at 537.

²² See Kaplan, *supra* note 10.

²³ Privatization refers to the transfer of ownership and control of state-run enterprises (ranging from utilities such as gas or electric companies to department stores and real estate) to private individuals. This process began in Russia in the early 1990's.

perspective.²⁴

With the benefit of hindsight, many Western experts now have a much more realistic recognition of the limitations in the transferability of the American experience. This seems especially true when examining legal institutions in Russia. A recent survey of what went wrong with "privatization" in Russia vividly makes this point.²⁵ The authors note that they, as well as many others in the West (including key American leaders) had initially concluded that encouraging (or even pushing or requiring) the Russians to effect immediate "privatization" was the only correct economic prescription at the beginning of the 1990's. They now concede they were wrong.²⁶ In the early 1990's, when Russia was transforming itself from a centrally controlled state economy into a market economy, it did not have the laws, the traditions or the institutional infrastructure capable of simultaneously moving all state enterprises into private hands. What resulted was massive, and still continuing corruption.

Under Soviet rule, all enterprises were state enterprises. The primary law was, loosely, the law of bureaucracy. When Russia's major economic enterprises were suddenly put into private hands, the "prosecutors, judges and lawyers had no experience in untangling corporate transactions or understanding the indirect ways in which company insiders can siphon off profits. Legal concepts of fiduciary duty and prescriptions against self-dealing didn't exist."²⁷

The vastness of the changes in the new laws parallels the challenge to the Russian law professors. Not only were they now charged with teaching the new laws, but also with establishing new ethical norms for lawyers and judges. Because corruption is now so pervasive, the task of firmly establishing something approaching an internalized notion of the "rule of law" is no small task. Money alone, say the *Privatization* authors, is not the answer.²⁸ In some ways it simply will fuel the corruption. They offer the interesting proposition of subsidizing 500 Russian law students each year to come to the U.S. to attend law school.²⁹ At \$10m/year for 20 years, a cadre of well trained (and presumably, ethical) lawyers could return to Russia and make a real difference in turning the corner on corruption. The suggestion

²⁴ Cohen, *supra* note 11. See also STEPHEN COHEN, *FAILED CRUSADE* (2000), in which he elaborates on his stinging critique of American policy.

²⁵ *Privatization*, *supra* note 18.

²⁶ "The Russians who blame Western advice [i.e., "privatize quickly"] for destroying their economy are not entirely wrong." *Id.* at 1786.

²⁷ *Id.* at 1752 n.31.

²⁸ *Id.* at 1801.

²⁹ "Russia's current law schools are far too small to meet its need for business lawyers and are often dominated by Communist-era holdovers." *Id.* at 1802.

illustrates the close relationship between the task of educating new lawyers and the challenge of constructing a free market economy based on a rule of law. It also suggests that the process of transforming the Russian society is a long-term effort; not one that can be wished into success. It is against this background that the CEELI project should be assessed.

THE CEELI LEGAL EDUCATION PROJECT IN RUSSIA

The CEELI project began in 1991 to assist the former authoritarian governments in their efforts to become more democratic. In fact, it is one of a wide array of Western governments, law foundations and non-governmental organizations (NGO's) devoting considerable resources to this task of strengthening the rule of law in the former Soviet bloc states.³⁰ At least in the instance of most recent CEELI projects, the attempt has been to present the experiences of the West, and to be available to assist, to answer questions based on the western experiences, and generally to be an information source. There has been a conscious effort to refrain from imposing Western ideas on these newly emerging democracies. It hasn't always worked out that way, but I believe that is now the intent of CEELI.³¹

A good deal of soul searching has gone on about the role of the United States—and the West, more generally in assisting or facilitating these transitions.³² Have we been too directive, too lacking in recognition of and respect for the unique aspects of Russian legal traditions? Few Western policy makers, diplomats or volunteer CEELI lawyers would concede publically that the answer is yes.³³ Even if we wanted to impose our views and simply transplant the American notions of democracy and free market economies to Russia, there are even fewer who believe we could do so. To the extent that any of our assistance programs proceed on that assumption (implicit or otherwise), they are, I believe, doomed to failure. As some Russians have asserted, it would be American imperialism in its most arrogant manifestation.³⁴

³⁰ See generally *What Role for The West?*, *supra* note 9, and *Legal Donors Priorities for 1999*, in RUSSIAN FOUNDATION FOR LEGAL REFORM (Moscow, 1999).

³¹ See Lisa Dickieson, *ABA/CEELI Presentation*, in *What Role for the West*, *supra* note 9, at 40.

³² *Id.*

³³ See, e.g., Cohen, *supra* note 11.

³⁴ The recent deep-seated Russian opposition to U.S. policies in Kosovo also is a reminder of the independence and the enormous pride of the Russian people. George Kennan stated that he was "not surprised" at the role of Russia in opposing NATO policy in Kosovo; "it is for them largely a matter of pride." Richard Ullman, *The US and the World: An Interview with George Kennan*, THE NEW YORK REVIEW, August 12, 1999, at 4. A Russian historian wrote: "Although Russia is weakened, it is still strong both as a nation

Legal education has been only one part of the CEELI programs. The project also devotes considerable resources to assisting the judiciary in handling new kinds of disputes. Similarly, CEELI has sent specialists in various substantive areas that are now being dealt with for the first time; *e.g.*, womens' rights, commercial law,³⁵ the legal profession, etc. In the area of criminal justice, CEELI has worked with the other government and foundation-supported projects devoted to adapting to new categories of rights and defenses.

CEELI policy, at least in its legal education program, has been appropriately responsive to the stated needs of the Russians. This is as it should be. After a relatively short period of time, the Russians requested that the legal education advisors brought from the U.S. only be those experienced in clinical legal education. Previously, CEELI and others had brought American law professors to lecture and demonstrate teaching in Russia and to assist in the development of some of the new private law courses that were likely to be needed following the establishment of a market economy.

A shift toward clinical education seems to have occurred in the mid-1990's after three specific CEELI programs that brought Russian law professors to the United States.³⁶ First, there was a three month "faculty training program" for about fifteen Russian professors. Each was assigned to an American law school and a specific faculty mentor. The purpose was to give the Russians an opportunity to observe American legal education in action and to discuss with their mentors and colleagues their observations. Second, a professor-mentorship program was organized in 1996. Again, the purpose was to expose Russian law professors to American legal education. In neither of these programs was clinical education specifically stated as an identified concern. Yet, in both instances, the consensus of the participating Russians at the conclusion of their visits, was that what was new and different for them was clinical education. That is what they wanted to learn more about, not simply traditional methods of teaching.³⁷ A di-

and as a state. Its army may not have enough food to feed its soldiers, but it has great traditions and is armed with modern weapons." Roy A. Medvedev, *The Talk of Moscow, Why They Say Nyet*, WASHINGTON POST, May 2, 1999, at 1. The West is well advised not to come into Russia and contemptuously throw in their face the cold war defeat of communism.

³⁵ See, *e.g.*, William J. Dean, *Central and East European Law Initiative*, N.Y.L.J., May 5, 2000, at 3, for a brief description of the role that two American lawyers have played in CEELI commercial projects.

³⁶ See CEELI Annual Reports (1995-1998); Interview with Douglas Freifeld, CEELI country director in Russia, 1998-1999 (August 1999).

³⁷ Interview with Professor Ekaterina Shugrina, Altai Academy of Economy and Law, Barnaul, Russia, in Irkutsk, Russia (July 31, 1999). Professor Shugrina participated in the three month CEELI "Faculty Training Program" in 1995.

rect outgrowth was a third program that sponsored a two week trip by fourteen Russian law school deans and administrators to visit several of the leading clinical legal education programs in the United States.³⁸

The Russians made it reasonably clear they needed little assistance with the traditional law school classroom. What they did want to hear about was how the American law schools were preparing their graduates to be better able to actually practice law. Now that Russian lawyers would be playing a greater role in the newly established private sectors of the economy, the concern among many Russian law professors and some law school deans was how their new law graduates could better serve both their new clients as well as the new legal system. This was a clear call for assistance in teaching law students how to work with and serve as representatives of clients with newly established rights and to serve social justice. CEELI, to its credit in my view, responded to this expression of need.³⁹ Since 1995, nearly all of the CEELI legal education specialists that have been placed in Russia have been clinicians. This is the context in which I arrived in Moscow in May, 1999.

THE RUSSIAN LAW SCHOOL⁴⁰

I will not attempt to describe in any detail the traditional system of legal education in Russia.⁴¹ For the most part, Soviet legal education followed the European undergraduate model of legal education. Russia essentially still follows that model. As in other European civil law countries, most Russian law schools use five year programs that begin after secondary school. The lecture method is the norm. Little interaction occurs between teacher and student. The curriculums were, and still are to a significant degree, dictated by the Ministry of Education. The first three years are usually all required courses. There are optional or elective courses in the fourth and fifth years. While most schools require a paper each year (a much longer one in the fifth year), most exams are oral.⁴² There appears to be considerable cynicism about the favoritism generated by these methods of eval-

³⁸ They visited New York University, CUNY Law School and Georgetown.

³⁹ The situation in other countries is not necessarily the same as in Russia. See, e.g., Uphoff, *supra* note 5, in which Professor Uphoff is critical of efforts to bring clinical education to Romania.

⁴⁰ The law schools are referred to in Russia as "law faculties."

⁴¹ See Peter J. Sahlas & Carl Chastenay, *Russian Legal Education: Post-Communist Stagnation or Revival?*, 48 J. LEGAL EDUC. 194 (1998).

⁴² The oral exam is one of those few instances when a student has personal interaction with a teacher. The student selects a question from a list provided just prior to the examination, prepares briefly, and then orally answers the question, as well as any follow-up questions. See, e.g., Burman, *supra* note 5, at 24.

uation. Very little problem-based education is used and, as a result, most papers are seen as lacking in any creativity.⁴³

What changes have occurred in Russian legal education since Perestroika and the continuing effort to privatize the economy? The most significant one, or at least the one that is most evident is the growth in the number of law schools and the concomitant increase in the number of law students.⁴⁴ Private, non-governmentally supported law schools, are now permitted and they have become an important part of the new legal culture.⁴⁵ In state-supported law schools, the tuition and books are still free for those with top qualifications. For others who are admitted to state schools, they pay tuition just like those attending the newly established private schools. All of this law school growth is a direct response to the establishment of a free market economy. More students saw the need for lawyers in the post-Soviet state and wanted to get legal training. Applicants were prepared to pay to go to law school. That demand produced a growth in the private law schools. It also has resulted in state schools admitting paying students, who would not have been admitted previously.⁴⁶

With an undergraduate law degree in Russia, one can practice law, without any further examinations or certification, however, the opportunities are limited.⁴⁷ One may go on after the university to obtain graduate law degrees or more advanced apprenticeship training and be better qualified to perform certain legal functions, such as becoming a prosecutor or a notary or an administrative judge. One might also become an advocate (a trial lawyer) by joining a collegium

⁴³ Sahlas & Chastenay, *supra* note 41, at 209.

⁴⁴ In St. Petersburg State University ("SPSU") (an established and highly respected law school in Soviet times), for example, I was told that the student body increased from 800 to 4500 between 1994 and 1999. Interview with Professor Elena Dobhrokodova, SPSU (June 26, 1999). According to one source, there were 186 law schools in Russia in 1997. W. E. BUTLER, *RUSSIAN LAW* 134-35 (1999).

⁴⁵ Gianmaria Ajani, *Legal Education in Russia: Present and Future*, text accompanying n.27 (March, 1997) (unpublished paper for the Constitutional and Legislative Policy Institute, Central European University, Budapest, Hungary) (on file with author) (discussing the law that authorized this change).

⁴⁶ Another change that I believe is occurring are salary increases for faculty. Putting aside the impact of the 1998 ruble collapse (from 5 rubles to the dollar to 25 rubles to the dollar), the advent of tuition revenues in state and private schools seems to be enabling the schools to move toward salary levels that could sustain faculty with few if any outside paying jobs. As in the U.S., I was not comfortable discussing salary with Russians. But, as a result of spending a fair amount of time with several law professors, often after much vodka toasting (a great Russian tradition), I learned of the financial struggles of all Russians, not excluding law professors. The tuition revenues seemed to be one way out of the necessity of teachers having to struggle to make a living beyond the classroom. *See also id.*

⁴⁷ Indeed, there is serious discussion about whether it is appropriate to open up all of these new law student slots when there are few employment opportunities for the law graduates.

of advocates, in Moscow, for example, or in another city. To do that, the applicant must be accepted by the group and then undergo a lengthy apprenticeship followed by some kind of an examination process.⁴⁸

As I noted at the outset, there are a number of law schools that have initiated new clinical and lawyering skills courses.⁴⁹ There are many more schools that have not yet followed suit, and probably have no present intention to do so. To the extent new courses have been designed and proposed in recent years, a major bureaucratic problem is whether they fit into traditional course categories. This is relevant both for purposes of satisfying the federal Ministry of Education bureaucrats as well as for purposes of facilitating the law school administrators' decisions as to the "department" in which the new course will be placed and which teachers will teach the courses.⁵⁰ The related semantic question—what is a "clinic"?—is also an issue being debated.⁵¹ Typically, the deans and administrators are older and more conservative academics. If they cannot find a traditional department or a familiar niche into which a course could be placed, it might never see the light of day. Needless to say, a proposed course with a title like "Clinic" or "Interviewing, Counseling and Negotiating" is not easily placed within traditional classifications.

Another obvious change has been the new emphasis on commercial law and the consequences of privatization and the enactment of new laws and a new constitution in 1993. Aside from the mundane realities that students do not always get copies of the laws, there is the more substantial fact that new kinds of private rights were created.

⁴⁸ There are no universal bar examination or bar admission requirements. G. DANILENKO & W. BURNHAM, *LAW AND LEGAL SYSTEM OF RUSSIA* 123-34 (1999).

⁴⁹ St. Petersburg Institute of Law, for example, has begun lawyering skills courses using simulation. See text accompanying note 75 *infra*. The actual number of law schools now operating in Russia remains somewhat of a mystery. I have not seen any current figures on this issue.

⁵⁰ The ten departments that are typical in Russian law schools are: theory of state and law, administrative law, civil law, civil procedure, commercial law, criminal law, criminal procedure, labor law, international law and environmental law. Thus, for example, there is no department for antitrust, civil rights, bankruptcy, estate or intellectual property law. There also is no trial advocacy, clinical or client counseling department or even a department in which such a course could easily be inserted. There also is the problem of how many faculty members would have to be hired for any new department, and all of the accompanying internal political problems that would raise. See William Burnham, *Legal Education in NIS Countries: Too Theoretical, Too Narrow, Too Passive, Too Authoritarian*, in *What Role for the West?*, *supra* note 9, at 68, 76-77 (regarding the rigidity of the department ("kafedra") structure in Russian law schools). Professor Burnham, as is obvious from the title of his paper, has very strong opinions about the shortcomings of Russian legal education.

⁵¹ After many more years than is the case in Russia, American clinicians continue to debate this question.

Students have to be taught the new laws as well as the new contexts in which the lawyers would be called upon to apply those laws.

A fundamental question for Russian law professors is whether they can inspire law students to adopt the new ideals that are embodied in new constitutional provisions and in the new laws. Can the principles of freedom, democracy and the rule of law be internalized? I heard the following more than once: the law students have to be "educated" about the law and the new legal culture in which they will practice law; but the law professors will have to be "re-educated."⁵² Most law professors over the age of thirty-five have their positions primarily because they were loyal Communists. Their experience during the Soviet era was in a restricted state-controlled legal environment that is becoming increasingly distant, if not irrelevant, from contemporary needs. It is not surprising, therefore, that the majority of faculty members are not as interested in the new civil laws accompanying privatization as is necessary to meet the current needs of the Russian society. Ideologically, therefore, the post-Soviet shift imposes even greater challenges on older faculty. Persuading any law faculty to change its ways is no small task, even in the West. For those who seek to innovate and implement new ideas and courses in Russia, the challenge is much greater.⁵³

MY PERSONAL EXPERIENCES IN RUSSIA

How have the Russians dealt with these changes and the flood of offers from the West to prod them along some line of reform? I had read about⁵⁴ and heard about the Russians' proclivity to respond to directions, requests or even suggestions, by resisting, refusing or simply asking why in an obstructive sort of way. My experience was to observe Russians' ambivalence toward outsider advice. I often did hear the phrase from Russian staff in English, "it's not necessary."⁵⁵ At the same time, I was tremendously impressed with the number of

⁵² Granik, *supra* note 5, at 974: "Beneath the question of professionalism lies what is ultimately the greatest challenge facing post-Soviet legal education: the creation of a new legal consciousness among lawyers. The difficulties inherent in this challenge are obvious where the teachers themselves need the new consciousness."

⁵³ I encountered a much greater degree of rigidity and resistance to change among the more senior faculty and administrators with whom I met. The generation gap was palpable. Anyone over the age of thirty-five, with very few exceptions, simply was not receptive to change in methodology and even in subject matter. *See also* DANILENKO & BURNHAM, *supra* note 48, at 73-77.

⁵⁴ *See, e.g.,* LENIN'S TOMB, *supra* note 13; Remnick, *supra* note 2; Richmond, *supra* note *.

⁵⁵ I was told this was a carryover from the Soviet era when workers would resist assignments of new tasks by offering the response, "it's not necessary." Thus, this phrase was not particularly aimed at non-Russians.

lawyers and teachers who simply wanted to absorb as many new ideas as an outsider could communicate to them. Some were even aggressive in moving to try out new ideas. I attribute these seeming contradictions to an understandable Russian pride which is steeped in a long and rich history, and to cultural differences. Also, I think there is a "Russian" way of problem-solving that is different.⁵⁶ I tried to accommodate myself to these differences.

There was a clear awareness among astute Russians that they have been embarking into new areas and that they have a need for available consultation. Also, as exemplified by the Russian law professors who traveled to the U.S. and observed new teaching techniques, they then sought assistance to implement some of those concepts. When the Russians initiate the requests for a particular kind of assistance, their desire and ability to absorb the benefits of experience is insatiable. When the idea is pushed or proposed by the West, the receptivity is significantly diminished. Or, the Russians might exploit the offer of assistance from the West for short-term gain (*e.g.*, to gain travel to conferences or to obtain new teaching equipment) regardless of whether the gains will be put to good pedagogical use.⁵⁷

My observations are based on a fair amount of travel and a good deal of talking and meeting with Russian law faculty. I visited the campuses of four law schools in three cities and presented six or seven workshops to law professors in Moscow⁵⁸ as well as in other cities throughout Russia. I also met individually with many law professors and law students during my three month visit and gave two talks at a conference⁵⁹ in Moscow which was attended by more than 100 Russian clinicians from all over the country.⁶⁰ So what did I discover?

⁵⁶ I should add, the Russians' reputation for tolerance and resignation in the face of extreme difficulties, may simply be nothing more than pragmatic and very effective problem-solving. In the face of the severe drop in the value of the ruble, for example, it is estimated that 60% of the population now provides 50% of their food by growing it themselves. As George Kennan put it: "... one of the heartening aspects of the recent period has been the almost pathetic patience of the common people of Russia in the face of the terrible conditions under which they have been compelled to live." Ullman, *supra* note 34, at 4.

⁵⁷ See DANILENKO & BURNHAM, *supra* note 48; Uphoff, *supra* note 5.

⁵⁸ I was a clinical education specialist in the Moscow CEELI office. While I did travel to several other cities to work with law professors, I was essentially based in Moscow. At most, I worked directly with a single law school for a maximum of two to three days.

⁵⁹ I gave one talk on the use of clinical methodology in a large classroom (*e.g.*, a civil procedure course). I gave a second talk on designing and teaching a mediation skills course. Those were the topics that my predecessor in Moscow, Patricia Douglas, concluded matched my experience with the requests she had received from the Russian clinicians who were going to attend the conference.

⁶⁰ A major goal of the Russian clinicians who worked with Pat Douglas in organizing the conference was to establish an association of Russian clinicians so that they could continue to work together after the conference. In that regard, a key objective was to set up a

Let me elaborate a bit on my experiences.

Nearly all of the work that I did arose out of connections I made with teachers at the May conference in Moscow. Usually they had responded to something I said or to some of the materials I distributed.⁶¹ There also were relationships between CEELI and law faculties that had been cultivated by my predecessor who had been in Russia for over a year.

As I noted above, there is a huge generation gap when it comes to clinical education. Any lawyer or faculty member over the age of thirty-five, and perhaps even thirty, probably is not someone to spend a lot of time talking to about new and innovative teaching techniques.⁶² That statement is not limited to clinical methods. Any kind of interactive teaching using student-teacher dialogue is not likely to be received favorably by the "elders." The lecture method in Russian law schools is deeply ingrained among faculty. As one professor has been quoted in response to a complaint from a student whose question was not answered, "I am paid to lecture, not teach." There are, however, many younger teachers, and lawyers as well, who are very receptive to much of what clinicians are doing in the United States.⁶³

In addition to the reality of the resistance of senior faculty and

listserve for the clinicians to communicate easily with each other. (Non-Russians sometimes forget that the country is huge; eleven time zones from Moscow to Vladivostok, on the Pacific coast.) Professors from all over Russia participated in the conference. As of my departure in August, 1999, the technical steps had been completed to establish the listserve, an important accomplishment. Setting up some kind of an association of clinicians was proceeding more slowly. I have since been informed that the listserve is up and running. E-mail from Professor Katerina Shugrina (July 2, 2000).

As an aside, I should add that one of the most fascinating experiences I had at the conference was to sit in on a meeting when the clinicians were discussing the politics of organizing themselves. It seemed like a union organizing meeting in many ways. People, even the younger teachers (who very much predominated at the conference) were moving very tentatively, feeling their way toward self determination in a manner which I would imagine was similar to workers' meetings in the U.S. at the beginning of the twentieth century. The issues being discussed ranged from the structure and the rules of the organization (after all, they were lawyers!) and how to elect their leaders, to the consequences of their organizing among their senior faculty colleagues at their respective institutions. It reminded me, once again, of the enormity of the political changes that have occurred in Russia since the early 1990's.

Another conference accomplishment was the preparation by Russian clinicians of a treatise on clinical education in Russian and the distribution at the conference of 1600 copies.

⁶¹ These included articles on establishing a clinic and using simulations in a large and small classroom. Some were translated into Russian.

⁶² There were several notable post-forty year old geriatric exceptions who were actively pursuing clinical possibilities.

⁶³ I worked with one lawyer who graduated law school in the early 1990's and is now working for a large American law firm, Innokenty Aleekseev. He was actively involved in efforts to promote the use of clinical methods in law school as well as in the establishment of clinics where students could represent indigent clients.

administrators, the more prestigious schools were generally very conservative in their response to curricular or pedagogical change. Moscow State University (MGO is the English acronym) and St. Petersburg State University (SPSU) Law Schools were in this category. Less experienced faculty in those schools were even more reluctant to press vigorously for reform.⁶⁴ The effort to establish an association of clinical educators and a listserve by which they could communicate with each other, reflected in part a desire to gain strength in numbers. Over the summer, I spent a fair amount of time discussing both their fledgling organization and the listserve. I tried to explain that the mutual support among clinicians in the U.S. was an important antidote to a lack of support from their on-campus colleagues. The U.S. listserve was central to reinforcing that collegiality among clinicians and encouraging reform efforts. Many Russians seemed to be persuaded of the importance of these support devices for themselves.⁶⁵ Whether an effective Russian listserve will be enough to overcome the reluctance to push for change remains to be seen.

Russia in some ways was and is ahead of the U.S. in terms of experiential learning. The practicum, a form of externship, is a requirement for graduation from all law schools.⁶⁶ The descriptions of this part of the Russian law school curriculum, however, appear to vary from school to school,⁶⁷ but certain elements are common to all. All students are required to spend at least a month in a court and a month in the procurator's office (*i.e.*, the prosecutor).⁶⁸ The practicum at a minimum offers the students the opportunity to "see how the system works."⁶⁹ The administration and operation of the practicums

⁶⁴ See Uphoff, *supra* note 5.

⁶⁵ As noted above, a Russian listserve has been established and an organization of clinicians seemed to be going forward.

⁶⁶ See Uphoff, *supra* note 5, at 330 (critical description of a similar practicum requirement in Romania). Cf. Edwin Rekosh, *The Possibilities for Clinical Education in Central and Eastern Europe* at 5 (1999) (unpublished paper, on file with author) ("One institution with largely untapped potential is the practicum, which offers the possibility of creating an enormously powerful learning experience for students as they confront the law as it is actually practiced.").

⁶⁷ For example, it seems that some schools require three practicums (*e.g.*, Moscow State Academy: one month in summer after second year; one month in summer after fourth year; and two months during the fifth year), while others, two practicums (St. Petersburg State University: one month in summer after second year; two months at the beginning of fifth year). These differences were disclosed to me in earlier 1999 conversations with graduates of three different schools and were recently confirmed in e-mails: Sasha Nadmitov with respect to Russian Peoples Friendship University; Dima Shabelnikov with respect to Moscow State Law Academy; and Ilya Nikiforov (Natalia Maliamina) with respect to St. Petersburg State University.

⁶⁸ Sahlas & Chastenay, *supra* note 41, at 203.

⁶⁹ E-mail from Dima Shabelnikov (January 5, 2001).

are very informal. If the student puts in the requisite hours, and completes a report on the hours, the mentor will sign off and the school will give the student credit under a pass/fail system. Generally, there is little if any supervision. Indeed, I was told that the supervision of the students often is non-existent, and that both the student and the practicing lawyer merely go through the motions of complying with the requirements.⁷⁰ But if a student takes the initiative to seek out more guidance, it sometimes is obtainable. None of the mentors are trained in any way, and the quality of the work assignments varies widely. The placements are essentially arranged by each student seeking out an office in which to do the practicum. This then leads to one of the more problematic aspects of the practicum—law students with “contacts” will privately be able to arrange for better placements than students without such connections.

Both the recently graduated law students, as well as professors and members of the bar felt the practicum was a good idea, however loosely administered it is. But all agreed that the practicum has not been used as effectively as it might be. Within the existing framework of the Russian practicum requirements, there is much room for making the experience a richer and more rigorous learning opportunity. For example, one issue that came up in several workshops was how to recruit and train good field placement mentor lawyers. This is certainly not a problem limited to Russia; we face these same issues daily in the United States.⁷¹ Another is the need to monitor the work of the mentor lawyers to ensure that students are doing work and are receiving feedback. Again, the same challenge faces American clinicians.

In St. Petersburg, I was very impressed with the work at two schools, St. Petersburg Institute of Law (“SPIL”) and St. Petersburg State University (“SPSU”). In both cases, the clinicians (*i.e.*, the faculty who were interested both in client clinics as well as new teaching methodologies) met the youthful profile. In SPSU, a clinic was in operation and students were assisting clients with housing and welfare problems. The energy and enthusiasm of the clinicians was infectious. SPIL, a private school, re-established in the early 1990’s a school that

⁷⁰ Interview with Innokenty Aleesksev (July 10, 1999).

⁷¹ An example of how Americans might learn from Russians recently arose in connection with a project on which I am working at the Association of the Bar of the City of New York. In the New York project, a key issue is how we might train and supervise new law graduates for an apprenticeship in which the graduates could provide legal services in partial fulfillment of their bar admission requirements. In Russia, a *pro bono* effort had begun in which private attorneys (both Russian and foreign lawyers) would be trained in certain areas of immigration law. Once trained, the lawyers would then “assist” the law students performing services for indigent clients. The Russian experience was instructive in demonstrating how lawyers might supervise law students or new graduates who had received only minimal training.

existed prior to the Russian Revolution. It is named in honor of Prince P.G. Oldenburgsky.⁷² It has 230 students and 25 faculty.⁷³

SPIL's deputy dean, Arkady Gutnikov, had been one of the professors who traveled to the U.S. on the programs I described above.⁷⁴ He had already instituted a "Street Law" program that he had learned of on his visit to Georgetown.⁷⁵ Not only had he begun the program at SPIL but he had organized a group to teach others (law teachers, as well as others) to go into the secondary schools in Russia to teach the children about the "new" laws in Russia.⁷⁶ If ever there were an ideal context in which to gain maximum benefits from a street law program, it now is in Russia. It not only accomplishes the traditional clinical objectives of having students learn by doing (the skill of explaining clearly the law is as helpful with clients as it is with secondary school pupils), but it assists in the transition to a democracy by helping to acquaint the younger pupils with legal concepts new to the Russian populace.

SPIL also was well along in developing skills courses. It already had an interviewing and counseling course and had begun clinical work with indigent clients. SPIL also had begun work on improving its practicum program.⁷⁷ SPIL also planned to institute teacher training to identify lawyers who might want to teach part-time, or at a minimum work as field mentors for students fulfilling their practicum requirement. In this latter regard (training field supervisors), SPIL was ahead of most American law schools, at least in its planning efforts. The challenge in Russia of hiring and paying full-time teachers is much greater than in the U.S. Law teachers salaries are quite low, and law schools are at least as financially constrained as those in the U.S. As a result, SPIL was approaching the task of staffing new clinical courses more open-mindedly and innovatively than many in the U. S. Too many American clinicians have resisted using part-time

⁷² In light of its pre-revolution history, I raised with several SPIL faculty the delicate issue of whether the school had a political ideology. While SPIL was named after a czarist supporter, they assured me that there was complete academic freedom among the faculty.

⁷³ SPIL application to CEELI, April 30, 1999. (A copy of the translation of the application is on file in the CEELI Moscow office.)

⁷⁴ See text accompanying notes 36-38 *supra*.

⁷⁵ Street Law is a program begun at Georgetown University Law School to teach law students how to teach law to high school classes. By learning how to teach, the law students not only learn the law, but learn how to explain legal concepts clearly and to be an effective public speaker. For reasons that are not entirely clear to me, street law is not taught in many American law schools.

⁷⁶ I was present at a conference to train teachers from northwest Russia to train law students to go into the secondary schools and teach law. The group included law professors, lawyers, college teachers, and others.

⁷⁷ Meetings with SPIL faculty members, Alexi Baikov and Yelena Ivnova and Arkady Gutnikov (June 24-25, 1999).

lawyer/teachers, for fear of diminishing the importance and role of full-time clinicians.⁷⁸ At SPIL, under the leadership of Gutnikov, they were considering and beginning to implement programs to actively recruit and train lawyers who wanted to teach, but could do so only part-time.

A problem common to the law schools I visited is severe space shortage and deteriorating physical facilities. These were especially acute problems at SPIL which had taken over part of a secondary school. Very little if any audio/visual equipment was available, even in a place like SPIL which had already instituted one or another forms of clinical education.

In addition, SPIL, with the assistance of the Ford Foundation, was conducting teacher training sessions for law professors and lawyers interested in learning experiential teaching methods. These sessions have proved to be invaluable in encouraging and supporting law teachers in the establishment of clinical education. The "interactive" teaching programs instituted in the 1999-2000 academic year helped solidify SPIL's leadership role in fostering clinical and skills education. Dean Gutnikov, in that same vein, participated in recent CEELI meetings designed to facilitate Russians taking over future clinical developments.⁷⁹ Gutnikov even spoke of expanding his teacher training efforts into a full-fledged graduate program for future clinical law teachers.⁸⁰

St. Petersburg State University ("SPSU") is one of the oldest and more prestigious universities. Its law school had substantially increased in size (by adding tuition-paying students to its traditional tuition-free students). As a result (perhaps of increased revenues), there seemed to be a bit more responsiveness among the administrators to the clinical education demands of several younger faculty members. SPSU had a live client clinic up and running with an office in which student lawyers could meet with clients. CEELI was able to provide both political and moral support to the SPSU clinicians in dealing with their administration, as well as small grants for equipment for the clinic. Here, as at SPIL, the critical factor was the enthusiasm and energy of the faculty who were desirous of establishing clinical

⁷⁸ While there is some basis for this fear, it should be kept in perspective. I have become convinced that there are useful and constructive ways to integrate part-time teachers into the curriculum without undermining the role of full-time clinicians.

⁷⁹ Interview with William Meyer (July 8, 2000). Meyer is the former Director of the newly established CEELI Institute in Prague. Gutnikov was one of several people who participated in CEELI's efforts to develop a curriculum for teaching clinicians.

⁸⁰ I referred Dean Gutnikov to Wally Mlyniec at Georgetown for possible assistance with SPIL's plans for its graduate programs.

education.⁸¹

Moscow was a more difficult locale for me and for CEELI generally. Compared to other parts of the country, relatively few requests for information or assistance came from law schools in Moscow. I can only speculate on the reasons. For Moscow State University (MGO), it seemed to be: "Why change! We're already the best." Moscow State Institute for International Relations (MGIMO) similarly was not interested in changing, or even considering new teaching techniques.⁸² While the faculty and administrators in Moscow law schools were less than active and quite unreceptive to any clinical education ideas, there was a very aggressive and busy group of Moscow law students who wanted to do "real" work. CEELI tried to support that enthusiasm to the extent possible.⁸³

At one Moscow law school, there was an interesting clinical project in the works.⁸⁴ In trying to establish a live client clinic, the administration and the clinical promoters sought to overcome the same issues we confront in the U.S.: limited money and limited faculty who were interested and available to teach. They worked out a tentative arrangement with a local collegium (*i.e.*, a bar association) to provide volunteer lawyers who each would supervise a law student working on a case representing an indigent client, and in addition, lead a class with the student discussing aspects of the case. The lawyer and student might even interview or counsel the client in front of the class in a manner similar to a physician-patient interaction on medical school hospital rounds. A full-time faculty member would oversee the scheduling of the outside lawyer/teachers and participate in most of the

⁸¹ I also had a useful meeting with a thirty year-old alumnus of SPSU, Ilya Nikoverov, who is now working at an international law firm; he obtained an LL.M. from a U.S. law school and is now teaching at SPSU part-time. He was very interested in using clinical techniques in the traditional classroom and helping his colleagues to do the same. This lawyer/teacher exemplified the new generation of lawyers who want to move the law and legal education forward.

⁸² Here also, I worked with a relatively recent alumnus of MGIMO (now at the Moscow office of a big U.S. law firm), Innokenty Aleeksev, who was supportive of clinical education and wanted to persuade the current dean to consider implementing such innovations. While we did not succeed, this lawyer (who might like to teach at some point) like the one I worked with from SPSU, is in the new generation that is trying to assist Russia to quickly get up to speed.

⁸³ These students, with very little support from their law schools or elsewhere, put out a city-wide student newspaper, *Jurfak*, that covered many issues of interest to the students, including clinical education. These same students, for example, were among those who were trained by a group of law firms. See *supra* note 71. The *Jurfak* students also were very helpful in putting on the May conference in Moscow. They translated and published a short article I wrote describing the various forms of clinical education, and continued to promote the educational reforms with their respective law schools.

⁸⁴ The project was still on precarious grounds when I left Russia, so I will not use any names.

class sessions. In this way, students could work on a real case and there would be a related classroom component. In U.S. terms, it would be a cross between an externship and a clinic; the Russians were modeling it after case rounds in medical school. They were seeking advice on how to recruit and train the outside lawyers. While different from models I have used, it certainly was a creative effort to accommodate the pedagogy to their resource limitations.⁸⁵

The seeds of a similar effort were being planted between an organization of private lawyers and a law school, again with a key objective of providing representation to indigent clients in connection with their "registration documents."⁸⁶ The lawyers would "train" law students to be able to represent clients independently of both the lawyers and the law schools. The law firms would be available for consultation, but not as direct supervisors. It was, as the lawyers were wont to say, "better than nothing." Neither the law school nor the law offices were prepared to go further. The hope among the law firm lawyers was that, once running, the schools would re-consider providing law school credit for the student work, and possibly some teaching resources. The lawyers sought assistance from CEELI in how to train the students. Again, while not the ideal U.S. model, it reflected the determination of many to go forward and a real concern for social justice among new lawyers and law students.

Finally, I want to mention a remarkable experience I had with an incredibly enthusiastic and dynamic dean from Stavropol.⁸⁷ Dean Lidia Voskobitova was one of the prime movers in organizing the May conference of Russian clinicians and gave a moving and inspiring speech there in support of clinics and clinical methodology.⁸⁸ She had

⁸⁵ Professor Kandis Scott has made the same important point regarding the role of Western clinicians in assisting those with ideas different from our own experiences. Recognizing that Romanian clinical education faced insuperable obstacles, she acknowledged that their plan to use established continuing education techniques made eminent sense. Kandis Scott, *Additional Thoughts on Romanian Clinical Legal Education: A Comment on Uphoff's "Confessions of a Clinical Educator,"* 6 CLIN. L. REV. 531 (2000).

⁸⁶ The Legal Services Advisory Board was organized by a group of international law firms in Moscow to devise ways to provide assistance to non-profit organizations trying to help poor people.

⁸⁷ Stavropol is in the immediate vicinity of Chechnya. As a result, a trip we had planned to conduct a workshop there was cancelled by the State Department for security and safety reasons. The U.S. Agency for International Development was and is a principal funder for CEELI.

⁸⁸ All of the speakers were simultaneously translated. This was my first direct experience with simultaneous translation, both in listening to speakers (via earphones) and in face-to-face meetings with one or more persons. For me, the latter was extraordinary, and much different from consecutive translating, with which I am very familiar. It was as if I were talking to someone in the same language, with but a brief couple of second pause between a person's facial expressions and the words that were just spoken to me. I mention this here, because I was able to obtain the services of one of the incredible interpreters

already set up criminal and a civil clinic at her school, Stavropol Technical State University, and asked for my assistance in establishing both a mediation clinic and an ADR course. During a two day workshop with Dean Voskobitova and several of her colleagues, I learned much from them, and hopefully, assisted them to begin a new mediation clinic in the fall. As was the case with many of the other Russian clinicians I met, she was hungry for any new teaching idea and open to discussing and exploring them and even experimenting with most.⁸⁹ She and her colleagues certainly helped me in beginning a new mediation clinic at my law school.⁹⁰

Even in the short time I was in Russia, it became clear that there was a group of Russian law professors who not only were committed to promoting clinical education and using clinical techniques, but were dedicated to expanding it to other schools in Russia. The kind of professors mentioned above—Gutnikov, Voskobitova, Dobrokhovda, and others⁹¹—will have to be central to any continued support from the West. Their interest in ensuring enforcement of civil rights and their progressive and innovative pedagogical responses to the challenges facing Russian legal education were extraordinary.⁹² The Ford Foundation and Soros have already recognized them and sought to support their enthusiasm for clinical education by inviting them to teach other law professors in continued teacher training programs.

from the May conference, when I held a workshop with Dean Voskobitova later in the summer.

⁸⁹ It is worth noting, for example, that in the workshop we conducted, Dean Voskobitova invited not only teachers, but lawyers and judges—the persons with whom her students ultimately would be working to implement the skills she was teaching them. In my experience, such efforts at inclusion have not been the norm in the design and implementation of clinicians' teaching conferences. We can learn from such fresh open-mindedness.

⁹⁰ As with many areas of clinical education in Russia, there is a dearth of materials in Russian. At Dean Voskobitova's request, I solicited permission from several American authors and received prompt and gracious support from Professors Leonard Riskin and Nancy Rogers for use of translations of their books into Russian. I then obtained CEELI support for completing the translation of the materials.

⁹¹ There were many other dedicated professors with whom I worked. I did want to mention a series of meetings I had in Samara and in Irkutsk, Siberia; the latter included Russian clinicians from a far flung area, ranging from Irkutsk (about six hours by air from Moscow) to Vladivostok (about another four or five hours still further east from Moscow). Here, again, there were young, idealistic and strong proponents of clinical education. Just to deal with attending our meetings required difficult travel for all of them.

⁹² It was exhilarating to witness the energy and creativity of these Russian law professors. A similar experience was related by two recent American visitors to China who were on "rule of law" type excursions. Ronald C. Minkoff, *Witnessing Chinese Law in Transition*, N.Y.L.J., June 28, 2000, at 1; cf. e-mail from Bob Seibel to Clinic Listserve, June 28, 2000. It is also worth noting Minkoff's observation that the goal of the U.S. participants in the visit "was not to proselytize, but to describe: to show how the U.S. system works." Minkoff, *supra* at 1.

Using a format similar to the NITA teacher training model, Ford has already had several teacher training sessions at which new teachers interested in learning clinical techniques can speed up their learning process.⁹³ As long as there are Russian teachers who want to learn and implement clinical techniques, such teacher training sessions should be supported by the West.

THE FUTURE FOR CEELI IN RUSSIAN LEGAL EDUCATION

What can CEELI and American clinicians do at this point to further assist the continued progressive development of legal education in Russia? Even after the very short time I spent in Russia, it seems clear to me that both Russia and the development of clinical education are at important turning points. Post-Soviet Russia has gone through some turbulent times. At the start of Vladimir Putin's presidency, Russia seemed poised to move to a new stage, perhaps one with slightly less upheaval. From the perspective of a believer in democracy and equity, such a turn may not be all positive; more authoritarianism already suggests a curtailing of freedoms. From the vantage point of most Russians still suffering from the political transition, a "Putin stability" may seem very attractive. The question is whether adherence to democratic norms will prevail over the very strong historical predilection of Russian leaders to move toward authoritarianism. The "[w]eakness in the rule of law has been among the biggest barriers. . . ."⁹⁴ Which direction Putin will take is subject to debate. To some, "the signs are not encouraging."⁹⁵ Another commentator observed: A . . . decade of chaos has fostered, among average Russians, a longing for order that could legitimize a new and lethal despotism under Putin."⁹⁶

Similar themes are being played out in academia. To what extent will the movement toward progressive and democratic changes be constrained, if not squelched, by conservative authoritarian control of the law schools? Habits are deeply ingrained in Russia. They will be changed only with a struggle and probably quite slowly. Even the entrenched academicians in Russia have expressed an awareness of the need to bring legal education up to the level of addressing the changes

⁹³ The same model was used to train clinicians at the recent International Clinical Conference in India last December.

⁹⁴ Sabrina Tavernise, *With A Growing Economy, Russia is in Unfamiliar Territory*, N.Y. TIMES, December 18, 2000, at C20.

⁹⁵ John Lloyd, *The Autumn of the Oligarchs*, N.Y. TIMES MAGAZINE, October 8, 2000, at 94. See also Note, *Russia's 1993 Constitution: Rule of Law for Russia or Merely a Return to Autocracy?*, 27 HASTINGS CONST. L.Q. 155, 165 (1999) (referring to the current situation: "A system with a powerful president fits well in Russia's history").

⁹⁶ See Kaplan, *supra* note 10: ". . . the biggest unknown may be Mr. Putin himself."

occasioned by a much smaller world, and all of what the term globalization connotes. But when those from the West become engaged in this process of change in Russia, it is critical that humility and recognition of the pride and depth of history and tradition among the Russian intellectual elite, be the central features of that cooperation.

With substantial assistance from the West, and in particular, CEELI, many Russian legal educators have absorbed (over a very short period of time) a great deal of the progress American clinicians have made over the past thirty years. While governments and NGO's have used a variety of methods to date to present the fruits of that American educational reform, the most effective approach to pursue now seems reasonably clear to me. We should be responsive and supportive. For the most part, we should be past the point of initiating programs or proposing what the Russians might do. This does not mean we cannot be active or that CEELI cannot play an important role. It simply means that Russia, and individual Russian law professors should now take the lead in shaping the direction of legal education reforms in Russia.⁹⁷

BUILDING ON PAST CEELI WORK

Among the most significant evidence of CEELI successes is the cadre of energetic, enthusiastic and creative Russian law professors who are alumni of earlier CEELI programs (especially those who traveled to the U.S.) and who are now doing clinical work in Russia. Many of them have become leaders of educational reform in Russia. CEELI should stay in contact with them and ask them periodically if there is anything it can do to support their continued efforts. Such requested support might take many forms. For example, I cited the importance of translating English materials into Russian. It is unlikely that such materials would simply be transferable to Russia, but it is very likely they could be of great assistance in developing specific new materials designed to meet the particular circumstances in Russia. This would require discussions between the Russian clinicians and a

⁹⁷ Obviously, this raises difficult political questions in terms of Congressional approval of any government-subsidized program (which includes CEELI). To the extent Russia takes actions which elicit disapproval in the U.S. (e.g., Chechnya or human rights violations), money will be tight. Likewise, such actions could result in Congress placing restrictions on U.S. money which would undermine the text point: let Russians determine what kind of assistance they want.

A similar point was made recently by John Dooley, Justice of the Vermont Supreme Court. He is a veteran CEELI participant in Russia and is concerned that the new "tougher line" coming out of Washington in 2001 could lead to policies that could undermine the progress that has been made. Justice Dooley, like many others, emphasizes the long view; reform in Russia is not for the "short-winded." *MOSCOW TIMES*, February 15, 2001.

knowledgeable American CEELI clinician. A related materials need could be in audio/visual equipment, as well as professionally produced tape materials. To the extent CEELI can meet any of these relatively modest financial costs, it should do so.

Another significant outgrowth of assistance from the West has been the teacher training conference. The Ford Foundation has been a central force in organizing and administering these conferences. Several such three to five-day intensive interactive conferences have been conducted in different areas of Russia. These conferences now are taught almost exclusively by Russians, several of whom I mentioned previously in this essay. They are modeled on the NITA teacher training programs, and like the NITA example, are an effective and efficient way to teach law professors new experiential teaching techniques. Such conferences should continue to be supported as long as there are Russian law professors to teach and potential law teachers who want to attend. American law professors should be available as consultants if requested and should participate as trainers⁹⁸ only to the extent requested by the Russians, perhaps for more esoteric areas not yet staffed by Russians.⁹⁹

The establishment of an association of Russian clinical educators and an accompanying listserve should be supported by CEELI, both politically if requested by the Russian law professors, technologically (if needed) and financially,¹⁰⁰ if that is necessary. It does not seem likely that the latter would amount to much money (possibly travel stipends to attend an annual clinical conference).

One area not actively pursued is the development of *pro bono* work by the private lawyers in Russia, both international lawyers and Russian lawyers. As for the American lawyers who are practicing law in Russia, here there would be no need to be reticent. CEELI, an arm

⁹⁸ Ideally, any non-Russians who participate as a trainer should speak Russian and teach in Russian. I believe that CEELI should initiate much more aggressive outreach efforts to recruit Russian speaking clinicians and lawyers for short and longer term assignments.

⁹⁹ It should be noted that there are tensions between and among various Western institutions that have similar goals of supporting the development of clinical education in Russia. The Ford Foundation and the Soros Foundation, understandably, and probably unavoidably, have their own goals and interests in promoting various projects. Very generally, Ford seeks to promote live client clinics where law students can represent indigent clients in need of legal assistance. Soros' focus seems to be more on teaching students basic lawyering skills. It is incumbent on CEELI, as well as these other independent NGO's to do their utmost to be supportive of each others' work and not to undermine what the other is doing. This is a constant challenge, but it seems to me that it should be viewed in a positive light, as reflective of the benefits of having multiple sources of support for constructive educational developments.

¹⁰⁰ In 1999, there were still many Russian clinicians who did not have a personal computer.

of the American Bar Association, need not mince words in encouraging *pro bono* work. As noted above, this could be expanded to include supervising law students in field placement situations, and possible involvement with the law schools. Here, also, careful diplomacy with the local Russian bar associations (*e.g.*, the collegia) is crucial to the success of any such cooperative educational ventures. The encouragement of *pro bono* work by American lawyers in Russia should take into account the efforts, if any, of their Russian counterparts. Continued support for student organizations (like the one mentioned above) also fits in with this same *pro bono* effort.¹⁰¹

While there clearly has been much progress in a relatively short period of time, the number of clinics, or skills courses, remains quite small in Russia. It may be that the notion of “model” clinics or “model” courses would be useful to the development of clinical education. But if the model concept is followed, it is critical that the design be one that is cognizant of the realities of Russian higher education. Establishing a model that can never be replicated is a futile gesture. CEELI might explore this with those now teaching clinics to determine if there is a model clinic that would facilitate others’ following their lead. Such a prototype might include the production of tapes, publishing textbooks, etc.

The sister school concept is a model that has worked effectively for Vermont Law School with Petrozavodsk State University Law Faculty.¹⁰² If other law schools could emulate this working partnership, both American and Russians would gain.

DESIGNING AN EFFECTIVE CEELI PRESENCE IN RUSSIA

For the past several years, the centerpiece of CEELI’s clinical efforts has been a clinical education specialist stationed in its Moscow office. That person would try to make herself or himself available to law professors throughout Russia. The clinical specialists went out and proselytized a bit about clinical education, conducted some training sessions, helped select Russians for programs in the U.S. and generally made themselves available on request. It may be time to consider slightly different models.

The focus of Western assistance should be to respond to Russian requests for expert consultation. To the extent that the Russians ask

¹⁰¹ One of the lawyers with whom I worked informed me that student participation had ebbed in a law firm project involving law student representation of indigent clients. It is not clear why there has been a decline in interest. E-mail from Innokenty Aleeksev (June 28, 2000).

¹⁰² Vermont Law School and Petrozavodsk State University Law Faculty Legal Education Partnership (grant proposal on file with author).

for American clinicians to be present, CEELI should do its best to accommodate them. For example, if a Russian law school sought a visiting professor to teach in a particular field or to advise as to one or another form of clinical education, for a semester or a year, CEELI would solicit applications, recruit such a person and then finance the visit. Academic schedules require a bit more awareness by CEELI of the need for longer-term planning (a minimum of a year in advance) in order to recruit effectively for longer stays in Russia. Similarly, if the Russian need were for a shorter-term visit (one or two weeks or more), CEELI would likewise try to meet those needs. CEELI should more actively recruit such U.S. clinicians (especially any who speak Russian) and much more actively participate in U.S. clinical conferences.¹⁰³

Ideally, and perhaps exclusively, any classroom teaching of students or other law professors should be done only by those who can do so in Russian. The experience of Americans teaching abroad confirms my own feelings that such teaching should be in the native language to show respect for the people and country, to learn more about the country, to better avail oneself of local primary source materials and, ultimately, to facilitate greater learning by those being taught.¹⁰⁴ This need not preclude consulting or advising, especially if the people being advised speak English, or if excellent interpreters are available. Where to draw the line between teaching and consulting, of course, is a continuing challenge.¹⁰⁵ One interesting alternative was suggested by two people who taught bankruptcy in Hungary.¹⁰⁶ The class was team-taught, in English, by a bi-lingual Hungarian "English as a Foreign Language" teacher and an American law professor. The students were learning English by way of learning bankruptcy. Both teachers seemed to think it was a very effective way of dealing with the language issue.¹⁰⁷

Visits to the U.S. by Russians have proven to be among the most

¹⁰³ Roy Stuckey, Frank Bloch, Clark Cunningham and others have very much raised the international consciousness of clinicians and at least have brought to the attention of most of us what CEELI is all about. There is more that CEELI should do. As the recent conference in India has demonstrated, the world indeed is much smaller than ever before, and the connections among diverse cultures much greater.

¹⁰⁴ Jane Ellen Stearns, *Reflections on Teaching in Chile*, 48 J. LEGAL EDUC. 110 (1998).

¹⁰⁵ One interesting distinction is between teaching law students and teaching law professors; in the absence of Russian language proficiency, the latter seems preferable to the former. A second distinction worth noting is whether those being taught have some facility in English. I had the experience of conducting a class in Poland with students, all of whom (I was told) could speak and understand English. While I was never certain how accurate that description was, this model seemed to work well.

¹⁰⁶ Katalin Kollath & Robert Laurence, *Teaching Abroad: Or, "What Would That Be in Hungarian?"*, 43 J. LEGAL EDUC. 85 (1993).

¹⁰⁷ *Id.*

productive CEELI initiatives, at least for those Russians who speak or understand English. This requires CEELI to explore all of the possible ways and places that Russians might benefit from visits to the U.S. Several different kinds of visits have already been used to great success, and might be usefully repeated.¹⁰⁸ Others might be explored. For example, intensive teacher training sessions in the U.S. (like the ones run by Ford in Russia) might work. Such sessions might focus on more esoteric topics about which there are not yet Russians ready to teach. Direct CEELI financial support for the Ford-run (and Russian taught) conferences in Russia should also be considered.

If American clinical expertise would be useful to review applications from Russians for visits to the U.S., that could be accomplished by clinicians in the U.S. Administrative oversight could be done by the CEELI country director in Moscow.

Financial support for national or regional conferences of Russian clinical law professors also would be useful. On request, American clinicians might attend to make presentations on topics of interest to Russians and as to which there was not an appropriate Russian counterpart. My experience (with the aid of excellent simultaneous interpreters) at such a conference in Moscow was that such a gathering proved very useful in presenting ideas that were new to Russians, facilitating brainstorming sessions about how to solve problems encountered by the Russians, and, generally, in eliciting requests from Russians for particularized follow-up information.

To the extent the physical presence in Russia of a clinical educator is deemed essential, consideration should be given first to hiring a Russian to fill that role. There is a growing number of expert Russian clinicians who may or may not be available to assume such a position. If that route is taken, the positions should be filled for a minimum of six months, preferably a year; not permanent and probably not more than two years.

As with clinicians' experience in the United States with "soft money," there is a clear recognition in Russia that reliance on grant money from Western NGO's (Soros, Ford, etc.) to establish and operate clinical programs is clearly, at best, a short term affair. As the lingo goes, the clinics and new programs must be sustainable independently of any outside funding. The question then is what can the West do to assist them to get to that point.

¹⁰⁸ For example, two thousand Russians (including 130 members of Parliament) recently visited the U.S. both in Washington, D.C. and elsewhere in the U.S. to stay with a host family and to observe first hand, the work of mayors, judges, etc. The visit was sponsored at the urging of James Billington, the Librarian of Congress, at a cost of \$10m. *Editorial*, N.Y. TIMES, June 17, 2000, at A14.

CONCLUSION

Russia is going through a difficult but exciting time. Observing law professors struggle to overcome severe obstacles to stay current and effect new ideas was a privilege as well as a humbling experience.¹⁰⁹ I grew to appreciate in them an impressive combination of determination and perseverance. They are among an energetic generation many of whom want very much to make this political and legal transition work. I also gained a deep respect for the Russians' independence and genuine national pride.¹¹⁰ An increasing number of Russian clinicians are trying mightily to set up clinics and implement new teaching methods in the midst of very difficult conditions. To the extent that Americans can be available to assist, on request, that would be desirable.

¹⁰⁹ Dean John Sexton calls on us in an era of globalization to demonstrate "... a cultural humility uncharacteristic of Americans." John Sexton, *Thinking About Training Lawyers for the Next Millennium*, NYU LAW SCHOOL MAGAZINE, Autumn 2000, at 35. He suggests, even more specifically, that lawyers would do well to improve their listening skills.

¹¹⁰ See John Lloyd, *The Russian Devolution*, N.Y. TIMES MAGAZINE, August 15, 1999. In this excellent discussion of the interplay of history and politics in the ongoing Russian transition, the author concludes: "Russia will make of it what its history allows. It must find itself; until then we can do little more than watch, offering an occasional bit of encouragement from the sidelines." I believe this applies to clinical law professors as well as to diplomats and politicians.