

# ABA/CEELI's Law Clinic Programs in Croatia\*

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## I. Introduction

In 1991, Croatia seceded from Yugoslavia and was soon involved in a long, painful civil war that would last four years. When the fighting ended, Croatia was an independent nation, but it had inherited its governmental institutions, judiciary and centers of learning from the previous regimes, Yugoslavia and the Austro-Hungarian Empire. These systems were not equipped to deal with the needs of a modern, democratic, free market-oriented society. As a result, Croatia has spent the past decade attempting to transform its economy and governmental systems, with varying degrees of success. The introduction of practical skills training through the ABA/CEELI<sup>1</sup> clinical programs is a small but largely successful example of this slow transformation.

## A. The Croatian Legal System

The legal system is a victim of Croatia's transition from a communist to a democratic society. While the main structures of the Yugoslav judicial system remain, they are now being asked to perform more effectively. For example, under the communist regime, judicial efficiency was not significant. However, today, parties demand quick resolutions to their disputes. Foreign and domestic economic investment depends upon the ability to have disputes resolved quickly and transparently. Additionally, the failure to provide a fair and public trial within a reasonable time violates Article 6.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>2</sup>

Despite these pressures, the judiciary now has a 1.4 million case backlog and over one million new cases are filed every year. This is an extraordinary number of cases, given the fact that Croatia's population is only 4.4 million. Clearly, something is not working.

\* This article relies on the observations and findings made by Professor Terry Wright in her capacity as consultant to ABA/CEELI in the February–April 2002.

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1 ABA/CEELI (American Bar Association/Central European and Eurasian Law Initiative) is a non-profit NGO working in over 25 countries around the world. It uses American and local lawyers to provide technical legal assistance to developing countries in an effort to promote the rule of law. ABA/CEELI has had a program in Croatia since 1993. For more information about ABA/CEELI and its various programs, see [www.abaceeli.org](http://www.abaceeli.org).

2 Croatia is a signatory to this convention.

One reason the system is failing is that the rules of procedure are inefficient. For instance, subpoenas for testimony are routinely ignored so cases must be frequently continued. Attorney often fail to appear at hearings<sup>3</sup>, with no consequences, and new evidence can be introduced at the appeals stage, causing re-trials. It is not uncommon to hear of cases over ten years old. Croatia has lost a number of cases in the European Court of Human Rights because its judicial system is so slow.<sup>4</sup>

However, another significant problem stems from the fact that many of the participants lack the appropriate basic skills. Many of the judges lack basic research and writing skills. They also often lack the ability to 'stand up' to attorneys who abuse the system or violate the rules.<sup>5</sup> Many attorneys and prosecutors lack advocacy skills. The problem is further compounded by the fact that individuals usually choose which legal career to enter (judiciary, private attorney, prosecutor, etc.) without any experience or information as to which path would be most appropriate for them.

## B. Legal Education in Croatia

There are four Law Faculties in Croatia-Zagreb, Split, Rijeka and Osijek. Zagreb is the capital and largest city in Croatia while the other three are regional capitals. In some sense, each law faculty reflects the character of the very different regions. However, on paper at least, much of the system is standardized throughout the country.

Students enter the law faculties as undergraduates, as in most of the rest of Europe. Students matriculate after passing a standard entrance exam. While there is some migration to Zagreb, most students attend the faculty closest to home. The Ministry of Justice pays for most full time students' tuition. Although the first year class usually totals more than 400 students, graduating classes generally have only 100 to 150 students.<sup>6</sup> Attrition rates are high for a variety of reasons. Because the official unemployment rate is over 20%, students often leave school if they find a employment – even if it is outside of the legal world. In addition, many students leave due to boredom or lack of interest, as most classes are just long lectures, without any student participation. Still others don't drop out but rather extend for many years the standard four-year program by taking less than a full load of classes and delaying final exams. It is not uncommon for students to delay graduation for two, three and even more than five years. While this may seem bizarre to an American or English lawyer, students find no advantage in graduating quickly when there are no good jobs waiting.

Classes usually consist of the professor giving lectures from pre-written notes. Students take handwritten notes on what is said and few textbooks or other books are used during class. Casebooks are almost unheard of and the Socratic method is not used. In addition, there is very little student participation. Questions are rarely raised and open debates are virtually forbidden. Until recently, there has been no attempt to incorporate technology into the learning process.

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3 *Lawyers at the Zagreb Municipal have a 30% no show rate for hearings.*

4 *See, e.g., Rajcevic v. Croatia, 07/23/02*

5 *This is partially due to lack of experience. Approximately two thirds of Croatian judges have less than eight years of professional experience. Most advance directly from law faculty to the bench. On the*

*other hand, attorneys who are members of the Croatian Bar Association (the only permitted court barristers) enjoy a great deal of privilege and power. They tend to control the court process to a far greater extent than do attorneys in, for instance, the United States.*

6 *Zagreb is far larger than the other three and has roughly 1,000 first year students and roughly 300 graduates each year.*

The content tends to be theoretical, often historical in nature. Finally, there is little effort to link the content to everyday circumstances or practical use.<sup>7</sup> Exams are orally administered, usually in a private, one on one meeting with the professor.<sup>8</sup> The system is good at imparting certain kinds of information to students and accurately measuring their understanding of it, however, most students find their legal education to be of little practical use after graduation.<sup>9</sup> Most students graduate with ineffective writing, reasoning and advocacy skills.

As mentioned above, many students choose their particular legal career path without any helpful information or assistance, as the law faculties provide almost no career planning resources. Unfortunately, most professors have little practice experience. In addition, there is no “on campus recruitment” by lawyers or other employers, as can be found in North America. There are no publications given to students, explaining the pros and cons of the various professions. And, equally important, there are no publications or other resources explaining to students how to apply for jobs in particular areas, such as the State’s Attorney’s Office or the local Municipal Court. Most students (outside of the clinical programs discussed herein) have never seen the inside of a courtroom or witnessed a trial or hearing. One the great ironies of Croatia’s newfound media freedom is that most Croatians know more about the American justice system (such as the ubiquitous Miranda warnings) through American TV shows than their own justice system.

## **II. The Osijek Law Faculty Clinic**

Osijek is the traditional capital of the region known as Slavonia. It lies in the northeast portion of the country. It borders Serbia (along the Danube River) to its east, Hungary (mostly along the Drava River) to the north, and Bosnia (along the Sava River) to the south. It is traditionally a rich agricultural region. Until the middle of the 20th century, Slavonia was more prosperous than most of the rest of Croatia. It also has a mixed Croat-Serb population, with a smaller Hungarian minority. In the early 1990s, after Croatia declared independence, the Yugoslav army and ethnic Serb irregular forces invaded Slavonia. Much of eastern and southern Slavonia was occupied for several years, and Osijek was surrounded on three sides by Yugoslav forces and subject to regular artillery bombardment. After the war ended, a UN peacekeeping force took over parts of the region and remained until 1997.

As a result of this fighting, Osijek was transformed into a bombed-out, refugee-filled city. The economy has yet to recover and one can still see bullet holes and shrapnel marks on the elegant nineteenth century façades, including those of the Osijek Law Faculty Building. The community may be short of resources, but the will to improve remains.

Igor Bojanic and Vjekoslav Puljko are co-directors of the Criminal Law Clinic in Osijek, which was established with ABA/CEELI’s assistance in 1995. When ABA/CEELI discontinued funding after the second year, the clinic closed. In 2001, ABA/CEELI was able to reestablish its funding and restart the clinic. The Clinic’s new iteration has a different organizational structure and curriculum from the initial one. Bojanic and Puljko decided early in the planning process they that wanted as

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7 While they are undoubtedly intelligent, well published and informed, most Croatian professors have no practice experience so it is not surprising that they favor a theory-based approach to education.

8 The Ministry of Science and Technology requires that students be examined orally. Some professors augment the oral exams with written ones.

9 See Report of Professor Terry Wright, April 14, 2002, Zagreb, Croatia.

many students as possible to experience the clinic's opportunities. So, all fourth year students have an opportunity to participate in the clinic. In each of the past two years, over 100 fourth year students have participated.<sup>10</sup>

Since the directors opted for breadth over depth, each student participates in clinic activities for a limited period of time – about one month with a minimum 35 hours total. The class is divided into two groups of about twenty students who participate in the clinic activities simultaneously. The participants are then subdivided into four groups of about five students. The subgroups spend a week in each of three different offices – a prosecutor's office, a private law office and a county court judge's office. Then, the students spend a week on a simulation, one subgroup acting as the prosecutor, one as the defense counsel and the third group playing the judge.

At these different offices, "mentors" assist students with exercises. The students do not work with actual pending files, but rather are given typical assignments with real case files. While not revolutionary in some systems, this is usually the students' first exposure to legal papers and a professional environment. During each week, the students spend about one half of their time working directly with the mentors and the other half working on their assignments. The mentors are local prosecutors, defense attorneys and a county court judge.

A typical experience would be as follows:<sup>11</sup> At the initial meeting for the students' week with the prosecutor's office, the mentor would give a presentation on what goes into a case file and the steps taken by the office prior to filing a suit. Then the mentor distributes real case files to the five students and walks them through each document. Students have a chance to ask questions about issues on process, documentation, rules of procedure and the prosecutor's role. The mentor also provides information on where and how students can perform legal research. After this introduction, students are given an assignment with a partial file from an old case and are instructed to draft an indictment based on the documents in the file. After completion, the mentor discusses the students' indictment, line by line.

The students have this kind of experience at each of the three offices during their term. The skills they learn include basic drafting skills, critical and strategic thinking as well as criminal procedure rules from different perspectives. They will also have engaged in open discussions about ideas, tactics, style, etc. The students' work is then forwarded to the directors, and the mentors discuss the students' progress.

In the fourth and final week of the clinic program, students participate in a simulation exercise. There, students are given a simulated case file, including police reports, expert witness statements, court investigation reports and other documents. One subgroup plays the role of the prosecutor, one group plays the role of the defense attorney and the last group serves as the trial court judge. After the groups draft and exchange court papers, they hold a mock closing argument. The mentors and the directors observe and then direct a final discussion session. This exercise gives students the opportunity to actually compete with each other in a 'moot court' setting. The mentors and directors provide essential observations and critical feedback. Students are also required to maintain a journal of their activities throughout the month, which is then submitted after the completion of the simulation.

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<sup>10</sup> *In contrast, the previous Osijek Clinic had admitted only the top few students.*

<sup>11</sup> *See Wright Report, at 25.*

At the end of the term, students are given either a pass or fail grade. If they fail, students must reenroll because they cannot graduate from the law faculty without a pass from the clinic. One problem encountered is that some students must wait almost two years after taking the basic criminal procedure course to participate in the clinic. So, many students must re-learn portions of the criminal procedure code in their fourth year, to participate effectively in the clinic's placements. To mitigate this problem, there is discussion about closer integration of the theory and practice components of students' criminal law education.

The clinic recently found office space at the law faculty and some of the ABA/CEELI funding in the 2002 year went towards the purchase of furniture and equipment for the office. Prior to that, the clinic was essentially run out of the co-directors' offices.

The program works well given the community's limitations. Osijek has a limited number of lawyers or judges who are willing to spend the required time serving as mentors. Therefore, the program must rely on a few dedicated professionals who receive only partial compensation for their efforts, which requires that many students rotate through these few professional offices. Although students have only one month to experience this program, they do learn some important practical skills and information, which was unavailable to their predecessors.

### **III. The Split Law Faculty Clinic**

The city of Split lies midway along the Dalmatian coast, almost directly south of Zagreb. It is the capital of Dalmatia and second largest city in Croatia. Split is the site of the ancient Roman Emperor Diocletian's Palace, still intact today in the center of the old town.<sup>12</sup> In contrast with Osijek and Zagreb, Split has a distinctly Mediterranean feel, with palm trees and white marble facades. Split, like Osijek, suffered from the wars of the 1990s when irregular Serb forces took over large portions of inland Dalmatia and the Yugoslav navy blockaded Split from the sea. Although Split was bombed during the war, it does not have the visible scars that mark Osijek. Split's economy suffered in the 1990s, as tourists largely stayed away from the Croatian coast. After several years of peace, the situation is improving.

The Split Law Faculty is the second largest in Croatia. The Split Criminal Law Clinic received ABA/CEELI funding in 1995–7 and partially survived the period of discontinuation of funds with a limited fourth year program that provided practical skills for around ten students. Criminal Law Professor Goran Tomasevic may be the reason that the program survived at all. He continued the limited clinical program by donating his time and efforts so that a few students could continue to enjoy the benefits. When the ABA/CEELI funding was restarted, the clinic was expanded and improved. Now, the program has a third year and a fourth year component.

The third year component has about 115 students this year. The first semester consists of students analyzing cases. They are given a set of new fact patterns each week, on a different topic. They then have the opportunity to think about how to apply the facts to the law they have learned in the previous two years. While not "clinical" in the strictest sense, this work does give students the opportunity to apply the content learned in other classes to real life situations. Students learn how to think critically and practically and at the end of the semester, they are tested on their ability to apply the facts to the law.

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<sup>12</sup> Interestingly, Diocletian was from Split and is known in history as the Roman emperor who "split" the Empire into East and West.

The second semester is devoted to court simulation. The class is divided into three groups. Each group is then subdivided into five activity groups of roughly ten students. The activity groups represent a mock prosecutor's office, defense attorney's office, court, appeals court and "other". Students in the last group serve as journalists, scribes, witnesses, etc. The students pick which activity group they want to be in, based on an order developed by a complex formula using grades from the first semester, other criminal law classes and other considerations.

All of the students work on the same fact pattern, which is developed by the director, Goran Tomasevic, and Judge Josip Cule, the President of the Criminal Division of the Split County Court. The facts are based on a criminal case that is pending in front of Judge Cule. During the second semester, the students work on the case, using a file developed from the actual court file. They meet with each other and their mentors. While the mentors assist the students with questions and strategies, students are encouraged to find the answers themselves.

Initially, the prosecutor activity group drafts and presents its indictment. The defense group presents its response papers and the "other" group serves as a court panel, ruling on pre-trial issues. Then, the groups engage in a mock trial, with the "other" group serving as witnesses, journalists and court reporters. Finally, after the court group issues its decision, the groups prepare appeals and argue those matters in front of the appeal court group. While some groups do more work (prosecutors, defense attorneys) than other groups (appeal court, "others"), everybody has a chance to experience the difficulties, the frustrations and the challenges that real life criminal litigation presents.

After the final simulations, the entire third year class watches the actual trial, on which their simulation was based. The County Court has one large courtroom that can accommodate everybody and Judge Cule arranges for the trial to take place soon after the simulations are completed. This is usually the highlight of the year, as students can compare their trial with the real one. This year, the case was an attempted murder trial, which took place on April 29, 2003.

The fourth year component is limited to 12–15 students. These students are chosen pursuant to a complicated formula and only the best students are accepted. Some of the competition is due to the intense interest in the fourth year program's content. However, many students also recognize that acceptance into the fourth year program gives them a head start in their job searches.

The Split fourth year program is similar to the externship placement components at Osijek and Rijeka. Fourth year students receive about ten weeks of externship placement at various professional offices in the area. They are usually placed in groups of two students, for about two weeks at each office. The five office placements are at the County Court, the Misdemeanor Court, the Prosecutor's office and two private defense attorney offices. At these placements, the students receive some basic practical guidance and are then given practical assignments.

The program works in a fashion similar to the placement components at the other clinical programs. Students tend to work on basic research and basic drafting. The mentors tend to give some guidance but try to make sure that students learn the process by themselves as much as possible. At some placements, students are given current tasks that the mentor must complete in the mentor's practice. Unlike the placement program at Osijek, the students in Split also attend a two-hour classroom session each week of the semester. There, students discuss practical issues with the professors, largely relating to the students' assignments.

Students are required to keep a journal of their activities and must turn it in to the director, with all written work product, at the end of each placement. At the conclusion of the semester, there is a written exam relating to practical issues that students handled in their placements.

The Split criminal program reaches most of the third year students and is a very popular course. The fourth year program is also popular and well run, but is only for the elite students. The mentors' offices are aware that they are dealing with the top students at the Split Law faculty. While most enjoy the work with students, they also see the benefit of having an inside look at potential recruits, especially since there is no organized recruitment regime and most jobs come through personal connections. So, some fourth year students receive job offers from these offices in addition to practical skills training.

#### **IV. Rijeka Law Clinic**

Rijeka (Fiume in Italian) is Croatia's largest port and third largest city. It is located in the northwest corner of the country, where Italian influence is the strongest. In fact, between World War I and World War II, Rijeka was part of Italy and even today, Italian language can be heard on the streets and on local radio stations. Rijeka has the reputation of being more cosmopolitan and business oriented than its two regional rivals, Split and Osijek.

The Rijeka Law Clinic survived ABA/CEELI's discontinuation of funding in 1997. This was due to the fact that the clinic's directors, Dr. Vesna Crnic-Grotic, international law professor, and Dr. Aldo Radolovic, Istria County Court President, were able to convince the law faculty's hierarchy that the clinic should be continued with local law faculty funding. So, unlike Split, the Rijeka clinic did not have to rely upon extensive *pro bono* efforts by the directors and mentors. As a result, ABA/CEELI's funding in the past two years focused on improving and expanding the clinic's resources, instead of the more basic assistance that it provided to the other programs.

Unlike the other ABA/CEELI clinics, Rijeka is a civil law clinic. Fourth year students participate in this clinic after they have completed a series of basic law classes, including civil procedure. As with the fourth year program in Split, the Rijeka Clinic has a limited number of positions (18), and only about one out of three student applicants is accepted.

The program has three main components: externship placements, simulations and classroom seminars and a fourth experimental component, a limited live client clinic. In the externship placements, students spend about six hours per week for a total of ten weeks at a local professional office. Most of the placements are in private law firms, but there were some new placements in 2003 at the Rijeka Municipal Court and the Rijeka NGO (non-governmental organization) Center.

Unlike the rotation systems in Osijek and Split, the Rijeka placements tend to be fixed for the entire semester. While this obviously reduces students' opportunities to compare different professions, it gives them a more extensive experience with their mentors. It also allows for greater involvement in a legal file. It is difficult to assign anything other than a small, discrete task when the student has only a few weeks in the office. But in the Rijeka program, the mentors can get students much more involved in a particular case. It appears that many of the lawyer mentors are giving students actual, pending work assignments (like drafting an opinion letter or a motion) and are using them in the case. As with other clinics, Rijeka students are required to keep a daily log of their activities and then turn them in when the placement is completed.

The program's second component is the simulation work. Here, students participate in semester-long simulated civil trials, which are developed by judge Radolovic and based upon real life cases he has currently pending before his court. The students are divided into two main groups of nine and those groups are further subdivided into three activity groups – plaintiff, defendant and court. Each group drafts the court papers from initial filing through to the trial and decision. Along the way, the clinic's staff assists the students but the emphasis is on making sure that students solve their problems themselves. Outside experts are brought in to assist the students and this year, real medical and sports experts served as witnesses in the simulated case, which involved an athlete suing for damages resulting from a car accident.

The simulation component has been improved with the arrival of the new simulation courtroom in 2003(funded by ABA/CEELI). This is the first such facility in Croatia, where students can practice their skills in a courtroom like setting. Previously, students had to use a small office or classroom. ABA/CEELI funded the furniture and equipment and the law faculty donated the building space. This is an important step because it shows that the law faculty is willing to make a permanent, visible commitment to practical skills training.

The clinic's third component is the classroom seminar. Here, students receive basic information that is designed to help them with their work in the other components. The seminar consists of a weekly lecture series where guest professors, lawyers and judges speak about different aspects of a current legal case. The students are given extensive background information on that case at the beginning of the semester and the guest lecturers speak about aspects like legal ethics, examination, appeals, etc. At the conclusion, students engage in a mock trial.

The fourth and final component is an experimental one, called "live client clinic". Under Croatian law, students cannot represent parties in a lawsuit. They cannot sign pleadings or appear in court. This prohibition has made it difficult for Croatian clinics to offer legal services to live clients. However, in 2002, the Rijeka Clinic decided to try an experiment. The Clinic decided to offer quasi-legal services to other students. The services would be essentially researching and finding answers to students' questions on their rights and responsibilities arising from their student status, in areas such as insurance, class credits, graduation, grades, housing, etc. The 18 fourth year students in the clinic would staff the clinic's office and be available to receive questions. The theory was that students would have the opportunity, for the first time in Croatia, to experience being completely responsible for somebody's legal or administrative problem. They would learn how to handle a real client with a real problem.

In practice, the live client clinic proved to be too ambitious. The students felt that this was extra work and tended to ignore this part of the program. Apparently, the students were just too busy to handle the live client problems. In addition, since this part was apparently not incorporated into the grading scheme, students may have had less incentive to participate. As a result, the Rijeka Clinic is considering changes to the program that might make this component more effective in the future.



## **V. The Zagreb Law Faculty**

Zagreb is the capital and largest city in Croatia. It is three to four times larger than Split, the next largest city. Zagreb hosts most of Croatia's largest companies and receives most of the foreign investment and international assistance. Zagreb also has the largest<sup>13</sup>, oldest<sup>14</sup> and, arguably, most prestigious law faculty, the Zagreb Law Faculty. Until 2003, the Zagreb Law Faculty declined to participate in clinical assistance programs.

However, in 2003, Professor Ivo Josipovic agreed to incorporate elements of the ABA/CEELI clinic program into his second year criminal procedure class. The top 40 students (out of about 100) from the first semester of criminal procedure were accepted into the program. The students had a classroom seminar component similar to the one in Rijeka, which included guest speakers, moot court practice and discussion about practical elements of criminal practice. The program also had an externship placement component. There, students were to spend about six hours per week during the semester, working at a private law office, a prosecutor's office, a court or a prison. They were to be assigned mentors who were to brief them on the activities of the office and provide basic assignments relevant to pending cases.

At the time of this writing, the program had just begun and ABA/CEELI had yet to receive the results or details about the program's administration. However, Professor Josipovic is a highly skilled and reputable professor and ABA/CEELI has every confidence that this program will be a success.

## **VI. Conclusions**

While the clinics have different organizational approaches, each has found a way to teach the same basic practical skills. Students are very pleased with the clinics and they continue to be among the most popular classes. Students realize that this is their first and only pre-graduation opportunity to see what it is like to work in a court or a law office. Students also learn basic drafting and other practical skills that they would not otherwise have. In addition, students have an opportunity to integrate (in some programs more than others) what they learn in theory with the real world. Equally important, the clinics are designed so that students learn most skills by trial and error, on their own or with other students, instead of having the information handed to them in a lecture format.

Of course, some aspects of the programs could be improved. The results from the live client clinic experiment at Rijeka were disappointing. In addition, the Osijek clinic needs to better integrate the classroom information with the field placements. However, on balance, all the clinics have been a resounding success. The biggest challenge in the immediate future is financial sustainability. Rijeka and Split appear to have achieved this. Osijek has not, but is considering some creative funding options. For Zagreb, it is too early to speculate since its first semester is still running.

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<sup>13</sup> There were about 4,000 students enrolled in the Zagreb Law Faculty

<sup>14</sup> The Zagreb Law Faculty was established in 1776.