

# Pushing The Boundaries or Preserving the Status Quo?

## Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice<sup>1</sup>

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### **Introduction**

The clinical legal education environment is one that is ripe with professional and ethical situations. Students involved in this educational experience inevitably are exposed to ethical dilemmas and choices. In this paper we examine the role played by clinical legal education programs in the development of ethical awareness among those law students. Within the context of the well documented concerns in the wider legal profession as to the standard of ethics teaching and ethical practice we assert that the clinical environment provides a rich opportunity for a deep learning experience about the nature and extent of a legal practitioner's professional and ethical responsibilities.

We begin by setting out the assumptions that underpin our approach, place our discussion in context and discuss various lawyering paradigms. We then outline key features for designing a clinical program within the context of a practical example. These key features include a whole of program approach, objectives, format and assessment.

We argue that the unique clinical opportunity lies in encouraging students to critically analyse the law of lawyering including the various codes of practice and their rationales within a framework of access to justice issues, a client centred approach and a recognition of the public role of a legal practitioner. This approach is built on the Australian experience of clinical legal education.

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1 This article is based on a paper given at the Third International Journal Of Clinical Legal Education

Conference and Eighth Australian Clinical Legal Education Conference July 2005 Melbourne, Australia. The authors are grateful to the helpful comments from two reviewers.

We conclude that if clinical legal education is to be more than practical legal training clinical teachers and program designers need to be wary of the easy option of simply perpetuating an uncritical acceptance of the law of lawyering. We submit that unless clinical law teachers make the intellectual and practical effort to articulate their own approach (model) to legal practice and communicate this to their students, they have little chance of engendering a deep understanding of ethical lawyering in their students. In our vision of the role of clinic in ethics education we aim to provide future lawyers with a range of conceptual, analytical, critical and practical skills with which to engage in the ongoing professional project of exploring what is an ethical legal practitioner.

### **Assumptions underpinning our approach**

The approach we describe in the paper flows from a number of assumptions. We recognise that these views are contestable and for that very reason believe it is important to articulate them.

Our first assumption is that the role and responsibilities of a legal practitioner include serving the community. Good lawyers are more than just expert legal technicians serving the interests of their clients. We think that lawyers should strive to do good.

This view stems from an acknowledgement that lawyers hold a privileged position in the community as a result of the community's direct bestowal on them of rights and privileges. Lawyers in Australia and elsewhere in the common law world have a virtual monopoly over the delivery of key legal services for fee including a monopoly over advocacy in the courts. In return for the community granting this privilege, lawyers have traditionally espoused a commitment to public service – the 'service ideal' – as a means perhaps of earning 'social credit'.<sup>2</sup>

*Membership of a profession entails privileges. Members of the legal profession have a monopoly on the right to represent litigants in court for a fee, and to perform certain other kinds of service....In return, the community expects that they will acknowledge obligations and responsibilities, which override considerations of financial reward and which are not necessarily enforceable either by legal sanction or by the practical constraints of the marketplace. The conferring of privilege and the acceptance of responsibility are two sides of the one coin.*<sup>3</sup>

We consider that ethical practice involves asking oneself what the impact of one's proposed conduct is on the community as well as on the client. This is because legal practice is a public activity not a private one, with lawyers' monopolies over certain areas of work entrenched in legislation.<sup>4</sup> As Stephen Parker argues:

*We have fallen into the mindset that lawyers are part of the private sphere....but the profession they practise is a public one. The duties they owe to the system of justice always prevail, in law and in professional ethics, over the duties they owe to their clients or themselves or their partners.*

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2 Larson, MS (1977) *The Rise of Professionalism: A Sociological Analysis*. Berkeley: University of California Press Ltd.

3 Gleeson, M. (1999) 'Honest and Liberal Practice' 73 (7) *Law Institute Journal* 78

4 For example in Australia each state has legislation

regulating the practice of law. Eg: *Legal Profession Act (Vic) 2004; Legal Profession Act (NSW) 2004; Legal Profession Act (Qld) 2004; Legal Practitioners Act (1981) SA; Legal Profession Act (Tas) 1993; Legal Practice Act (WA) 2003*. A similar regime exists in other common law countries eg *Courts and Legal Services Act 1990* in the UK.

*They hold a position or office. They do not merely do a job. We have lost sight of the public nature of a lawyer's position.*<sup>5</sup>

Our second assumption is that the clinical method of legal education, properly implemented, offers unrivalled opportunities for exploring and examining the ethical dimension of legal practice. The key to this assumption is the existence of spontaneity or 'randomness' in the clinic environment. This provides a rich and realistic learning opportunity for both individual student practice and group discussion that shares their experiences and application of ethical decision-making strategies.<sup>6</sup> While we acknowledge that teaching ethics by classroom problem based learning ensures the curriculum is covered, our experience is that every aspect of legal practice (not just student clinical legal practice) and every case, no matter how simple, illustrates the nature of the lawyer-client relationship and the ethical dimension of legal practice. For example, a non-English speaking client with an adult child interpreting raises starkly the question "who is my client?" with attendant issues of obtaining instructions and advice. It also raises significant access to justice issues (for example, language and cost). Our preference for the clinical as against simulated teaching method is founded on the richness of our experience as teachers in that environment where teacher and student are confronted with unanticipated ethical dilemmas which must be analysed and resolved.

Our third assumption is that law teachers, especially clinical law teachers are inevitably role models for their students. This idea of law teachers as role models is not new. Carrie Menkel-Meadow in 1991 argued that law teachers cannot avoid teaching legal ethics simply because they project an approach to lawyering in the way they teach.<sup>7</sup> Clinical law teachers are in the hot spot.<sup>8</sup> For many law students, we are the first legal practitioner they have ever met. Our credibility is high because students see clinical teachers as "real lawyers" in contrast with other members of academic staff. We therefore need to be aware, as Gary Blasi says, "in these areas [of ethics, morals and justice] our example can be absolutely critical."<sup>9</sup>

This by implication requires the clinical law teacher, who is also an advocate and practitioner, to consider the model of lawyering that they adopt.

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5 Parker, S. (2001). 'Why Lawyers Should Do Pro Bono Work.' 19(1 and 2) *Law in Context* 5. Parker is reiterating the view of the public nature of the professional role expressed by two influential Reports into legal education in Australia. See, Committee on the Future of Tertiary Education in Australia, *Tertiary Education in Australia (Martin Report)* Australian Universities Commission Canberra Government Printer 1964 and Committee of Inquiry into Legal Education in NSW, *Legal Education in N.S.W. (Bowen Committee)* (Sydney, Government Printer, 1979).

6 Simon Rice, (1996), *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum* 9-15.

7 Carrie J. Menkel-Meadow, (1991) "Can a Law Teacher Avoid Teaching Legal Ethics?" 41 *Journal of Legal Education* 3. See also American Bar Association (1986) *In the Spirit of Public Service: A*

*Blueprint for the Rekindling of Lawyer Professionalism* 16; Noone, M. A. and J. Dickson (2001) "Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers." *Legal Ethics* 127. See also discussion in Ross, Y., (2005) *Ethics in Law: Lawyers' Responsibility and Accountability in Australia* (4th ed) Butterworths, p 25-26.

8 Peter Joy from Washington University Law School in the US has recently written very interestingly on this topic drawing on empirical research into the negative effect on law students' ethical awareness of role modelling by lawyers in unsupervised work experience, Joy, PA. "The Ethics of Law School Clinic Students as Student-Lawyers." *Southern Texas Law Review* 45 (2003-2004): 815-841.

9 Gary Blasi, "Teaching/Lawyering as an Intellectual Project" (1996) 14 *Journal of Professional Legal Education* 65, 73.

The challenge is for clinical law teachers to develop a program/course that fosters the development of a rich and critical ethical understanding by using a variety of strategies for the exploration of ethical decision making. On a personal professional level, part of that challenge for the clinical teacher/supervisor is to model the application of moral judgement and legal knowledge to ethical decision-making.

## **Setting the Australian scene**

### **Clinical Legal Education**

Until recently the most common clinical legal education model in Australia was a one-on-one client service model.<sup>10</sup> Under this definition of clinical legal education it is a legal-practice based method of legal education in which law students assume the role of a lawyer and are required to take on the responsibility, under supervision, for providing legal services to real clients. The students receive academic credit and attend classes. But increasingly, clinical legal education programs now include externships, where students are placed in outside agencies. In these courses the students may deliver legal services to clients or may focus on policy, research and law reform activities. Clinical legal education in Australia does not usually refer to simulated client environments.<sup>11</sup>

In Australia, clinical courses have traditionally been situated within the community, usually within community legal centres.<sup>12</sup> This university-community connection is pivotal to an understanding of the goals of clinic in Australia which are both educational and service oriented. Legal activism lies at the heart of community legal centres. Early centres challenged the status quo and were viewed with suspicion by the mainstream private legal profession. Clinical programs based in community legal centres share some of this legacy.<sup>13</sup>

Although not overtly about teaching ethical legal practice, clinical legal education in Australia, from its inception in 1975 at Monash University, has been doing this. The educational goals of first, a practice based knowledge and understanding of the operation of the law and legal processes and secondly, the ability to critically analyse the practical connection between the current law and legal processes and practical justice, emphasise the public role of the lawyer in the administration of justice. Added to these goals is the service orientation of Australian clinical programs. Traditionally, the legal services of the clinical program are provided to poor and disadvantaged people in the community and the service element is integral to the achievement of the educational goals.<sup>14</sup>

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10 Giddings, J (2003) 'Clinical Legal Education in Australia: A Historical Perspective' 3 *International Journal of Clinical Legal Education* 7

11 University of New South Wales, Kingsford Legal Centre, *Clinical Legal Education Guide* 2005.

12 Noone, M. (1997). *Australian Community Legal Centres – The University Connection. Educating for Justice: Social Values and Legal Education*. J. Cooper and L. G. Trubek. Aldershot, Dartmouth Publishing Company Limited: 257–284. Giddings, J (2003) 'Clinical Legal Education in Australia: A Historical Perspective' above n. 10.

13 Noone M.A. (2001), 'The Activist Origins of Australian Community Legal Centres' (19) *Law in Context* 128.

14 Dickson, J. (2000) 'Clinical Legal Education in the 21st Century: Still Education for Service?' *International Journal of Clinical Legal Education* 33.

With the diversification of clinic in Australia, the connection to community and commitment to service appears to remain in that externships are most commonly situated in not-for-profit, public interest and community agencies.<sup>15</sup>

La Trobe University's clinical legal education program has three courses. Ethical legal practice and conduct are the primary focus of one unit. This clinic is based within a regional office of Victoria Legal Aid, the statutory legal aid body. Another clinic based at the West Heidelberg Community Legal Service is centred on poverty and human rights law. A third externship unit addresses the work of a range of public interest law organisations.<sup>16</sup> The latter two clinics both address ethical issues within the course content. This paper draws on our collective experience in running a clinical program for over 20 years.

### External focus on ethics and legal profession

Over the past 25 years in Australia there have been numerous inquiries and resultant reports where the legal profession's role in the justice system has come under scrutiny.<sup>17</sup> Many of these reports encapsulated the concerns of sections of the Australian community that the regulation of the legal profession and the mode of delivery of legal services contributed to the inaccessibility of the legal system.<sup>18</sup>

A recurring theme in the reports is a concern that the teaching of ethics in law schools needs to be undertaken seriously as part of the development of a culture of ethical practice in the legal profession. In its 2000 Report *Managing Justice: a review of the federal civil justice system*, the Australian Law Reform Commission ("ALRC") examined the role of academic legal education in shaping the legal culture.<sup>19</sup> It recommended that:

*In addition to the study of core areas of substantive law, university legal education in Australia should involve the development of high level professional skills and a deep appreciation of ethical standards and professional responsibility.*<sup>20</sup>

15 University of New South Wales, Kingsford Legal Centre, *Clinical Legal Education Guide 2005*; see also Giddings, J (2003) 'Clinical Legal Education in Australia: A Historical Perspective': above n. 10.

16 Dickson J., (2004) '25 Years of Clinical Legal Education at La Trobe University' 29(1) *Alternative Law Journal* 41; Curran, L (2004) 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change' 5 *International Journal of Clinical Legal Education* 162.

17 New South Wales Law Reform Commission, *First Report on the Legal Profession*, 1982; Law Reform Commission of Victoria, *Access to the Law: Restrictions on Legal Practice*, Report No 47, 1992; Senate Standing Committee on Legal And Constitutional Affairs, *Cost of Legal Services and Litigation Discussion Papers No 1-7 and Final Reports 1 and 2*. 1991-1994; Trade Practices Commission, *Study of the Professions - Legal*, Final Report 1994; Access to Justice Advisory Committee,

*Access to Justice - an Action Plan*, Canberra 1994; *Reforming the Legal Profession - Report of the Attorney General's Working Party on the Legal Profession*, Victoria August 1995; Australian Law Reform Commission, *Managing Justice: a review of the federal civil justice system* AGPS Canberra 2000.

18 For a discussion on the impact of this repeated inquiry on the notion of professional responsibility see Dickson, J.A. and Noone, M.A. 'Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers' above n.7.

19 Australian Law Reform Commission, *Managing Justice* above n.17, p113.

20 *Ibid.* The ALRC acknowledged that clinical legal education programs offer a rich environment for students to confront and practise ethical decision-making. However, it accepted that in Australia, law schools generally lacked the level of resources required for a widespread adoption of the 'live client' clinical method. See p 118-119.

In reaching this recommendation the ALRC looked back to the *Martin* and the *Bowen Committee* reports into legal education in Australia<sup>21</sup>. The *Martin Report's* recommendations in 1964 for university based legal education were based on the assumption that the practice of law was a public function in the administration of justice. The *Bowen Committee Report* in 1979 saw the law school as part of the process of "professionalisation", that is "the development of skills . . .but it also involves the development of a feeling for the professional role – for its responsibilities and limits".<sup>22</sup> In 1982, the New South Wales Law Reform Commission ("NSWLRC") in its influential Report on the complaints system in New South Wales<sup>23</sup> took a similar view of ethical decision-making as a fundamental skill. The NSWLRC took the view that

*...it is inadequate to teach legal ethics and professional responsibility as if these are matters of etiquette...Rather, these are matters which are bound up in the fundamental nature and essence of lawyering and legal professional practice, which necessitates a process or problem-solving approach to the subject...<sup>24</sup>*

The ALRC in *Managing Justice* also considered approvingly the approach of the 1992 MacCrate Report into legal education in the USA<sup>25</sup> and in many respects the Australian concerns for ethics education mirror those expressed in other jurisdictions.<sup>26</sup>

As well as these formal government initiated inquiries, academic writing and inquiry has blossomed in Australia and elsewhere over the past ten years leading to an increasing literature exploring the nature of ethics in law and ethical legal practice as well as the teaching of ethics in the law school curriculum.<sup>27</sup> Professional bodies in Australia have also come to the realisation that there must be a re-envisioning of the meaning of ethical legal practice.<sup>28</sup> Nonetheless, there is still considerable debate about what constitutes ethical legal practice. Academics and practising lawyers disagree about definitions and the requirements, scope and meaning of ethical legal practice.

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21 Above n. 5.

22 *Bowen Committee Report*, above n. 5, Ch 3.30–1

23 *New South Wales Law Reform Commission* (1982) above n.17.

24 *Ibid* Para 5.24.

25 *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap Legal Education and Professional Development – An Educational Continuum*, (American Bar Association July 1992) (the "MacCrate Report").

26 For Example: ACLEC, *First Report on Legal Education and Training* (London, ACLEC 1996) Para 1.19; Nelson, S. *Reflections from the International Conference on Legal Ethics from Exeter* (2004) *Legal Ethics* 7(2) 160–166 discussing the work of the Training Framework Review Group of the Law Society of England and Wales. In Canada see *Committee Responding to Recommendation 49 of the Systems of Civil Justice Task Force Report Attitudes-skills-knowledge: proposals for legal education to assist in implementing a multi-option civil justice system in the 21st Century Discussion Paper*, Canadian Bar Association Ottawa August 1999 and in the US see American Bar Association (1986) *In the Spirit of Public Service: A Blueprint for the Rekindling of Professionalism*.

27 See eg: a recent Australian journal edition dedicated to the teaching of legal ethics, (2001) 12 (Nos 1 & 2) *Legal Education Review*, and the collection of articles (both Australian and international) contained in, Le Brun, M.J. et al, *Improving the Teaching and Learning of Legal Ethics and Professional Responsibility in Australian Law Schools: Workshop Materials, July 1999* [The materials developed under a National Teaching Fellowship Award]. See also Economides, Kim (ed), *Ethical Challenges to Legal Education & Conduct*, (Hart Publishing Oxford 1998), Noone, M. A. and J. Dickson (2001) "Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers." above n.7; special issue on teaching ethics in (1999) 33(3) *Law Teacher*. See also (1995) 58 *Law and Contemporary Problems* for a symposium in the US context and Nelson, R. L., D. M. Trubek, et al., Eds. (1992). *Lawyers' Ideals/Lawyers' Practices*. Ithaca, Cornell University Press.

28 *Law Council of Australia, 2010: A Discussion Paper: Challenges to the Legal Profession* (2004). The professional journals also regularly address issues of professional conduct using the language of ethics.

In both the professional and academic literature there are a range of views about the role of lawyers. Essentially, we see that the difference is between an understanding of ethical practice which focuses on the lawyer's role vis a vis client and one which extends this understanding to require and include consideration of the effect of the lawyer's and client's conduct on the community. A key element of each view could be the interpretation of the extent of the duty to the administration of justice. As part of this debate various paradigms of lawyering have been put forward.

## Paradigms of lawyering

A simplified dichotomy often presented is the distinction between "*the client advocate role*" and the "*legal system advocate role*".<sup>29</sup> The client advocate pursues the client's interest no matter what the consequences. In this role the lawyer is seen as the mere mouthpiece of the client. This is also sometimes described as the hired gun approach. *The legal system advocate* emphasises the role of the lawyer as an officer of the court. Using this model the lawyer takes into consideration the interests of the administration of justice as well as those of their clients.

This approach has been expanded by academics in both Canada and Australia. Christine Parker recently outlined four paradigms of lawyering – adversarial advocate (the tradition conception of a lawyer); responsible lawyer (officer of the court and trustee of legal system); moral activist (agents for justice through law reform, etc) and ethics of care (relational lawyering).<sup>30</sup> Parker assesses her four approaches to legal ethics by looking at how the lawyer views the social role of lawyers, the relationship of legal ethics to general ethics and the nature of the relationship between the client and the law. She describes these approaches as a "set of conceptual tools that can be used to guide or assess the ethics-in-practice of Australian Lawyers".<sup>31</sup> She does not intend these to be seen as stand alone, discrete models. Rather they "can be used as a set of considerations that lawyers ought to 'respond' to in deciding what to do in any particular situation".<sup>32</sup>

Canadians Buckingham and others describe three approaches to lawyering: the adversarial/traditional lawyer, the merchant lawyer and the responsible lawyer.<sup>33</sup>

In the adversarial approach, legal practice centres on the existing interests of the client, whatever they may be. It is based on the adversarial nature of law (the criminal courtroom) where winners or losers are defined by the rules of the game. Legal ethics are also seen in this context. If a lawyer acts (plays) within the rules then their conduct is ethical irrespective of other considerations. The moral universe of the lawyer is thus one dictated by the *role* of the lawyer within the adversarial system.<sup>34</sup> This narrow focus requires lawyers to vigorously adopt their client's position as their own. This leads to role differentiation where the lawyer has to separate/ delineate their own personal being from their role of lawyer. They do things for their clients that they would otherwise find immoral. They must constantly justify their actions to themselves and others.<sup>35</sup>

29 As detailed by Chernov A.(1991) 'The Lawyer and Morality' 18(1) Brief 6; Ramsey, I.,(1992) 'Ethical Perspectives in the Practice of Business Law' 30(5) Law Society Journal 60.

30 Parker, C.,(2004) 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' 30 (1) Monash University Law Review 49 at 56 onwards.

31 Ibid at 74.

32 Ibid.

33 Buckingham, D., Bickenback, J., Bronaugh, R. & Wilson, B., (1996) *Legal Ethics in Canada Theory and Practice* Harcourt Brace Canada.

34 Ibid.

35 Wasserstrom, R, " Lawyers as Professionals: Some Moral Issues" (1975) 5 *Human Rights* 1 as quoted in Ross Y, *Ethics in Law* (2005) above n. 7, p 34.

The merchant lawyer approach is the one that many would now say is the dominant one, where the lawyer is principally a business person. The prospect of immediate financial gain is more important than professional responsibilities. The suggestion is that at the beginning of the 21st century, commercialism has won the day. This is not a recent criticism.<sup>36</sup> However, the increasingly global nature of large law firms with the associated escalation of profits and inevitable changes to the work environment of individual lawyers suggests that the incentives to adopt this approach are stronger now.<sup>37</sup>

The responsible lawyer approach recognises that lawyers not only play several professional roles in their careers, they also serve a variety of other social roles. It might be called the whole lawyer or whole person approach. It is critical of the adversarial approach. The lawyer has their own moral convictions to deal with but also issues wider than the particular client. For example this lawyer considers the consequences for the opposing party, third parties, the legal system and the lawyers own integrity. This approach requires a full assessment of the client's needs.

*A more generous understanding of ethical lawyering is achieved when it is viewed as a vocation that enables the integration of social responsibilities and personal convictions.*<sup>38</sup>

It is our view that as clinical teachers, our obligation and challenge goes beyond merely reacting to pressure for ethics teaching to be embedded in the curriculum. Through our teaching, we play an influential role in the development of future lawyers and hence legal culture. This gives us individually, and the law school as an institution, the opportunity to work with and perhaps lead the practising legal profession in a re-envisioning of the meaning and application of ethics in law.<sup>39</sup>

The contest of views about what is ethical legal practice and the different lawyering paradigms provides fertile ground for debate and growth amongst students to which clinical supervisors can contribute with their blend of practice, academic rigour and reflection. In this way students begin to develop a deep understanding of ethical practice.

## **What is a 'deep understanding of ethical practice?'**

As clinical teachers we cannot avoid engaging our students in discussion of the meaning and extent of ethical legal practice and in our view, the aims of those discussions are to challenge conventional and narrow interpretations of ethical conduct, the status quo, and to push the boundaries of our own and our students' understanding of the requirements of an ethical lawyer.

In a recent student exercise at the beginning of the clinical course *Legal Practice and Conduct* (focussed on ethics and law of lawyering), there was surprisingly clear and consistent views among the group as to their understandings of the requirements or meaning of ethics in law. In the first class the students were asked to work in groups to write short descriptions of their understanding of 'ethics' as applied in the practice of law. The aim of the task was for the students to explore and

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36 Kirby, M., 'Billable Hours in a Noble Calling?' (1996) 21(6) *Alternative Law Journal* 257 ; See Galanter M & Palay T, 'The Transformation of the Big Law Firm' in Nelson, R.L., Trubek, D. M. et al., Eds. (1992) above n. 27.

37 For a recent discussion of the impact of globalism on lawyers' practices and conduct see, Nagan, Winston P., 'Lawyer Roles, Identity, and Professional

Responsibility in an Age of Globalism' 13 *Fla. J. Int'l L.* 131, 2000–2001.

38 Buckingham, D., Bickenback, J., Bronaugh, R. & Wilson, B., above n. 33.

39 Adrian Evans comments that habitual ethical reflection has benefits for both clients and practitioners – (2003) 77(5) *Law Institute Journal* 80. ALRC *Managing Justice* above n 17, Bowen Committee Report above n. 5.



articulate their personal views and thereby provide a context for an examination during semester of varying interpretations in the academic and professional literature of legal ethics and professional responsibility.<sup>40</sup>

The students noted on transparent overheads the following aspects: “integrity, encompassing moral elements, looking beyond personal bias, responsibility to clients and courts, balancing act, beyond the letter of the law, ‘proper’ behaviour, awareness of the issue by professional in position of power, response guided by: society’s values, social good/public benefit, morality.”<sup>41</sup>

These students were beginning their studies in ethical legal practice but their responses illustrated a broad appreciation of the issues. The majority of students in the class apparently believed that ethics and legal ethics embodies moral choices – ‘right v wrong’ ‘proper behaviour’. There was a belief that ethics and ethical conduct requires consideration not only of personal values but also of wider societal values and the ‘public benefit’. ‘Responsibility’ is also a common thread – leading to the question ‘to whom’? Do legal ethics require responsibility only to client and court or is there a responsibility to the community? The students’ responses illustrated that they considered ethical decisions are based on a number of considerations beyond the mere letter of the conduct rules or the ‘law of lawyering’.

Students come to law school for a variety of reasons but a significant number come with notions of ‘helping people’ and ‘doing good’.<sup>42</sup> Students who do our clinics are self selecting in that they have to apply to do the course (they are not compulsory). It is likely that a majority of those who choose to undertake a clinical subject are already concerned about broader issues of justice and are more altruistic. Their resume is also clearly a consideration.

Ethical legal practice requires an adherence to the relevant rules of professional conduct but as most students quickly realise the codes of conduct are often indeterminate and ambiguous. Consequently, ethical legal practice requires more than this. It involves an understanding of the interaction between the rules and morality, between the rules and justice. Ethical decision-making involves moral decisions as well as compliance with rules. This pre-supposes that the lawyer knows the rules, has skills of moral reasoning and a developed set of strategies for recognition of ethical issues and resolution of them.

In adopting Rest and Narvaez’ four elements of moral decision making (moral sensitivity; moral judgment; moral motivation; moral character)<sup>43</sup>, Julian Webb suggests that ‘failure to act ethically may be the result of a “moral failure” at any of these four stages – a failure of recognition, of judgement, motivation or character.’<sup>44</sup>

40 It also of course gave the teacher an insight into the opinions of the group.

41 Student responses recorded on transparency and held by Judith Dickson.

42 See Susan Daicoff, ‘Lawyer Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism’ (1997) 46 *The American University Law Review* 1340. See also, Western, J.; Makkai, T. & Natalier, K. ‘Professions and the Public Good’ in Arup, C & Laster K (eds) *For the*

*Public Good: Pro Bono and the Legal Profession in Australia* (2000) 19 *Law in Context* 21.

43 Rest, James R. & Narvaez, Darcia (eds) *Moral Development in the Professions: Psychology and Applied Ethics* (Hillsdale, NJ, L. Erlbaum, 1994) quoted in Julian Webb, ‘Conduct, Ethics and Experience in Vocational Legal Education’ in Economides (ed) above n 28, 284–285; see also discussion in Ross, Y (2005) *Ethics in Law* above n.7, p 50.

44 Webb, *ibid.*

As Sampford and Blencowe point out, 'good legal practice depends upon the making of complex judgements about a variety of matters not strictly related to the law.'<sup>45</sup> Competence and ethics are, in our view, intertwined. A lawyer has both a contractual and an ethical duty of competence and in many situations the nature of the advice given to a client is founded on a judgement (a moral judgement) about what is both legally and ethically correct. Sampford and Blencowe argue that 'at their best [law and ethics] are mutually supportive, with ethical principles providing the principled justification for legal rules and offering valuable interpretive tools for legal rules as well as the basis for a supportive ethical culture.'<sup>46</sup>

Confronted as clinical law teachers with students who hold the ideas shown earlier, as well as by those with more directly self interested motives for studying law how do we proceed? We believe that our task as clinical teachers is to provide our students with a clear framework for ethical decision-making and to model the process of that decision-making.

As educators we need to be constantly thinking about ways in which we can present our students with possibilities for regular opportunities to tackle difficult ethical issues in the broader context of the society around them. In our experience such an approach creates huge interest for the students and they rise to the occasion with vigorous debate and questioning.

In 1997, Brett Walker QC, then president of the Law Council of Australia stated:

*the Australian legal profession must continue to examine itself and the legal system, in order to push sensible reforms and save the community impracticable experiments with the administration of justice....The Australian justice system is a good justice system, with a sound international reputation but of course, no system is ever perfect, and – like all professional sectors – the legal system can be fine tuned and improved.*<sup>47</sup>

Similarly, Baxt in a discussion of ethics and law reform recognized a role for lawyers in ensuring the maintenance of cherished rules for the protection of citizens and the need "not to want to see the other extreme laws being piled on laws simply because there has been no enforcement in the past."<sup>48</sup>

The Australian Law Reform Commission has recognized that law schools can foster a sense of public responsibility in budding lawyers. It states that "education, training and accountability play a critical role in shaping the legal culture and thus in determining how well the system operates in practice".<sup>49</sup> It goes on to state that it is evident that, "while it is of the utmost importance to get structures right, achieving systemic reform and maintaining high standards of performance rely on the development of a healthy professional culture."<sup>50</sup>

In order to facilitate discussion of these various aspects of ethical legal practice and the various paradigms of lawyering, the design of the clinical program (implementation of the method) is

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45 Sampford C. & Blencowe S., 'Educating Lawyers to be Ethical Advisers' in Economides (ed) above n 27, 319.

46 Ibid.

47 Press Release: Lawyers Must keep Driving Justice reform, to Ensure Sensible Change, 2 October 1997 see <http://www.lawcouncil.asn.au/read/1997/1957000630>.

48 B. Baxt 'The Role of Regulators' in Coady, C. A. J., & Sampford C. J. G., (eds) *Business, Ethics and the Law* (1993) The Federation Press, p 80. For some interesting discussions of the important role of legal

practitioners in combating systemic injustice see: Hamby, A. D. and Goldring, J. L. *Australian Lawyers and Social Change*, (1976) Law Book Company Sydney particularly the opening remarks by H C Coombs pages 1.4, and Robertson, C., 'The Demystification of Legal Discourse: Reconciling the Role of Poverty Lawyer as Agent of the Poor', (1997) 35 (3) *Osgoode Hall Law Journal*.

49 ALRC *Managing Justice* above n. 17, Chapter 2 page 1.

50 Ibid.

critical. In discussing the issues of program design to enhance a deep understanding of ethical issues, we draw on a recent practical problem from one of clinics.

## **Designing a clinical program with ethics in mind**

Our suggestions for program design are based on our combined experiences, including our specialist ethics clinic, but are intended as generic on the basis that an objective inherent in every clinical program is ethics education.

We consider that the critical design features include:

### *1 Whole of Program Approach – Supervision expertise*

A whole of program approach means that directors have a responsibility both to the students and to their supervisor staff, to ensure first, that supervisors understand basic principles of adult learning, secondly, that supervisors have a developed knowledge and understanding of ethics in law and finally that the individual programs are structured in such a way as to provide opportunity for debate and discussion.

Program design (as against individual course design) needs to acknowledge the importance across the program of these elements. Critically, for a program director, is the further factor of expertise of clinical staff. With the expansion of clinical programs it could be difficult to find competent and experienced practitioners who want to work in the university environment. The temptation might be to focus on legal competence and hope that supervision skills come with time. Most Australian clinical supervisors have learned ‘on the job’. However, in clinical programs, the quality and structure of supervision is critical to the students’ learning experience. The supervisor is the role model, perhaps the first legal practitioner that the student has ever met. The supervisor and the clinical law teacher, cannot avoid teaching legal ethics.<sup>51</sup> If the formal objectives speak of ethical awareness but supervision practice ignores engagement with these issues or if there is little guidance in reflections, then the ethic being modelled is contrary to that espoused.

A program director can adopt a number of methods of professional development of supervisors. These include formal supervision training, peer supervision and mentoring and ongoing independent evaluation and reflection. All are valuable. We have found the latter method particularly useful. The University’s Academic Development Unit conducts a formal workshop with the students in the absence of their supervisors. The aim is to frankly assess the program and identify what works well and what can be improved. This invaluable process encourages us to revisit the stated objectives of our clinical courses, to re-examine the content we teach in the classroom and in the clinic, and to scrutinize the approach to lawyering we model through our practice and assessment.

### *2 Clear objectives related to ethical practice and practice of justice*

Most universities require the subject outline to state the objectives of the course. We suggest that these include the development of knowledge and understanding of the ethical obligations of lawyers. We expect that most programs do include such an objective. For example, at Monash University the *Professional Practice* subject includes an objective: ‘(5) an understanding of

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<sup>51</sup> Menkel-Meadow: *above* n.8.

professional legal issues of ethics and morality.<sup>52</sup> The University of New South Wales *Clinical Legal Experience* entry in the Handbook includes the statement that the course aims ‘to engender in students an appreciation of the ethical, social and practical complexity of the legal system’.<sup>53</sup>

At La Trobe, the students enrolled in our specialist ethics clinical course, *Legal Practice and Conduct* are encouraged: to see legal practice as socially situated and hence as ethically complex; to reflect on the nature of the lawyer’s relationship with a client including issues of power and trust; to evaluate ethical conduct in a practical context using a range of frameworks including: professional rules of conduct, legal practitioner’s own moral/ethical framework, legal practitioner’s responsibility to administration of justice *in a manner conducive to advancing the public interest*. legal profession’s commitment to serving the community, to analyse what constitutes ethical legal practice and to reflect on the level of responsibility individual legal practitioners have to pursue justice.<sup>54</sup>

### **3. Content**

We suggest that the reading materials and other resources for the course should include reference to the different models of lawyering discussed earlier. Reading materials may be accompanied by questions requiring students to consider their own approach to lawyering as they practise it in the clinical context. We also suggest that in teaching communication skills – listening, questioning, interviewing, we emphasise their connection to performance of ethical duties. Without doubt, empathetic and careful listening and skilful questioning leads to a lawyer obtaining necessary information to effectively assist the client. Competence is an ethical issue.

### **4. Format**

Clinical units should be designed in such a way as to provide regular opportunities, in group and in one on one interactions, to discuss and tackle ethical issues. Time to reflect and the flexibility to allow for this, needs to be built into the program design. The format of the day should include opportunities for questioning, thinking, challenging and identification of legal and ethical issues that might be missed or which may need further examination.

There is always a tension involved here as the demands of the day build up. There are many client issues to be settled and supervised and each student needs to gain the supervisor’s time. The challenge is to balance these competing priorities and ensure that the temptation for example not to hold the all important debrief is resisted. Students can also learn from the way in which the supervisor manages to settle priorities and juggle the time but still give space to the important issues as and when they emerge.

In our view a clinic needs to have clear provision for both informal and formal discussion with students. Regular built in team discussion time, perhaps over lunch or afternoon tea, brings the focus from the specific to the broad. We suggest that each student team meet in this way with their supervisor on each clinic day. This allows the experience and insights of one student to be shared with all. Adhoc one-on-one supervision is also essential. Again in the real client clinic, this may arise in the course of client interviews or file work.

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52 <http://www.monash.edu.au/pubs/handbooks/units/LAW5216.html>

53 <http://www.handbook.unsw.edu.au/undergraduate/courses/2006/LAWS2304.html>

54 *Unit Outline*.

In the externship situation where the university clinical teacher is not present on site, we believe it essential that the campus component include supervision sessions to discuss the challenges students may confront, as well as the formal class time focussing on the relevant theory.

The following scenario provides an example of how this design feature is relevant to achieving the goal of deep ethical understanding.

Conflict of interest situations are the most frequent ethical issue confronting legal practitioners. This scenario demonstrates how the supervision/teaching and clinical unit design can allow a deeper exploration of legal ethical approaches and the tensions these can create for student and supervisor alike.

#### *A Conflict Scenario*

*John and Mary (husband and wife) are seen together in the clinic by a student lawyer. Centrelink, the social security administrator, has raised a debt against each of them relating to their failure to declare the whole of the husband's earnings. John's wages were paid partly in cash and partly declared on a payslip. John and Mary did not declare the cash wages and as a result each continued to receive a social security benefit when they were not entitled to do so. John's social security payment has been stopped. Mary is receiving a Disability Support Benefit and John was on an unemployment related payment. Neither John nor Mary have yet been charged with criminal offences relating to the failure to disclose but a legal aid application form is completed by each and student takes responsibility for file.*

*Two weeks later John and Mary return to the clinic after some more contact from Centrelink and to bring in financial information for the legal aid application. They have still not been charged with criminal offences. It is a short information exchange which includes some advice to John and Mary about the range of likely penalties if convicted on criminal charges.*

The potential for conflict of interest is easily identified by the student lawyer during the first interview.<sup>55</sup> At the mid first interview stage, the discussion with the supervisor focuses on the immediate situation and procedural steps. The aim is to clarify whether there is any difference of position between John and Mary and to flag the potential of a conflict. It is essentially a rule based discussion. Both John and Mary are taken on as clients for the purposes of advice and a freedom of information application.

After hearing from the student lawyer during the second interview, the supervisor believes that the matter raises serious conflict issues. In the post interview discussion the student focuses on how upset Mary was at the prospect of a serious sentence. The supervision exchange goes something like this:

*Student:* and the husband just didn't seem to want to listen. He kept interrupting when I talked about what might happen with criminal charges. Maybe he didn't want her to hear the bad news, maybe he was just being protective.

*Supervisor:* Do we know why she is on Disability Benefit? Do you have any sense of disability?

*Student:* I haven't asked but she seems very fragile. Maybe she has a mental illness.

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<sup>55</sup> *In the clinical model used at La Trobe University in the real client clinics, the student (or pair of students) interviews the client alone to gather information then leaves for a mid interview discussion with the supervisor in which a preliminary view of the situation is developed. The student then returns to the client to advise, obtain further information, refer out or obtain instructions to act.*

*Supervisor:* Let's just think about this interview and the instructions we have from each of them so far. I'm wondering if we can take the agreement of John and Mary to act together at face value given what you feel after today's interview. Do you think we are in a real conflict of interest situation here?

There follows a discussion of the facts known so far and the rules about conflict of interest.

*Supervisor :* Well, they haven't been charged yet so we are only helping with a freedom of information application. No-one else is going to help them with that.

*Student :* Maybe it's too risky and we should send them away to do it themselves. Only thing is I'm worried about Mary. She seems fragile and dependent on John. Maybe if they get a grant of legal aid when they are charged, we can send them off to private practitioners.

*Supervisor :* I've had a look at their applications. They won't qualify. His wage and her benefit exceed the financial eligibility limit. Even without a conflict of interest we might not be able to act, certainly not on a plea of not guilty. In our clinic we have to work within legal aid guidelines.

*Student :* But they can't afford a private practitioner. Wouldn't a private solicitor have the same conflict problem we might have? Are you saying they have to have different lawyers and pay two sets of fees – on that wage! That's ridiculous. She won't go to a different lawyer from him!

Who makes up these rules about legal aid and conflicts of interest anyway? Must be the lawyers! We could just ignore all this and help them out. The clients could be seen by two different students otherwise they might not get any help. We have to do something. This is an access to justice issue!

What followed the second interview was a discussion between the supervisor and student, followed up later in the team discussion over afternoon tea, of the practical implications of a strict application of conflict rules. A range of issues was explored by the students and supervisor including: defeating lawyers' obligations to serve the community; that the obligation to the client may not involve taking the easiest option for the student lawyer; the need for the student to think through the various implications of the different actions a lawyer might take; protecting clients' right to loyalty; the possibility of more flexible application of rules by allowing separate lawyers within the same firm; lack of legal aid to working poor; structural barriers to accessing justice system (cost, complexity, ethical rules).

We consider that encouraging critical analysis alone is not sufficient. The group decides that the key to avoiding depression and defeatism lies in identifying possibilities for action and change. These include working out a way of providing legal services to these clients, perhaps through the already stretched community legal centres, working out how to address the wider ethical issues for the practitioner. Is there an organisation examining lawyer's ethical rules at the moment? Would the Bar Association or Law Society be interested in developing guidelines? Wider still, is it part of practitioners' ethical obligations to use their casework experiences in law reform? The group decides that conflict of interest rules can have the effect of limiting access to justice and lead to forced self-representation. The students discuss whether the rules are too strict and whether exceptions could be explored when the outcome of a strict application of the conflict rule may result in no legal representation.

This analysis of the practice is critical to the teaching mission. As discussed below, if the structures are in place in the clinic, the analysis can be developed into practical expressions of professional responsibility.

### 5 Clear Limits on file/project numbers

In a real client clinical program, management of the file load of students is a key issue in enabling space for discussion of systemic and individual ethical issues. Too many files swings the balance towards volume service delivery and away from education through service. Too few of course limits the opportunity for rich experience. Here again, the nature and objectives of the clinic are the reference point. Our view, however, is that if, in a university based clinical program, day after day passes without the opportunity for thoughtful discussion of the ethical dimension to the work, then the educational mission is not being achieved.

### 6 Reflective journals

The use of journals in professional education is common particularly in the health sciences and teaching disciplines. Journals are a tool for the development of the skill and art of reflection, advocated by Schon in the 1980s.<sup>56</sup> There is an increasing literature on reflection in education and professional life.<sup>57</sup> Clinical legal education, like clinical education in other disciplines is the obvious place in the curriculum for students to learn this skill. A clinical program can be designed to incorporate a compulsory journal, either for assessment or as a hurdle requirement. Setting clear goals for the journal is important as well as clear assessment criteria (if assessed) and providing clear timely feedback (modelling). The journal is an opportunity for students to explore the ethical implications of their daily practice through 'reflection on action'.<sup>58</sup>

In our program we use a compulsory journal, assessable in two courses and a hurdle requirement in the other. We have found that after some initial reluctance, students embrace the opportunity and report its value in enabling them to reflect on their practice and pull issues together in their mind. In our experience, journals are particularly useful in externships, allowing students to raise ethical and other issues in a general way but in a way which enables feedback.

In the West Heidelberg clinical course, where the primary focus is poverty and human rights law, the journals are used as one tool for drawing out the legal ethical dimension of the students' experience. In the journal students discuss their interviews and case progress; reflect on their performance as lawyers and how they might improve; difficulties they encountered with clients and any ethical dilemmas and tensions they face and how they might deal with them both professionally and personally. The journal gives the supervisor the opportunity to engage with the students on these issues and to follow the progress of each student.

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56 Schon, D., *The Reflective Practitioner* (1983) Jossey-Bass, San Francisco and his later writings

57 See eg: Moon, Jennifer A., *Reflection in Learning & Professional Development: Theory and Practice* (1999) Kogan Page and the references there.

58 Ogilvy J.P., 'The Use of Journals in Legal Education: A Tool for Reflection' (1996) 3 (1) *Clinical Law Review* 55. We drew on Ogilvy's work in designing the

*journal component of our program. The goals of the journal in our ethics clinic are: To provide regular student feedback to the supervisor on the student's progress in understanding the role of a lawyer, ethical duties, professionalism; To identify gaps in the student's understanding; To promote reflective behaviour; To exploit the connection between writing and learning; To foster self awareness; To relieve stress.*

## 7 Assessment

Educational research clearly shows that students see the assessment in a course as a firm indicator of what is important in the content.<sup>59</sup> It is essential that in the clinical course, like any other course, the assessment is closely related to the stated objectives of the course. The clinical environment offers a range of assessment opportunities consistent with university requirements. The written course material should inform the students how the assessment is designed to assist them achieve the course objectives. Importantly the performance assessment needs to integrate ethical development with other skills' development

One way to do this is to formulate the assessment criteria in the language of ethical duties and ethical practice. As stated earlier, our view is that every aspect of legal practice illustrates the ethical nature of the lawyer-client relationship. Criteria for assessment of written communication skills, for example, might include a criterion such as “demonstrates knowledge and understanding of rules of confidentiality” and “demonstrates understanding of relationship of trust”. At assessment time, the ongoing record keeping easily identifies a student whose work fails to meet these measures. Given the natural importance of assessment to students, it is only fair that the clinical teaching support this approach.

Written assessment must, as stated above, align with course objectives. However, no matter what the specific context of the clinical program, an assessment piece which requires students to think about law in its public operation, and legal practice as a public activity, is assessment which encourages students to a wider and hopefully richer understanding of their ethical obligations as lawyers.

As an example of this approach to assessment, we redesigned one of our real client programs giving it a human rights focus and introducing a law reform project as the key written assessment. The renovation came about from an evaluation of the course which included listening to the students' views. The students were clear that simply doing the casework, even with discussion about its implications, was not enough. They felt strongly that the casework raised an obligation – ethical obligation – to address the broader issues emerging.<sup>60</sup>

### *Modelling Ethical Practice*

We return to our third assumption, namely, that clinical law teachers are role models for their students. A clinical program and clinical units with the design features we propose stand as a clear statement to the student participants by the law school that a deep understanding of the ethical dimension to legal practice is a fundamental skill required of lawyers.

We argue that ethical practice goes beyond mere adherence to rules and requires a lawyer to consider the implications of those rules for access to justice. While not every busy practitioner can engage in law reform activities personally, the most recent edition of the Public Interest Law Clearing House (PILCH) newsletter noted that “lawyers in the private profession are expanding

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59 Johnstone and LeBrun, (1994) *The Quiet Revolution: Improving Student Learning in Law* (Sydney Law Book Co.) and Johnstone, R., (1996) *Printed Teaching Materials: A New Approach for Law Teachers* Cavendish Publishing Limited pp.42–46. In *Australia the Commonwealth Government has funded research into assessment in higher education and development of practical resources*. See: *Assessing Learning in Australian Universities project*: <http://www.cshe.unimelb.edu.au/assessinglearning/about.html>

60 Curran, L., ‘Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change’, above n. 16.



their pro bono involvement beyond case work for clients to include submission-writing, advocacy and law reform on behalf of clients in their own right” It is observed that this is a “significant contribution to access to justice.”<sup>61</sup>

In the clinical environment, however, law reform activities provide a practical method of using time, assessment, file work and journal reflection to experience and examine immediate access to justice issues. This enables the students to identify issues they consider the legal profession, ethically, should respond to so that ‘the legal system can be fine tuned and improved’.<sup>62</sup> In the clinic at the West Heidelberg Community Legal Service students must identify an issue emerging in their casework that is in need of law reform or exposure and discussion. Topics have included: Mentally Ill Offenders and the Criminal Justice System, Self Represented Litigants, Breach of Confidentiality in Children’s matters, Youth Debt.<sup>63</sup> The students work in teams of four and in consultation with community legal centre staff. Once completed and if to a high standard, the work is released as a law reform submission to government and other relevant bodies.

The report entitled: *Unrepresented Litigants: At What Cost?* resulted from one student’s difficulties in obtaining representation for a client before a tribunal. As with the practical scenario described earlier, there was discussion in clinic of the reasons for the situation. The assessment project provided the opportunity to do something about this issue and improve access to justice. The student and her clinic team conducted research and published a report which was sent to people the students decided were key decision-makers.

The students in writing the report had to grapple with many issues related to the role of a lawyer vis a vis their client and the administration of justice. In essence the question raised was the extent of the lawyer’s professional ethical obligation when confronted with inadequacies and deficiencies in the law and legal system? Specifically, what should a lawyer do if they see an unrepresented person in court who is clearly struggling? What should a lawyer do where legal aid has run out, they have been acting – do they act pro bono? What is the judicial officer’s role where parties are unrepresented and clearly struggling? If they try to help what does this mean for the administration of impartial justice? What are the broader implications of acting pro bono in encouraging the withdrawal of adequate funding for legal aid or for the client? How can these choices be made? What mechanisms should be considered to enhance access to justice?

There can be limitations in using case-work alone to achieve a just result in client cases. Physical court structures, uncertainty of outcome, delay and issues of cost can work as an incentive to give up on a case despite its merits. Where a lawyer observes the law as problematic and as a revolving door of negative consequences for many individuals, it may be that by simple legislative amendment the situation can be avoided. We refer to our earlier stated assumption about the role of lawyers in the public arena and argue that ethical practice includes a recognition of this role.

Where clinic assessment and design includes a law reform or similar community focussed legal research,<sup>64</sup> the student has to struggle with the requirements of their duty as a lawyer to act only

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61 PILCH Matters, Issue 6, May 2004, Public Interest Law Clearing House, Melbourne.

62 Press Release: Brett Walker QC, President of the Law Council of Australia, Lawyers Must keep Driving Justice reform, to Ensure Sensible Change, above n.47.

63 Curran, E., (2004) ‘Responsive Law Reform

Initiatives by Students on Clinical Placement at La Trobe Law’ 7(2) Flinders Journal of Law Reform 287; for a list of reports see Appendix A.

64 For example, Murdoch University; Monash University; La Trobe University; University of New South Wales; Griffith University; University of Technology Sydney.

on instructions and with the temptation to engage in cause lawyering which might be at the cost of their clients.<sup>65</sup> They confront the complexities of ethical conduct in this situation but realise that they have the option also of contributing towards improving the justice system.<sup>66</sup>

For supervisors and teachers in clinical programs we can assist the students in developing the skills that may help them in becoming ethical lawyers of the future and thus have the satisfaction of a possible succession plan as our students, working as lawyers, provide good ethical role models for the younger lawyers with whom they also come into contact in later life.

## **Conclusion**

Clinical legal education is a well-respected method of teaching about law and the legal system. However the potential of clinical legal education in enhancing and promoting ethical legal practice is yet to be fully explored. Particularly in Australia where the links between clinical programs and the access to justice movement remain strong, there is a risk of complacency in the clinical fraternity about the teaching of ethical legal practice.

If clinical legal education is to be more than practical legal training, clinical teachers and program designers should be wary of the easy option of simply perpetuating an uncritical acceptance of the law of lawyering. There is a need to look again at the stated objectives of our courses, the content of what we teach in the classroom and in clinic, the approach to lawyering we are modelling through our practice and through the assessment, and importantly how carefully we structure the clinical experience to allow for opportunity for engagement among students and with clinical teachers.

We argue that clinical teachers, concerned about engendering a deep appreciation of ethical lawyering in their students, need to focus on certain key design features within their clinical program. In developing these features, clinical teachers can assist students in obtaining a deeper understanding of issues involved in ethical decision-making and the various paradigms of lawyering. Within the clinical environment, students can begin to critically analyse the law of lawyering including the various codes of practice and their rationales within a framework of access to justice issues, a client centred approach and a recognition of the public role of a legal practitioner.

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65 A Sarat, and S Scheingold (1998) (eds) *Cause Lawyering: Political Commitments and Professional Responsibilities*. Oxford: OUP.

66 In another recent example La Trobe students published a report on youth debt<sup>66</sup> due to a concern about the number of their young clients enticed into credit debt and mobile phone debt. The chapter on mobile phone debt generated public interest from 40 national media outlets within twenty-four hours and mobile phone companies issued press releases responding to the concerns raised in the student report. State and

Commonwealth Government responded directly to the student recommendations and are exploring improved regulation of the telecommunications industry. Follow up meetings with ministerial staff and advisers and the students occurred. The students were staggered to think that they might just make a difference and more young people in the public arena might exercise caution and be aware of their rights as a result of their modest law reform project: *Youth Debt: A project of the La Trobe University law students and the West Heidelberg Community Legal Service, January 2004.*

## **APPENDIX A**

Since July 2002, the La Trobe Law students have published the following reports which are available from the West Heidelberg Community Legal Service: [http://www.bchs.org.au/html/community\\_legal\\_service.html](http://www.bchs.org.au/html/community_legal_service.html)

1. *Unrepresented litigants, at what cost: a report into the implications of unrepresented litigants in the Magistrates Court of Victoria (2002)*
2. *Citizens Rights and their Rights: A Report into the Public Transport System and Citylink (2002)*
3. *An Investment in the Future: The Juvenile Justice System in Victoria (2002)*
4. *Police Prisons: conditions, overcrowding and length of stay in police cells (2002)*
5. *Working Together to Break the Cycle: a discussion of current treatment and sentencing initiatives for drug dependent young people in Victoria (2003)*
6. *To Breach or Not to Breach: Confidentiality and the Care and Protection of Children (2003)*
7. *A Report into Youth Debt (2004)*
8. *The Crimes (Family Violence) Act 1987: A Review of Intervention Orders, (2004)*
9. *The PERIN Court: A Discussion Paper, (2004)*
10. *The Mentally Ill and the Criminal Justice System, (2004)*
11. *Another Poke at the Pokies: Gambling and its Legal and Social Impact on the Community. (2005)*
12. *The Impact of Law and Social Policy on the Newly Arrived Somali Community: Crossing the Cultural Divide. (2005)*