

# Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change

Liz Curran

*“Despite the healthy respect of precedent, which is an essential part of the common law tradition, the law is capable of providing an important impetus for social and economic change. Not only is reform of the law often essential to overcome obvious inequalities and injustices in society, but the reforms can markedly influence community attitudes and behaviour.”*

Law and Poverty in Australia, AGPS, Canberra, 1975, page 2

*“The law, like any other human creation, has defects, some of them serious. It is in constant need of improvement.”<sup>1</sup>*

The Chief Justice of Australia, the Honourable Murray Gleeson AC

## **Introduction**

This paper will examine why in my view student lawyers who one day soon will be fully-fledged practitioners have a vital role in law reform. It will firstly draw on some of the commentary on the topic and then discuss the program I run at the West Heidelberg Community Legal Service (the legal service) which seeks to actively encourage students to view law reform as their responsibility as lawyers in the community. I should state that the approach of the law reform projects of the clinic I will discuss are still a “work in progress” as we are constantly refining and developing the process to heighten its effectiveness on those who make the laws and administer the laws which impact upon the community.

---

<sup>1</sup> AM Gleeson, *Boyer Lectures 2000: The Rule of Law and The Constitution*, ABC Books Sydney 200 page 4

In 1978 La Trobe University in Australia commenced its clinical legal education program at the West Heidelberg Community Legal Service initially with legal studies students. Since 1992 law students under supervision have provided legal services to the local community in an educational and scholarly context. The current clinical legal education (CLE) program is for students in their final years of law. The placement is in one of the poorest suburbs in Victoria, a state of Australia and so, as with the original models in the United States for clinical programmes<sup>2</sup> the aim is to provide legal services to low income people but also to enhance lawyering skills and understandings.

As well as students interviewing, advising, preparing cases for court and running client cases under supervision in a human rights law context, in recent times, a new component has been introduced to the clinic. This involves the students in completing a law reform submission which emerges from case law at the clinic. The students, in conjunction with the legal service, identify emerging problematic patterns in their work and then having conducted research and written a report they suggest recommendations to improve the legal system and lessen negative impacts of the law's operation on the community. The role of students in law reform activities is not new. SCALES a clinical program at Murdoch University had students assist with a submission on behalf of the United Nations in relation to Human Rights and Housing in Australia. The students looked at issues around the provision of accommodation for women and children in situations of domestic violence. SCALES in the Murdoch Law School Newsletter states that "the involvement of clinic students in projects such as this is an important part of a clinical program. It improves students legal and problem solving skills, aims to challenge and broaden the students' sense of the role of lawyers and the law within society."

The legal service/La Trobe "Law Reform Project" is a structured course component and aims to be innovative and challenging for students. It also deliberately emulates the new culture of many larger law firms which require team project work and collaboration rather than individual endeavours which the usual exam or essay assessment of a university can involve. This new course component enhances the effective communication by students with persons who hold positions of power, with government departments, people engaged in direct service delivery in a number of different fields and with other lawyers.

## **1. Theoretical Background**

A number of academics, governmental and statutory enquiries and some common law cases have highlighted the importance of a critical appreciation of the operations of the law for students and the ethical role of legal professionals in enhancing the operation of the law and law reform. Universities can have a role in preparing students for this in later life.

Richard White<sup>3</sup> states that the functions of the legal system and legal services are threefold:

1. To resolve individualized conflicts
2. To individualise group conflicts

---

2 Edwin Rekosh, *Public Law Initiative, The Journal of Clinical Legal Education*, March 2001

3 *Social Needs and Legal Action, Law in Society Series*

1973, Richard White, editors C M Campbell, W G Carson and P N P Wiles, *Martine Robinson, United Kingdom, page 16*

3. To strengthen the perceived identity between the individual and society as seen as a unitary whole. He comments that an aspect of the latter is reforms in the legal system that reinforce the concept of equality before the law, to overcome any tendency towards alienation and to encourage people to have constructive perceptions of the system.

He also states that the main functions of legal services research might be formulated as being: to identify those areas in which rights are not at present being enforced, to propose means by which they can be enforced more effectively and to point to further areas in which the creation of a structure of enforceable rights might be desirable.<sup>4</sup>

Philip Lewis in the same collection of commentaries argues that the value of people working and researching in legal services is that “the proposals they make for reform lie in encouraging the further attainment of equality before the law.”<sup>5</sup>

Similarly, Brian Opeskin a Commissioner of the Australian Law Reform Commission, states that the need for law reform arises for many reasons noting that some legislation was written a long time ago and can no longer meet the demands placed on them by a growing population in an increasingly globalised economy. He adds, “developments in technology may generate problems that human society has not previously encountered; social attitudes and values may have changed in ways that need to be reflected in the law; old laws may need to be refreshed to modernise their language and remove obsolete provisions.”<sup>6</sup> He also observes that law reform relates not just to statute law but also the common law.

The Lord Chancellor’s Advisory Committee on Legal Education and Conduct in its Review of Legal Education in 1994<sup>7</sup> was a review of all stages of education and training in England and Wales. The review also considered practical training under supervision. It noted that some “artificial divisions between the “academic” and “vocational” study of law” had emerged. The report concluded that legal education should stress the ethical values upon which the law is based. This includes consideration of the nature and limitations of law and the legal process, the dilemmas faced by individuals, organisations and governments, and the responsibilities placed upon individual lawyers.<sup>8</sup> It also noted the “need for adequate resourcing of university law schools if they are to meet the demands made upon them to produce well-qualified entrants to the specifically vocational stage.”<sup>9</sup> The Committee also stated that students should develop knowledge of relevant aspects of the social sciences, in order to appreciate the law’s social, economic, political, ethical and cultural context.

4 *Social Needs and Legal Action, Law in Society Series 1973, Richard White, editors C M Campbell, W G Carson and P N P Wiles, Martine Robinson, United Kingdom page 35*

5 *Social Needs and Legal Action, Law in Society Series 1973, Philip Lewis, editors C M Campbell, W G Carson and P N P Wiles, Martine Robinson, United Kingdom page 37*

6 *Speech by Brian Opeskin, Commissioner, Australian Law Reform Commission to Melbourne University, JD Program Guest Lecture series, Melbourne 4 April 2001 see [www.alrc.gov.au/events/speeches/20010404.htm](http://www.alrc.gov.au/events/speeches/20010404.htm)*

7 *The Lord Chancellor’s Advisory Committee on Legal Education and Conduct in its Review of Legal*

*Education in 1994, Extracts from Consultation Paper, June 1994 <http://www.law.warwick.ac.uk/lj/3-3i.html> This report is published in the Law Technology Journal: Vol 3, No 3 October 1994*

8 *The Lord Chancellor’s Advisory Committee on Legal Education and Conduct in its Review of Legal Education in 1994, Extracts from Consultation Paper, June 1994 <http://www.law.warwick.ac.uk/lj/3-3i.html> page 7*

9 *The Lord Chancellor’s Advisory Committee on Legal Education and Conduct in its Review of Legal Education in 1994, Extracts from Consultation Paper, June 1994 <http://www.law.warwick.ac.uk/lj/3-3i.html> page 7*

In the La Trobe clinical programme, students work closely with people from other disciplines as the legal service is based in a community health service. Students, in assisting clients may liaise with psychologists, drug and alcohol clinicians, counsellors, doctors and youth workers who work for the health centre. The emphasis is on the role of lawyer delivering a holistic solution for clients. This is a product of the often complex and multi-layered contexts of the clients and so the students in the course do come to see the aspects of the social sciences that the Lord Chancellor's Advisory Committee suggests. This has also meant that the students' research into their selected law reform projects causes them to examine broader social impacts and contexts affecting their topics. For instance, when students examined the juvenile justice system in Victoria in 2002 they had to consider developmental psychology as one of the important contributors to behaviours and in rehabilitative options and purposeful intervention. Similarly, students examining drug law reform have examined the availability and access points for young people in counselling and detoxification services and the impacts of this on a defendant's capacity to meet the terms and conditions of court orders.

The International Bar Association's Standards for the Independence of the Legal Profession<sup>10</sup> also see a role for both lawyers and educators of lawyers in the promotion of law reform activities. The International Bar Association recognises that lawyers have a "vital role" in cooperating with governmental and other institutions in furthering the ends of justice. It states, in clause 3 of the Standards, that legal education should be designed to promote knowledge and understanding of the role and the skills required in practising as a lawyer, including awareness of the legal and ethical duties of a lawyer and of the human rights and fundamental freedoms recognised within the given jurisdiction and by international law. In clause 14, they state that lawyers should propose and recommend well considered law reforms in the public interest and inform the public about such matters.

In a submission by staff of Murdoch University's SCALES clinic staff to the Australian Law Reform Commission's Review of the Federal Civil Justice System, the role of clinical legal education in shaping attitudes of the profession and promoting its ability to respond to issues of access to justice and the legal system was highlighted.

The Australian Law Reform Commission (ALRC) in its report "Managing Justice – a review of the federal civil justice system"<sup>11</sup> released in 1999 dedicated Chapter Two to education, training and accountability. This report was a very comprehensive examination of the civil justice system in Australia which involved both research and the receipt of many submissions from a variety of bodies including community agencies, legal bodies and universities. The ALRC 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". They 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>12</sup> This professional culture in my view should be encouraged, fostered and nurtured at law school equipping students to understand the role of the law and the players in the law in the broader operation of the legal system.

---

<sup>10</sup> *The International Bar Association's Standards for the Independence of the Legal Profession (Adopted 1990)*

<sup>11</sup> see [www.austlii.edu.au/au/other/alrc/publications/reports/89/ch2.html](http://www.austlii.edu.au/au/other/alrc/publications/reports/89/ch2.html)

<sup>12</sup> *Managing Justice, ALRC, 1999, Chapter 2 page 1*

The ALRC notes that there are a vast number of American law schools which operate clinical programs but that in Australia, the much lower level of resources available to law schools has meant that only a handful of law schools run clinical programs.<sup>13</sup>

In 1992 in the United States there was a review of legal education.<sup>14</sup> According to this report known as the “Mac Crate Report” the values of the profession were as follows:

1. the provision of competent representation
2. striving to promote justice, fairness and morality
3. striving to improve the profession, and
4. professional self development.

Also in Canada arising from the Canadian Bar Association’s Task Force Report on Civil Justice<sup>15</sup> the “Recommendation 49 Committee” concluded that law students should have the opportunity to critically evaluate processes for resolving conflicts in light of the broader public interest in legal rights.<sup>16</sup>

Australia’s law schools are very different to those in the United States although similar to those in Canada (for the moment anyway the Commonwealth government of Australia in its most recent Budget has announced greater fee paying and personal autonomy in setting those fees for universities.<sup>17</sup>) But Australia does not have the vast resource base of American law schools<sup>18</sup> both public and private which have substantial tuition fees, large endowments and receive significant support from alumni and benefactors. In Australia, and as I understand it the United Kingdom, clinical legal education courses are primarily part of the undergraduate program and are often combined with another degree. There is a somewhat broader ‘liberal education’ mission than American law schools which have in the last decade become more narrowly oriented towards ‘professional separation’ and skilling . In Australia, there is also a unified national system for public universities which is fully accountable to the federal bureaucracy and has periodic reviews and quality assurance processes.<sup>19</sup>

Richard Grimes<sup>20</sup> has noted that the Lord Chancellor’s Advisory Committee on Legal Education and Conduct makes specific reference to the relevance of intellectual and personal skills and the importance of seeing law in its operational context. He states that from his own experience of running a live-client clinic, the learning experience for students represents a qualitative leap from simulated methods. It is deep learning at its best he claims. He notes that the services offered in these clinics are predominantly welfare based. The focus of law reform activities enables students to see broader operational contexts of the legal system itself and to be socially active and responsive when they observe the impact of poverty and exclusion on their clients who must also navigate an often unresponsive and inactive legal system.

13 *Managing Justice*, ALRC, 1989, Chapter 2 page 4

14 *Legal Education and Professional Development – An Educational Continuum (Report of the Task Force on Law Schools and The Profession: Narrowing the Gap)* American Bar Association, Chicago, 1992 (The MacCrate report)

15 *Systems of Civil Justice Task Force Final Report*, Canadian Bar Association, Toronto, 1996

16 *Systems of Civil Justice Task Force Final Report*,

*Canadian Bar Association, Toronto, 1996, pages 45–46*

17 *Federal Budget, 13 May 2003, www.aph.gov.au*

18 *Managing Justice*, ALRC, 1989, Chapter 2 page 13

19 *Managing Justice*, ALRC, 1989, Chapter 2 page 13

20 *Research Reports on Legal Education, Number Two, Legal Skills in Clinical Legal Education, Web Journal of Current Legal Issues in association with Blackstone Press Ltd.*

In a recently published article by two of my colleagues at La Trobe University, Mary Anne Noone and Judith Dickson<sup>21</sup> examine ethical issues and student lawyering. They state “We also accept that as teachers we are role models and we continue to reflect on and communicate with our students what we consider constitutes professional responsibility.” They observe that the legal profession uses the public service ideal as a justification for the privileges of monopoly and self regulation but observe that the challenge is to retain this clear commitment to public service in the midst of pressures on lawyers to do the client’s bidding, corporatisation and competition.

G. E Dal Pont<sup>22</sup> also comments on the perception of lawyers as more interested in financial benefit than the interests of their client and the community. He observes that “lawyer bashing” is common and that both the public and governments have contributed to it.<sup>23</sup> He cites the Dean of Yale Law School<sup>24</sup> as lamenting the fact that the best graduates go the large law firms where time charging, a mercantile attitude and the client who dictates the course of disputes have become common place. The Dean concluded that legal institutions had a role in stewarding students to bequeath the profession with the quality and integrity it was once seen to have. Dal Pont notes that commentators have argued that law be redefined to suit the purposes of large commercial practice<sup>25</sup> where professional ethics and fearless legal advice can be seen as threatening. Dal Pont argues that the professions most valuable asset is its reputation and the confidence it can inspire<sup>26</sup> and laments the polls<sup>27</sup> which reflect poor professional ethics of lawyers. The challenge as educators is how to best encourage students to think of ethical conduct in the context of justice.<sup>28</sup> And as Ross puts it, to produce “critical and creative law graduates who are self reliant, self determining, and self motivating individuals who can communicate well and work co-operatively as well as independently”<sup>29</sup>

Dal Pont also points out that as a participant in the administration of justice and the legal system, the lawyer must foster respect for law and its administration.<sup>30</sup> This duty manifests itself, in many ways. Case law states that firstly, although lawyers are not precluded from criticising the law or otherwise not supporting laws as lawyers are well qualified to criticise the law and any restriction on critical assessment of the law could hamper law reform. The court however has stated that lawyers must not do this in a manner that undermines the law or public confidence in it.<sup>31</sup> Secondly, lawyers must not engage in conduct which may otherwise bring the legal profession into disrepute or which is prejudicial to the administration of justice.<sup>32</sup> Noone and Dickson comment

---

21 *Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers, Legal Ethics, Volume 4, No.2*

22 *Lawyers’ Professional Responsibility in Australia and New Zealand, Second Edition, Law Book Company Sydney, 2001*

23 *Lawyers’ Professional Responsibility in Australia and New Zealand, Second Edition, Law Book Company Sydney, 2001, Part One page 8*

24 Kronman *The Lost Lawyer: Failing Ideals of the Legal Profession, Harvard University Press, 1993*

25 *Lawyers’ Professional Responsibility in Australia and New Zealand, Second Edition, Law Book Company Sydney, 2001 Part One page 8*

26 *Lawyers’ Professional Responsibility in Australia and New Zealand, Second Edition, Law Book Company*

*Sydney, 2001, Part One, page 14*

27 Morgan Poll 2–3 April, 1994 where of 1,212 people Australia wide only 30% of respondents rated lawyers as high or very high in ethics and honesty which was 14% lower than the same survey in 1984.

28 *Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers, Legal Ethics, Volume 4, No.2 page 133*

29 I. Ross, *Ethics in Law: Lawyers Responsibility and Accountability in Australia, 3rd Edition, Sydney, Butterworths, Australia, 2000 at page 75*

30 *Re B (1981) 2NSWLR 372 at 382, Moffitt P*

31 *Ambarde v Attorney General for Trinidad and Tobago (1936) AC 322 at 325, Lord Atkin*

32 *Victorian Barristers Practice Rules, Rule 4 and Re Milte (1991) 22 ALR 740*

that “the realities of legal practice, in the community based model of a clinical programme, ensure that issues of public policy, law reform, social and moral questions and the provision of legal services in the public interest will arise, confront students and demand reasoned solutions.”<sup>33</sup> Legal educators, they observe in the United States in the 1970s, embraced the clinical method for this purpose. It was seen as offering hope in instilling in law students a conception of professional responsibility that went beyond mere knowledge and the application of rules and which involved obligations of service and commitment to justice including law reform.<sup>34</sup>

## The Clinical Legal Education Program La Trobe at the West Heidelberg Community Legal Service

In Australia we have a Federal system of law which means we have national laws and State laws in each of the seven different States and two territories of Australia. This gives rise to complexity and in some senses confusion.

The programme of law at La Trobe University has over the past twenty five years had a strong commitment to access to justice and a commitment to the study of law in context. In fact the latter is the title of the La Trobe Law School’s Journal. My position as a lawyer at the legal service is fully funded by La Trobe. This was partly the result of the 1970s National Henderson Inquiry into Poverty that was commissioned by the Federal Government. La Trobe wanted to contribute to the local community after West Heidelberg was cited as one of the poorest communities in Victoria with minimal access to legal services by the Inquiry.<sup>35</sup> By the way, a point of trivia is that West Heidelberg was the Olympic Village for the 1956 Games in Melbourne and after the Games was handed over to public housing.

The Clinical Legal Education programmes at La Trobe are worth double the credit points of other subjects in recognition of the heavy work load and time commitment required from the students. The focus as Noone and Dickson point out in their paper<sup>36</sup> of the clinic is on analysing and reflecting upon what constitutes ethical conduct, not upon skill acquisition. They “come to see legal practice as socially situated and hence ethically complex.”<sup>37</sup>

33 *Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers*, *Legal Ethics*, Volume 4, No.2 page 134

34 See D A Blaze, *Déjà vu All Over Again: Reflections of Fifty Years of Clinical Legal Education (1997)* 64 *Tennessee Law Review* 939 at 950–954 The programme of law at La Trobe has over the past twenty five years had a strong commitment to access to justice and a commitment to the study of law in context.

35 *Commission of Inquiry Into Poverty (1976) A Study of the Heidelberg (Victoria) Community*. Canberra,

AGPS pages 15–24 and 75–76

36 *Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers*, *Legal Ethics*, Volume 4, No.2 page 139

37 See A Goldsmith and G. Powles, *Lawyers Behaving Badly: Where Now in Legal Education for Acting Responsibly in Australia*, in K Economides (ed) *Ethical Challenges to Legal Education and Conduct*, Oxford, Hart Publishing, 1998 page 119 and *Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers*, *Legal Ethics*, Volume 4, No.2 page 143

## **2. How the law reform component emerged**

I came to the clinical program having spent many years working in law reform on both a state and national level around issues of access to justice, poverty, native title and human rights law through two previous jobs, one as a policy, law reform and media commentator for the Federation of Community Legal Centres (Victoria) and the other as Executive Director of a human rights organisation.

During the first year and a half in my new job as a clinical supervisor it became apparent that there were a range of client cases which were in need of law reform responses. Due to the minimal resources of the legal service it was unable to work on public policy dimensions as much as it felt was required. Coincidentally, at the time that this was being discussed at Committee of Management level at the legal service, the students raised in class and in their afternoon debrief sessions their desire to have more ability to respond not just to their case-work but to the opportunity to raise the broader issues that emerged from their cases.

Three issues at the time made the students comment that they wished they had more capacity to raise law reform matters and work on them during the course. These were the bankruptcy laws which exposed clients who were compulsive gamblers to hefty criminal convictions, the treatment of asylum seekers where they had a case involving treatment of a Somali man in detention and finally a sentencing review they had read which raised a recommendation which in the students' view would be of detriment to young people. Although in the latter two cases the students drafted and sent a letter on the topics to government they lamented the lack of space in their course to undertake further work on issues of law reform. It was through the raising of these convergent concerns of the students and the Committee of Management that the law reform project was born.

In addition, during the semester break I had attended a seminar run on ethics in the legal profession and one of the issues raised was the changing approach of law firms to the bigger cases where there is increasing project work style being undertaken by law firms which meant that they were using solicitors to work in teams rather than the more traditional model of solicitors working in a solitary fashion. The firms commented on how difficult it had been to encourage collaboration and that solicitors initially had tended to work in a more adversarial, competitive manner which was not always in the client's best interests as it had led to fragmented advice. They commented that perhaps it was the mode of assessment at law schools that reinforced this approach in addition to the competitive nature of legal practice.

Keeping these issues in mind over the semester break of that year a review of the assessment for the course was undertaken to ascertain whether there was scope to incorporate the student feedback in relation to law reform projects. In early 2001 student assessment involved 45% for placement, 10% for class participation and presentation, 20% for an interview report and 25% for an essay. It was difficult to juggle the assessment too much given the criteria required for subject approval and as any law reform project would involve an increase in effort by the students it was important to make the project worth more. The interview report was reduced to 15% and the final assessment's worth was increased to make it worth 30%. In addition, the essay was now to be described as a "law reform project". Clearly, the project would involve academic research and critical analysis and so from a university point of view was still a very relevant scholarly endeavour and assessment tool.

The students at the clinic attend in groups of four on each day they are on placement. Normally, in the morning they interview clients and prepare cases and do follow up work in the afternoon.

In order to emulate the trend of law firms in doing project work I decided rather than have the student work on individual law reform topics, to establish teams of four (on each day of placement) who could determine and work on the topic together. The Committee of Management was prepared to reduce the students case work by three clients a week on the basis that in exchange the university students would build up the legal service's law reform profile. Students have a client free afternoon a semester to work on their projects. In addition, students often use the regular afternoon debrief session of the placement to discuss their progress on the project and to examine points of contention and clarification with their team or supervisor.

In the first few weeks of placement students are asked to think of their clients and any burning issues that they determine need attention. They are asked to also examine previous work on the possible topics they are considering and any stated gaps in research that they might fill. They come to their afternoon session in the third week with ideas. At the same time the legal service practitioners are asked to also consider topics and with the assistance of "butchers paper" the topics are thrashed out, debated and compromises made on what will be the law reform topic for each team. The students also decide which content they will concentrate on for their 3,000 words each. The students are encouraged to be realistic in what they can achieve in a very limited time frame and to organise their time effectively as they should expect delays in responses to their correspondence.

Generally, the students will determine whether their law reform project will take the form of a law reform submission to a specific statutory or government enquiry or a Report on the topic. They generally divide their project into Chapters (making assessment easier) selecting a student to write each chapter including introduction, conclusion, recommendations and in some cases an Executive Summary. Students with a particular skill will often choose to do a Chapter which takes advantage of their skills. For instance, commerce students will often select to examine efficiencies and funding, another student who has an undergraduate qualification in psychology looked at this aspect of the legal issue, a sleep scientist was able to examine the effect on prisoner health of fluorescent light and the constant waking that occurred in police cells. Students have elected to be marked individually on their chapters and in some cases have asked to be given a mark as a team. The report can then be marked, edited and published by the CLE supervisor. Students have also developed lists of whom the report can be sent to once it is published. For instance, public bodies, people who have assisted in their research, politicians, media outlets, community organisations and so on.

The project has also meant that the experience and networks I had established in my work in the law reform arena are not lost and can be used by the students who then develop their own links in government, the profession and elsewhere. This teaches students not only about legal practice, ethics and legal professionalism but also how to participate in and examine processes of law and guide the students in the acquisition of law reform skills. The new component of the course is designed to demonstrate to students techniques in ensuring that the law can be more responsive and can be improved and it exposes students to the broader role they may wish to play in public life.

Some criteria for assessment will include: relevance, quality of research, conciseness, team cooperation, ability to act under direction, synthesis of information, analysis and evaluation, depth and quality of arguments presented, balance, usefulness and practicality of recommendations made, expression, clarity and innovation.

### **3. How it has been developed**

In the last year the course has also been redesigned to reflect and complement the students law reform project. In week eleven of the two hour class at the university the topic covered is *Mechanisms for Law Reform – Different Tools and Approaches*. This involves examining the potential of the law and other mechanisms such as education, cultural and institutional structures in achieving change, retaining good practices and obtaining justice for economically and socially disadvantaged people.

It examines the power of analysis, research, law reform activities such as submissions to bodies, advocacy, community action and other methods for achieving social change. In week twelve the topic is *Evaluating Mechanisms for Law Reform and Taking Action*. Students in this session critically evaluate the differing methods and their appropriateness to different situations and also engage in discussion of matters that have emerged in their client work and their law reform topics.

We also have a class hypothetical where students are given a fictitious but real life scenario and take on roles of the key players in the operation of our legal system including politicians, civil servants, lawyers, media commentators and lobby groups. Students are placed in a situation where they must take on the perspective from the point of view of the roles they are given. The hypothetical contains ethical and legal professional dilemmas, requires knowledge of the international law frameworks they have learned about during the course and a working knowledge of law reform initiatives that they might be able to explore resulting from the scenario they are given.

In their last class they can meet with their team to discuss the law reform project, sort out formatting, areas of duplication, recommendations and other issues.

### **4. How it is done**

Students having selected their topics then have to determine their methodology for their law reform topic. Students will often undertake surveys or “person to person” and “over the phone” interviews with people who have some expertise in the area. They do not interview or survey members of the public or clients in view of the difficulties involved in getting timely ethics approval. The La Trobe University Ethics policy provides scope to enable surveying of people who are experts in the area in which they are being questioned. Students will research the topic and as a result of their enquiries draw conclusions and devise and discuss solutions to the problems that they have identified.

### **5. A Case Study: Self-Represented Litigants**

I will select an example of one of the students’ projects to illustrate the process for the project. Generally, students come up with the title for the projects in the final stage of drafting the report or submission. The project I will discuss is last year’s second semester, 2002 project which was entitled, “Unrepresented Litigants: At What Cost: A Report Into the Implications of Unrepresented Litigants in the Magistrates Court of Victoria”.

One group of students had undertaken a number of cases in their first few weeks where legal aid had either run out or where the clients were not eligible for legal aid and the solicitor at the legal service was unavailable to represent the client. The students found themselves having to provide

advice to these clients on how to represent themselves in court. In one civil case the student was convinced that no amount of help would equip the person to represent themselves and wanted to attend an initial conciliation with the client as a support person. The students settled on this topic as a result of their experiences.

The first task the students undertook was to conduct a literature review and analysis of the current research and gaps in studies undertaken. They then wrote to the Magistrates Court and the new Federal Court Magistracy of Australia (which does family law and civil matters) advising the court of their intention to do a project, enclosing a set of eight questions they had devised on self represented litigants. They asked if they could interview members of the court. They received a letter from the Chief Magistrate of the Victorian Court who encouraged them in their work and offered to facilitate interviews with the various regional courts on their behalf. In addition, the students sent the same questions to the Managing Director of Victoria Legal Aid (VLA) seeking permission to interview duty lawyers at VLA and then once approved made times to interview both over the phone and in person the duty lawyers and magistrates and registrars at various regional courts about self-represented litigants. The students sat in on court proceedings and observed unrepresented litigants in action using these as case studies in their report without identifying the individuals in any way. Finally, students also attended "do it yourself classes" run by legal aid offices. Having gathered all of this material the students spent some time synthesising the material, analysing and evaluating it and developing suggestions for improvement by way of recommendations. Once they had completed this task they provided a list of persons at the back of their report whom they wished to receive copies of the report. These included interviewees, the judiciary, public servants, parliamentarians the various law reform bodies and members of the media. The students included acknowledgments thanking the people who had assisted them throughout the project. The students also drafted a press release to be sent when their report had been assessed, finalised, edited and approved by the legal service's Committee of Management. Covering letters were written by the CLE supervisor and sent out to the students' addressees with the Report.

## **6. How it has been received**

Once the law reform project had been received by the various recipients, we received a number of letters within the month of the report being sent from the Attorney General of Victoria, the Leader of the Opposition, the Law Reform Commissioner of Victoria, stating that the report raised many issues that needed consideration. They received a letter from the legal aid commission stating the report would be very useful in improving legal aid services to self represented litigants. The supervising solicitor was contacted by various media including radio and the press and asked to report on the student's findings and sat with students in a radio interview. As the students had been exposed to guidance about dealing with media in the class at La Trobe University, they were aware of the limitations of what they should comment upon and so tended to discuss the process of the report and seek guidance from me on the more substantive issues. The media were quite receptive to the idea that it was students who were actively involved and clearly impressed by their energy and commitment in working for the public interest.

About two months after the report had been sent out, the Law Council of Australia sought permission to use the report in its materials and for lobbying purposes. In addition, the Law Institute of Victoria requested permission to reproduce the students work and recommendations

in its criminal law newsletter. The final coup was a notification from the Department of Justice to say that it had met with the court and that the recommendations from the students were to be implemented as part of the Magistrates Court's ten-year strategic plan.

## **7. Getting into the public consciousness**

The importance of educating the public as to the issues that need action in the legal system or in improving understanding of the operation of the legal system is considered as a very important aim in the student's work. This is why they involve themselves in using the media as a tool for broader publication and exciting the media's interest. In addition, some of the projects have also involved an educational component.

In one project the students were concerned about the practices of a lending/ finance company and developed an information kit to be used by health centre staff and financial counsellors in educational classes and focus groups with clients in highlighting questionable practices and legal rights. In another project, students came to realise that counsellors of children often believed they were obliged by law to breach confidentiality with their clients thus exposing them to a breach of their duty of care. The students have been developing an information sheet for counselling practitioners, highlighting their obligations and duty of care to clients and what the law did and did not require. This information is being circulated to counselling organisations throughout the State.

To date the students have not been as directly involved in lobbying as I would like as often requests for meetings with Ministers about their projects occurs after students have completed the subject. There have however been a couple of instances where I have been able to contact students and they have come along to ministerial meetings and been involved in explaining their point of view and why there is a need for a change or to sustain a particular approach. This means they observe first hand the political process and its overlap with law-making.

Some of the other projects students have worked on have included:

1. Juvenile Justice entitled, *An Investment in the Future*, semester 2, 200
2. Police Behaviour and Standards
3. Finance Companies and Lending Practices
4. Police Prisons: Conditions, overcrowding and length of stay in police cells
5. Citizens and Their Rights: A Report on the Public Transport System and City Link
6. Working Together to break the Cycle: a discussion of current treatment and sentencing initiatives for drug dependent young people in Victoria
7. To Breach or not to Breach: Confidentiality and the Care and protection of Children
8. The Responsiveness of Legal Aid Services

## **8. Moving forward into the future (succession plan)**

As a result of the Law Reform Project on self-represented litigants two students were hired as paid researchers for a Commonwealth Government Report which examined self-represented litigants in the Family Court of Australia. In addition, students who have interviewed members of the legal

profession for instance for the project on police cells were invited to apply for articles at these firms. Students can list their law reform project and media coverage they have received in their portfolio for job applications. Students gain exposure to barristers, magistrates, judges in their research, making links for their future careers but also feedback from these professionals reveals that they found the student contact energising because of the students keenness, freshness and genuine desire to “make the world a better place”. As clinical legal education teachers you would be aware yourselves of how much students can contribute with fresh ideas often challenging the cynicism that years of experience can bring.

From a student’s point of view the law reform project enlarges their professional networks for their futures in law or other fields and makes them have more choices about the areas of law they may wish to practice in and if they decide not to practice they realise there is a whole realm of activities that a law degree will give them opportunities in from politics, to being a public servant to working in public policy and advocacy.

From the point of view of the profession it may assist in reducing the negative perceptions of lawyers in the community as “money grabbing lawyers” as they see professionals dedicated not just to client work but to the advancement of the community in general. It also means that as one generation moves on there are custodians who will have experienced the benefits of working towards equality before the law and enhancing the rights of citizens.

## **Conclusion**

Not only does the law reform project force students out into the community, honing their skills at dealing with difficult bureaucracies and civil servants, seeing the players who administer and legislate for changes in the law but it also reminds these sectors of the important role they have in being involved with students, by mentoring them and understanding that they are keen to learn and engage.

The project has many other advantages but the most important is that the students’ clinical experiences can be garnered to work for positive change in the community through law reform and creates the “healthy professional culture” which the ALRC saw as so important. As Lewis and White suggested in the reference to them at the beginning of this paper, students can strive to “reinforce the concept of equality before the law, to overcome any tendency towards alienation and to encourage people to have constructive perceptions of the system.”

Students not only learn about legal practice, ethics and legal professionalism but also how to participate in and examine processes of law and acquire a range of law reform skills. It exposes students to the broader role they may wish to play in public life when they are fully fledged lawyers encouraging their participation in their law association and to be unafraid in speaking out against injustice.

Since the introduction of the law reform component in the clinic, students have received feedback from government, media outlets and parliamentarians that many of their suggestions and recommendations are being examined or are to be implemented. This demonstrates to the students that there is scope for a practical impact on policy-making and law reform to enhance the civil rights of the clients that they have represented as well as the broader community.

Geoffrey Robertson QC in his book, “The Justice Game” states “this was not what I had been taught at Law School, which dunned into me that law was a system for applying rules made by

legislators or by judges to facts elucidated by evidence, through which a just result would be achieved.” He goes on however to conclude that “Law is erroneously regarded as a tool for oppression: I have tried to show it can serve as a lever for liberation.” Robertson’s view of the law can present us as educators with an opportunity to instill as a notion, within our students, not just understanding of the law and its operation but also what its potential can be by exposing students to and exploring innovative and challenging ways of learning about the law. As one student said to me last week in his clinical debrief, “This course has made me realize I don’t want to be just a functionary of the legal system. I want to be involved in how the system works and making it work towards the betterment of the community.”

## **Appendix to Conference Paper**

A selection from the report and some recommendations made by the students included:

“We recognise the limit of resources to the justice system thus we advocate a balanced response, providing support where appropriate and representation where necessary.

### **Recommendation 1**

Data on litigants in person should be collected and made available for analysis. Particular emphasis should be directed towards;

profiling litigants

- categorizing their legal disputes
- examining the costs involved in resolving the dispute
- litigants in person’s impact on court time
- recording satisfaction levels<sup>38</sup>

### **Recommendation 2**

Because the lack of representation may result in an unfair trial, the right to legal representation for unrepresented adult litigants in criminal and civil matters in the Magistrates’ Court needs to be strengthened. Arguably, too much is left to the discretion of the magistrate. Legislative reforms are required that guarantee legal representation for the more serious offences, particularly those punishable by imprisonment.

### **Recommendation 3**

Expansion of the eligibility criteria for Legal Aid scheme is proposed along the lines of the Swedish model. The scheme should encompass not just people living below the poverty line, but people who are financially or socially disadvantaged.

---

38 *Law Reform Commission of Western Australia, Review of the Criminal Justice System in Western Australia: Final Report, Recommendation 198, quoted in Australian Institute of Judicial Administration Incorporated, Litigants In Person Management Plans: Issues For Courts and Tribunals, Victoria, Australian Institute of Judicial Administration(AIJA), <http://www.aija.org.au/online/LIPREP1/pdf>, 2001, p.10.*

### **Recommendation 5**

A scheme is required to give more assistance to litigants who wish to contest or defend criminal charges but who fail to qualify for legal aid. Currently such litigants are pressured to plead guilty because otherwise they must represent themselves (unless they can obtain pro bono counsel) and suffer great disadvantage in the presentment of their case in court.

### **Recommendation 6**

The Duty Lawyer Scheme should be extended to assist litigants involved in certain civil actions, for example, road accident or personal injuries claims where parties may not be insured.

### **Recommendation 7**

The compilation of a comprehensive and user friendly directory of legal and non-legal agencies in Victoria.

### **Recommendation 8**

Moderate and simplify language used within the court arena. This encompasses avoiding legal jargon, sophisticated phrasing and Latin maxims. If there is a simpler way to state a question, ruling or instruction, Magistrates should adopt it.

### **Recommendation 9**

Appointment of an information officer whose function is the provision of assistance and support at court. '...providing staff are prepared to assist any litigant on request there is no basis for any fear or accusation of impartiality.'<sup>39</sup> Such an appointment would provided unrepresented litigants with a focal point of reference within the court and would allow Registrars to more efficiently deal with the administrative matters of the court.

### **Recommendation 11**

Installation of touch screen information kiosks within the Magistrates' court. These kiosks should facilitate those from non-English speaking backgrounds by providing language options and should offer information and answers vocally to assist the semi-literate or illiterate.

### **Recommendation 12**

A publication of 'Ten Commonly Asked Questions.' Registrars interviewed noted that they were often repeatedly supplying the same information to multiple litigants in the one day, thus a leaflet of this kind would not only greatly benefit litigants in person but would additionally assist registrar staff."

**In all there were twenty-four recommendations.**

---

<sup>39</sup> *ALJI*, p. 18 *op cit*.