

ADRIAN EVANS FESTSCHRIFT SPECIAL ISSUE

Editorial

Kate Seear, Monash University, Australia

In November 2018, Monash University had the privilege of hosting the annual IJCLE conference. The conference has long given clinicians from across the world an opportunity



to come together and share findings from research into clinical legal education. The conference brings more junior and senior clinicians together, too, and allows clinicians to share stories and ideas and to deliberate about and debate problems pertaining to the clinics they work in.

Professor Adrian Evans is one of the true stalwarts of clinical legal education, and has been a regular attendee at the conference over many years. Many of those familiar with the work of IJCLE will also be familiar with Adrian's enormous contribution to the fields of clinical legal education and legal ethics over the last four decades. In 2018, Adrian announced he would be retiring from academia. Somewhat serendipitously, Adrian's retirement coincided with Adrian's own university (Monash) hosting the IJCLE conference, and thus gave us an opportunity to celebrate Adrian's work with colleagues from across the globe.

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This celebration took the form of a special event (a 'festschrift') over one afternoon, before the commencement of the IJCLE conference. The event was a mix of personal and professional reflections on Adrian's life and career, offered by a range of colleagues. It was also an event of varying emotions and formats. There was serious, academic reflection on Adrian's contributions to scholarship, alongside musical tributes and jokes, and reflections on behalf of his family, delivered by Adrian's partner Maria Bohan. The event also coincided with an address from the Dean of the Monash faculty of Law, Professor Bryan Horrigan, in which he spoke about Adrian's crucial role in the establishment of the Faculty's clinical guarantee, and where he announced publicly for the first time that Adrian would be appointed as an Emeritus Professor.

Professor Elaine Hall invited us to turn the festschrift event into a special issue of the IJCLE journal in honour of Adrian. This special issue contains photographs from the day and contributions – in a range of forms – from all of those who spoke at the event, including remarks from Adrian himself.

WELCOME AND OPENING REMARKS

Hello everyone and thank you for joining us today.

My name is Kate Seear. I am an Associate Professor in the Faculty of Law at Monash, and the Academic Director of Springvale Monash Legal Service.



I would like to begin, as is customary, by acknowledging the traditional owners of the land on which we meet today – the Wurundjeri people of the Kulin nations – and to acknowledge elders past, present and emerging. I also take this opportunity to acknowledge that when these lands were invaded, Aboriginal and Torres Strait Islanders never ceded sovereignty and that they remain strong in their enduring connection to land and culture.

I'd like to welcome you all here today to this very special event – a Festschrift – in honour of the retirement our colleague, Professor Adrian Evans. Welcome to Adrian, to his partner Maria, and his family, to colleagues and friends.

Let's begin by addressing the elephant in the room. I know many of you want to know this, because you've all been emailing me.

What actually is a Festschrift?

Given how many of you were unsure about it, I'm surprised to see you all here.

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Adrian himself feared that it was a 'roast'. We told him it wasn't, of course, in a bid to convince him to come along. Rest assured, there will be some jokes about Adrian's propensity for hugging and calling us all 'brother' later in the day, and the uncanny resemblance between Adrian and Ned Flanders.

The word Festschrift comes from the German. Like all good academics, I turned to Wikipedia for a definition. It's traditionally defined as:

a book of letters or a panel honoring a respected person, especially an academic, and presented during their lifetime. It generally takes the form of an edited volume, containing contributions from the honoree's colleagues, former pupils, and friends.

Today, our Festschrift for Adrian takes the form of a panel, where we will hear from colleagues and family members about the contributions Adrian has made, over many years, to clinical legal education and legal ethics, social justice and promoting access to justice, for vulnerable and marginalised members of our community. We have a star-studded line up.

The format is as follows: in the first half of the event we will hear from Professors MaryAnne Noone, Nigel Duncan, Peter Joy and Jeff Giddings, and from Carolyn Worth AM, about Adrian's life work. At about 2:45, we will break for afternoon tea, giving you all an opportunity to mingle and pass on your best wishes to Adrian, if you have not done so already.

We will then return for the final hour, where the mood will lift a little. We have a couple of surprises to come, including some more light-hearted reflections on

Adrian's life and work, before we will hear from Adrian himself. The Dean of the Law Faculty, Professor Bryan Horrigan, will close proceedings at 4pm.

Now I should say before going any further that Adrian threw a spanner into the works just before we commenced, telling me that he didn't like 'the "R" word' – retirement – because it sounds too final. And so I've done some quick research to find some synonyms we might use as an alternative. They include: resignation, fallback, abandonment, withdrawal, surrender, desertion, goodbye, departure, retreat and demise. Somehow I am not sure any of these will suit, either!

And so I was thinking about the recent announcement by actress Gwyneth Paltrow and musician Chris Martin that their marriage was coming to an end. Rather than announcing their 'divorce', they announced that they were going through a period of 'conscious uncoupling'. As I understand it, 'conscious uncoupling' signals a mutually respectful decision to go your separate ways, while not losing contact altogether. And I think this is the spirit in which we meet today: to celebrate Adrian's 'conscious uncoupling' from Monash and from academia, with the recognition that we will still be able to retain a connection to him, and him to us.

We are going to hear a lot about Adrian's career over the next three hours, but let's start with a brief refresher. Adrian completed a double degree in Law and Commerce at The University of Melbourne in 1972 and was admitted to the Supreme Court of Victoria on the 1st of March 1974. In 1976, he completed a

diploma in theology which was awarded by the Australian College of Theology, the forerunner to the University of Divinity. He completed his Masters thesis at Monash University in 1997 and his PhD in 2008.

Adrian has held numerous roles across the years, including: working at Price Waterhouse Coopers in 1975, as a legal advisor to students at the Monash Union in 1976, as a Solicitor in the LaTrobe Students Representative Council from 1976 to 1987, and as Coordinator of Clinical Legal Education in the Department of Legal Studies at LaTrobe University from 1977 to 1985. He was the coordinator of the Springvale Legal Service (as it was then known) from 1988 – 2000, holding the roles of Lecturer, Senior Lecturer, Associate Professor and eventually full Professor at Monash University from 1988 until today. Adrian has won teaching awards and numerous grants, published 15 books (edited and authored) and numerous reports and articles on clinical legal education, legal ethics, virtue ethics and therapeutic jurisprudence, gender and ethics, lawyering and faith. Of course, you can't get a true sense of who a person is by reciting their CV, even though Adrian's CV is incredible. So I'd like to say a few words about who I think Adrian is.

I came to know Adrian in the late 1990s, when he taught me Lawyers' Ethics at Monash. Adrian had the dubious honour of leading a subject that pretty much every law student regarded as unbearably dull, given its focus on truly scintillating topics such as the trust account rules and lawyers' duties (to which I can only say: the students had a point).

Alongside this, Adrian talked to us about lofty notions like justice, fairness, values and the common good. Adrian was, as I recall it, the first and only lecturer I'd ever had who talked to us about what kind of lawyer we wanted to be, how we could live an ethical life as a lawyer, what kind of impact we wanted to make in the world, and the importance of access to justice for society's underprivileged.

Adrian's profound musings about Aristotelian ethics, virtue ethics and the age-old question of what it means to truly "do good" were met with other age-old questions from his students such as: is this rubbish going to be on the exam and what answer will give me the most marks for the least effort?

But I was inspired – both because Adrian spoke of things that really mattered, and which had somehow disappeared from the curriculum of most other subjects, and because I was a bit of a dork. But Adrian embraced that and encouraged me. He was one of those lecturers who would stop and talk to you across the campus, ask how you were, and take an interest in what you cared about. He gave you life advice and career guidance – sometimes unsolicited, but always well meaning. After I worked for a few years in private practice and community legal centres I was unsure what I wanted to do. Adrian gave me my first ever opportunity in academia, hiring me to do research assistant work on an ethics project that was a response to *British American Tobacco v Rola McCabe* – the case that raised questions about the links between lawyers and

big tobacco. Adrian had a strong sense of right and wrong and those values were ones I had not always seen in practice.

In this work, he made me and many others like me feel like there was a space for us in legal practice or academia, especially when we didn't want to take the well-trodden path of doing a corporate clerkship, articles at a big city firm, and racking up billable hours.

I could not have known then that Adrian would eventually become my boss at Monash. Like many others, I have benefitted enormously from Adrian's care, guidance and sensitivity. Adrian listens to, and cares about, people. He thinks carefully about the impact his words will have on you before he speaks. He is deeply empathetic. He has helped me deal with a myriad of challenges, including complex ethical dilemmas, student issues, workplace politics, and more. Adrian has also been an unbelievable support through personal challenges over the last couple of years, and I am extremely grateful to him for that. I know that I am not alone, either. It's actually the main reason why we have all come together to acknowledge him today.

In preparing for today's event, I asked a number of colleagues – present and past – to say something about what Adrian had meant to them over the years.

When I reflected on them all, it turned out that they formed a neat little poem.

So here is a poem in honour of Adrian. It is called Adrian is.

Adrian is...

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Adrian is... The most amazing and awesome person. He is a man of integrity, encouraging and supportive with charm and wit; with a laugh that you can hear from afar and you know that **all is good** because Adrian is around! I count it as a privilege to have worked with Adrian over many years and know he is a friend.

Adrian is... The most cited clinician in a PhD thesis.

Adrian is... The only colleague who has suggested a mid day siesta could be beneficial! "Just lie down on the floor".

Adrian is... Someone who – when a small thunderstorm rolled in from WA – was most welcoming, and provided generous encouragement & support.

Adrian is... An insightful man.

Adrian is... Fond of outdoor wear and puffy vests. Any time. Any where.

Adrian is... Someone who exemplifies the four approaches to legal practice: a zealous advocate for high ethical standards; a trustee of the legal system; an agent for change to improve justice outcomes, and a lawyer who cares deeply about relationships with family, friends, colleagues and clients.

Adrian is... Someone who makes me feel like he's always got time for me and that he has no other pressing business.

Special Issue: Adrian Evans Festschrift

And Adrian has been my supervisor, mentor, colleague, ethical compass and friend over many, many years - even though he deserves his retirement, I am going to feel quite lost without him.

I want to thank you all again for coming today.

ADRIAN EVANS AND CRITICAL PEDAGOGY: HIS EARLY CAREER

Professor MaryAnne Noone, La Trobe University, Australia

I was delighted to accept the invitation to be a part of Professor Adrian Evan's Festschrift in November 2018 because over the last thirty years Adrian and I have journeyed together along the social justice and clinical legal education path, sharing many challenges, discoveries, losses and adventures.



Specifically I have been asked to discuss Adrian's early contribution to clinical legal education but to do this it is necessary to also focus on his contribution to the community legal centres. In Australia, like many other countries (as detailed in Frank Bloch's book) early clinical legal education programs were intertwined with the developing community legal centres or neighbourhood law centres movement.¹

In fact in the first part of Adrian's career, his contribution relates more to community legal centres than to academic pursuits. However having noted that, from early on, Adrian's actions and writings reveal a clear and strong commitment to a philosophy of education

¹ Bloch F. & Noone M.A, (2010), 'Legal Aid Origins of Clinical Legal Education' in Bloch F.(ed) *The Global Clinical Movement: Educating Lawyers for Social Justice* Oxford University Press; Noone M.A. (1997), 'Australian Community Legal Centres - The University Connection' in Cooper J. & Trubek L. (eds), *Educating for Justice: Social Values and Legal Education*, Dartmouth

which has endured throughout his working life: critical pedagogy. I draw this out in this paper, drawing on my own archives as well as rereading Adrian's early publications. These were not refereed academic articles but pieces in the *Legal Services Bulletin*² and *Hearsay*³.

I will focus on a couple of examples that reveal Adrian is, and always has been, an agitator, a disrupter and an innovator, someone prepared to challenge the status quo and propose alternative approaches to legal education, to the operation of community legal centres and to the regulation of the legal profession.

But first a little background.

Adrian studied law and commerce at Melbourne University, graduating in 1972. This was at the time that the Whitlam Labor Government came to power in Australia with a election theme of 'It's time for change'.⁴ A progressive government was elected after 23 years of conservatism. Globally and domestically it was a time of significant social disruption and change.

Although there was changes in many aspects of society, this was not necessarily the case in the legal profession. As David Neal notes, for a law graduate at this time, "options like working for a legal aid commission, a public interest law practice, a law reform commission, in the pro bono program at one of the big law firms, or even volunteering at a community

² The *Legal Service Bulletin*, an initiative of the Fitzroy Legal Service, was a newsletter then journal, that aimed to provide a medium for the distribution of educational material and general information relating to legal aid in

Australia. It became the *Alternative Law Journal* in 1992. See Brown D., 'A Critique of the Legal Service Bulletin' in Neal D., *On tap not on top: Legal Centres in Australia 1972-1982* Legal Service Bulletin p40-48

³ *Hearsay* was the newsletter of the Federation of Community Legal Centres (Victoria) from 1985- 1998.

⁴ Neal D., 'Law and Power- living in the 70s' (2014) *Law in Context* 99, 101

legal centre did not exist. It was a much narrower legal world.”⁵ Consequently Adrian pursued the traditional path of completing his articles⁶ and he then worked in the tax department at Price Waterhouse & Co. - Chartered Accountants for a short time.

However in a move that was to characterise Adrian’s career, he took on an unconventional position. He became the legal advisor to student volunteers who were giving free legal advice at the Monash university student union.⁷ Then in 1976 he was appointed by the Students Representative Council at La Trobe University to establish an in-house legal service for students of the university. La Trobe University was a young university (commenced in 1967) with quite a reputation for student activism and innovative academic programs.⁸

This was a time of radical change in the provision of legal services in Australia and elsewhere: the first Aboriginal Legal Service opened in 1971, the first community legal service Fitzroy Legal Service opened in December 1972 quickly followed by a number of other community legal centres in Victoria. These voluntary, independent, community run organisations offered free legal assistance, out of office hours, in ‘shop front’ locations. It is hard for us to imagine now, but these services were, at the time, seen as an serious affront and perceived by many as a threat to, the existing conservative legal profession.⁹ In taking up this position

⁵ Neal above

⁶ Law graduates had to complete a year long period of ‘apprenticeship’ under the supervision of a legal practitioner before becoming admitted to legal practice. This was called articles.

⁷ Giddings J., *Promoting Justice through Clinical Legal Education* (2013) Justice Press pp 171 - 189

⁸ La Trobe University, *From the Paddock to the Agora* (2017) La Trobe University Press in conjunction with Black Inc ; Neal note 2 pp 112-118

⁹ Noone M.A. (2001), ‘The Activist Origins of Australian Community Legal Centres’ (19) *Law in Context* 128; Noone M.A. & Tomsen S., *Lawyers in Conflict: Australian Lawyers and Legal Aid* (2006) Federation Press 69-72, 199-230

at La Trobe University student union, Adrian was throwing his hat into the alternative/progressive ring.

Simultaneously Adrian was studying theology at the Australian College of Theology, and playing an active role in his church. I surmise that Adrian's religious beliefs may have also prompted him to become involved in improving access to justice rather than assisting the rich with their tax issues.

In his role at the La Trobe University student union, Adrian was advising and providing legal services to students with a particular emphasis upon assisting students facing disciplinary issues but he soon realised the demand was more than he could meet. At the university campus there was a Department of Legal Studies focused on taking an interdisciplinary approach to the study of law.¹⁰ Adrian approached the Department and requested they allow him to 'co-opt' the students on the basis that he would train them 'on the job' in basic legal skills. He was given approval and in 1978 a subject was established integrating this training into the La Trobe Bachelor of Arts.¹¹

This was Adrian's first foray into clinical legal education and is an early example of Adrian identifying a problem and creatively devising a solution. He was unable to address the student demand for legal services and so proactively sought to train students to work as paralegals assisting him. But this was not just a technical skills based course.

¹⁰ Petersen, K. Socio-legality and La Trobe University : introducing and celebrating a broad church of ideas. (2013) 29 (2) *Law in Context*,1-9; DaviesS, S. From law to 'legal consciousness' : a socio-legal pedagogical expedition.. (2013) 29 (2) *Law in Context*, 42-58.

¹¹ Evans, A., 'Para-legal training at LaTrobe' (1978) 3 *Legal Service Bulletin* 65

Innovatively, Adrian engaged with the counselling service on campus to assist him in preparing the students for these roles and teaching interviewing skills to the students. In this endeavour we see the seeds developing of Adrian's philosophy of education as indicated in one of his first written pieces in 1978

"On the premise that education is the fruit of human interchange rather than an exercise in role definition [my emphasis], first year students from the Department of Legal Studies are invited to apply for a half unit para-legal training programme".¹²

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fact, any doubts in this regard were dispelled by the decision in *Given v. C.V. Holland (Holdings) Pty Ltd* 1977 PR 40-029, which held that the words 'of a particular locality' were wide enough to cover a statement as to the number of miles covered by a car.

v. Southern Motors Box Hill Pty Ltd 1977 ATPR 026; *Eva v. Preston Motors Pty Ltd*, (unreported, Federal Court of Australia, 9 June 1977).

v. C.G. Smith Pty Ltd and ors (unreported, Federal Court of Australia, 21 July 1977).

(75) 5 A.L.R. 493.

⁸ This is dealt with in s.87 (2) (a). At first glance, s.87(2) (a) seems to confer on the court a power to rescind contracts. However, in an extraordinary decision, *TPC v. Mirreys Pty Ltd* 1977 ATPR 40-028, the Federal Court held that the provision did no more than confer a power to declare contracts void for illegality, on the basis that they contravene the *Trade Practices Act*.

⁹ Manufacturers' warranties legislation already exists in South Australia (*Manufacturers Warranties Act* 1974) and the A.C.T. (*Law Reform (Manufacturers Warranties) Ordinance* 1977).

Para-legal training at La Trobe University



ADRIAN EVANS

The La Trobe Legal Service began in the Department of Legal Studies in 1974, staffed by members of the Department. By the close of 1975, the Students' Representative Council was able to allocate funds to employ a solicitor to take over much of this work. A solicitor was appointed on a part-time basis in April 1976, with the aim of providing advice and generally representing the interests of students. By 1977 the scope of the service had become virtually that of a private legal practice and it was clear that the time was ripe to begin training 'para-legal' personnel for work in the service. The following account of the training programme emphasises the relationship between the provision of fully adequate advice in the broad sense of the phrase and the availability of emotionally attuned listeners who are trained in the areas of law most commonly encountered by students.

On the premise that education is the fruit of human interchange rather than an exercise in role definition, first year students from the Department of Legal Studies are invited to apply for a half unit para-legal training programme in the first part of their second year. Successful completion counts towards degree qualification. Candidates are interviewed by myself as solicitor from the Legal Service, together with a counsellor from the University Counselling Unit. In this interview we are looking for indications of the student's ability to listen attentively, the level of general maturity and the degree of self-confidence or assertion. Those who do not appear to rate well in these areas are selected out at this stage.

At a subsequent two day seminar held before re-enrolment for second year, all those who rank well enough in these interviews are exposed to teaching techniques and exercises — academic and interpersonal — designed to minimise initial nervousness and highlight individual strengths and weaknesses within an atmosphere that encourages self-awareness and disclosure and seeks to strengthen each candidate's ability to project his or herself sensitively.

Since this necessarily requires a degree of personal interaction, the seminar is limited to approximately 12 students, with myself and two counsellors as facilitators. In broad terms, the seminar seeks to inform students of the techniques to be used and to give each person the opportunity to opt out of the course without disadvantage to their subject selection if there are disagreements. From experience it seems that such doubts, often in connection with the self-disclosure inherent in the educational techniques, are best spelt out and resolved before students are committed to enrolling in the half unit.

¹² Evans, A., 'Para-legal training at LaTrobe' (1978) 3 *Legal Service Bulletin* 65

Over a 10 year period, Adrian established a group of paralegals specialising in representing students before the University's disciplinary tribunals. The utilisation of paralegals was unconventional at that time and is an illustration of Adrian's preparedness to challenge the status quo.¹³ Based on this experience, in 1989, when legal aid funding was being cut, Adrian controversially suggested having paralegals rather than lawyers as front line advisers.¹⁴

Of course whilst all this was happening at LaTrobe, Adrian was also the father of 4 young boys, including twins (see Maria's contribution).

In May 1985, I commenced working at La Trobe university in a unique position as a lecturer practising as a lawyer at another community legal service close to campus; West Heidelberg Community Legal Service. As part of that role I was responsible for a subject called Law and Social Justice in which students undertook placements at the legal service.¹⁵

A month after starting in the position (June 1985) I attended the National community legal centres conference in Brisbane. I have a strong recollection of wandering home from dinner with group of conference attendees, when Adrian and I got chatting about the theme of the conference, social change. He suggested we might work together - we could revise his subject to more directly focus the curriculum on social change. This was the beginning of my clinical journey and working together with Adrian. Although I had worked at Springvale

¹³ For further contemporary discussion see: Noone M.A. (1991), 'Paralegals - in the Community's Interest?' in Vernon J. & Regan F. (Eds), *Improving Access to Justice* Australian Institute of Criminology Noone M.A. (1988), 'Paralegals - a growth area in times of restraint?' 13 *Legal Service Bulletin* 253

¹⁴ Evans, A, 'Para-Legal Advisors!' (1989) 19 *Hearsay* 5

¹⁵ See Dickson, J., '25 Years of Clinical Legal Education at La Trobe Uni: Keeping the community in legal education' (2004) 29 *Alternative Law Journal* 37; Neal D., 'Law and Power- living in the 70s' (2014) *Law in Context* 99, 101

Community Legal Service, which had a clinical program with Monash University, I had been the community lawyer and had no direct responsibility for students.¹⁶ Looking back, I probably had more experience with activism, having been the lawyer for the squatters union¹⁷, whereas Adrian had developed a sophisticated clinical program at the SRC. He recognised the potential of bringing these two aspects together.

Working together, we developed a most ambitious and exciting course. The subject went for a full year, students spent time on placement at both our respective legal services. The original University Handbook entry for the subject stated:

'the aim of the subject is to produce students with firsthand experience of community legal services and a priority for social action, together with the strategies for implementation developed within the reality of client contact and the opportunities now being provided with the legal system. The approach is to link clinical skills, substantive law, research, exposure to case work environments and the technique of public interest legal analysis and strategies' [my emphasis]

¹⁶ Greenwood K., *It seemed like a good idea at the time : a history of Springvale Legal Service 1973-1993* (1994) Springvale Legal Service

¹⁷ Noone M.A., Stewart I., Trezise P., & Winn G. (1983), 'Bona Vista-A Large and Attractive Property' 8 (6) *Legal Service Bulletin* 253

Teaching this course with Adrian, I learnt about the Binder and Price approach to legal interviewing skills¹⁸, the Myers-Briggs Type Indicator¹⁹, utilising Structural Analysis to strategise about social problems²⁰, theories of non-violent action²¹ and much more.²²

Adrian's philosophy of education pervaded many aspects of the course. He drew on the work of Ivan Illich²³ and Paulo Friere²⁴ and shunned a 'banking' concept of education. He was clearly an advocate of 'critical pedagogy'.²⁵

To quote Wikipedia,

Advocates of critical pedagogy view teaching as an inherently political act, reject the neutrality of knowledge, and insist that issues of social justice and democracy itself are not distinct from acts of teaching and learning.^[2] The goal of critical pedagogy is emancipation from oppression through an awakening of the critical consciousness, When achieved, critical consciousness encourages individuals to effect change in their world through social critique and political action.²⁶

¹⁸ Binder D. & Price S., *Legal Interviewing and Counselling: a client centred approach* (1977) West Academic Publishing USA

¹⁹ <https://www.myersbriggs.org/my-mbti-personality-type/mbti-basics/home.htm?bhcp=1>; Peters, Don, & Peters, Martha M. (1990). Maybe that's why I do that: Psychological type theory, the Myers-Briggs type indicator, and learning legal interviewing. *New York Law School Law Review*, 35(1), 169-198.

²⁰ Reid, S., *Change for justice : structural analysis and strategies for change* (1987) Uniting Church (Victorian Synod) in conjunction with Centre for Structural Analysis

²¹ Burrowes, R., *The Strategy of Nonviolence Defense: A Gandhian Approach* (1996) Albany, NY: State University of New York Press, .

²² Notes from the course detail guest lecturers from range of related organisations as well as legal aid, community legal centres, police force etc.

²³ Illich, I, *Disabling professions* (1977); *Deschooling Society* (1973)

²⁴ Friere, P., *Pedagogy of the Oppressed* (1970) [English version]

²⁵ For a detailed explanation see entry here Coghlan, D., & Brydon-Miller, M. (2014). The SAGE encyclopedia of action research (Vols. 1-2). London, : SAGE Publications Ltd doi: 10.4135/9781446294406

²⁶ https://en.wikipedia.org/wiki/Critical_pedagogy

I think anyone who has worked with Adrian, will recognise how this approach has underpinned his attitude to legal education and provided the foundation for much of the work of his career.

At the same time as Adrian was working at La Trobe, he was actively engaged in the Community Legal Centres sector and the Federation of Community Legal Centres. In 1985, Adrian took on responsibility for establishing a mutual professional indemnity insurance scheme for all Victorian Community Legal Centres. This scheme became the template for the national scheme after he oversaw a related Commonwealth government funded consultancy.²⁷

Whilst working on the insurance issue, which was aimed at enhancing the longevity of community legal centres, Adrian published an article titled "A Challenge to Community Legal Centres".²⁸ Community legal centres in Victoria were celebrating 15 years of existence but Adrian was not about to wish those working in centres Happy Birthday, instead he said:

Community legal centres are in a mid-life crisis which could see them decline in impact in much the same way as many males do. Collectively and at individual level some real soul searching is necessary if the impetus of the 1970s is to be recovered by the majority of centres. The process must include the motivational regeneration of workers, the education and empowerment of the client groups they serve and the

²⁷ Evans, A 'Community and Aboriginal Legal Centres – National professional indemnity insurance options for 1988' 1987) 12 *Legal Service Bulletin* 277 ; Evans, A, 'Professional Indemnity Insurance for Legal Centres' 1987 (9) *Hearsay* 12

²⁸ Evans A., 'A challenge to community legal centres' 1987 (12) *Legal Service Bulletin* 165

development of investigative, analytical and strategic techniques at the price of lower time inputs into routine case work. [my emphasis]

In this article Adrian is challenging those working in community legal centres to adopt aspects of critical pedagogy; to work towards social justice to both achieve political relevance as well as having personal integrity; he talks of education and empowerment of the community; and he encourages workers to use not only individual litigation but consider mediation and non-violent disobedience.



Adrian did not hold back in this article – it is highly provocative:

Only by grasping the nettle of identification with the oppressed will centres lose their Cinderella fragility and recover the idealism with which they were founded such a short time ago. If we wallow much longer in the comfort of acceptance by the established profession, or in the warmth of the wages and conditions spa bath, political legitimacy will be handed over to less conservative groups and growing irrelevancy will tighten like a noose on the energy and output of our workers.²⁹

Adrian's challenges were subsequently discussed at the 1987 National community legal centre conference in Hobart, Tasmania which itself was a controversial affair. The Conference had tried to confront the "fundamental issues" raised in Adrian's article and challenged the community legal centre movement to define its role in addressing poverty.³⁰ Many of the issues Adrian identified in 1987 have been revisited, albeit in less direct terms, many times in the intervening years.³¹

Unfortunately Adrian and I only taught the Clinical Legal Education course together for one year (1987) however the subject continued to be taught by myself and my colleague Judith Dickson for several years and many aspects of the pedagogy underpinning the contents and approach continued into the clinical legal education program at La Trobe University.

²⁹ P 169

³⁰ Farrelly, S., 'Reflections on the 1987 Community Legal Centres Conference' (1987) *Legal Service Bulletin* 227

³¹ Rich N., *Reclaiming Community Legal Centres: Maximising our potential so we can help our clients realise theirs* (2009) Consumer Action Law Centre and Victoria Law Foundation; Rice S., 'Are CLCs finished?' (2012) 37(1) *Alternative Law Journal* 17; Noone M.A. (1992), 'Imperatives for Community Legal Centres', 17 *Alternative Law Journal* 121

In 1988 Adrian moved to the position of Coordinator of the Springvale Legal Service and Lecturer in Law at Monash University where he joined Australian clinical pioneers Sue Campbell and Guy Powles.³² Now he was in charge of a large community legal service and the related clinical legal education program. Although Adrian continued to have a role in community legal centres (he was on the executive of the Federation of Community Legal Centres in 1989³³) including continuing to offer a critical perspective³⁴, his focus shifted more towards legal education and research.

However Adrian's commitment to critical pedagogy did not diminish. In an article he wrote in 1990 titled 'Developing socially responsible lawyers' he again spoke of the difference between *the 'ladder' or linear approach to teaching (conventional) compared to the "participatory 'web' approach 'where both 'teacher' and students interact around the context of real clients' situation.* In this article Adrian strongly asserts, 'critical' or 'liberating' education is the only method that works well in clinical environments,³⁵ and that clinical legal education can only reach its full social and educative potential in a *community* environment. ³⁶

³² Giddings J., *Promoting Justice through Clinical Legal Education* (2013) Justice Press pp 171 - 189

³³ Federation of Community Legal Centres Annual Report 1989

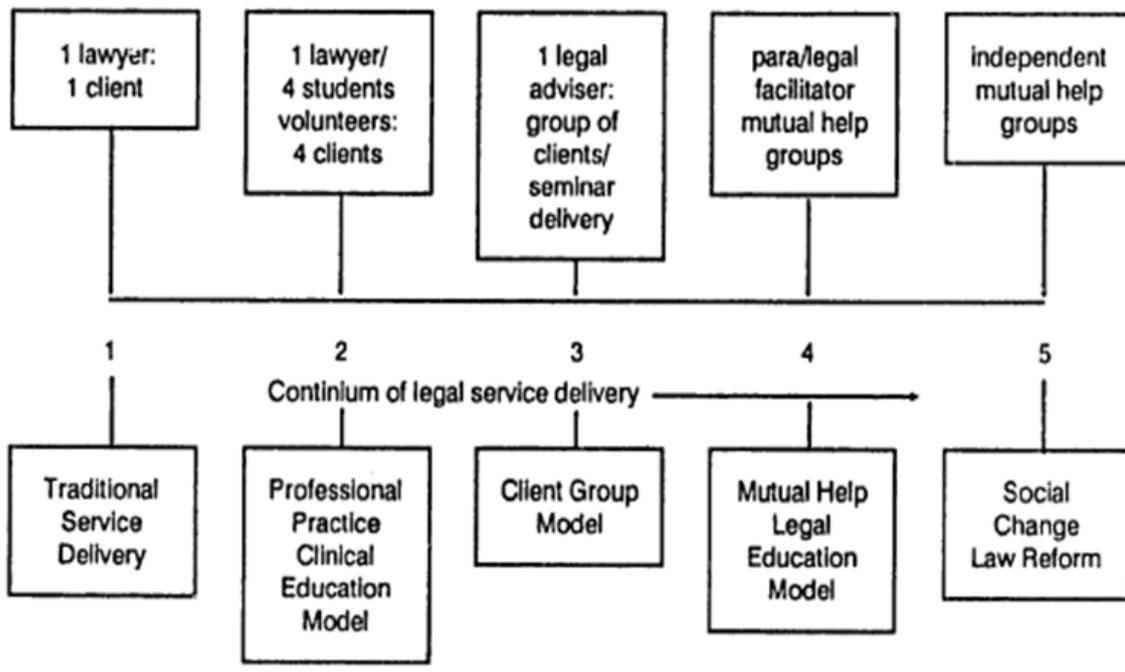
³⁴ Evans, A. 'The Leadership of CLCs – letter to Editor' (1991) 32 *Hearsay* 15

³⁵ Evans A., 'Developing socially responsible lawyers' (1990) 15 *Legal Service Bulletin* 218

³⁶ This article also is an illustration of Adrian's preference for setting out his ideas in diagrammatic form.



Developing socially responsible lawyers



Options in delivering Legal Services

Although Springvale Community Legal Service had been involved in range of community projects, these did not involve the law students. Putting his theory into practice, Adrian quickly developed a community development component to the clinical legal education program, where students would work on projects with community groups.³⁷ As Giddings notes, Adrian together with Springvale staff, Roy Reekie and Phillip Somerville, were “heavily influenced by Brazilian educator Paulo Friere’s writings on the concept of ‘dialogical empowerment’ with students engaged in a process of mutual enquiry with their teacher. Adrian saw the role of ‘close facilitative supervision’ as critical.”³⁸

In the role at Springvale and Monash, Adrian begins taking a key leadership role in Australian clinical legal education and establishing an international network of clinicians and legal ethicists.³⁹ He is asked to assist in the establishment of new programs around Australia and had a role in convincing the Commonwealth government to fund four clinical programs around the country.⁴⁰

In April 1990, he organised the first national clinical legal education conference titled “Australian Clinical Legal Education in the 1990s”.⁴¹ The conference was held the day before the National Community Legal Centre conference illustrating the continuing close links

³⁷ Giddings J., above pp 189 - 190

³⁸ Giddings above

³⁹ For example Adrian attended the Third International Conference on Clinical Legal Education in July 1993. Evans, A., ‘Clinical Legal Education and Justice Entwined’ (1993) 18(5) *Alternative Law Journal* 237 and he was active in the formation of the Global Alliance for Justice Education : <https://www.gaje.org/>

⁴⁰ Giddings J., Promoting p 191-192; Giddings, Jeff --- "Legal Education: The Commonwealth discovers clinical legal education" (1998) 23(3) *Alternative Law Journal* 140

⁴¹ There had been an ‘Australian Clinical Legal Education Teachers Conference’ in February 1987 organised by Monash Faculty of Law.

between Australian clinical programs and community legal centres. Conference topics included 'discussion on the 'type' of lawyers which present programs seek to produce and developing socio-legal awareness of clients.

Adrian's presentation at the conference was titled "structural factors giving the context to legal education'. Again he talked of "the participatory 'web-like' paradigm of clinical teaching compared to the hierarchical/ladder like methods of didactic teachers".

I referred at the start to my concurrent clinical journey with Adrian. In 1991, we did literally embark on a clinical expedition. Together we visited 25 'peak' or 'best practices' clinical legal education programs in north America over a four week period. Adrian had received a grant from the Monash Development fund to address recommendations for the future of the Monash clinical program and I was on sabbatical. We were fortunate to meet with many of the 'wise' men and women of American clinical legal education.

These photos include – Haywood Burns at Cuny, Steve Wizner at Yale, Fred Zemans at Parkdale/Osgoode Hall, Rick North at University of Maryland , Jeff Hartje, University of Denver University..



A strand of Adrian’s career is his interest in technology. He was and still is an early adopter of new technology. At Springvale he was responsible for planning and implementation of successive generations of computerised client case management software, commencing in 1988 with the conversion of existing Macintosh to IBM based word processing and continuing in 1989 with the design, supervision and marketing of a customised client information system for file and statute of limitation management, student supervision, research and statistical reporting purposes. So as part of this trip we not only learnt about the innovative curriculum developments we also explored the latest in technology and physical clinical environments.

I think for both of us this was a formative experience. In visiting a range of clinical legal education programs, we were able to appreciate the soundness of Australian clinical legal education, however we came back to Australia wanting to establish more focussed or specialised clinical legal education programs. I developed a clinical legal ethics course⁴² and Adrian, the Sexual Assault Clinic (see Carolyn Worth's contribution).⁴³

Around this time, Adrian also starts to crank up his analysis and criticism of aspects of the legal profession – there was a community group project at Springvale based around people with complaints against lawyers. One of his first research projects was to survey people's opinions of lawyers.⁴⁴ He also begins to take an interest in solicitors trust accounts and enrolls in a Masters of Laws.⁴⁵ Other speakers will develop these themes.

Adrian was also increasingly involved in law reform and participating on various advisory groups both with government and for non-government organisations. As an example in 1989 he worked with others from the Federation of Community Legal Centres on a submission to a Senate Standing Committee of Legal and Constitutional Affairs enquiry into the Costs of Legal Services and Litigation. Adrian made a particular contribution to the section on the

⁴² Noone M.A & Dickson J. (2002) 'Teaching towards a new professionalism: Challenging law students to become ethical lawyers' 4 (2) *Legal Ethics* 127

⁴³ Evans A., 'Specialised clinical legal education begins in Australia' (1996) 21(2) *Alternative Law Journal* 70

⁴⁴ Evans A., 'Acceptable But Not Entirely Satisfied: Client Perceptions of Victorian Solicitors' (1995) 20 *Alternative Law Journal* 57-62; 'A Concise History of the Solicitors Guarantee Fund (Vic): A Marriage of Principle and Pragmatism' (200) *Monash University Law Review*,??; 'Professional Ethics North and South: Interest on Client Trust Funds and Lawyer Fraud – An Opportunity to Redeem Professionalism' (1996) 3 *International Journal of The Legal Profession* 281-300

⁴⁵ Evans A., 'Whose Money? The Solicitors Guarantee Fund', (1993) 18 *Alternative Law Journal* 220-225

regulation and ethics of the legal profession, an area he become an international expert on – again others will pick up this theme.

THE AGE, Monday 16 July 1990

Picture: RAY KENNEDY



Four wigs: Mr Adrian Evans, from the Springvale Legal Service, left, Senator Barney Cooney and two lawyers ride on the scenic railway at Luna Park. They were there to launch the Federation of Community Legal Centres' submission to the Cost of Justice inquiry.

Legal centres criticise lawyers on fees, rules

...ion of Community ... has put the legal ... control and self- ... under scrutiny, and ... wanting.

...ssion to the Senate's ... inquiry, the federa- ... d the 'way lawyers' ... and how the profes- ... es itself. Neither pro- ... eration argued, did ... ll public confidence.

...ation has a unique ... will lack momentum," the submis- ... sion said.

A key recommendation was for complaints bodies to be independent of solicitors and barristers, perhaps through an expanded role for the lay observer. It also wants complaints against barristers to be more open to scrutiny

... to ensure that our legal and political systems provide justice to all Australians," the submission says.

"This inquiry should give attention to measures that are able to increase technical competence and ethical responsibility in lawyers in a pro-active cost-control role.

"The Federation of Community Legal Centres objects strongly to the funding link between self-regulation and clients' money.

"While the cost of discipline is not the responsibility of the lawyers, there is no internal impetus for well-merited and independen-

So to conclude I want to show a photo taken at Luna park⁴⁶ at the launch of the Federation of Community Legal Centre's submission to the Senate inquiry into Cost of Legal Services

⁴⁶ Fun parlour at StKilda, Victoria Australia <https://lunapark.com.au/>

and Liltigation. Adrian is sitting with the chair of the committee, Senator Barney Cooney and in the background are several legal centre workers. At the time of this photo, 1989, Adrian academic career it about to take off – he will go on to complete a Masters of Law, a PhD, become a professor and author several books.⁴⁷

From the examples I have discussed, we can see that Adrian has been prepared to take risks and be unconventional in his approach. He is someone prepared to challenge and disrupt the status quo. He is an agitator and innovator.

More than three decades ago Adrian adopted a particular approach to teaching, critical pedagogy and this has grounded his involvement in clinical legal education. He is firmly committed to creating deep and transformative learning experiences for students in the furtherance of social justice.⁴⁸

I feel very fortunate to have shared aspects of Adrian's journey through community legal centres and clinical legal education. In my experience, Adrian is a person of great integrity and sound values. He is someone who has sought to practice what he preaches. He an

⁴⁷Evans, A. H., Cody, A., Copeland, A., Giddings, J. M., Joy, P., Noone, M. A. & Rice, S., *Australian clinical legal education: Designing and operating a best practice clinical program in an Australian law school* (2017) 1st ed. The Australian National University; Parker, C. E. & Evans, A. H., *Inside Lawyers' Ethics* (2017) 3rd ed Cambridge University Press; Hyams, R. L., Campbell, S. L. & Evans, A. H., *Practical Legal Skills: Developing Your Clinical Technique* (2014), 4th ed. South Melbourne, Victoria, Australia: Oxford University Press; Evans A.H., *The Good Lawyer*, (2014), Port Melbourne, Victoria, Australia: Cambridge University Press. 232; Evans A., *Assessing lawyers' ethics: A practitioners' guide*, (2011), 1st ed. New York NY USA: Cambridge University Press.

⁴⁸ Evans, A., 'Client Group Activism and Student Moral Development in Clinical Legal Education' (1999) 10 *Legal Education Review* 179

exemplar of a 'good lawyer'⁴⁹. It has been a privilege, Adrian, to share experiences and collaborate on projects throughout your career, particularly those in the early stages.

⁴⁹ Evans A, *The Good Lawyer* (2014) Cambridge University Press

ADRIAN EVANS - CONTRIBUTION TO CLINICAL PEDAGOGY AND GLOBAL JUSTICE

Professor Nigel Duncan,

City Law School, UK

It is a great privilege to be asked to say a little about Adrian's work. I have been asked to address his contribution to clinical pedagogy and global justice. Such is the way in which he has



integrated different aspects of his work so that each informs the other, it has been hard for each speaker to separate out their allocated topics. In that attempt I shall firstly address Adrian's contribution to the developing clinical pedagogy of the United Kingdom, as that is what I know best. I shall then turn to address his contribution to global justice through a wonderful project we have both worked on: the Global Alliance for Justice Education.



I first met Adrian in the mid 1990s when he was visiting the UK to attend a clinic conference I was involved in organising. One of the characteristics of spending time with Adrian is that we get to walk in beautiful places. At this conference, which was the brainchild of Richard Grimes, we concluded it by going walking in the Peak District. We talked about all sorts of things, but what I most remember is discussing his values research with Adrian. This led to his publications with Josephine Palermo . We had hoped to develop a parallel study in the UK, but were unable to get the funding to support it. However, that combination of discussions of working with students in clinic and the values we bring to teaching learning and practice have characterised all my work with Adrian.

His main contribution to clinical pedagogy in the UK has been through his writing, and I will take you through the main pieces.

Hugh Brayne, Richard Grimes and I, having founded the UK Clinical Legal Education Organisation, began working on a book designed to encourage and advise colleagues considering setting up clinical programmes in the UK. We sought the advice of several colleagues with specific experience to inform what we wrote and to write their own sections. The book was published by the Blackstone Press in 1998. Adrian wrote a chapter: 'The Australian Perspective'. This was not simply a presentation of what had been learned in Australia, but was critical of a lot of what we said. We had explored the question of whether it was right for a clinic to choose cases in order to provide students with specific experience that was most useful to their learning needs at that time. We had suggested that whether or not that was legitimate might depend on where the funding for the clinic had come from (an argument which now feels uncomfortably market-oriented to me). Adrian addressed this head on, focussing on the values and mission of the clinic and criticising those that prioritise student experience over client needs. This has led to a significant debate since. Adrian's arguments anticipated the later critique of Donald Nicolson: if we tell students that the clients are there to help them learn we foster an attitude that the client is there for them, rather than they being there for the client – which they risk taking into practice. (Donald Nicolson, 2008,

“‘Education, Education, Education’: legal, moral and clinical”, 42:2 *The Law Teacher*, 145-172 at 169-70).

This article was published in a special issue on maintaining quality with a diminishing resource. In it Adrian argues the importance of developing a link between values and skills and that by working with external legal service agencies we can achieve this without adding to the cost of law school provision. One aspect of this article is worth flagging up as particularly characteristic of Adrian’s thinking. He introduces the idea of a spiritual element that (quoting Kirby J) may be missing.

This special issue was designed to respond to Roger Burridge and Julian Webb’s article in *Legal Ethics* “The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School”, (2007) 10(1) *Legal Ethics* 72-97. The special issue sought responses from three other commentators on legal education, Anthony Bradney, Fiona Cownie and Wesley Pue, whose arguments had been critiqued in that article. I also sought responses from Australia and the USA, and this was Adrian’s contribution. Again, he proposes live client clinic as a vector for helping students to develop awareness of their own values, comfort with diversity and the courage to act accordingly. He suggests what the appropriate values for legal practitioners are and gives practical guidance as to how to get students experiencing and thinking about these values.

Adrian's final contribution to *The Law Teacher* was this article which appeared in the 'Policy and Education Developments' section of the journal. This reported on the project that culminated in the publication of the 'Best Practices' document, covering best practices in course design; law in context in a clinical setting; supervision; reflective student learning; assessment; staff; and infrastructure. The support given to this project by the Committee of Australian Law Deans is something that is sorely lacking in the UK, where circumstances are such that simple application of the recommendations will not be entirely effective. However, the subsequent publication of the book: *Australian Clinical Legal Education: Designing and operating a best practice clinical program in an Australian law school* by ANU Press, freely available to all as a pdf download, is an invaluable resource.

I will now turn to my second subject. In my view, Adrian's major contribution to clinical pedagogy was his participation in the group that decided to set up an international organisation to promote 'socially relevant legal education' (Madhava Menon), bringing together law teachers and providers of legal services, especially to disadvantaged communities, for mutual benefit, and aiming to learn from all, not only the wealthy and privileged law schools.

This project arose out of a meeting in Florida which was intended to attract legal educators from around the world, but which in fact attracted very few. As a result it was decided to write to clinicians and others who were due to attend the Australasian Professional Legal Education Conference in Sydney in

1996. I was one of those who received a letter inviting us to a full day's meeting before the start of the conference and Adrian was another. Some 20 of us met in Sydney, hosted by Simon Rice at the Centre for Legal Education, and thrashed out the basis for this organisation.

We were both then on the steering committee for the first conference which was to take place in India in 1999.

I have a very few pictures taken at that conference. This one shows Adrian presenting his paper during a plenary session. He and I also gave a joint paper at the first GAJE Conference, which took place in Thiravananthapuram in Kerala, India. One memorable experience happened in the main hall where our plenary sessions were held. This was a large building with open sides to allow a through breeze to make delegates more comfortable. Above us there were large cooling fans to keep the air in movement. The problem arose because above those fans were beams on which the local pigeons tended to congregate. I noticed that there were areas of the hall which people were avoiding. I assume that I do not need to be too explicit as we experienced the reality of a common and rather unpleasant saying.

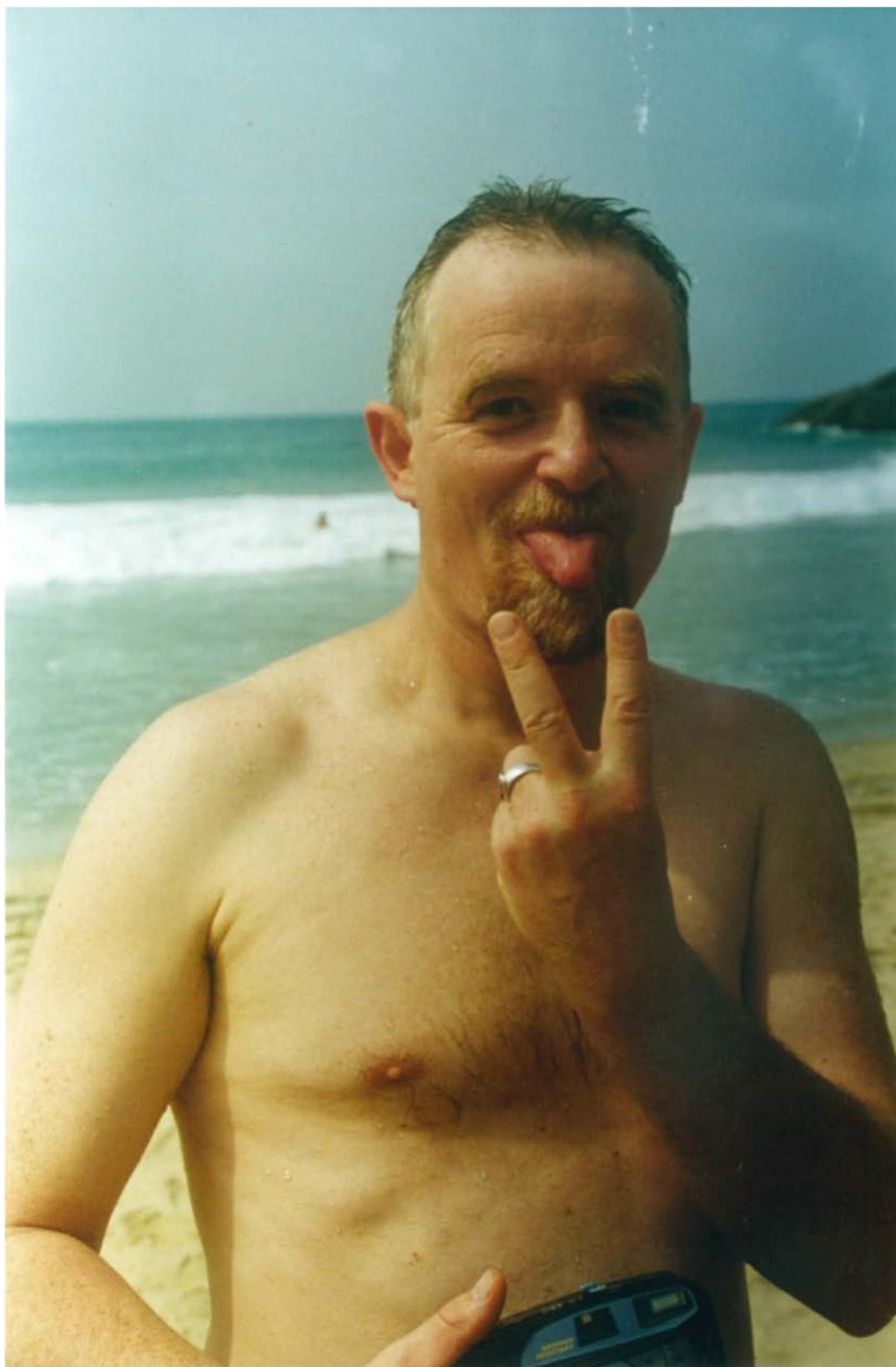


At this point I should explain something of the nature of a GAJE Conference. Typically they start with a one-day workshop on a significant theme to inform the work of the remainder of the conference. This is followed by a three- or four-day conference with academic papers and workshops, some in plenary but with many parallel sessions. Presenters are encouraged to ensure that their sessions are interactive and not simply the reading of an academic paper. The main conference is then followed by a series of 'Train the Trainers' workshops. At this first conference the Train the Trainers workshop started with an exploration of training in client counselling (interviewing) skills and then developed into the mentoring of individual projects by experienced clinical practitioners.

We did take some time off at the end of each day of the conference, and the beach at Kovalam was a short motor-rickshaw run away. Here we are taking a bit of rest and recreation.



However, our intellectual debate continued. Those of you who have known Adrian for a while will have probably got the impression that his arguments are so good that he normally wins them. Well, sometimes he loses an argument and this is the result.



This photograph was taken in the apartment of Ela Gandhi, granddaughter of the Mahatma, an ANC MP for the area. This group of conference delegates were privileged to be invited for dinner there. She cooked us a wonderful spicy vegetarian meal, an experience I will never forget.



Adrian was heavily involved in the planning of this, the second GAJE Conference and the opening one-day workshop. This focussed on “Pervasive Justice Education in Law Schools and NGOs” and was prepared by Adrian, Neil Gold, Margaret Barry, Asha Ramgobin and David McQuoid Mason. The workshop was intended to explore the immediate issues and challenges of instilling justice education concepts and ambitions in law schools and NGOs and to work toward moving on from just meeting and discussing justice education to its implementation. The workshop began with a brief “morning

contemplation” followed by an opening plenary session on “Introduction to Justice Education in the Curriculum” presented by Adrian Evans.

This opening workshop led to a session in the main conference: Mainstreaming Justice Education in the Law Curriculum.

Adrian was again involved in the planning for the third conference in Krakow. His specific contributions were as Pre-Conference workshop organiser with the themes: Curriculum for an ‘International Justice’ degree; and Strategies for formalising Justice Education.

This led into the theme of the main Conference: Teaching Values to Law Students, again a subject very close to Adrian’s heart.

The fourth conference took place in Cordoba, Argentina. Adrian had planned a session: “Legal Ethics Education as a Contribution to the Justice Mission of the Legal Profession”, but, in the end could not make it to the conference. I took over the running of a challenging workshop with design support from Sara Chandler (UK) and Clark Cunningham (USA). We had extra help from role playing participants: Julie Bishop (Australia); Richard Boswell (USA); Sally Hughes (UK).

In Manila in 2008 Adrian presented an interactive session: “Measuring a law school’s delivery of justice education”. This was designed to critique a proposed method for assessing whether a law school is a credible justice educator or not. A series of questions were proposed to participants, for

example, 'Is legal ethics a compulsory part of your law course?' 'How many school staff have a pro bono track record?'

This was designed to contribute to a chapter in Frank Bloch's edited book which was subsequently published in 2011: *The Global Clinical Movement: Educating Lawyers for Social Justice*, OUP.

Subsequently GAJE has continued to thrive. I have been fortunate enough to attend the Valencia, Eskisehir and Puebla conferences and they continue to have the same challenging and exciting spirit and are a great, welcoming opportunity for new and experienced clinicians to meet each other and the providers of legal services to disadvantaged communities across the world. I recommend the next conference in Bandung, Indonesia to you.

I started with a picture of a walk with Adrian so I'll finish my section with another – this one more local to us here in Melbourne – down on Wilson's Prom. This is Oberon Bay, taken through the branches of tea trees blackened by a major fire earlier in the year.

This picture was taken by Peter Joy, to whom I now hand over.



REFLECTIONS ON THE CONTRIBUTIONS OF ADRIAN EVANS

Jeff Giddings,

**Associate Dean (Experiential
Education), Monash Law Faculty**

My early memories of Adrian Evans are from community legal centre national conferences in the late-1980s. He was well established at the La Trobe SRC Legal Service when I started at Fitzroy



Legal Service. Adrian was the quiet achiever with responsibility for the Professional Indemnity Insurance cross-checks that all CLCs needed to complete. Adrian arrived at Monash Law Faculty in 1988, taking on the role of Director of the (then) Springvale Legal Service (now the Springvale Monash Legal Service). In taking over this role from Simon Smith, Adrian had a hard act to follow. My respect for both Simon and Adrian has continued to grow over the last 30 years.

As a student then volunteer at Springvale Legal Service (SLS), I saw how Simon had shaped the maverick culture of SLS, driving progress on a wide range of issues and spearheading the fundraising that enabled SLS to build new premises at 5 Osborne Avenue. With the support of senior Monash clinicians, Sue Campbell and Guy Powles,

Adrian developed a more structured approach to establishing the priorities of both SLS as a service and the Monash clinical program more generally.¹

Springvale Legal Service

A key focus of Adrian's early casework at SLS involved continuing Simon's work on claims against a local solicitor, Peter C Neil. Former clients of Neil's came to SLS seeking advice regarding proceedings issued against them by Neil, seeking payment of legal fees for work done years earlier.² I remember Adrian telling me that this work persuaded him that developing socially responsible lawyers required the community 'to deal with lawyers who are rogues.' He rightly called out the failure of the Law Institute of Victoria to hold lawyers to the standards expected by the public. 'We couldn't be coherent as a clinical program unless we were addressing both ends of the problem.'³

Adrian's approach to lawyering provided a powerful example to his students and colleagues. My Monash clinical colleague, Ross Hyams shared the following insight into Adrian's time as Director of SLS:

During Adrian's time as Director of SLS, he always bore such a sense of social responsibility that he felt that he was basically unable to turn a client in need away. This was back in the days before the legal service put a cap on how many clients could be seen on any given day. So, having dealt with the rush of 15-20 clients in the mornings that he was on session, any client who wandered in for the rest of the day

¹ Jeff Giddings, *Promoting Justice Through Clinical Legal Education*, Justice Press, 2013, Chapter 6.

² *Ibid*, 188.

³ *Ibid*, 188-189.

would always be seen. This sometimes resulted in another 5-10 clients in the afternoon, rolling into the night. It was well known amongst the students that if you were assigned to Adrian's client session day that you would work and work hard!

Adrian was the catalyst for moves by the Monash clinical program to extend student involvement in community development activities. This involved focused group work with clearly articulated objectives and was in keeping with Adrian's view that 'Clinical legal education can only reach its full social and educative potential in a community environment'.⁴

Calling Canberra!

There's a great story about Adrian sending a letter of congratulations to the Shadow Attorney General after an election, congratulating him (wrongly) on becoming the first law officer in the jurisdiction. This anecdote was no doubt a one-off occurrence as Adrian has generally been very effective in balancing 'big picture' vision with command of the detail.

Adrian was closely involved in efforts to raise the profile of clinical legal education with successive federal governments in the 1990s.⁵ Monash was recognised for its leadership role in Australian clinical legal education through the arrangements made for its clinicians, including Adrian, to mentor staff involved in establishing the new clinical program at Murdoch University in 1996.⁶ The 1998 federal budget announced funding for the Commonwealth Attorney-General's Department to support

⁴ Adrian Evans, 'Developing Socially Responsible lawyers' (1990) 15(5) *Legal Service Bulletin* 218, 219.

⁵ Giddings, note 1, 191.

⁶ *Ibid*, Chapter Nine, footnotes 68-73 for further details.

university clinical legal education programs and, early in 1999, Monash was one of the four law schools that secured funding, establishing the Family Law Assistance Program (FLAP) supporting family law clients without legal representation.⁷

In 1996, Adrian wrote about the establishment of a multi-disciplinary clinic addressing the complex issues faced by victims of sexual assault.⁸ Having observed similar clinics overseas, he approached Carolyn Worth (Co-ordinator of the South East Centre Against Sexual Assault (SECASA) about the development of a pilot program. This advanced placement became an ongoing part of the Monash clinical program.⁹ It provided students who had completed the general clinic with opportunities to further develop their skills and 'gain a deeper understanding of the operation of the legal system through immersion in a particular area of law'.¹⁰

The Australian Clinical Best Practices Project

Monash was the lead institution for a collaborative project to develop *Best Practices in Australian Clinical Legal Education* in 2011-2012. With funding from the Australian Government Office for Learning and Teaching, clinicians from 6 law schools (Anna Cody, Anna Copeland, Adrian Evans, Mary Anne Noone, Simon Rice and myself)

⁷ Jeff Giddings, 'The Commonwealth Discovers Clinical Legal Education' (1998) 23(3) *Alternative Law Journal* 140. In relation to the operation of the FLAP, see Susan Campbell and Alan Ray, 'Specialist Clinical Legal Education: An Australian Model' (2003) 3 *International Journal of Clinical Legal Education* 67.

⁸ Adrian Evans, 'Specialised Clinical Legal Education Begins in Australia' (1996) 21(2) *Alternative Law Journal* 79.

⁹ Fay Gertner and Carolyn Worth, 'Compensating Sexual Assault Victims: The Development of a Specialist Legal Clinic' in Bronwyn Naylor and Ross Hyams (eds), *Innovation in Clinical Legal Education: Educating Lawyers for the Future* (2007) 53.

¹⁰ *Ibid.*

developed resources to support effective practices in clinical legal education.¹¹ Adrian was the leader of this ambitious project to develop standards or recommended practices (“Best Practices”) for effective clinical legal education in Australia both to improve the delivery of clinical legal education and to assist in the renewal of University law curricula.

Adrian had to adjust his approach to leading the Best Practices Project. It became clear early on that he had hoped we would develop a set of standards to be met by all clinical programs. Other members of the team (me included) saw our aim as providing guidance through the identification of effective practices that programs should consider adopting. I could see the way that it was a challenge for Adrian to take this different approach and I was impressed that he managed to do so. It became a consensus-driven project with every team member having lots of ideas and plenty to say. Hard work but productive. At one team meeting, Adrian asked ‘When are we going to get to my pet thing?’. I’ve enjoyed using that phrase in subsequent discussions.

We developed a comprehensive set of best practices, organised under seven themes comprising *Course Design, Law in Context in a Clinical Setting, Reflective Student Learning, Assessment, Supervision, Staff and Infrastructure*. These best practices were endorsed by the Council of Australian Law Deans in November, 2012.¹² The project

¹¹ See Best Practices: Australian Clinical Legal Education: The Final Report of the Project, Strengthening Australian Legal Education by Integrating Clinical Experiences: Identifying and Supporting Effective Practices. Accessible at <https://ltr.edu.au/>

¹² *Ibid*, 7.

also generated a jointly-authored book, *Australian Clinical Legal Education*.¹³ Adrian's role was once again important here as we moved to share more of what we had learnt through the project.

The Monash Clinical Guarantee

Monash is in the midst of a major expansion of its clinical legal education program. We have introduced a Clinical Guarantee, assuring every law student that they will have an opportunity to participate in our clinical program if they so choose. We are the first Australian law school to do so and you can imagine that doing so has involved a range of opportunities and challenges. Monash is seeking to develop approaches to foster legal professionals and thinkers who will be adept in emerging local and global professional contexts. The clinical program has been identified as having an important role to play in preparing students for the world of future legal work.

The Faculty is implementing the Guarantee across 2018-2020. This involves a very substantial increase in the numbers of students able to participate in a clinical experience. We expect that by the end of 2020, more than 80% of students will take up this opportunity to participate before they complete their degree. We are expanding existing clinics as well as building a range of new partnerships and collaborations. 287 students were able to participate in a clinical unit in 2018 and 385 are projected to participate in 2019. This expansion in participation has been enabled by strong support from Monash University and its Law Faculty with extension of one of its key

¹³ Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Peter Joy, Mary Anne Noone & Simon Rice *Australian Clinical Legal Education*, ANU Press, 2017.

clinic sites, Monash Law Clinics – Clayton, and the opening of a new clinic site in the Melbourne CBD, Monash Law Clinics - Melbourne.

Adrian Evans was a key figure in the development of the Clinical Guarantee as an idea once it was suggested by Peter Joy when he visited Monash Law Faculty in 2016. Having now been given the opportunity to steer this ambitious project, I want to thank Adrian for having the 'can do' attitude and vision to pursue an ambitious project like the Clinical Guarantee. Adrian had the good sense to work closely with our Dean, Bryan Horrigan and the (then) Faculty Manager, Jane Prior, in developing the initial proposal. Since then, he has had the strength not to try to be a back seat driver. He has helped Melissa Fletcher and me in our efforts to juggle an array of interests and agendas as we develop and implement this worthy project.

ADRIAN EVANS FESTSCHRIFT

Carolyn Worth AM

I know two things about Adrian Evans.

These do not include details of his stellar law career which others more knowledgeable can write about. The two things are firstly his development and support of the joint specialist legal



clinic that Springvale Monash Legal Service and the South Eastern Centre Against Sexual Assault (SECASA) started in 1992 which still operates and is an indication of his support for victim/survivors of sexual assault. The second thing I know is his enjoyment of bushwalking.

To start with the Joint Legal Clinic. In 1994 Adrian Evans had been overseas and returned inspired about specialist legal services amongst other things. He was very excited about clinics he had seen in operation in Canada on his study tour. He hoped that he could duplicate these clinics in Australia. He also wanted to “utilise the energies of the female students doing Law at Monash in a constructive manner.” I on the other hand had a completely different agenda. I was looking for a better system for Victims of Crime applications than that provided at the time by private law firms. Those who recall those times will remember that there was very little money in preparing victims of crime applications so there was not a large amount of legal

expertise in this area. I was concerned that a number of our clients had not received the service they deserved. An additional problem was that our more vulnerable clients were intimidated by the law offices we sent them to even those of the labour law firms. My final hope with creating the Clinic was to improve the attitude of SECASA counsellors to lawyers. Their main experience with lawyers, when I first started at SECASA, was predominantly of defence counsel who had either cross examined clients aggressively or the counsellors themselves.

After some minimal discussion Adrian and I established a 12 month pilot for a joint legal clinic that was to apply for compensation utilising the criminal injuries legislation under the Criminal Injuries Compensation Act (1972). SECASA was to provide the referrals and support clients to attend the clinic. Clients were to be interviewed with a counsellor present for support. It is worth mentioning that many of our clients are extremely vulnerable and have long histories of sexual assault starting in their childhood. Four female students were carefully selected for their perceived ability to deal with sexual assault victim/survivors. The clinic was launched by Jan Wade, the then Attorney General.

Joint Legal Clinic launch



1995 was kinder time than now. The clinic was established with a handshake and a kiss and a hug. (There will be more about the hugs in a bit.) When the Clinic commenced we did not have a Memorandum of Understanding or an Agreement as we would need today. Lawyers from both sides had not spent hours working out the intricacies of who was responsible for what. Twenty years after the Clinic commenced Monash Health, who is SECASAS's auspicing body, were setting up a legal clinic in the hospital. They knew we had a Legal Clinic and asked if they could have a copy of the original documents for establishing the specialist legal clinic as a guide for their proposed clinic.. When there were told there was no original paperwork the bureaucrat who asked looked very puzzled and then said that it was fine if I did not want to give it to her. I said that they would have been welcome but that we had started the Joint Clinic on a trust basis. As I said kinder times.

The Joint Clinic has been in existence for 23 years.

Supervisor Meghan Butterfield at 20th Birthday Party



It is a tribute to Adrian's vision for innovative legal solutions and also his commitment to victim/survivors of sexual assault. It has survived

- Legislative changes including Jeff Kennett's attempt to destroy VOCAT
- Difficult magistrates
- Aggressive clients
- Counsellor who appear unable to get reports in on time no matter what the penalty from me

The clinic has undergone many changes including

- becoming part of Advanced Professional Practice at Monash Law
- moving from SECASA's office to Springvale Monash Legal Service
- having male and female students
- paying the student supervisor

The Clinic is, however, still true to Adrian's initial idea and provides our clients with a service that is not often duplicated in the private sector. The Clinic carries around 100 active files, has 3 groups of four final year law students doing Advanced Prof Prac and has 26 volunteer solicitors. Most of the volunteer solicitors are ex Monash students who did Advanced Prof Prac at the joint clinic.

A recent evaluation found that the clinic does better than the State average for awards which confirmed what I had always suspected and anecdotally knew.

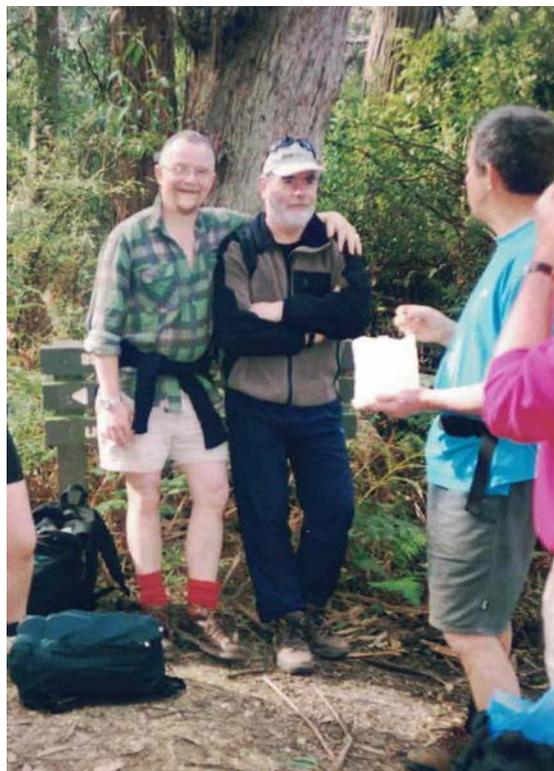
Now to bushwalking and hugs. Not long after the clinic started Adrian mentioned that he liked bush walking. He said that with a number of friends he walked to the lighthouse at Wilson's Promontory annually. He suggested I might like to come on the next trip with Peter, my husband. It sounded like a terrific idea so we agreed. There was no mention at the time of the 1 in 2 gradient on the final part of the walk, which I have got used to over the years, or the undulating nature of the bush path on the way to the lighthouse. I enjoy the walk and the days at the Lighthouse recovering and preparing for the walk back. The years I miss because of other commitments I feel as though I have been deprived of a great treat.

However, I want to mention one particular year when there had been a large law conference in Melbourne. Adrian, who is very inclusive and enthusiastic, issued the invitation to a number of overseas presenters at the conference who were clearly esteemed lawyers, and men of a certain age, to come to the Lighthouse the following weekend. I do not think those who said they would come had any idea what they

were being asked to do. I haven't mentioned before that it is a 20 kilometre walk with a number of steep climbs to access the lighthouse with the extraordinarily steep climb at the very end of the 20 kilometres. As we walked along the conference people were saying things along the lines of "I haven't been on a walk like this since I was 20." "It is very nice to get out of the City." This lasted for the first 5 or 6 kilometres then there was far less conversation. It was a miracle a couple of the walker survived without serious injury or a heart attack. And the reason for the weight of some packs became apparent. Adrian recovered with a nap. The next day we had all recovered and everyone look remarkably well.



My last comment is about the hugs. I love Adrian and miss seeing him regularly. I love his hugs. My husband, however, is hug averse. I am known to wander past him when a male friend is hugging him and say quietly hands off your sides and on their back. So I thought you would like this final slide of Peter having a small hug around the shoulders from Adrian whilst having a photo taken. Keep hugging Adrian it is good for all of us.



Adrian have a great time in the next part of your life and I am looking forward to the Lighthouse in 2019.

FAREWELL FOR ADRIAN

Speech given via video by

Professor Christine Parker, Melbourne Law School, The University of Melbourne.

christine.parker@unimelb.edu.au

Hi Adrian! Hi everybody! Sorry I can't be there. I didn't want to miss out on the opportunity to pass on my best wishes to Adrian and celebrate what he's been doing, and particularly in legal ethics. So I've made this video with the help of my husband, Simon Kerr.

I thought I'd tell you a little bit about what Adrian and I have done together and that's also a good advertisement for the third edition of our book *Inside Lawyers' Ethics* [shows book to audience – see photo].¹



I first met Adrian when I was doing my PhD on lawyers' ethics and the regulation of lawyers, and I had to interview all of the movers and shakers who were advocating for reform to the legal profession at the time back in 1995. Everyone said, 'Oh you must talk to Adrian Evans'. So I went to Melbourne; I talked to Adrian Evans. I can't remember what he said(!) but it obviously made an absolutely huge impression on me... About seven years later, I moved to University of Melbourne and I wanted a friend and a colleague to write a book with, so I emailed Adrian and said, 'Could we have lunch? I've got something I want to discuss with you'. He came and had lunch and I asked him to co-author what became *Inside Lawyers' Ethics* with me. I'd got the agreement of Cambridge University Press to do something a bit different to the normal law type text book, something a lot more practical and full of case studies, but still very scholarly. I knew Adrian was the perfect person to help me with that because I didn't have as much practical experience as he had.

So, I think what we did in this book really picked up a lot of the things Adrian had been doing and continues to do in contributing to lawyers' ethics and justice in the legal profession. He'd established and worked with the Latrobe University law clinic and then Springvale Monash Legal Service. He'd been helping people who had bad experiences with the legal system and also bad experiences with lawyers. He'd been teaching legal ethics. He'd been writing a regular column for the *Law Institute Journal* on legal ethics, and just generally advocating for justice in the legal profession. This book picked all those things up. But that doesn't really tell you the main thing which

is that Adrian has a unique combination of passion for justice and for doing the right thing, and compassion and care for people in real situations.

I think the best illustration of that is the number of times I've met somebody who was a student of Adrian's at the Springvale Monash Legal Service and they've remembered both the vision that he gave them but also the pastoral care that he gave them. I hope that that's reflected in the way that we write the book, and in the way that we taught legal ethics together at Monash and I continue to teach it at Melbourne University.

Now there's some things that we tried to do together that didn't work so well, like for example I think we tried about three times to get a research grant to look at ethics in large law firms, and that didn't work so well. We never got it -- although we did publish a special issue of *Legal Ethics* on lawyers' ethics in large law firms and a hard-hitting opinion piece on the topic.²

And also, as many of you know, Adrian has had a rather unpopular passion for years on the issue of how the interest on lawyers' trust accounts is used. I used to talk to people and mention Adrian and they'd roll their eyes when we got to the interest on lawyers' trust accounts because Adrian has a very strong sense of justice that that interest ethically belongs to the clients.³ Also, as a matter of justice, Adrian believes that government should be responsible for funding legal aid as a citizenship right, not as a matter of charity from lawyers. And I think he's right, he's convinced me of that over the years.

I know that Kate Seear has organised this event as a Festschrift that usually occurs when somebody retires but Adrian doesn't like the 'R' word – "retirement" – so that's not to be mentioned anywhere near Adrian. In fact *really* what he is doing is creating more time so that he can go and save the world from ecological destruction and fight for climate justice. I do remember him coming back from an International Bar Association meeting where Mary Robinson had spoken about the urgent need for all of us to do everything that we can do in the fight against climate change and she particularly encouraged lawyers to do something. In the latest edition of *Inside Lawyers' Ethics* we do include some discussion of those issues as part of the broader ethics for lawyers.

So, to finish off, I, and my lovely husband Simon Kerr, who is about to appear in this video, thought that we would sing a little song to inspire Adrian and all of you in the fight for climate justice (see photo).

*Let's have one last cheer for coal
It's done so much for humanity
But now it's clear it's simply mad
To burn more coal for energy*

*For reasons that are clear and now
It's time to say farewell
So cheerio, our old friend coal
Cheerio coal, cheerio*



Special Issue: Adrian Evans Festschrift

Well let's have one last cheer for Adrian

He's done so much for humanity

Now it's clear it's simply mad

To do administration for eternity

For reasons that are clear and now

Well he must save the world

So cheerio, Adrian, cheerio⁴

¹ Christine Parker and Adrian Evans, *Inside lawyers' Ethics*, 3rd edition, 2018, Cambridge University press, Melbourne.

² Christine Parker, Suzanne Le Mire and Adrian Evans (guest editors), special issue of *Legal Ethics*, 11(2), 2008 on "Ethical Climate in Corporate and Commercial Law Firms"; Adrian Evans, Linda Haller and Christine Parker, "McCabe case a lesson for all" *The Sunday Age* (Melbourne), 5 November 2006, 21. See also Christine Parker, Adrian Evans, Linda Haller, Suzanne Le Mire and Reid Mortensen, "The ethical infrastructure of legal practice in larger law firms: values, policy and behaviour" *University of New South Wales Law Journal*, 31(1), 2008, 158-188.

³ See Adrian Evans, "Professional ethics North and South: Interest on clients' trust funds and lawyer fraud. An opportunity to redeem professionalism." *International Journal of the Legal Profession* 3.3 (1996): 281-300.

⁴ Lyrics written by Simon Kerr, "One last cheer for coal", 2018. For more about this work, see www.musicforawarmingworld.org

Introduction:

(Graeme Hodge, Monash University)

What can we say about Adrian? We have heard many times this afternoon that Adrian is a person who has long been passionate about legal ethics, about virtues and about conflicts of interest; that he is an author and close colleague to many in the room; and that he is now retiring. I, for one, have valued his personal advice, his integrity and his wisdom. In fact when I think about it, he has spent much of this life advising others how to behave in difficult situations and how to live a better life. He has always handled other people with real care. I think we should turn the tables here and ask not what his advice is to us about a situation, but ask ourselves how each of us should behave towards Adrian as he enters a profoundly different period of life – retirement. Joshua Yuvaraj and I formed a group (last week) and called ourselves *The Travelling Strawberries* (with due acknowledgment to the slightly better known *The Travelling Wilburys*). This is our advice on how we should deal with Emeritus Professor Adrian Evans in the future.



HANDLE WITH CARE

(Adrian Evans Style)

He's been in Law and he's been around
He's been sent up, and he's been shot down
But he's the best thing that we ever found, So
Handle him with care

Associate Deans they are changeable (their)
tasks are barely tolerable
Maria you are adorable (For)
Hand'ling him with care (Now)

He's re-tired but he'll never be lonely (There's)
so much life he's yet to live
Won't you show him that you really care?

It was Cambridge Uni Press that they first tried on
Now that text book 'Lawyers Ethics' is relied on

He's been fobbed off, and he's been fooled
His sensitivity to conflicts has been ridiculed
Been teaching decades in Monash Law School
Handle him with care

(music break)

He's been stuck in airports, and been terrorized
In Faculty meetings he's been hypnotized (and)
Over-exposed, commercialized
Handle him with care (Now)

He's retired but he'll never be lonely (There's)
so much life he's yet to live
Won't you show him that you really care?

It was Cambridge Uni Press that they first tried on
Now that text book 'Lawyers Ethics' is relied on

Now there's no more uptight and there's no more mess
Ahead is bees and honey (and walking) I guess
Oh, the sweet smell of success
Handle him with care

SOME THOUGHTS . . .

Maria, Family & Friends

Thank you all for being Adrian's colleagues, collaborators and friends.

A few things you may not know about our Adrian, plus some family and friend thoughts.



Clinical practice on the home front

One morning as I'm rushing out the door at 5.30am,

Adrian says "I'm working from home today - how about I do Spaghetti Bolognese for dinner?"

"Sounds great. How about you put some spinach in it? There's lots in the vegie garden - just make sure you soak it and wash it several times - the snails like to hide in it."

Many hours later, we sit down for dinner, sprinkle the parmesan, take our first mouthful . . . crunch, crunch have we all broken a tooth at the same time?

The boys and I look at each other, pause, and then push our bowls to the centre of the table.

"Just what is in this Dad?"

The search begins. dozens of tiny snails."

Come for dinner sometime!!!

You are most welcome.

Ethics – On our weekends!

Over the years when Geelong has been in the finals, Adrian heads off to Monash for the Staff Grand Final Football Morning Tea - or whatever it is you have.

Dressed to kill in borrowed Cats jacket, scarf, cap, badges.

We need to let you know that he knows nothing about footy.

He's a total fraud!

We used to let him come with us.

He would sit in the stand reading the Age and then The Saturday Paper, every now and then, trying to tell us stories about corruption or similar.

A bit later, after noticing the ads around the ground, would come a lecture about alcohol and gambling advertising. Of course, we all totally agreed but "Would you just shut up for an hour or so? The game is on a knife's edge, Geelong is behind by 2 points!"

A bit later after seeing a screen shot of the AFL CEO, we would hear another mini lecture about the corporation that is the AFL . . . and being corrupted by gaming

companies! And yes, again we agree, for sure, but could we just watch the game please?

So now, we don't let him see the fixture, we don't tell him how much our memberships cost - we just head off.

He does however, pay for all the fun Cats clothing we buy for our grandchildren!

And there's a little PS: This year on Saturday mornings, during the AFLW, I would have ABC Radio on, and would often have to say . . . "Please be quiet . . . it's the Outer Sanctum Program."

"What's that?" he would ask!

Maybe to help Adrian live with a feminist he's in a Men's Group and for today the blokes collectively sent this message:

Adrian founded our Men's Group 30 years ago so we could all reflect and support each other on the broad range of experiences of being male in a changing world.

He is committed to taking action, driven by social justice and responsibility, including reducing the human environmental impact his house is almost independent from the grid!

It will be when he puts in a wind turbine!

He is disinterested in competitive physical pursuits **unless** facing the challenges of a hike. Indeed, he is seldom happier than when he's in the bush, with or without his gastronomic delight – tinned Spam!

Some messages to Adrian

Adrian's Friend Peter

When the definitive research is done on the history of the Man Hug, Adrian will rightly be credited as a pioneer. Although more commonplace now, Man Hugs could be fairly confronting in those early days. Adrian had the knack of delivering the right combination of affection and force. I even think that occasionally, when there were a few quiet cracks of the vertebrae, Adrian's Man Hug would realign the spine and improve the energy flow through the chakras. Quite a gift!

One of many he will bring into this new season of life.

Every blessing mate and a big hug.

Adrian's Friend Ray

Adrian - it has been a privilege having you as a constant and wonderful friend for more than 40 years.

A friendship spanning interests in ethics, world affairs, family matters, and especially what is happening to our planet.

Your integrity is beyond doubt and your compassion for others, an outstanding virtue.

We look forward to seeing more of you now!

Adrian's Sister Caroline says

Adrian you give so much of yourself to everyone with whom you come into contact.

You are a fantastic father and grandfather and a great brother to me – always listening and affirming of my abilities. I love you very much and am very, very proud of you.

Adrian's brother Richard

Adrian - stay strong in your knowledge of truth.

And lastly, a few messages from ours, and Jenny's, boys . . .

Impressive young men

Hugh

There's lots I could say about **Dad** as a role model, a teacher, someone who cares a lot about those less fortunate in life.

Growing up, Dad's sense of humour was right out of the "Dad's Sense of Humour" handbook, in fact he could have published his own edition, alongside his law books – maybe actually making money from a book.

I always hoped I would bypass this generic trait but I realize this humour is part of me too.

I'm very proud of my **Dad**.

Dan

Dad - I mostly remember you looking at me sternly over the top of your glasses, saying in a deep voice "Daniel!"

I am very proud that you have led a life walking your talk for the good of our society and our planet.

James

Dad you always tell us to vote for the Greens but you were seen last Saturday handing out How to Vote cards for Labor?

I think you are a most ethical professor - unless you find out that Aldi is owned by Woolworths and then you will be at a loss with nowhere to shop because poker machines are owned by everyone!

Dad you remain for me - the gold standard for doing the right thing in the world!

Angus

Dad you taught me a lot, not the boring stuff, but rather the important things – appreciation of good science fiction, trees, the environment new science, feelings.

I am very proud of you!

And from me

I too am very, very proud of you.

Adrian my best friend

My partner, my lover

What a ride we are on!

It sure is never boring!

Here's to lots more learning and fun.

How privileged to have you by my side.

Let us now listen to Adrian's favourite song

And your job - Adrian - is to think about:

- **why we are all proud of you, and**
- **why we all love you!**

FESTSCHRIFT COMMENTS

**Adrian Evans, Emeritus Professor,
Monash University, Australia**

There is an unfair stereotype comparing medical students and law students. Medical students commence as healers and often wind up as determined capitalists, while law students begin with dreams of successful commercial careers, and wind up as...?



Our job as justice educators is to encourage the humanity and compassion of future lawyers - and particularly in such a way that they make the jump in connecting those qualities to the idea of justice. And in an intensive, live-client, poverty law clinic we have the best possible methodology to achieve that leap. Sometimes students 'get it' instantly, but most take some months and I think, benefit most when as teachers and practitioners, we articulate early on to each student the requirements of the individual case against the justice architecture. When this process works well, their flourishing also impacts strongly on their clients' sense of hope.

Watching students connect these dots has given me the most joy, even when the medium was tragic. I recall a student at Monash's clinic at *Springvale Legal Service* in

Melbourne who related, in a distressed manner, the story of a client they had just interviewed in the waiting room, a young mother with small children around her feet. She said she had nothing to feed them because her partner had been sucked into the addiction machine of the infamous Crown Casino, and lost their savings. Our student asked the question: 'Why was (and is) our state government so willing to see such pain inflicted by the Casino, for the sake of its tax revenue and its budget?' That led to a long discussion about the classic ethical dichotomy of governments - the end-justifies-the-means *versus* 'do no harm' - and later on, enough contextual confidence for the student to go back to our client and talk about how to support her financially and in her relationship. And then that student became part of a community development team at Springvale, which examined and advocated around the Casino's political manoeuvre supporting so-called self-exclusion orders for addicted gamblers.

Many clinicians have similar experiences. Their stories, in this journal and others, encourage us and perhaps sustain us. *Doing clinic* – ideally with clinician friends who are also looking for justice connections in each student and in each client's case - is exciting and nourishing, and it can make a profound difference to human beings in need, as well as graduating the sort of lawyers who can powerfully support the social imperative for justice.

Clinical legal education is comparatively costly if it is effective, but its' position within justice education makes that expense worthwhile many times over. Both clients and future lawyers can develop a practical understanding of and respect for the Rule of

Law in an age when many can see the concept as old and tired, or just plain irrelevant. With both our climate and global inhumanity now taking over as dominant moral (if not survival) agendas, I see clinics - and a renewed emphasis on ethical fluency - to be the major upcoming challenges for the legal profession. And I plan to be active in both. Encouraging university leaders and education regulators to see the win-win in clinical and justice education and resource our law schools accordingly, is my recipe for at least some human happiness and justice.

DESIGNING AND IMPLEMENTING AN ENHANCED CLINICAL PROGRAM IN THE AGE OF DISRUPTION. PART ONE: THE ENVIRONMENT FOR CLINIC

Professor Bryan Horrigan¹

Clinical legal education (CLE) has become a transnational project with a borderless community of expertise and support. No contemporary discussion of the globalisation of legal education and training is complete without



appropriate reference to CLE.² The annual conference of the *International Journal of Clinical Legal Education* in different corners of the globe is a testament to CLE's evolved global state and reach. Far from being a niche area of legal education and law school activity, on a grander scale CLE forms part of the ecosystem of socio-economic justice and broader access to justice under the rule of law, in ways explored in this article.

Accordingly, this two-part article takes as a starting point the inherent value of CLE, existence of a global community of CLE practice, and extensive body of pedagogical

¹ BA, LLB (Hons) (Qld), DPhil (Oxon); Dean, Faculty of Law, Monash University, Melbourne, Australia. I am grateful to Emeritus Professor Adrian Evans for comments, Jarryd Shaw for research assistance, Elaine Hall for creating and assisting with diagrams, and the anonymous peer reviewers for comments. All responsibility is mine.

² E.g. W. van Caenegem and M. Hiscock (Eds), *The Internationalisation of Legal Education: The Future Practice of Law*, 2014 (Edward Elgar, Cheltenham UK and Northampton MA, USA).

and other scholarship about CLE by individual lawyers across all arms of the legal profession. It addresses from an Australian decanal perspective some of the less extensively explored aspects of CLE beyond its pedagogy, practice, and range, through the lens of contemporary law school environments under pressure from numerous disruptive forces confronting the university, legal services, and community legal sectors.

This article begins by locating CLE in law schools within the evolving societal and regulatory contexts for access to justice, before moving to a particular institutional example of how to expand and otherwise enhance a CLE program – the ‘Clinical Guarantee’ offered by the Faculty of Law at Monash university. It ends by connecting that earlier discussion to broader questions about the involvement of law schools and CLE in contemporary lawyering, democracy, and social justice.

In doing so, this article joins others in this collection in honouring Emeritus Professor Adrian Evans, based upon the Festschrift celebrating his work and contribution to the international CLE community at the 2018 Melbourne conference for the *International Journal of Clinical Legal Education*. At that conference, I was honoured to make public the news that Monash University had conferred the title of emeritus professor upon Professor Evans, to take effect upon his formal retirement at the end of 2018. Emeritus Professor Evans thereby becomes the first emeritus professor from and associated with the clinical program at Monash University’s Faculty of Law. His outstanding contributions over his career to international scholarship on legal ethics, clinical legal

education, and contemporary lawyering³ are matched only by his equally outstanding service, collegiality, mentoring, and care for his colleagues, students, and CLE community colleagues.

Access to Justice and CLE⁴

Access to justice is a fundamental political and legal issue in both developed and developing countries. It is co-existent with concerns for human rights, requirements of effective legal and judicial systems, conditions for the rule of law, and evolving features of democracy, in ways explored further below. Arguably, the societal need to ensure adequate access to justice has never been more acute, given the current global inability to organise effective collective action or even litigation to address the emergency of climate change, with ripple effects for battles over water rights, modern slavery, political destabilisation, corporate inaction and abuse of power, migratory movements, and burgeoning refugee numbers. To that extent, access to justice is also connected to one or more of the world's Sustainable Development Goals (SDGs).

The local and transnational significance of access to justice in countries that say they subscribe to the rule of law is captured in a speech by (former) Chief Justice Marilyn Warren from the Supreme Court of Victoria, as follows:⁵

³ E.g. A. Evans, *The Good Lawyer: A Student Guide to Law and Ethics*, Cambridge University Press, Melbourne.

⁴ Parts of this section use and amplify material first presented by the author at the annual Council of Australasian Tribunals (COAT) Conference in 2016.

⁵ Chief Justice Marilyn Warren, 'The Access to Justice Imperative: Rights, Rationalisation or Resolution?', Eleventh Fiat Justitia Lecture, Monash University Law Chambers, 25 March 2014, at p 4.

A recent international report on access to justice noted that in OECD countries ‘for many today the law is not accessible, save for large corporations and desperate people at the low end of the income scale charged with serious criminal offences’. In other words, only the very rich and the very poor can readily access representation in the courts.

In short, if you find yourself needing to engage with a court or tribunal, you cannot afford a lawyer, and you do not qualify for publicly funded legal aid (which is never able to cover every legal need and is more thinly spread than ever), presently your remaining options are largely confined to seeking assistance from a community legal centre (CLC) or law school-supported legal clinic, or doing it yourself – hence the growing significance of the topic of self-represented litigants. Yet access to justice is imperfectly realised at best and a meaningless mantra at worst if justice is not really accessible to most people because they are neither corporations who can afford it nor criminal defendants in a trial.

CLE provides a clear pathway towards enhanced access to justice. In *The Good Lawyer*, Professor Evans defines and personalises CLE and its fostering of lawyerly values for law students in the following way:⁶

(Y)our own emotional intelligence, client sensitivity, understanding of how the law works in practice, ethical judgment, and, through a *real* personal experience

⁶ Adrian Evans, *The Good Lawyer*, 2014, Cambridge University Press, Melbourne, at p 12; original emphasis.

of social inequality, a sense of compassion for victims of injustice [are] qualities [that] are developed by best practice clinical legal education (CLE) – a form of work-integrated learning (WIL, also known as ‘service learning’ or ‘learning by doing’) that puts law students in a position of responsibility for real clients who are facing immediate and demanding legal problems. CLE has been endorsed by the Council of Australian Law Deans (CALD) and *Best Practices for CLE* have been identified for law schools that offer such programs.

CLE is now much more than just an aspect of university education for aspiring lawyers. It has systemic, professional, collaborative, and community significance too. Key recommendations from the Australian Productivity Commission Report, *Access to Justice Arrangements* (‘A2J’), are illustrative of this multi-dimensional significance of CLE. Recommendation 7.1 says:⁷

The Law, Crime and Community Safety Council [i.e. the successor to the Standing Committee of Attorneys-General], in consultation with universities and the professions, should conduct a systematic review of the current status of the three stages of legal education (university, practical legal training and continuing professional development). The review should commence in 2015 and consider the:

⁷ Australian Productivity Commission, *Access to Justice Arrangements: Productivity Commission Inquiry Report* (Report, Volume 1 No. 72, 5 September 2014) 46.

- appropriate role of, and overall balance between, each of the three stages of legal education and training
- ongoing need for each of the core areas of knowledge in law degrees, as currently specified in the 11 Academic Requirements for Admission, and their relevance to legal practice
- best way to incorporate the full range of legal dispute resolution options, including non-adversarial and non-court options, and the ability to match the most appropriate resolution option to the dispute type and characteristics into one (or more) of the stages of legal education
- relative merits of *increased clinical legal education* at the university or practical training stages of education
- regulatory oversight for each stage, including the nature of tasks that could appropriately be conducted by individuals who have completed each stage of education, and any potential to consolidate roles in regulating admission, practising certificates and continuing professional development. Consideration should be given to the Western Australian and Victorian models in this regard.

The Law, Crime and Community Safety Council should consider the recommendations of the review in time to enable implementation of outcomes by the commencement of the 2017 academic year. (emphasis added)

First, these sadly neglected recommendations rightly call attention to the need for both taking stock and developing a more nuanced view of what range and level of legal education and training should occur at each of its three discrete stages of university career, practical legal training (PLT), and continuing professional development (CPD). Secondly, all of CLE, ADR, and related work-situated education and training are together mainstreamed as core components of legal education and training for each of those three phases of legal education and training, as a joint or collective responsibility for the various arms of the legal profession at different points in a qualified lawyer's lifelong learning and career.

Thirdly, the significance of CLE as one prong of such a review is reinforced by the mainstreaming of CLE within standard legal education at university and its heightened relevance for law school accreditation, law school competitive positioning, law student and university expectations, law student employment prospects, and employer and community expectations of job-ready law graduates. Fourthly, these recommendations crystallise the relevance of a large group of equal stakeholders – government, courts, law schools, the legal profession, the legal aid community, CLCs, and accrediting and funding bodies – in forming a key constituency and network for improving how legal education and training advances the community's growing access to justice needs. In that enterprise, such a multi-constituent community also plays important professional, institutional, and societal roles that connect CLE to access to justice, contemporary democracy, and the rule of law.

Finally, such recommendations go to the heart of what law schools can do in making CLE part of the university student experience, through initiatives such as CLCs as well as partnerships with courts and tribunals that also serve the wider public interest in enhanced access to justice. Commencing from 2018 onwards, the Monash Faculty of Law has started implementing a 'Clinical Guarantee', whose origin and implementation are outlined further below.

We have also opened a CBD clinic for the first time in our Faculty's proud history of CLE, and 'Monash Law Clinics' – our new clinical identity – now operate in suburban, CBD, and overseas locations. Our range of clinics has expanded beyond criminal law, family law, and general practice, to embrace international trade law, corporate governance and social responsibility, modern slavery, family violence, small business, public commissions and inquiries, and death penalty cases in the Asia-Pacific region, with further areas of coverage and expansion planned in successive phases of implementation.

'Think Globally, Act Locally' – The Monash Law Experience

The world-class law school that I have the privilege to lead pioneered CLE in Australian university legal education almost 50 years ago, and aims to continue leading the way in CLE training, research, and innovation. Ours was the first law school in Australia to have a clinical program and clinic-based experiential legal

education.⁸ As described by Professor Jeff Giddings in his landmark text on CLE (long before he joined our law school as a staff member), the Monash Law Faculty established a model since followed by other Australian law schools that combines four key ingredients – law school involvement in CLE, through ‘a live-client clinic’, located in ‘a community legal aid setting’, and drawing upon ‘a mixture of funding sources’.

9

The Monash Law Faculty now pursues its involvement in CLE by funding and staffing three CLCs¹⁰ with extensive CLE programs,¹¹ providing work-situated student placements with courts and other organisations,¹² modelling relationships between courts and lawyers in delivering access to justice for local communities,¹³ spreading

⁸ J. Giddings, *Promoting Justice Through Clinical Legal Education*, 2013 (Justice Press, Melbourne), at p 163.

⁹ J. Giddings, *Promoting Justice Through Clinical Legal Education*, 2013 (Justice Press, Melbourne), at p 163.

¹⁰ Monash Law Clinics @ Clayton (formerly Monash Oakleigh Legal Service (MOLS)), Monash Law Clinics @ Melbourne CBD, and Springvale Monash Legal Service (SMLS) – the first two wholly funded and managed by the Faculty of Law, with some Australian Government and Victorian legal aid funding support.

¹¹ LLB students and JD students who meet eligibility requirements can do an elective clinical unit of one kind and duration or another, for course credit.

¹² More than 300 Monash law students each year benefit from a variety of work-situated experiences in legal clinics, internships, and externships that are organised by the Monash Law Faculty and its centres with community legal centres, law firms, courts, other legal organisations, and NGOs in Australia, Asia, Europe, and North America.

¹³ Although well-developed in the USA, student appearance regimes are still relatively novel developments elsewhere. The long-term development of relationships and trust between local courts, local lawyers, and the Monash Faculty of Law’s community legal clinics has reached the point where local courts by leave permit students to represent needy clients in court under the supervision of a qualified legal practitioner. In practice, very few requests for such leave to appear are refused by judicial officers. Many alumni and local lawyers who are familiar with this system offer to provide such supervision in court to enable this form of in-court student involvement in facilitating access to justice for people who cannot afford it and do not receive any legal aid.

the lessons of CLE to international audiences,¹⁴ and facilitating communities of practice for academic scholarship and expertise devoted to CLE.¹⁵

As an organisation with collective responsibility for thousands of clients and their families who cannot afford a lawyer and who do not qualify for free public legal aid, and with a significant stake in three of Victoria's active community legal clinic sites of operation, the Monash Law Faculty is also a major stakeholder in access to justice and governmental, professional, and community debates about it. Accordingly, the Faculty made a submission to the Victorian Government's 2016 *Access to Justice Review* and participated in follow-up governmental discussions aimed at implementing its recommendations, together with CLCs and other stakeholders. It is another illustration of what CLE-engaged law schools contribute as participants in a broader ecosystem of legal and policy reform in a fair and just society.

Strategic and Resourcing Implications of 'The Clinical Guarantee'

In 2017, the Faculty made a public commitment to have a 'Clinical Guarantee' for its law students. The journey towards this public commitment is instructive. It was

¹⁴ Two-way international exchanges of clinical legal training and expertise are provided through a variety of means in the Monash Law Faculty's CLE program. A Visiting Clinical Scholar scheme funded by the Susan Campbell Memorial Fund provides for a period of residence with the community legal centres for an international expert in clinical legal training and scholarship. In addition, the model of CLE pioneered at Monash Law has recently been the subject of site visits and exchanges involving judges, legal practitioners, legal academics, and law students from countries such as Vietnam and Indonesia. The lessons of the Family Law Assistance Program (FLAP) are being shared with local courts, lawyers, law schools, and communities in Indonesia through a publicly funded research project in partnership with other organisations.

¹⁵ For example, see the various contributions to CLE training and scholarship by the Monash Law Faculty outlined in: Jeff Giddings, *Promoting Justice Through Clinical Legal Education*, 2013, Justice Press, Melbourne.

neither accidental nor easy. Under the Clinical Guarantee, all commencing undergraduate law and JD students from 2018 onwards who want and qualify for it have the opportunity of at least one clinical experience during their law degree for course credit. It gives them real-life work experience and inculcates an ethic of service and professionalism, while doing something that also contributes to access for justice for those most in need of it. So, a natural starting point for this discussion is the strategic significance of embedding CLE in a law school's DNA and at scale.

Many clinical legal academics and practitioners across the globe operate with scant resources and support, toiling largely alone with the help of a few like-minded academic colleagues and local lawyers if they are fortunate. While passionate about the value of CLE, their particular clinic(s), and the importance for their students and community clients, they often operate with less than fulsome understanding, recognition, and support from their other academic colleagues and institutions. The dividing line between clinical legal academics and other legal academics reflects deeper gulfs in orientation, experience, and valuing between legal theory, substantive law, and legal practice.

How do a law school and its management and staff bridge this divide, if it is a reality to any extent for their constituency? More significantly, how is CLE embedded in a law school's DNA and at scale from an institutional and strategic perspective? Every dean at every law school anywhere in the world with a CLE program could offer something of value about the numerous paths available and the issues to be navigated

on that journey. Some of those lessons will be bespoke to a particular law school in question, and others will need sorting as different species of the same genus, given the various permutations of legal clinics that are possible. Still, some broader patterns and common themes are discernible.

Documenting and analysing such things from the reflective standpoint of those charged with the care of a law school and its experiential education is just as valid and necessary an object of legal scholarship as anything else,¹⁶ although it is not as voluminous as other aspects of CLE and broader legal scholarship. To that extent, this article also seeks to fill a gap in the literature.

First Big Step – Strategic Alignment and Positioning

The first big step in developing and launching something as ambitious and extensive as Monash Law's Clinical Guarantee lies in strategic alignment with institutional values and history, strategic priorities, and competitive differentiation from other law schools. Like many law schools, ours has a long-standing commitment to social justice, community lawyering, and access to justice more broadly. As a law school founded from the outset to be innovative and different from more traditional counterparts, engagement with CLE became an important way of translating those values into reality.

¹⁶ Eg M. Coper, 'My Top Ten Tips for Good Deaning' (2012) 62:1 *Journal of Legal Education* 70; and M. M. Barry et al, 'Exploring the Meaning of Experiential Deaning' (2018) 67:3 *Journal of Legal Education* 660.

Our publicly declared ambition as a law school is to have the leading blend of international, clinical, and technological expertise for our educational and research audiences in Australia's near region. Victoria is a full legal education market, with eight accredited law schools, not all of which offer both an LLB and a JD as equal pathways to admission as a legal practitioner, and none of which have anything approaching the scale and resourcing commitment of the Clinical Guarantee, as a differentiating feature in the increasingly competitive world of attracting the best students from all backgrounds and destinations. In short, CLE and the Clinical Guarantee are a good fit for our past history, present circumstances, and future trajectory.

Second Big Step – Resourcing and Implementation

The second big step is to plan and resource such a large-scale clinical commitment. Everyone knows that the best laid plans can come unstuck if their implementation and resourcing are not adequate. For something as strategically significant and resource-intensive as the Clinical Guarantee, with a need to bring both faculty and university stakeholders on board, and without sufficient business development capability in-house, we developed a brief for and with external consultants on the business case assessment for the Clinical Guarantee, with a multi-year projection, phased implementation, and return on investment. Most importantly, especially in convincing academic sceptics and building cross-institutional consensus internally, we had strong support and guidance from our alumni and the representatives of

various arms of the legal profession on our External Professional Advisory Committee.

Strategic Business Case to Convince All Stakeholders

In terms of normal institutional politics, the strategic business case was an important step in socialising such an ambitious and resource-intensive proposal at both university and faculty levels, including within the internal clinical community. The business case rests upon a mixed funding model, with contributions from each of the annual operating budget (funded largely by student teaching income), a dedicated philanthropic and alumni campaign as part of a broader university-level fundraising campaign, and retained strategic investment funds based upon annual surpluses from exceeding university-set budget targets, in addition to pre-existing annual governmental funding for clinical programs providing access to justice. Such a mix of funding is essential in an national tertiary sector environment that lacks widespread institutional endowments and a culture of alumni philanthropy (as in the USA), and without recourse to other regulated funding mechanisms, such as access on public interest grounds to interest accrued on funds held in trust for clients by their law firms.

Institutional and Other Funding

At the same time, no institution could move quickly or easily from not having a CLE program to having something like the Clinical Guarantee, at least not without a dedicated multi-million-dollar bequest or donation to that effect anyway. Long before

our law school entertained the idea of the Clinical Guarantee, we already made regular multi-million-dollar commitments annually to prioritising and resourcing our existing CLE program, and to supporting our involvement in more than one CLC. A natural result of our involvement in more than one CLC, and our status within Victoria and Australia as a leading 'player' in delivering access to justice to thousands of people who are most in need of it, is a recent move towards one Monash law identifier (or 'brand') for our clinical efforts across various locations and with multiple partners.

Other important sources of pre-existing institutional funding support come from individuals and foundations in philanthropic donations, a dedicated faculty fund whose interest supports small annual bids from each of our CLCs in rotation, and the publicly supported Sue Campbell Fund.¹⁷ The latter honours the memory of one of the pioneers of our CLE program and facilitates visiting CLE experts from overseas and an annual oration in her memory that brings together the local clinical community – another aspect of our broader leadership role in this field as a leading clinically-orientated law school.

Every single alumni I meet who went through our CLE program almost always says that it was the most valuable experience of their university legal education, not least in making law real and come alive for them, and often in stimulating life-changing

¹⁷ The late Sue Campbell was one of the pioneers of Monash Law's clinical program: see Richard Fox and Adrian Evans, 'Clinical in legal teaching to get justice', *The Age* (Melbourne, 18 April 2011) 12.

career choices because of their clinical experience. Still, most of those alumni went through law school when student numbers were smaller and anyone suitable who wanted a clinical option got one. Those alumni are taken aback when I report that we are not able to provide the same life-changing clinical experience for all suitable current students based just upon governmental and university funding, and without their philanthropic and in-kind support.

Leadership and Recruitment

Another key component of resourcing CLE generally and the Clinical Guarantee in particular from a decanal perspective is the attraction and retention of appropriately skilled staff and partners. Resourcing and replenishing leadership in the clinical space is just as significant as other faculty recruitment and leadership capacity-building. In terms of Faculty governance and resourcing, the clinical program straddles functional and enabling portfolios servicing education, research, academic resourcing, engagement, and finance. So, academic and professional leadership is critical in ensuring the clinical program's success. In this context, as deans come and go, it is important in gaining traction to have broad university support for CLE as the exemplar of WIL in law, so that CLE initiatives are maintained throughout successive deanships.

In the lead-up to developing the Clinical Guarantee, the Faculty introduced new clinical leadership by creating roles such as the Director of Work-Integrated Learning and Placements, with Associate Professor Ross Hyams – one of our most experienced

clinicians and lecturers – becoming the inaugural holder of that role. Starting with a platform of dedicated and passionate clinicians, we also recruited a renowned Australian and international leader in CLE and ADR (Professor Jeff Giddings) to develop and steer the team implementing the Clinical Guarantee, backed with additional recruitment of new ongoing staff with CLE management and supervisory experience. That additional recruitment includes, for example, some part-time staff from the broader legal profession (e.g. with practical experience in family law) and partner organisations (e.g. a supervisor from The Capital Punishment Justice Project (formerly known as Reprieve Australia) to supervise the pilot anti-death penalty clinic).

Most pleasingly, the demonstrable prioritisation of CLE through the Clinical Guarantee and the need to have sufficiently diverse clinical options to cater for student demand have together resulted in some existing academic staff with relevant substantive law expertise being willing to become involved in and learn about CLE as part of their teaching allocations. Other existing academic staff have looked for new ways to include a clinical component in classroom learning and assessment. The resulting ripple effects have been a more diverse range of topic areas for clinics, an increase in the number of both staff and students involved in clinics, and a cross-fertilisation of the clinical and non-clinical constituencies within the Faculty.

Soon after his arrival, Professor Giddings was also appointed as the Associate Dean (Experiential Education) and – through that appointment – a member of the Faculty

Executive Committee, commensurate with such roles elsewhere, and hence with a key seat at the table where decisions are made about faculty-wide strategic priorities, resourcing, recruitment, and external engagement. His appointment added new leadership and perspectives for the existing cohort of committed and passionate clinicians. It also required us to take the professionalization of our approach to managing the clinical program to another level, in terms of examining the inter-relationships between the various management roles within the expanding clinical program and locations.

Clinical Spaces and Amenities for Staff, Students, and Clients

The penultimate aspect of resourcing concerns the physical space and amenities provided for clinicians, supervisors, other staff, students, and clients. In committing to the Clinical Guarantee, we also made the case at University level for centrally allocated capital expenditure to expand and upgrade the available space for clinics at our two wholly funded and operated CLCs. Again, the strategic positioning, competitive differentiation, and demonstrable business case were all critical in securing central funding and support.

The three-year roll-out of the Clinical Guarantee commenced in 2018. Most importantly, the Faculty of Law expanded its own clinical facilities and locations, while also developing new external relationships and potential clinical partners. By the end of the first-year of the roll-out of the Clinical Guarantee, the Faculty (with University support) had committed capital expenditure to expand its existing clinical

facilities at the Monash-Oakleigh Legal Service (now known as Monash Law Clinics @ Clayton), and established a Melbourne CBD clinical presence for the first time in the Faculty's history, mainly for JD students who already take classes and have physical studying and collaborative space as a cohort elsewhere in the same building. As part of other capital expenditure to improve and modernise physical amenities for staff and students, we designed and built a new multi-functional and state-of-the-art Moot Court with embedded technological capability, which also functions as a clinical space for face-to-face clinics, virtual clinics, and live teleconferencing between cohorts of students and clinicians at our various clinical locations.

Clinical Criteria and Roll-Out

At the same time, the range of internships, externships, clinics, and other placements were all re-examined through the lens of core criteria for being part of the Clinical Guarantee. As a result, some were upgraded to meet those criteria, and some were treated as alternative or incubating experiences for students who might later undertake a genuine clinical experience of sufficient duration, commitment, supervision, and client-based focus to meet the criteria.

Some clinical opportunities are first tested for viability as pilots through a generic clinical externship unit, especially where external partners are involved for the first time. There are also some specialised clinics – sexual assault and family violence clinics, for example – that work best when they are staffed by students who have

already experienced a 'general practice' clinic and are assessed by clinical supervisors as being accomplished in a particular specialisation.

Other clinics that demonstrably meet the criteria for a high-quality clinical experience from the outset can be established and categorised as such. In addressing the inevitable demarcation issues and making the necessary judgment calls – eg is it a pilot clinic or is it a placement? – the leadership, dialogue, and collaboration amongst and between clinicians and academic managers such as the Associate Dean (Experiential Education) and the Director of Work-Integrated Learning and Placements, for example, are essential ingredients for success.

By the beginning of 2019 (ie the second year roll-out in implementing the Clinical Guarantee), as we headed towards increasing the number of clinical opportunities to deliver the Clinical Guarantee, the expanded clinical program began to take shape on three fronts simultaneously. First, the numbers of LLB and JD students collectively increased in the core and long-standing clinical programs conducted at Monash Law Clinics @ Clayton (ie near the main university campus), Monash Law Clinics @ Melbourne (i.e. our CBD clinic, on a new and dedicated clinical floor of the building where we conduct our JD, LLM, and professional seminar activities, in the heart of the judicial and legal precinct), and the Springvale Monash Legal Service.

Secondly, a large number of new clinics were established with external organisations, many of them as pilots in their initial year. As a result, a law school whose clinical experience and reputation was grounded firmly in family law practice, criminal law

practice, and general practice, and pursued conventionally through subjects entitled 'Professional Practice', 'Advanced Professional Practice', and the 'Family Law Assistance Program' (FLAP), found itself piloting clinics in an expanded range of subject areas, some in collaboration with clinical supervisors or co-supervisors from other organisations, and some with an international dimension as well.

Initially, those pilots included new areas as diverse as trade law, public inquiries and commissions (in conjunction with the Australian Law Reform Commission (ALRC)), and death penalty case-work and clemency appeals – the latter in collaboration with The Capital Punishment Justice Project, as one of the first steps in a broader partnership to develop a region-first Institute and southern hemisphere hub as part of a global network doing research, advocacy, and case-work aimed at universal abolition of the death penalty in our time. Others in development extend beyond the traditional and local focus of CLCs (eg a regionally focused modern slavery clinic), without diluting the core commitment to social justice and access to justice for a range of local community constituencies.

Managing Drains on Resourcing

The final aspect of resourcing is one that often dare not speak its name, and which deans and associate deans can experience more acutely than others. Time, energy, and focus are all valuable and scarce commodities in university life, for individual academics as well as academic and professional staff managers. Regrettably, one aspect of resourcing is the adverse impact on available management capacity in terms

of those commodities, due to change-resistance and sometimes active undermining by those with other agendas and axes to grind, beyond reasonable disagreement and differences of views. Deans who do not bend easily to the demands, power plays, and timelines of others, even those who ostensibly support CLE, can spend time and other resources managing such things that are otherwise better spent on active development of clinical and non-clinical opportunities for a law school's various constituencies.

At the same time, it is always both necessary and desirable to spend some time and resourcing dealing with reasonable levels of understandable anxiety of non-clinicians about feared diversion of scarce resources away from their areas, consensus-building and bridge-building across a diverse faculty for something as ambitious as an expansion of a clinical program, and even steering clinicians who benefit from an expanded clinical focus towards new ways of thinking and working in the clinical space. In my experience, the matters outlined above can all be considerable and time-consuming challenges.

Third Step – Organisational and Individual Alignment and Culture Change

The third big step is organisational (and cultural) realignment, normalisation, and prioritisation of CLE in the everyday policies, processes, and practices of a law school as an academic (and business) enterprise. Legal academics commonly relate to the everyday business of a law school through the individualised lens of what it means personally for them in terms of employment category, formal workload allocations (including allocated roles), promotion and developmental opportunities, recruitment

in their area of teaching and research interest, access to resources (including funding for research sabbaticals), and institutional and team recognition. Mindsets, attitudes, behaviours, and hence organisational cultures are set (and reset) accordingly.

Ideal Position

The challenges here are familiar and long-standing ones for most law schools with a clinical program, but they are rendered more rather than less acute when the clinical program expands, gains traction, competes with others internally for resources, creates personal career development opportunities, requires significant time in upskilling (for clinicians in new clinics and new ways of working, and for non-clinicians in 'learning the trade' of clinical supervision and work), and achieves an elevated institutional priority, with all of that being seen through the individualised career-orientated lens of both clinicians and non-clinicians alike. The ideal position is one where all of the following hold true:

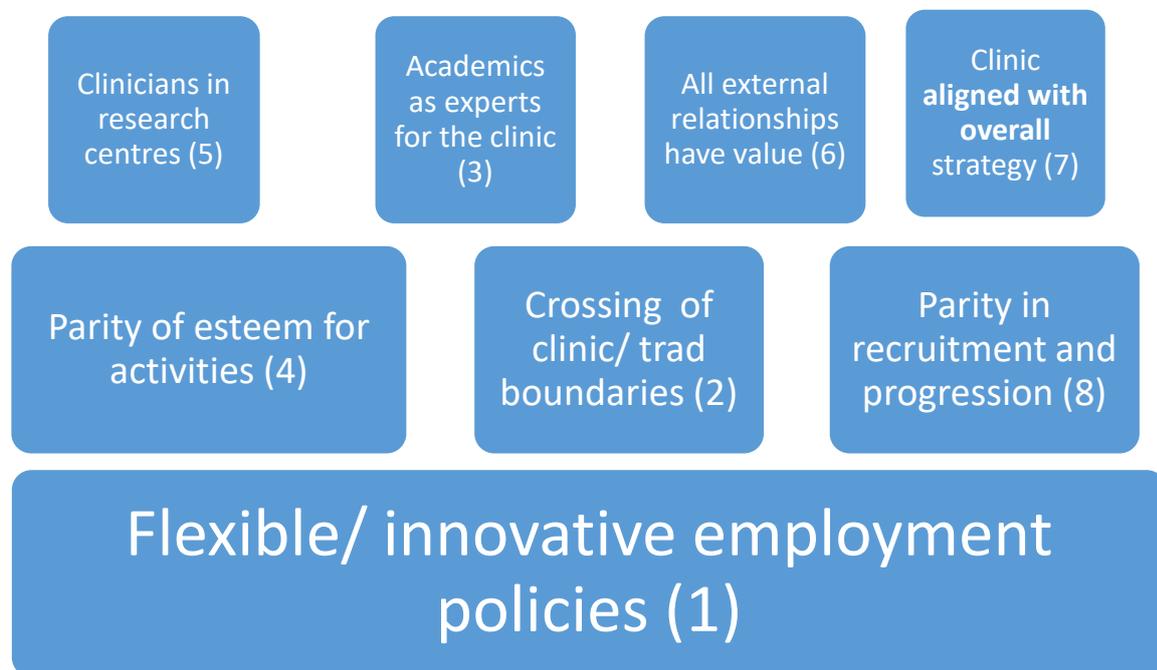
- (1) Institutional employment policies and categories, and their correlative functions and performance criteria, are sufficiently flexible or innovative to accommodate what is needed to build and enhance a clinical program, with a combination of bespoke ongoing positions (eg clinical positions that are differentiated in some way from teaching-research positions) and part-time positions (eg part-time professors of practice, to optimise recruitment and engagement of senior members of the legal profession);

- (2) A significant number of non-clinicians become more involved in clinics, and a significant number of clinicians become more involved in non-clinical faculty work, with experiential, career developmental, and other benefits on all sides;
- (3) Academics with relevant subject matter expertise make that available where relevant to clinical supervisors and students whose client-based work relates to that subject matter;
- (4) Equal parity of esteem applies to clinical and non-clinical supervision, scholarship, and external engagement;
- (5) Academics working in the clinical space secure competitive research grants and fellowships, take research sabbaticals, and become involved in research centres and groups that complement (but are not limited to) their clinical work;
- (6) The external engagement links that most law academics foster in their fields of research and work become contacts to leverage for potential clinical partnering possibilities too;
- (7) Alignment is achieved between what happens in the clinical domain and a faculty's overall strategic directions, profile-raising, philanthropy, and relationship-building (as in the case of our pilot anti-death penalty clinics and progress towards the establishment of a region-first institute focused upon abolition of the death penalty in Asia); and
- (8) Faculty recruitment, sabbaticals, workload allocations (for teaching and service), education performance standards, and research performance standards are all sensitised to clinical and non-clinical academic work and career progression.

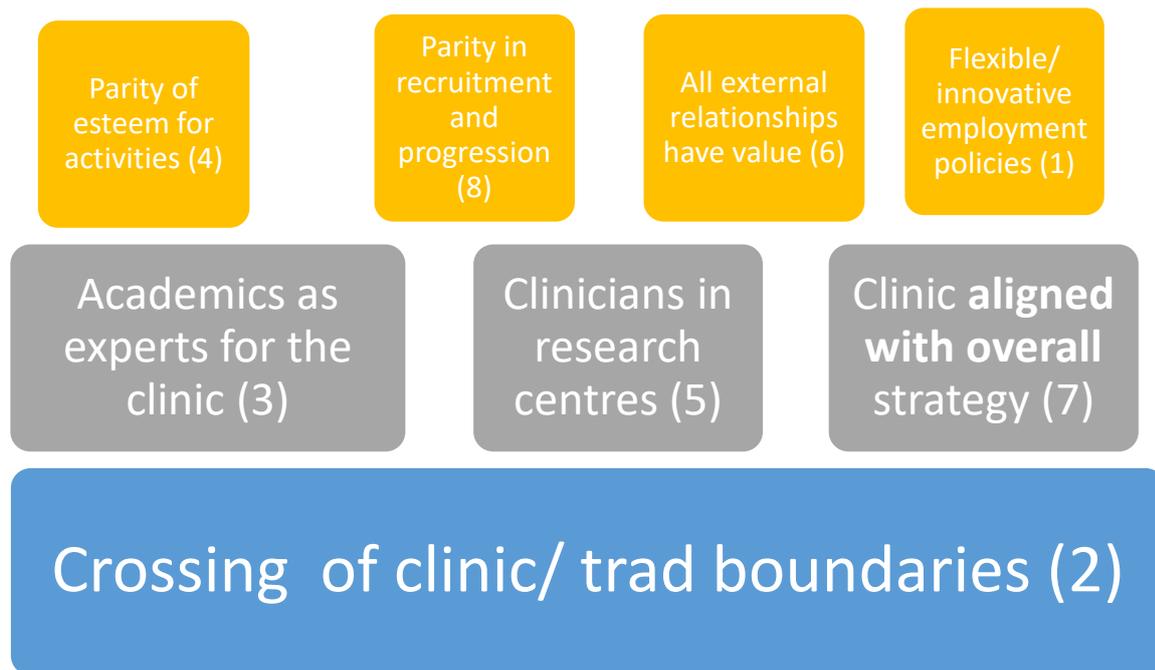
In the real world, of course, ideal conditions rarely occur. Prioritisation, platforms, planning, progression, and pathways – i.e. the five Ps – help in navigating real-life conditions. Institutionally, conditions that create strategic institutional alignment, flexible categories of employment and workload allocation, and parity of esteem and opportunity (including career progression, sabbaticals, and resourcing) become foundational platforms for pathways of education, research, and engagement involving clinicians. As a clinical program matures in its profile, scope, and outreach, translation of external networks and links into client-related public advocacy, research grant collaborations, institutional and centre-based networks, and organisational partnering become developmental opportunities for clinicians and their students.

Where conditions are not ideal, or clinicians face something less than a receptive institutional reaction to clinical plans, obviously choices need to be made. However, those choices are not necessarily limited to sacrificing pursuit of any of the eight ideal conditions outlined above. Nor are they limited to focusing upon internal links rather than developing external links, or pursuing educational initiatives at the expense of research-related ones. Phasing, pilot schemes, and scaling up or down as appropriate are all techniques that facilitate smart choices, whatever the resourcing and other institutional constraints. The risk in making choices, either individually or institutionally, that do not treat a clinical program and all of its dimensions holistically is that traction is lost in mainstreaming and integrating a clinical program within the core institutional endeavours of education, research, and engagement.

In making such choices, it can be helpful to step back and reflect upon the different angles from those choices can be approached. Different individual and institutional dimensions are each engaged. A mixture of 'top down' and 'bottom up' approaches are available, with different priorities and emphases for initial actions on planning, developing, and embedding clinics institutionally, as represented in the following diagrams:



This version of the diagram implies the power of the broader institution and the place of faculty, school, clinic and research centres nested within



This version implies more generative power on the ground between clinic and law school, creating the conditions in which arguments for parity in the institution can be made in a way that senior management will accept.

Employment Categories

Consider employment categories, for example. At our institution, we recently achieved sufficient diversity in academic employment categories to attract and retain dedicated clinicians and associated staff, with appropriate career development paths, workload allocations, and performance expectations to match. The variety of employment categories now includes: teaching-research positions; research-intensive positions; education-focused positions; clinical positions; and practice positions (eg

'professors of practice' drawn part-time from the legal profession, including retired judges and practitioners).

Education-focused and clinical roles each retain an aspect of scholarship, but focus upon research that is appropriate to their role – scholarship about legal education pedagogy and research-informed public submissions and advocacy, respectively. Indeed, in an era of government-mandated institutional research quality and impact exercises, making clinicians write publications to meet indiscriminate research output targets can be counter-productive, while on the other hand clinically informed research and engagement can provide suitable material for case studies of research impact. In other words, the diversity of employment categories means that we do not try to force clinical 'squares' into clinically insensitive 'round holes'.

Cognate Research Critical Mass and Scale

Diverse employment categories are not the only institutional infrastructure to be mined or leveraged in providing enhanced scaffolding for an expanded CLE program. 'Breaking down the silos' that can afflict a clinical program as much as any other part of a law school's endeavours means looking for alignment between clinical practice and scholarship, on one hand, and a law school's education, research, and engagement, on the other. For example, while law school clinics and associated CLCs might characteristically focus upon public advocacy and law reform aimed at access to justice, there is no reason why at least some of those involved in such endeavours cannot also be researching in related and other fields, pursuing high-quality

publications, competitive grant and contracted research opportunities, and even forming cognate research groups and centres. The Harvard Centre for the Legal Profession and equivalent centres and research groups around the globe, for example, undertake valuable evidence-based research about the future of the legal profession and the contemporary nature of lawyering.¹⁸

Interim Conclusion

Three key dimensions of designing and implementing an enhanced clinical program are outlined in the first part of this article – strategic institutional alignment and competitive positioning in the legal education services market, institutional resourcing and implementation, and alignment and culture change from both organisational and individual perspectives. Conceptually, those three dimensions are treated as being analytically distinct here for explanatory purposes, and they interact and overlap significantly in operational terms. As in most law school endeavours, culture and mindsets underpin everything.

Other aspects of organisational cultural change as CLE evolves within a law school focus upon what counts as a worthy ‘access to justice’ constituency for clinical purposes, how clinical experience of legal practice matches or differs from other experience of legal practice (for both clinicians and students), how both CLE and ‘access to justice’ initiatives adapt and respond to disruptors such as globalisation and

¹⁸ E.g. B. Heineman et al, ‘Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century’, Paper, November 2014.

digitalisation, and whether all lawyers – not just lawyers in CLCs or law school-associated clinics – have responsibilities towards the constituencies who are most in need of access to justice, regardless of their own particular client base. Such matters are already the subject of CLE scholarship¹⁹ and professional commentary²⁰ as well as public reports²¹ and professional/judicial commitments²² in some jurisdictions. The second part of this article concentrates upon some key cultural challenges for clinical programs that derive from various contemporary sources of disruption.

¹⁹ E.g. M. Castles, 'Marriage of Convenience or a Match Made in Heaven: A Collaboration Between a Law School Clinic and a Commercial Law Firm' (2016) 23 *International Journal of Clinical Legal Education* 7; and A. Thanaraj and M. Sales, 'Lawyering in a Digital Age: A Practice Report Introducing the Virtual Law Clinic at Cumbria' (2015) 22 *International Journal of Clinical Legal Education* [ci].

²⁰ B. Horrigan 'The War Against Poverty is Not Optional for Lawyers', published in 2015 and accessible via the IBA website for the Poverty, Empowerment, and Rule of Law Working Group, available at this link: <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=f9ce20d3-15f9-417e-a9d8-59198ea304b2>.

²¹ E.g. K. Miller, *Disruption, Innovation, and Change: The Future of the Legal Profession*, Law Institute of Victoria, 2015.

²² E.g. see the forward-looking agenda pursued by the Utah Supreme Court and Utah Bar Association in 2018-2019, as recorded in a Statement from the Utah Bar Association, 2019, which included key priorities such as: '(1) loosening restrictions on lawyer advertising, solicitation, and fee arrangements, including referrals and fee sharing; (2) providing for broad-based investment and participation in business models that provide legal services to the public, including non-lawyer investment and ownership of these entities; and (3) creating a regulatory body under the auspices of the Utah Supreme Court that would develop and implement a risk-based, empirically-grounded regulatory process for legal services'. Such things have implications for CLCs, law schools, and their CLE programs too.

REFLECTIONS ON ADRIAN EVANS'S CONTRIBUTIONS INTERNATIONALLY TO CLINICAL LEGAL EDUCATION AND LEGAL ETHICS

Peter A. Joy*

It is a privilege to join you today in honoring the work of Adrian Evans. You have already heard much about Adrian, and I will not belabor the point too much – Adrian is a wonderful person, colleague, teacher, lawyer, scholar, and friend. Nigel



Duncan has already told you much about Adrian's work internationally, so I will focus more on his contributions to and impact on clinical legal education and legal ethics internationally. My focus is on Adrian as a lawyer, teacher, and scholar.

I assume that most of us have heard of Six Degrees of Kevin Bacon. If you have not, it is based on the theory that any two people on earth are six or fewer acquaintance links apart. With Kevin Bacon, it assumes that anyone involved in the movie business can be linked through their film roles either to Kevin Bacon or someone he worked with in six

* Henry Hitchcock Professor of Law, Vice Dean for Academic Affairs, and Director of the Criminal Justice Clinic at Washington University in St. Louis School of Law. I am grateful to the *International Journal of Clinical Legal Education* and especially Professor Elaine Hall for publishing the Festschrift proceedings and Professor Kate Seear for editing this special issue.

steps or less. For example, the Australian film star Toni Collette was in *The Sixth Sense* with Bruce Willis, Bruce Willis was in *The Player* with Tim Robbins, and Tim Robbins was in *Mystic River* with Kevin Bacon. That puts Toni Collette within three degrees of Kevin Bacon.

When it comes to the international clinical legal education and international legal ethics communities, everyone is within three degrees of Adrian Evans. This is a testament to Adrian's reach, but also it is fortunate for everyone at this Festschrift. Why you may ask? Well, if you have been following along you should realize that because you know Adrian you are within one degree of Adrian, and everyone you know is within two degrees of Adrian. I strongly doubt that there is anyone on this planet who does work in the clinical legal education and legal ethics fields who doesn't know Adrian, you, or those you know. Adrian's interests and motivations for the work he has done as a teacher and scholar come from his personal commitment to be an effective, ethical lawyer, and he has been, and continues to be that and much more. Adrian wrote about his philosophy in one of his many publications, the book *The Good Lawyer*. Adrian's focus is both practical, and theoretical, as this slide about the obligations of legal practitioners illustrates.¹

¹ This slide is from Adrian Evans, "Inside Ethical Practice," available at <https://slideplayer.com/slide/13596714/>.



Through his work as a clinical teacher, Adrian continued to provide much-needed legal assistance to those unable to afford an attorney as he taught and mentored hundreds of students in how to be effective, ethical lawyers. By helping law students learn how to apply what they learned about the law to help individuals and families, Adrian has made a significant positive impact on society and, through the work of his former students, he continues to do so.

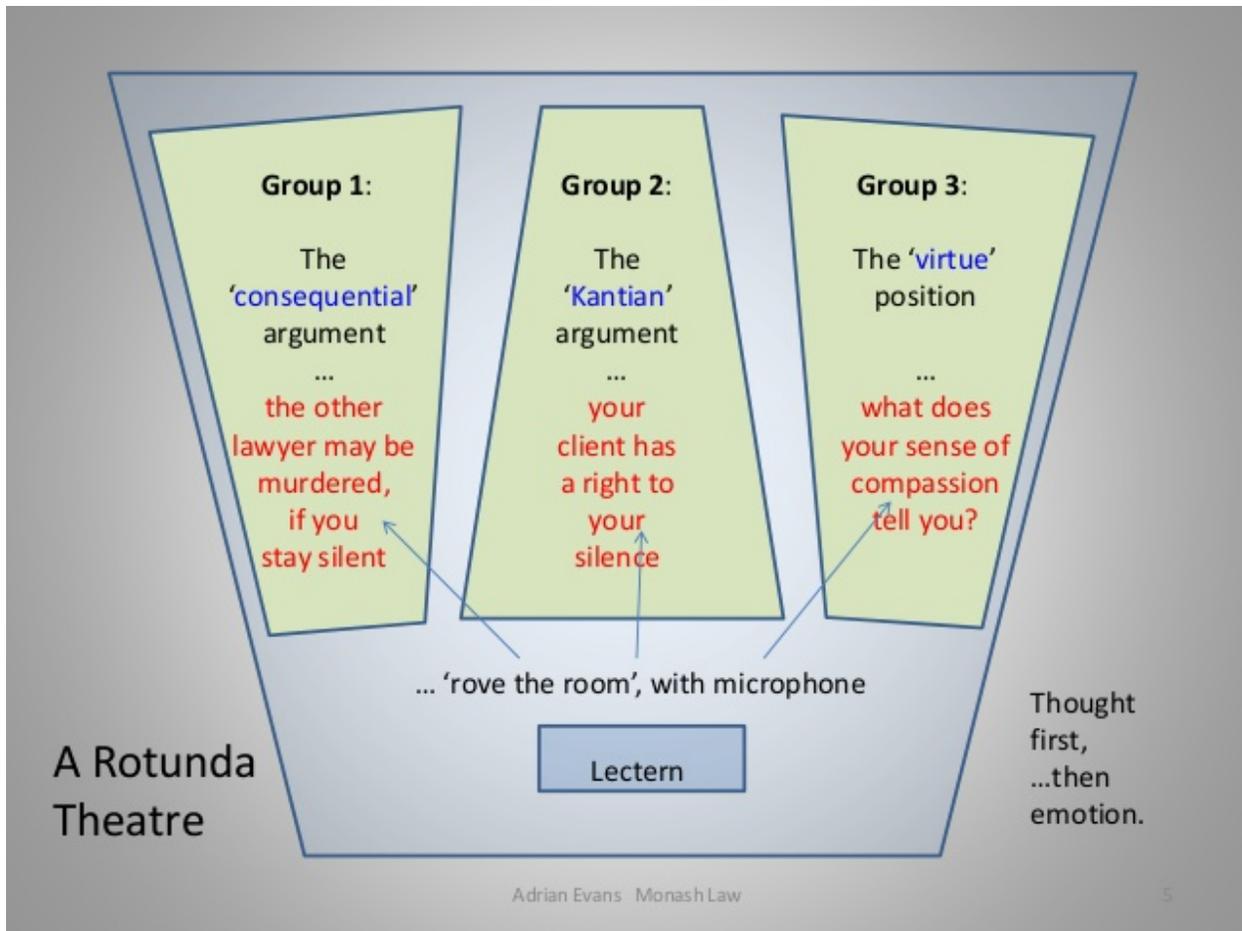
Adrian is also a great teacher. Adrian won various teaching awards, including the Monash Vice-Chancellor's Award for Distinguished Teaching, and I have seen Adrian in action at conferences doing engaging, thoughtful presentations. I was also fortunate to sit in on some of Adrian's supervision sessions with students when I was a Sue Campbell Visiting Scholar at Monash. I was impressed not only by his effectiveness as a teacher,

but with his extraordinary efforts aimed at ensuring the emotional health of his students dealing with difficult issues their clients faced. I learned a lot from observing him.

Adrian's teaching career started in the 1970s with his work on developing the Clinical Interviewing Program for Legal Studies' students, and Professor Mary Anne Noone has discussed in depth, and much better than I, Adrian's teaching career. But, to put Adrian's teaching career in perspective, here is a short recap. From 1988 to 2000, Adrian was the Coordinator of Springvale Monash Legal Services, the first clinical program in Australia. During this same time, Adrian's career blossomed as he progressed from 1988 to 1995 as Lecturer in Law, to Senior Lecturer in Law from 1995 to 2000, and he has been a Professor of Law since then. The next phase, which Dean Bryan Horrigan has recently announced is Adrian's new status as Emeritus Professor of Law.

As a teacher, Adrian also focused on understanding, and helping all of us in the international clinical legal education community to understand, the pedagogy associated with effective clinical teaching. Here is one of his slides illustrating effective and engaging teaching.²

² This slide is from Adrian Evans, "Learning Lunchbox: Thinking Through Your Ethical Response," available at <https://www.slideshare.net/rachelsaffer/evans-learning-lunchbox-presentation-on-stimulating-ethical-thought-24-nov-2014>.



Lastly, Adrian is a prolific scholar with a global reach. From 1998 to 2017, Adrian authored or co-authored nine books, thirty-nine articles, five book chapters, five additional papers or reports, and edited or co-edited six books.³ Adrian's research interests in clinical legal education run the gamut of every important area of the field. Among his many works are books and articles on establishing best practices for clinical

³ Adrian Evans Research Output, MONASH UNIVERSITY, <https://research.monash.edu/en/persons/adrian-evans/publications/?type=%2Fdk%2Fatira%2Fpure%2Fresearchoutput%2Fresearchoutputtypes%2Fcontributionto%2Fbookanthology%2Fchapter>.

legal education,⁴ student moral development in clinical legal education,⁵ the pedagogy of specialist clinics,⁶ practical skills development and effective skills teaching,⁷ and assessment of and evaluating clinical legal education.⁸ Adrian's work has not only influenced the current generations of clinical legal educators, but Adrian's labors promise to influence future generations as well through his publications.

Similarly, Adrian's legal ethics scholarship is far reaching, though laser sharp on developing and inculcating ethical behavior. His most frequent areas of interest include delving inside lawyers' ethics,⁹ assessing lawyers' ethics,¹⁰ reinforcing the ethics of lawyering,¹¹ what makes the good lawyer,¹² the ethical infrastructure of legal practice in large law firms,¹³ the connection between the ethics of combating money laundering and

⁴ Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Peter Joy, Mary Anne Noone & Simon Rice, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in Australian Law School*, 2017, Australian National University Press; Adrian Evans, "Best Practices: Australian Legal Education" *The Law Teacher*, 47 (3), 2013, 421-423.

⁵ Adrian Evans, "Client Group Activism and Student Moral Development in Clinical Legal Education" *Legal Education Review*, 2000, 179-190.

⁶ Adrian Evans & Ross Hyams, "Specialist Legal Clinics: Their Pedagogy, Risks and Payoffs as Externships" *International Journal of Clinical Legal Education*, 22 (2), 2015, 147-180.

⁷ Ross Hyams, Sue Campbell & Adrian Evans, *Practical Legal Skills: Developing Your Clinical Technique*, 4th edition, 2014, Oxford University Press.

⁸ Adrian Evans, "Global Agendas, Cultural Capital and Self-assessment of Clinical Legal Education Programs" *Monash Law Review*, 38 (2), 2012, 55-81; Adrian Evans & Ross Hyams, Independent Evaluations of Clinical Legal Education Programs: Appropriate Objectives and Processes in an Australian Setting" *Griffith Law Review*, 17 (1), 2008, 52-86.

⁹ Christine Parker & Adrian Evans, *Inside Lawyers' Ethics*, 3rd edition, 2018, Cambridge University Press.

¹⁰ Adrian Evans, *Assessing Lawyers' Ethics: A Practitioner's Guide*, 2011, Cambridge University Press.

¹¹ Adrian Evans, "(Self) Knowledge Is Power: Reinforcing the Ethics of Lawyering" *Law Institute Journal*, 86 (6), 2012, 29-35.

¹² Adrian Evans, *The Good Lawyer*, 2014, Cambridge University Press.

¹³ Christine Parker, Adrian Evans, Linda Haller, Suzanne Le Mire & Reid Mortensen, "The Ethical Infrastructure of Legal Practice in Larger Law Firms: Values, Policy and Behaviour" *University of New South Wales Law Journal*, 31 (1), 2008, 158-188.

reducing global poverty,¹⁴ and the relationship of virtue ethics to therapeutic jurisprudence.¹⁵

Adrian's work and career demonstrates that it is possible to be an excellent lawyer, gifted teacher in both clinical courses and the classroom, and a highly regarded scholar. On top of all of these accomplishments, Adrian served for several years as the Associate Dean (Staff) at Monash Law School. For most of us, being proficient in any one of those four areas would be a life's achievement.

So, it is fitting that this Festschrift recognizing the work of Adrian Evans takes place as a prelude to the *International Journal of Clinical Legal Education* Conference hosted by Adrian Evans' home institution, Monash Law School. Everyone who knows Adrian is better for having encountered Adrian, and I am privileged to be one of his many friends. On behalf of all of us, Adrian's students, and the clients that Adrian and his students have assisted for many years, thank you Adrian!

¹⁴ Adrian Evans, "Connections between the Ethics of Combating Money Laundering and Reduction in Global Poverty" in Maynard, P.D. & Gold, N. (eds), *Poverty, Justice and the Rule of Law: Report of the Second Phase of the IBA Presidential Task force on the Financial Crisis*, International Bar Association, 2013, 169-174.

¹⁵ Adrian Evans & Michael King, "Reflections on the Connection of Virtue Ethics to Therapeutic Jurisprudence," *University of New South Wales Law Journal*, 35 (3), 2012, 717-746.