Influential Factors in the Sustainability of Clinical Legal Education Programs

Influential Factors in the Sustainability of Clinical Legal Education Programs

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Synopsis

This thesis considers how to best recognise and realise the contributions that clinical methodologies can make to legal education. The use of experiential learning methods and the combining of community service with student learning distinguish clinical teaching from other forms of legal education. The thesis focuses on making the most of this distinctiveness by deepening the understanding of the factors that influence the establishment and sustainability of clinical programs. It will be argued that sustainability can be promoted through the constructive integration of clinical methods and insights across the various activities of a law school.

Clinical legal education programs often face a tenuous existence unless they are recognised as an integral part of the legal education project. A series of factors need to work together in order for a program to be established and then sustained. While no single factor can be taken to ensure the establishment and sustainability of a clinic program, the commitment and understanding of key staff to the clinic (both clinic supervisors and, beyond the clinic, law school leaders) is central to both establishment and sustainability. It appears that establishment is influenced more by contextual factors beyond the law school, whereas sustainability and continuing development are closely linked to factors more specific to each individual law school.

There are three parts to this thesis. The first part comprises four chapters designed to provide the framework for the analysis of factors influencing the establishment and sustainability of clinical legal education programs. These chapters are primarily drawn from the extensive clinical legal education literature. Chapter One provides an account of the emergence of clinical legal education and the development of clinical legal scholarship. Further, it discusses the notion of sustainability before addressing the research aims and methods.

Chapter Two considers the various objectives which can be advanced through the use of clinical methodologies. There are enduring ‘dynamic tensions’ between student learning and community service objectives. The chapter argues that the most productive use of clinical methodologies requires a strong understanding of the objectives for which such methodologies can be deployed. The pedagogical sustainability of clinics will be fostered by understanding the extent to which these

various objectives can be advanced in parallel and through effective supervision practices designed to facilitate the forms of learning that have been prioritised.

Chapter Three continues the examination of pedagogical sustainability through a review of the range of models used for clinical experiences. It addresses the importance of clinical programs selecting models appropriate to meeting their chosen objectives. The sequenced use of different models can foster more effective clinical integration across the law curriculum. While the service-teaching tension is correctly characterised as central to clinical education in law, there is another significant tension which has not been as closely examined – the tension between clinical methods and ethos standing alone as compared with being integrated within the law school. If a clinical program can be effectively integrated into the broader mission and activities of its law school, it is likely to be more effective as well as sustainable.

Chapter Four then provides an account of the range of factors identified as relevant to the establishment and sustainability of clinical programs. The factors are grouped together as relating principally to either external influences, the university in question or the particular law school. The chapter argues that what is required to make a clinical program sustainable is likely to differ from what is required to get one started. Early on, key individuals may need to take the initiative and undertake work beyond what might normally be expected of them. At some point, there is a need to move beyond the (perhaps) unsustainable work required to develop a program and to consolidate the program in a form which will sustain itself.

Part Two of this thesis includes four case studies of major Australian clinical programs designed to test the various factors outlined in Chapter Four. Chapter Five provides an account of the establishment and continuing development of the Monash University clinical program, demonstrating the significant changes to be expected as a program develops over the course of 35 years. Chapter Six addresses the clinical program at the University of New South Wales, demonstrating the importance of leadership to the continuing prospects of a clinical program. Chapter Seven reviews the range of factors which have influenced the development of the ambitious ‘clinical law school’ project at Newcastle University. Chapter Eight completes the case studies, considering the program at Murdoch University, the first Australian clinical program to secure Federal Government funding.

Part Three of the thesis consists of one chapter, containing the analysis and meta-analysis of the four case studies in terms of the extent to which the histories of those programs corroborate the establishment and sustainability factors outlined in Chapter Four. Analysis of the case studies also suggests additional factors which appear relevant to the development of clinical programs. The thesis also considers the potential for clinical method to foster collaboration and integrative relationships which enable each participant to make distinctive contributions to creating rather than claiming value. The thesis concludes with consideration of how clinical programs can utilise the understandings generated by this research.

Statement of Originality

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

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Jeff Giddings

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- Jeff Giddings, 'Two-Way Traffic – The Scope for Clinics in Facilitating Law School Engagement With Communities' in Patrick Keyzer, Amy Kenworthy & Gail Wilson (eds), *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service-Learning* (2009);
- Jeff Giddings, 'Contemplating the Future of Clinical Legal Education' (2008) 17 (1) *Griffith Law Review* 1;
- Jeff Giddings, 'A 2020 Vision of Australian Clinical Legal Education' in Bronwyn Naylor & Ross Hyams (eds), *Innovation in Clinical Legal Education: Educating Lawyers for the Future* (2007);

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- Jeff Giddings, 'The Commonwealth Discovers Clinical Legal Education' (1998) 23 (3) *Alternative Law Journal* 140.

Chapter Two - Understanding the Potential of Clinical Legal Education

Introduction

This chapter examines the range of objectives which can be advanced through clinical legal education. The flexibility of clinical methodologies means that they can be adapted to support student learning of different kinds. It will be argued that 'clinic fluency' is important to efforts to make the most productive use of clinical methodologies. Clinic fluency involves understanding both the objectives capable of being pursued and the clinical models best suited to each of those objectives. These are the two key dimensions of what was referred to in Chapter One as the pedagogical sustainability of clinical legal education and together they are the focus of the next two chapters of this thesis.

The chapter argues that sustainability will be promoted by setting realistic objectives and carefully selecting models that facilitate meeting those objectives as well as through the integration of insights across the broader curriculum. This encompasses understanding the extent to which various objectives can be advanced in parallel. The enhancement of student learning needs to drive the selection of objectives. Models can then be chosen and effective supervision arrangements implemented to facilitate the chosen objectives. What students learn and how they learn within the clinic can be combined with practices that emphasise service to clients and communities.

The chapter argues that sustainability will promoted by recognising the considerable degree to which service and social justice objectives can be integrated with the fostering of student learning. Clinics can also contribute to advancing other university objectives related to research, marketing and community engagement. In Chapter One, it was argued that clinical legal education is integrative in nature. This chapter considers how integrative frameworks can advance the respective interests of clinics and law schools by fostering engagement with current students, alumni, community groups and professional interests. Fostering integrative frameworks is important to fostering sustainability. It involves the development of new partnerships both within and beyond law schools, enhancing the collective understanding of various clinical methodologies, from drawing on clinical insights across the curriculum to simulations and externship arrangements to various forms of real-client experiences.

Resourcing issues will influence both the selection of realistic objectives for clinic-based activities as well as choices about which clinical models should be used to best advance those objectives.[1] This chapter addresses the challenges involved in identifying and prioritising objectives, including the tension between student learning and service-related objectives. Chapter Three will then consider issues related to model selection and how clinic-based methodologies can be usefully integrated and sequenced across the law curriculum in ways that see the benefits of such experiences shared effectively and broadly.

The first section of the chapter addresses the breadth of factors which provide the context within which law schools will develop and maintain their clinical programs. The chapter then examines ways in which to balance and, where possible, integrate student learning with service objectives. While the tensions between student learning and client service cannot be comprehensively reconciled, this chapter seeks to contribute insights as to how those tensions can be constructively managed.[2] The chapter then reviews the range of educational contributions clinical experiences can make to students acquiring practical lawyering skills. These include providing students with frameworks for legal analysis, collaboration with colleagues and awareness of clients. The chapter also addresses the claims made for clinics in relation to fostering service contributions and a continuing commitment to social justice, both of which are prominent in the clinical literature. This includes linking clinical experiences with pro bono activities.

The chapter then considers the centrality of effective supervision of students. Whichever objectives are prioritised, student experiences need to be structured and supervised in order to effectively advance those objectives. Close supervision is often

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[1] Hugh Brayne, Nigel Duncan & Richard Grimes, *Clinical Legal Education: Active Learning in Your Law School* (1998) 11; Nina Tarr, 'The United States Experience' in Brayne *et al*, above, 242-244; Henry Rose, 'Legal Externships: Can They Be Valuable Clinical Experiences For Law Students?' (1987) 12 *Nova Law Review* 95, 102; Andrew Goldsmith, 'Why Should Law Matter? Towards a Clinical Model of Legal Education' (2002) 25 (3) *UNSW Law Journal* 721, 721-730 & Simon Rice & Graeme Coss, *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum*, (1996) 51-52, 61-62, 94, 107.

[2] Condliffe suggests it is more appropriate to refer to conflict management than resolution 'for the simple reason that some conflicts cannot be resolved but most conflicts can be managed'. See Peter Condliffe, *Conflict Management: A Practical Guide* (3rd ed, 2008) 2. Similar reasoning can be used in the context of managing the tensions discussed in this chapter. See also Laurence Boulle, *Mediation: Principles, Process, Practice* (2nd ed, 2005) 87-89.

described as a hallmark of clinical education[3] and clinical methods will not achieve their potential without effective supervision tailored to addressing the objectives set for the clinical experience. Effective supervision is not a straightforward process and relies on a range of skills straddling the fields of education and practice. The nature and style of supervision required will depend on the students involved, what they have already learnt and what they are expected to learn from these particular clinic experiences.

Understanding the Multiple Contributions Clinics Can Make

Clinical programs can promote their sustainability by contributing to the pursuit of a range of educational, institutional and professional objectives. The Carnegie Report refers to the 'common aim of all professional education' being the development of 'specialized knowledge and professional identity'.[4] Beyond fostering service, clinics can be an important bridge between the law school and the multiple parties interested in legal education.[5] To date, insufficient attention has been paid to the capacity to design clinical programs which constructively integrate multiple objectives.

The objectives set for any clinical program will depend on a range of variables. Schrag refers to clinic design being a function of matters including financial resources, student

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[3] Roy Stuckey and others, *Best Practices for Legal Education: A Vision and a Road Map* (2007) 174-176 & 194-196; Association of American Law Schools (AALS), 'Report of the Committee on the Future of the In-House Clinic' (1992) 42 *Journal of Legal Education* 508, 551. 'Case supervision is the core of clinical teaching and, if done well, is hard, emotionally exhausting work. It demands close interaction with students. It is extremely time-intensive. It is that aspect of our work that is least understood and appreciated by our nonclinical colleagues.' David Chavkin, 'Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)' (2009) 22 (3) *Pacific McGeorge Global Business and Development Law Journal* 3, 17. Chavkin refers to students needing 'to invest in the quality of their decisions and this process is facilitated by having supervisors help students reflect on their experiences and not by displacing students as the *lawyers* for their clients.' David Givelber *et al*, 'Learning Through Work: An Empirical Study of Legal Internships' (1995) 45 (1) *Journal of Legal Education* 1; Carolyn Grose, 'Flies on the Wall or in the Ointment? Some Thoughts on the Role of Clinic Supervisors at Initial Client Interviews' (2007) 14 *Clinical Law Review* 415 & Jennifer Gundlach, '"This is a Courtroom, Not a Classroom": So What is the Role of the Clinical Supervisor?' (2006) 13 *Clinical Law Review* 279. Bryant & Milstein suggest that supervision may be the signature pedagogy 'most associated with clinic courses'. See Susan Bryant & Elliot Milstein, 'Rounds: A "Signature Pedagogy" For Clinical Education?' (2007) 14 *Clinical Law Review* 195 & Rice & Coss, above n 1, 14-15.

[4] William Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (2007) 3. At 11-12, the report states: 'Because it always involves social relationships with consequences, practice ultimately depends on serious engagement with the meaning of the activities – in other words with their moral bearing.'

[5] Jeff Giddings & Jennifer Lyman, 'Bridging Different Interests: The Contributions of Clinics to Legal Education' in Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (2010) 297.

demand and local legal practice requirements.[6] The contributions expected of clinics will be shaped by the range of communities which law schools serve and this means clinics are a key site for community engagement and collaborative activities. Rees has noted that these include student communities (principally students studying law but also other disciplines), the practising legal profession, the judiciary, government agencies, consumers of legal services and the general public.[7]

Clinical programs can make a broad range of research-related contributions and Research opportunities generated by effective clinical integration may promote the sustainability of clinical programs, especially as universities become more research-focussed.[8] Substantial research projects tend to require a breadth of knowledge and expertise best provided by a team of researchers. Clinicians can contribute expertise related to client-centred models of legal practice, litigation processes, alternative dispute resolution and access to justice, emphasising the strengths and limitations of problem-solving approaches.[9] Examples of research contributions in these areas are identified in the case study chapters in this thesis. Clinicians are also likely to be able to engage effectively with the public policy dimensions of research issues and identify ways in which to utilise knowledge from other disciplines.

Heavy teaching and service expectations make it difficult for clinicians to prioritise research scholarship in the same way as do other academic colleagues. This is a significant issue across jurisdictions and is examined in further detail in Chapter Four

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[6] Philip Schrag, 'Constructing a Clinic' (1996) 3 *Clinical Law Review* 175, 176.

[7] Neil Rees has identified a range of communities served by law schools. See Neil Rees, 'How Should Law Schools Serve Their Communities?' (2001) 5 *University of Western Sydney Law Review* 111, 114. See also Jeff Giddings, 'Two Way Traffic: The Scope for Clinics to Facilitate Law School Community Engagement' in Patrick Keyzer, Amy Kenworthy & Gail Wilson (eds.) *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service Learning* (2009) 44-50. Fiona Cownie has characterised parties interested in legal education as stakeholders, identifying students, academics, the profession, feminists and the state. See Fiona Cownie (ed), *Stakeholders in the Law School* (2010) Chapter 1.

[8] Gold & Plowden provide an analysis of the merit and potential of clinical scholarship. See Neil Gold & Philip Plowden 'Clinical Scholarship and the Global Clinical Movement' in Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (2010) 311. They refer to the insular nature of much clinical scholarship and call for greater recognition of the shared nature of many of the concerns of the global clinical community (at 320). They do not make a case for broader law-related research collaboration, let alone cross-disciplinary research. Grimes states: 'The client base provides a ready resource for legal research and socio-legal study, and generates related legal research, policy and reform initiatives.' Richard Grimes, 'Reflections on Clinical Legal Education' (1995) 29 (2) *Law Teacher* 169, 174.

[9] Clinicians can also contribute to research projects involving academic colleagues, especially in areas well represented in clinical casework. For example, human rights, environmental law, family law, criminal law, migration law and discrimination law and alternative dispute resolution.

as well as in the case studies. Chavkin invokes the image of Rumpelstiltskin spinning straw into gold when describing clinicians being expected by a 'generally hostile academic community' to take on escalating teaching demands whilst also facing 'increasing collateral demands to participate in governance, to be the visible presence of the law school in the external legal community, and to produce scholarship.'[10]

Clinics can make significant marketing contributions to their university. These include distinguishing the law school from others on the bases of learning opportunities provided to students and professional engagement, matters likely to be significant to both potential students and to the employers of graduates.[11] Clinics can also enable universities to showcase excellent practices in teaching and the attributes which graduates are expected to develop through their studies. This has been significant in Australia with clinic teachers from various law schools receiving national and institutional recognition of their teaching practices.[12] The significance of university objectives in shaping clinical programs will be considered in greater detail in Chapter Four.

The objectives set for legal education in any jurisdiction will also influence the objectives set for any use of clinical methodologies. The *Best Practices Report* provides a very comprehensive and persuasive account of what should be the goals set for legal education but does so within the framework of the overall purpose of US law schools being the preparation of lawyers for practice.[13] The introduction by the American Bar Association of professional accreditation requirements for clinical experiences to be made available to students has enhanced both the availability and quality of such clinical experiences, thereby contributing to the sustainability of US clinical legal education.[14]

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[10] David Chavkin, 'Spinning Straw Into Gold: Exploring the Legacy of Bellow and Moulton' (2003) 10 *Clinical Law Review* 245, 247.

[11] Interestingly, there have been name changes for several Australian clinics, changes clearly designed to more closely connect these clinics with their law school and university. Springvale Legal Service has become the Springvale Monash Legal Service while the Newcastle Legal Centre has become the University of Newcastle Legal Centre. See Jeff Giddings, 'Clinical Legal Education in Australia: A Historical Perspective' (2003) 3 *International Journal of Clinical Legal Education* 7, 21. See Chapter 5, footnote 177 and related text and Chapter 7, footnote 99 and related text.

[12] Giddings, above n 11, 21-22.

[13] Stuckey, above n 3, Chapter 2. The Carnegie Report refers to the preparation of lawyers in law school as 'the crucial portal to the practice of law'. Sullivan et al, above n 4, 1.

[14] Peter Joy & Robert Kuehn, 'The Evolution of ABA Standards for Clinical Faculty' (2008) 75 (2) *Tennessee Law Review* 183. At 232, they state that the ABA 'has long supported the full integration of clinical courses and the faculty teaching those courses into law schools. The

Outside the US, there is greater diversity of views as to the extent to which legal education should focus on preparing students for the practice of law and this uncertainty may have limited the prospects for clinical programs. Twining identifies how the two main conceptions of the role of the English law school - the professional school model and the academic model – have competed for dominance.[15] Hepple argues that the false antithesis between "liberal" and "professional" legal education' has resulted in a highly-problematic threefold division of English legal education.[16]

Australian legal education also relies on a post-academic 'professional' stage and this has both limited the development of undergraduate clinical programs and influenced the objectives of those clinics that have been established.[17] Keyes and Johnstone identify significant impediments to change in Australian law schools, including the demands of students and the practising profession, the inflexibility of legal academics along with resource limitations.[18] They also highlight that the nationally unified requirements for admission to the legal profession are pre-occupied with issues of content rather than pedagogy. Minimal attention has been paid to addressing graduate attributes, skills and theoretical perspectives.[19]

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history shows an unbroken movement by the ABA toward a system that provides a long-term relationship between the clinical faculty member and the law school so that the clinical faculty member has job security and the ability to participate in faculty governance comparable to other full-time law faculty teaching doctrinal courses'. See also Margaret Barry, Jon Dubin & Peter Joy, 'Clinical Legal Education for This Millennium: The Third Wave' (2000) 7 (1) *Clinical Law Review* 1, 20-21 and Peter Joy, 'Evolution of ABA Standards Relating to Externships: Steps in the Right Direction?' (2004) 10 *Clinical Law Review* 681. See also the coverage in Chapter 4 of this thesis, footnotes 59-62 and related text.

[15] William Twining, *Blackstone's Tower: The English Law School* (1994) 52.

[16] Bob Hepple, 'The Renewal of the Liberal Law Degree' (1996) 55 *Cambridge Law Journal* 470, 471, 477. Hepple argues that the division into 'an academic stage, a professional stage and a stage of continuing education and training' is counterproductive. See also Brayne, Duncan & Grimes, above n 8, 37. Maharg notes that the liberal law school is currently under 'intense pressure' and 'highly vulnerable to the market forces that drive both the neo-liberalist agenda, and globalised finance'. Paul Maharg, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-first Century* (2007) 5.

[17] Jeff Giddings, 'Contemplating the Future of Clinical Legal Education' (2008) 17(1) *Griffith Law Review* 1, 21-22. 'The continuing development and increased prominence of [Practical Legal Training] programs may place pressure on undergraduate clinical programs to focus more directly on skills teaching. Clinical teachers may also receive additional requests to contribute their practice expertise to non-clinic courses.'

[18] Mary Keyes & Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality and Prospects for the Future' (2004) 26 (4) *Sydney Law Review* 537, 538.

[19] Ibid 544. See also Vivienne Brand, 'Decline in the Reform of Law Teaching?' (1999) 10 *Legal Education Review* 109, 125-6 and Richard Johnstone & Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee* (2003) Chapters 1 & 2.

The legal traditions of African countries have emphasised formalism more than lawyering resulting in inflexible and conservative law schools paying little attention to critique of the law and legal institutions.[20] Chinese clinician, Mao Ling notes how the focus of Chinese legal education on substantive knowledge at the expense of skills development has produced many problems.[21] India's status as a developing country has made the promotion of social welfare a major aim of the law and this in turn has influenced the purposes articulated for legal education.[22]

These experiences indicate that the roles to be played by clinics are influenced by objectives generated both within and beyond the law school. They also demonstrate how the roles to be played by clinics can be left uncertain by a lack of clarity around legal education more generally. The local context, in particular the nature of legal education in any given jurisdiction and the importance attached to university and professional objectives, will influence clinicians involved in program development. Within both a law school and its clinical program, sustainability will fostered by leaders understanding how to balance, reconcile and prioritise interests related to student learning and community service.

Learning and Service – A Bridge or a Tightrope?

Operating a real client clinic provides a law school with the opportunity to make a community service contribution through the provision of legal advice and representation. Clinic participation can lead to student assumption of responsibility, organisation of time and resources, the gradual growth of confidence in oneself and

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[20] *Combining Learning and Legal Aid: Clinics in Africa*, Report on the First All-Africa Colloquium on Clinical Legal Education, 23-38 June 2003, organised by the Association of University Legal Aid Institutions of South Africa, the Open Society Justice Initiative and the University of Natal 2, 4. www.justiceinitiative.org (last accessed 19 September 2010).

[21] Mao Ling, 'Clinical Legal Education and the Reform of the Higher Legal Education System in China' (2006) 30 *Fordham International Law Journal* 421, 428-9. She identifies the focus on 'only theory-centered courses' resulting in students lacking the 'capacity to apply legal knowledge to resolve practical problems, or to think creatively'. Further, the narrowness of legal education means that 'Chinese law graduates may lack the ability to understand the society and to solve social problems'. The 'traditional knowledge-oriented goal of legal education' has stymied the development of more student-focussed teaching methods. Concerns have also been expressed regarding the capacity of the Chinese Communist Party and bureaucracy to stymie initiatives which could impede their agendas, such as the access to justice mission of clinical legal education. See Anonymous, 'Adopting and Adapting: Clinical Legal Education and Access to Justice in China' (2007) 120 *Harvard Law Review* 2134, 2140-44.

[22] Frank Bloch & M. R. K. Prasad, 'Institutionalising a Social Justice Mission for Clinical Legal Education: Cross-National Currents From India and the United States' (2006) 13 *Clinical Law Review* 165, 188.

other students and the engendering of a better understanding of the substance and processes of the law.[23]

The capacity for clinical legal education to serve multiple purposes generates the need to balance student learning and community service as well as the legal professional responsibilities of clinic supervisors. Gavigan sums up this tension very effectively in her account of the Parkdale Clinic operated by Osgoode Hall Law School:

> 'Put most baldly, the unspeakable question has been: are law students ... learning on the backs of the poor? Put more politely, the question was framed not infrequently as one of "service vs. education".'[24]

Brodie characterises service and student learning as 'two age-old pillars of clinical education' and notes that debates regarding how to balance them began with the advent of clinical teaching.[25] The learning focus of clinics in the USA is said to have shifted from skills to values while the focus on service has diluted.[26] Some have criticised 'the "depoliticisation", agnostication or "gentrification" of clinical legal education and the movement toward "the new orthodoxy of vocational education".[27] Service remains an enduring focus of Australian clinics which makes understanding the

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[23] Grimes, above n 8, 174.

[24] Shelley Gavigan, 'Twenty-five Years of Dynamic Tension: The Parkdale Community Legal Services Experience' (1997) 35 (3) *Osgoode Hall Law Journal* 443, 457.

[25] Juliet Brodie, 'Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighbourhood-Based Community Lawyering Clinics' (2009) 15 (2) *Clinical Law Review* 333, 334. Brodie outlines the resurgence of community lawyering clinics as a theme in the recent clinical legal education literature.

[26] Nicolson refers to variations in the leading purpose articulated for clinical teaching in different jurisdictions over time. See Donald Nicolson, 'Legal Education or Community Service? The Extra-Curricular Student Law Clinic' [2006] *Web Journal of Current Legal Issues*. This outline of leading purposes would have been more helpful if it had been accompanied by closer analysis. In 1974, Grossman noted that in 'nearly all the early writing relating to the current clinical movement, educational benefit to students was secondary; community service was the main objective.' George Grossman, 'Clinical Legal Education: History and Diagnosis' (1974) *Journal of Legal Education* 162, 174. See also Frank Bloch & Iqbal Ishar, 'Legal Aid, Public Service and Clinical Legal Education: Future Directions From India and the United States' (1990) 12 *Michigan Journal of International Law* 92, 94 & Irene Styles & Archie Zariski, 'Law Clinics and the Promotion of Public Interest Lawyering' (2001) 19 *Law in Context* 65, 69. The 1992 MacCrate Report strongly endorsed the skills and values learning dimensions of clinical education. American Bar Association (ABA), Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development - An Educational Continuum* (1992). At page 243, the report stated 'Clinics have made, and continue to make, an invaluable contribution to the entire legal education enterprise. They are a key component in the development and advancement of skills and values throughout the profession.'

[27] Jon Dubin, 'Clinical Design for Social Justice Imperatives' (1998) 51 *Southern Methodist University Law Review* 1461, 1466.

ways in which learning and service can be advanced in tandem all the more significant.[28] Developing and transitional countries face a much more acute tension between service and education with law school clinics often operating as the exclusive source of legal services to poor and marginal communities.[29] Maisel describes the greatly magnified pressure faced by South African law school clinics given that a majority of the population lives in poverty.[30]

While the metaphor of a tightrope has been used to describe the balancing act, it will be argued here that the focus should be on developing a bridge between these pillars.[31] There are different ways of fostering professional and community service – by the law school, its staff and through student involvement in a range of activities. Students learn through contributing to the delivery of legal services and access to justice imperatives make it entirely appropriate that such services focus on clients with limited capacity to access other services.

Chavkin has very clearly outlined that the provision of legal services in an educational environment is not the most efficient method of delivering such services. If maximising client service provision was the goal, the experienced lawyers would do all the key work themselves, only delegating to students where this made the task easier for the lawyers. Placing students at the centre of the representation process and getting them to take responsibility for their work means that fewer clients can be assisted. 'That is not to say that clients receive *inadequate* service in this model: only *inefficient* service'.[32] He describes the preferred educational approach as being 'built around a small-case model in which students can competently handle a small caseload and have time to reflect critically about their experiences.'[33]

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[28] Giddings, above, n 11, 22-23.
[29] Richard Wilson, 'Training for Justice: The Global Reach of Clinical Legal Education' (2003-2004) 22 *Penn State International Law Review* 421, 424.
[30] Peggy Maisel, 'Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn From South Africa' (2006) 30 *Fordham International Law Journal* 374, 414-5.
[31] The tightrope theme was used in a series of short articles published in recognition of the 2004 celebration of thirty years of the clinical program of the University of Maryland School of Law. See Steven Wizner, 'Walking the Clinical Tightrope: Between Teaching and Doing' (2004) 4 *University of Maryland Law Journal of Race Religion Gender & Class* 259, Jane Aiken, 'Walking the Clinical Tightrope: Embracing the Role of Teacher' (2004) 4 *University of Maryland Law Journal of Race Religion Gender & Class* 267 & Brenda Blom, 'Finding Your Balance on the Tightrope: Reflections From a Clinical Life' (2004) 4 *University of Maryland Law Journal of Race Religion Gender & Class* 273.
[32] Chavkin, above n 10, 257-8.
[33] Ibid 265.

While certain dimensions of education and service objectives can be managed creatively, there will be instances where such purposes cannot be advanced simultaneously. Clinicians need to identify such aspects and then prioritise, structuring their programs to address those priorities.[34] This has been an enduring debate in the clinical literature. In one of the most effective accounts of this issue, Redlich wrote of his experiences in 1969-70 running a 'relatively large service-oriented clinical program' at the University of Wisconsin, describing 'many unsatisfactory experiences' resulting from the variable nature of student supervision provided by the lawyers working in the host legal aid office.[35] Lack of experience left the staff attorneys unable to supervise so that students were left to seek supervision elsewhere.[36]

The English literature on clinical programs addresses similar concerns. While Boon asserts that in 'conflicts between student's educational needs and clients needs, the former must triumph',[37] Grimes highlights that one of the hardest aspects of clinical work with real clients is 'turning away a client in need'.[38] Turning away cases is particularly challenging where students do not have substantial practical experience of prioritising different claims on scarce resources in the face of clients with immediate needs for legal services.

While the 1987 Report of the Discipline Assessment of Australian Law Schools expressed doubts about the efficacy of seeking to combine legal education and legal aid,[39] Australian clinics continue to view community service as an integral element of

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[34] See Schrag, above n 6, 179-186 & Dubin, above n 27, 1479-1482.

[35] Allen Redlich, 'Perceptions of a Clinical Program' (1970-71) 44 *Southern California Law Review* 574, 575.

[36] Ibid 593. While some students did excellent work with effective supervision, others 'came and went as they wished and abandoned files were common.' (at 580) He further stated that while some students 'enjoyed the freedom to 'make decisions, give advice, and, to a high degree, practice law independently, others recognized that the clients and occasionally they, too, were being imposed upon.' (at 589). Redlich suggested that many problems appeared unique to that type of placement.

[37] Andrew Boon, *University of Westminster Making Good Lawyers: Challenges to Vocational Legal Education* 26.9.01, cited by Cath Sylvester, 'Bridging the Gap? The Effect of Pro Bono Initiatives on Clinical Legal Education in the UK' (2003) 3 (1) *International Journal of Clinical Legal Education* 29, 39.

[38] Grimes, above n 8, 182.

[39] Dennis Pearce, Enid Campbell & Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission: A Summary and Volume 1* (1987) 126. In relation to Springvale Legal Service, the key site of the Monash clinical program, the Report reported criticisms of limited time and supervision being devoted to the education of students, stating: 'Such a relationship is often not entirely satisfactory.'

their programs.[40] These clinics continue to be shaped to a considerable degree by the backgrounds of their key staff, many of whom have a background working in community legal centres or legal aid agencies.[41] Such clinicians tend to maintain a strong commitment both to delivering casework services to people who would otherwise be unable to access legal processes and to using the law and legal system to achieve community development objectives.[42] This makes it all the more important to focus on developing the links between student learning and service.

Prospects for Integrating Service and Student Learning

The various contributions which clinics make are not easily compartmentalised and can often be achieved in parallel and this reinforces the integrative potential of clinical experiences. The relationship between student learning and service involves aspects of cross-fertilisation rather than being confined to trading-off between these objectives. One of the hallmarks of integrative approaches to relationships is that efforts are made to identify multiple means of advancing particular interests.[43]

Students can learn through service-directed work in a range of ways. Working closely with their supervisor, students can develop the capacity to take responsibility for identifying, evaluating and addressing legal issues facing their clients. Effective supervision and practice structures can ensure that service imperatives do not result in students carrying excessive caseloads. Working with clients who have limited access to legal services also highlights to students the limitations of legal processes and the importance of ethical standards for lawyers and other professionals.

Perhaps the most promising integrative dimension which links service and learning relates to the interest of clinicians to foster a commitment amongst students to continuing service throughout their professional lives, contributing to pro bono

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[40] Judith Dickson, 'Clinical Legal Education in the 21st Century: Still Educating for Service?' (2000) 1 *International Journal of Clinical Legal Education* 33.

[41] Rees, above n 7, 118-119.

[42] Jeff Giddings, 'A Circle Game: Issues in Australian Clinical Legal Education' (1999) 10 (1) *Legal Education Review* 33, 38. Mary Anne Noone, 'Australian Community Legal Centres: The University Connection' in Jeremy Cooper & Louise Trubek (eds.) *Educating for Justice: Social Values and Legal Education*, (1997) 267-271.

[43] In her seminal 1925 paper, 'Constructive Conflict', Mary Parker Follett identified that the first step towards effective integration of different interests was to bring the differences into the open'. See Pauline Graham (ed), Mary Parker Follett – Prophet of Management: A Celebration of Writings From the 1920s (1995) 73. Lewicki et al refer to the importance in integrative negotiation of identifying interests with a view to generating alternative solutions. See Roy Lewicki, Bruce Barry & David Saunders, *Negotiation*, (6th ed, 2009) 79-85.

programs and similar activities after leaving law school. Strong claims continue to be made for clinical education in terms of its capacity to foster ethical awareness and pro bono contributions as well as skills development and there is a clear need for further empirical evidence to support such claims.[44]

Brodie refers to community lawyering clinics providing the opportunity to explore both skills and values simultaneously and in an integrated way.[45] This type of neighbourhood-based clinic, in which students provide advice in neighbourhoods close to their law school, enables the advancement of social justice objectives while also providing an environment in which students can engage in 'reflective, hands-on law practice that contributes mightily to their acquisition of the skills and values we associate with excellent lawyering'.[46]

To satisfactorily address the underlying tensions, clinical programs need to understand and prioritise the various possible program aims. Further, once particular objectives have been prioritised, these need to be accepted and supported by the law school and university.

Integration and Collaborative Advantage

The prospects for constructive integration of learning and service rely on clinicians collaborating effectively with their law school colleagues as well as professional groups and community organisations. Huxham and Vangen have identified that, while collaboration is prominent in the strategies of many organisations[47] and in the literature related to a wide range of disciplines[48], there is surprisingly little research that explicitly addresses the practice of collaborating. Their theory of collaborative

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[44] Palermo and Evans have reported on their survey-based research into the impact of clinical legal education and ethics courses on the values and ethical understandings of early-career legal practitioners in Australia. They tentatively conclude that 'establishment of a significant link between clinical experience and better ethical attitudes is almost (but not quite) there.' Josephine Palermo & Adrian Evans, 'Almost There: Empirical Insights Into Clinical Method and Ethics Courses in Climbing the Hill Towards Lawyers' Professionalism' (2008) 17 (1) *Griffith Law Review* 252, 278. Sandefur and Selbin recently found that there was 'surprisingly little empirical evidence about the relationship between clinical legal education and the practical and professional development of law students'. See Rebecca Sandefur & Jeffrey Selbin, 'The Clinic Effect' (2009) 16 *Clinical Law Review* 57, 58.

[45] Brodie, above n 25, 384. Community lawyering clinics are examined more closely in Chapter Three.

[46] Ibid 335.

[47] Chris Huxham & Siv Vangen, *Managing to Collaborate: The Theory and Practice of Collaborative Advantage* (2005) 7.

[48] They list sociology, business policy, economics, economic geography, public policy, politics and management. Ibid 10.

advantage involves synergistic outcomes, where a real advantage can be gained through collaboration, something that 'could not have been achieved by any one of the organisations acting alone'.[49]

Huxham and Vangen state that collaborating is time-consuming and requires the parties to be prepared to compromise while protecting their respective agendas. Participant organisations will operate in different ways and this places a premium on effective communication. It is also considered useful to begin collaborating by setting small, achievable tasks.[50] Noone has referred to similar insights in relation to integrated service delivery, with the level of partnership potentially progressing from co-operation to coordination then to collaboration and finally to integration.[51] These principles resonate with the literature in relation to dispute resolution processes designed to promote disputants taking ownership of efforts to manage their differences.[52]

Collaboration is by no means straightforward and needs to be carefully planned and implemented. What happens in many instances is closer to collaborative inertia, where limited output is achieved at a slow rate. The process of managing the aims of various collaborators 'is a central, continuous and inherently difficult aspect of collaboration practice'. It is part of the ongoing relationship rather than 'a precursory task to be got out of the way so that the main business of getting on with the job can be accomplished'.[53] This reinforces the importance of parties continuing to clarify their respective interests and invest time in identifying ways in which those interests can be advanced collaboratively.

Those involved in clinical programs can draw on these integrative and collaborative advantage insights as a framework for identifying ways in which to advance multiple objectives in tandem.

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[49] Ibid 60.
[50] Ibid 37.
[51] Mary Anne Noone, 'Towards an Integrated Service Response to the Link Between Legal and Health Issues' (2009) 15 *Australian Journal of Primary Health* 203, 205.
[52] Christopher Moore, *The Mediation Process* (3rd ed, 2003) 3-20.
[53] Huxham & Vangen, above n 47, 33.

Multiple Contributions to Student Learning

This section of the chapter considers the various forms of learning identified in the literature as available to students through clinical experiences. Some of these contributions are unique to clinics and come from the practice context of real client clinical work.[54] Clinical experiences can complement the classroom-based coverage of many basic subject matters, thereby addressing deficiencies in the standard law curriculum[55] and integration of clinical methodologies with the rest of the law curriculum provides opportunities to extend the benefits of clinic-based insights.

Clinical methods are well placed to act as a counterpoint to approaches which currently dominate law teaching, be it the case-dialogue method in the USA[56] or the large class lecture in Australia,[57] India[58] and many other nations. The *Best Practices Report* argues that students who are being educated experientially are being involved in all three domains of learning: the cognitive; the psychomotor or performative; and the affective or feeling.[59] The flexibility of clinical methodologies is particularly helpful in fostering the learning of those students who do not engage well with more passive approaches to learning.[60] Maranville offers a novel way of understanding this contribution,

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[54] In the words of the Committee on the Future of the In-House Clinic convened by the Association of American Law Schools in the early-1990s, 'No other learning experience in law school combines the extraordinarily varied and dramatic context of real cases and problems with the opportunity for intensive teaching, supervision, growth and reflection.' See AALS, above n 3, 517. Condlin identifies that clinical experiences provide students with opportunities to inspect particular types of lawyer work prior to job selection (placement). See Robert Condlin, '"Tastes Great, Less Filling": The Law School Clinic and Political Critique' (1986) *Journal of Legal Education* 45, 46.

[55] Linda Smith, 'Designing an Extern Clinical Program: Or As You Sow, So Shall You Reap' (1999) 5(2) *Clinical Law Review* 527, 531. Feldman describes clinical method as 'important for its potential to compensate for deficiencies in the existing patterns of legal education'. See Marc Feldman, 'On the Margins of Legal Education' (1985) 13 *Review of Law and Social Change* 607, 617. Keyes & Johnstone refer to there being a 'great deal of evidence available about what constitutes good teaching in higher education. Almost every aspect of that evidence is at odds with the traditional model of legal education. We think it is a matter of serious concern that very little of this research has directly influenced the policy debate on desirable change in tertiary legal education'. Keyes & Johnstone, above, n 18, 547.

[56] Sullivan et al, above n 4, Chapter 1.

[57] Keyes & Johnstone, above n 18, 552.

[58] Bloch & Prasad, above n 22, 168.

[59] Stuckey, above n 3, 167.

[60] Smith refers to Ryan Cole and Kolb in relation to adult learners being 'thought to have different preferred learning styles including learning by reading, listening, observing, and experimenting'. Smith, above n 55, 531, footnote 20. Wilson notes: 'The "breath of fresh air" brought about by clinical legal education to the otherwise arid and formal law school classroom is almost palpable.' Richard Wilson, 'Training for Justice: The Global Reach of Clinical Legal Education' (2004) 22 (3) *Penn State International Law Review* 421, 429.

highlighting the special capacity of clinic-based experiences to generate passion on the part of students, by which she means 'boundless enthusiasm' in their learning.[61]

There are connections between simulations and Problem-Based Learning (PBL). PBL involves students being 'presented with a problem situation before any subject-matter knowledge is acquired'.[62] Students, generally in small groups, 'analyse the problem and identify resources for learning how to solve it. Next, they independently pursue those resources and bring their new knowledge back to the groups usually and apply it to the problem.' The objective is for them 'to "learn how to learn" with guidance from an instructor who acts as a facilitator.'[63] Clinical simulations are often utilised to advance similar objectives. Live-client clinics have also been identified as aligning well with the principles of PBL.[64]

Legal Professional Skills Development

A range of authors have articulated the contributions clinics can make to students developing professional skills. The Association of American Law Schools (AALS) states that the goal of providing professional skills instruction is so well established that 'it is often taken as a synonym for clinical education'.[65] A critical component of such teaching 'is to provide models for the exercise of these skills, rather than simply focussing on how-to-do-it.'[66] Close supervision of students is significant to providing the scaffolding novices need in order to further develop their professional skills.[67]

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[61] Deborah Maranville, 'Passion, Context and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences' (2000) 7 *Clinical Law Review* 126, 128. Condlin identifies that clinic settings can enable the teaching of doctrine and analysis in an engaging fashion. Condlin, above n 54, 46.

[62] David Cruickshank, 'Problem-based Learning in Legal Education' in Julian Webb & Caroline Maughan (eds.), *Teaching Lawyers' Skills* (1996) 187, 188.

[63] Ibid. When supervisors in the leading English legal clinic at the University of Northumbria sought to address concerns about the lack of realism in the approach of students to the Year 3 simulations, they looked to the PBL approach used in medical education, adding an 8th step (elaboration, as used at Manchester Medical School) to the 7-step PBL approach referred to by Tamblin & Burrows. See Cath Sylvester, Jonny Hall, & Elaine Hall, 'Problem-based Learning and Clinical Legal Education: What can Clinical Educators Learn From PBL?' (2004) 4 *International Journal of Clinical Legal Education* 39, 46.

[64] Roger Burridge, 'Learning Law and Legal Expertise by Experience' in Roger Burridge et al (eds), *Effective Learning and Teaching in Law* (2002) 31-35. 'Learning occurs in the process of confronting a novel and messy scenario and researching the evidential, procedural and substantive issues involved.' (at 34).

[65] AALS, above n 3, 512. Maranville asserts that 'Clinical methodologies are without peer in teaching lawyering skills, from basic technique to sophisticated strategy.' Maranville, above n 61, 130.

[66] AALS, above n 3, 512.

[67] Sullivan et al, above n 4, 27. 'By making explicit important features of good performance through various conceptual models and representations, teachers can guide the learner in

Integrative approaches that combine simulations with real-client work, with complexity increasing over time as students develop their skills and understandings, are important here.

The absence of skills training from the traditional law curriculum resulted in many early clinical programs adopting skills training as their mission.[68] A wide range of practice skills are suitable for development through clinic-based experiences, including trial advocacy, interviewing, problem-solving, client counseling, negotiating, mediating, lobbying, drafting,[69] fact management, legal research, time management[70] and strategic planning.[71] The MacCrate Report developed a further dimension, linking a comprehensive set of fundamental lawyering skills with a set of four fundamental lawyering values.[72]

Students entering a clinical program tend to place a high value on the skills development aspect of their clinical experience (although their focus may shift as their clinic experience develops). 'Hands-on' skills development is also viewed favourably by the practising legal profession. Interestingly, clinic teachers tend to be less focussed on this contribution, emphasising the significance of students developing professional values and being sensitised to social justice concerns. Sherr suggests that the comprehensive uptake of skills training in practical training programs is a major achievement of the clinical movement but argues further that, if clinics have no major purpose beyond skills training, they are unlikely to have an ongoing significance.[73]

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mastering complex knowledge by small steps. These devices of representation serve as scaffolds (in the language of learning theorists) to support efforts at improved performance.'

[68] Smith, above n 55, 528.

[69] Ibid.

[70] Brayne, Duncan & Grimes, above n 1, 39. They state: 'A brilliant law student may be totally lacking in judgment.'

[71] Elliot Milstein, 'Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations' (2001) 51 *Journal of Legal Education* 375, 379. He states: 'The real world setting of the clinic forces students to engage in the complexity of analysis that is inherent when the multiple actors who affect outcomes are identified.'

[72] ABA, above n 27, Chapter Five. The skills referred to in the MacCrate Report included legal analysis and reasoning (151-7), factual investigation (163-172), communication (172-176), organisation and management of legal work (199-203), recognising and resolving ethical dilemmas (203-207). The 4 fundamental values identified were: provision of competent representation; striving to promote justice, fairness and morality; striving to improve the profession; and professional self-development.

[73] Avrom Sherr, 'Clinical Education at Warwick and the Skills Movement: Was Clinic a Creature of its Time?' in Geoffrey Wilson (ed), *Frontiers of Legal Scholarship* (1995) 108, 116-119.

Dealing With Unstructured Situations

Various authors emphasise the use of clinics to enable students to develop the analytical frameworks they will need to effectively structure their work on behalf of clients. The Carnegie Report observes that the mark of professional expertise is 'the ability to both act and think well in uncertain situations'[74] and that clinics can enable the features of a practice environment to be revealed in simplified ways which can be understood by novice practitioners 'who can begin to develop their own perception and judgment'.[75]

Modes of planning and analysis for dealing with unstructured situations are described by Amsterdam as 'conceptual foundations for practical skills'. Two such skills which are ideally suited to development in the clinic are: the structuring and application of doctrine to situations involving unclear or developing facts; and problem-solving through 'a thorough canvass of one's goals and an equally thorough study of the ways in which those goals might be accomplished'.[76] Students need to develop their understanding of the demands, constraints and methods for analysis of situations where the issues have not been pre-identified.[77]

In its analysis of the skill of problem solving, the MacCrate Report emphasises the importance of clients (in terms of goals and how they define the problem) as well as information (what is available and what could be obtained).[78] Clearly, clinical experiences can make an important contribution to students developing their own frameworks for addressing unstructured situations.

Self-awareness and the Capacity to Learn From Reflection

Many writers refer to the importance of the clinic's role in enabling students to learn how to learn from experience.[79] The close supervision enabled by low student-teacher

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[74] Sullivan et al, above n 4, 9.

[75] Ibid 10. Milstein describes the contribution of clinics in developing the strategic planning skills of lawyers, involving 'making decisions about taking action or withholding action in order to maximise the likelihood of achieving the goals' of the client. 'The real-world setting of the clinic forces students to engage in the complexity of analysis that is inherent when the multiple actors who affect outcomes are identified.' Milstein, above n 71, 379.

[76] Anthony Amsterdam, 'Clinical Legal Education – A 21st Century Perspective' (1984) 34 *Journal of Legal Education* 612. This is cited by the AALS, in its discussion of the capacity of clinical education to develop reflective practitioners. AALS, above n 3, 512.

[77] Stuckey, above n 3, 169.

[78] ABA, above n 27, 141-144.

[79] Brayne, Duncan & Grimes, above n 1, 47; Smith, above n 55, 530; Stuckey, above n 3, 169; AALS, above n 3, 513; Rice & Coss, above n 1, 30. Milstein suggests that the ultimate intention

ratios should facilitate such student reflection. The flexibility of clinical methods also enables students to engage in wide and deep experiences, providing greater opportunities to acquire wisdom. These experiences include 'making mistakes and learning from them.'[80] Reflective learning and self-awareness are also important in fostering resilience, a quality which is increasingly recognised as significant in the work of professionals in a range of disciplines.[81]

Exploring and Critiquing Lawyering and Legal Systems

Institutional critique appears to be a more prominent objective of clinical education in law than in other professions. Students and faculty studying particular areas of substantive law can 'develop a profound understanding of the legal theory, economic implications and social dynamics of a given segment of the legal system'.[82] Critique of the capacities and limitations of lawyers and the legal system is intertwined with and builds upon the other goals of clinical legal education.[83] The nature of the clients represented by clinics – often the poor and disenfranchised – highlights to students 'the way in which status often disadvantages their client, sometimes as a result of legal doctrine or other times because of the prejudices of judges or other actors in the legal system.'[84]

Awareness of Clients and Contexts

Clinic-based experiences enable the impact of the law and legal processes to be very clearly demonstrated to students, many of whom will initially have little idea how the law impacts on people in practice. This provides opportunities to examine the impact of particular areas of law and legal doctrine in real life.[85] 'Practical courses in lawyering and work in legal clinics are thus the logical complement to the forced

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of clinical pedagogy is to teach students to be 'reflective practitioners'. Clinic students are 'asked to evaluate themselves, analyse their experiences, and articulate what they have learned about themselves, about their abilities, about the validity of the assumptions underlying their strategic predictions, about the lawyering process, and about the justice system'. Milstein, above n 71, 380. Condlin identifies the potential for students to increase their self-awareness of dispositions and values likely to impact on their performances as lawyers. Condlin, above n 54, 46.

[80] Brayne, Duncan & Grimes, above n 1, 39. They state that, 'A brilliant law student may be totally lacking in judgment.'

[81] Stuckey, above n 3, 29-36.

[82] Smith, above n 55, 530. Condlin also identifies the importance of critique, enabling students to understand and criticise standard ways of performing lawyer practice skills for their contributions', both in specific instances and in the aggregate, to the legal system and the outcomes it produces. Condlin, above n 54, 46-7.

[83] AALS, above n 3, 516.

[84] Milstein, above n 71, 379-380.

[85] AALS, above n 3, 515-516.

decontextualisation that students experience in the standard first-year curriculum.'[86] Constructivist learning theory emphasises that learning is a matter of constructing interpretations of experiences and developing personal understandings that stay with the learner. Students will learn better 'when their opportunities to construct understandings are authentic, such as when their learning is anchored in a realistic context'.[87]

Milstein describes client-centered lawyering as 'perhaps the ideological core of clinical legal education'. Its starting point is that all important decisions related to solving a legal problem involve value choices and the lawyer needs to assist the client to 'make those decisions in a way that is consistent with the client's values.'[88] The Wisconsin clinical program developed a 'systems' approach in which the client is placed at the centre and seen interacting with a range of systems. The clinic emphasises 'teaching law students how particular systems...work at a day-to-day operational level. This approach encompasses both skills acquisition and social justice goals.'[89]

This extends further to illustrating to students the merit of adopting holistic and inter-disciplinary approaches to addressing legal issues, in both practical and theoretical contexts. Placing the client rather than the law at the centre also involves recognition of the limits of the law and the importance of other disciplines.[90] Clinical legal education allows students to consider the relevance, viability and applicability of legal rules and principles in other professional contexts as well as providing opportunities for cross-disciplinary collaboration.[91]

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[86] Sullivan et al, above n 4, 59. Maranville also refers to the contribution of clinics through providing context. She refers to these five aspects of context: information about the people who find themselves involved in legal disputes; the institutions and practices giving rise to legal disputes; the processes in which legal doctrines are applied; familiarity with the legal tasks lawyers perform; and the firms, organisations and work settings in which lawyers perform their tasks. Maranville, above n 61, 128-129.

[87] Michael Schwartz, Sophie Sparrow & Gerald Hess, *Teaching Law by Design* (2009) 7.

[88] Milstein, above n 71, 378.

[89] Meredith Ross, 'A "Systems" Approach to Clinical Legal Education' (2007) 13 *Clinical Law Review* 779, 781. In her account of the history of the clinical program at the University of Wisconsin, Ross quotes, at 788, the founder of that program, Frank Remington, who criticised skills-focussed courses as narrowing the clinical experience to a 'head start program' for people soon to join the profession.

[90] Noone, above n 51.

[91] Rice & Coss, above n 1, 32.

Collaboration

The Carnegie Report rightly identifies that the highly competitive atmosphere of most law school activities generates a widespread perception that students have entered a high-stakes, zero-sum game. This is then reinforced by competitive assessment practices.[92] Clinics provide multiple opportunities to foster greater collaboration and the use of integrative frameworks, amongst students as well as between students and supervisors:

> 'Working together, they often identify a range of options, and in that process, they learn another important lesson: that professional work involves exercising practical judgments under conditions of uncertainty. Collaborative learning allows students to develop new ideas through dialogue with others. Finally, collaborative learning provides support for the stress of practice.'[93]

Clinical experiences can help develop the capacity of students to effectively collaborate. Lawyers will not value collaboration if they do not know how to collaborate effectively. 'The more one values and practices collaboration, the better one will collaborate. The better one collaborates, the more one will value and practice collaboration.'[94]

Promoting Ethical Understanding and Actions

The literature on clinical legal education emphasises the suitability of practice contexts for fostering ethics-related learning.[95] Experiential education is a 'powerful tool for forming professional habits and understandings'[96] allowing students 'to critically analyse the law of lawyering including the various codes of practice and their rationales within a framework of access to justice issues, a client centred approach and a

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[92] Sullivan et al, above n 4, 30.

[93] Bryant & Milstein, above n 3, 208-9. The AALS Report on the Future of the In-House Clinic rightly noted that clinics can provide opportunities for collaborative learning. The 'intensely individual' nature of almost all law school learning can be contrasted with the prevalence of legal practice situations involving preparation and performance in a collaborative environment. AALS, above n 3, 514.

[94] Chavkin, above n 10, 254-255. See also David Chavkin, 'Matchmaker, Matchmaker: Student Collaboration in Clinical Programs' (1994) 1 *Clinical Law Review* 199 for a valuable analysis of both the importance and challenges of fostering student collaboration.

[95] See, for example, Sullivan et al, above n 4, 120. 'Decades of pedagogical experimentation in clinical-legal teaching, the example of other professional schools, and contemporary learning theory all point toward the value of clinical education as a site for developing not only intellectual understanding and complex skills of practice but also the dispositions crucial for legal professionalism.'

[96] Stuckey, above n 3, 167.

recognition of the public role of a legal practitioner.'[97] This also recognises the scope for fostering the natural synergies between service and learning referred to earlier.

Clinicians have argued that every clinician is also teaching legal ethics and professional responsibility.[98] The legal practice context of the clinic gives rise to spontaneous and various ethical questions,[99] allowing students 'to judge their ethical standards not just by their ideals, but by their actual deeds'.[100] Students can also learn through observing the actions of their supervisor and other professionals involved in the clinic.[101] Clinic-based learning about ethics emphasises the professional responsibility dimensions of understanding and addressing relevant codes and rules[102] as well as the development of character.

Teaching students to engage in professionally responsible legal work is considered 'one of the fundamental justifications for locating the clinic within the academy'.[103] The *Best Practices Report* has called for US law schools to expand their use of experiential education as 'a powerful tool for forming professional habits and understandings'.[104] Concerns regarding the lack of professional standards of lawyers were central to Ford Foundation support for the development of the extensive clinical programs in US law schools.[105] Since 1994, La Trobe Law School has included a clinical component in the ethics subject required for admission to legal practice. This was a significant development in the Australian context, with a new school recognising the natural

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[97] Liz Curran, Judith Dickson & Mary Anne Noone, 'Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice' (2005) 8 *International Journal of Clinical Legal Education* 104, 121.

[98] Peter Joy, 'The Law School Clinic as a Model Ethical Law Office' (2003) 30 (1) *William Mitchell Law Review* 35.

[99] Rice & Coss, above n 1, 21.

[100] AALS, above n 3, 514.

[101] The AALS Committee on the Future of the In-House Clinic stated 'students are able to observe the faculty member modelling how she would address the professional responsibility issue in question, and to learn that competent professionals take ethical responsibilities seriously'. AALS, above n 3, 514.

[102] Condlin, above n 54, 46.

[103] Milstein, above n 71, 378-9. He agrees with other writers that this teaching extends beyond issues of compliance with professional conduct rules to engaging students 'in an exploration of their role in creating a just society'. See also Condlin, above, note 54, 46 and AALS, above n 3, 513.

[104] Stuckey, above n 3, 167.

[105] The Ford Foundation establishing the Centre for Legal Education on Professional Responsibility (CLEPR) in 1968 .For a review of CLEPR's contribution to the development of clinical legal education in the USA, see J. P. Ogilvy, 'Celebrating CLEPR's 40TH Anniversary: The Early Development of Clinical Legal Education and Legal Ethics Instruction in U.S. Law Schools' (2009) 1 *Clinical Law Review* 1.

suitability of clinical experiences in enabling students to develop their ethical understandings.[106]

The contributions of clinical experiences to the goal of fostering professionalism have 'ranged from helping students develop appropriately professional and responsible relations with clients, to providing *pro* bono services, to inspiring students to champion the causes of the poor and reform the legal institutions they encounter.'[107] This teaching is said to involve 'reaching the heart and soul of the students' to develop their 'sensitivity to malfunctioning and injustice in the machinery of justice and the other arrangements of society'.[108]

Fostering Student Commitment to Social Justice

Developing student sensitivity to social justice concerns generated by the law and legal processes is another significant goal of clinics. This is linked to promoting the engagement of students in pro bono activities, a contribution which is explored further in the next section of this chapter. Students develop their sense of justice as they cannot begin to 'handle the real problem presented without an emotional response'.[109] A social justice-oriented clinical experience can create circumstances in which students will encounter 'disorienting moments' where their clinic experience cannot be explained by their previous understandings of how the world works.[110] This relates particularly to students understanding the impact of laws on marginalised people. Quigley emphasises that a complete clinical education experience should include lessons about social justice.[111]

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[106] Mary Anne Noone & Judith Dickson, (2002) 'Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers' 4(2) *Legal Ethics* 127, 137. The clinic placement is combined with a seminar series which harnesses the opportunity for students to 'reflect on the way a practitioner's duties and ethics are relevant to daily legal practice as well as on the efficacy of law, the legal system, the legal aid system, the legal profession and the nature of justice'. This was also the first Australian clinical program to involve students taking responsibility for clients within the practice of a major statutory legal aid office rather than a community legal centre.

[107] Smith, above n 55, 530.

[108] Ibid 529. The AALS Committee on the Future of the In-House Clinic stated 'Nurturing the student's ability to engage in representation of indigent clients ought to be an important part of the training of ethical lawyers. The clinic can provide both the experience of representing indigent clients and the opportunity for reflection on and discussion of such representation. AALS, above n 3, 516.

[109] Brayne, Duncan & Grimes, above n 1, 38.

[110] Fran Quigley, 'Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics' (1995) 2 *Clinical Law Review* 37, 50.

[111] Ibid, 38. Ross also lists a series of articles on the explicit social justice agenda of US law school clinics. Ross, above n 89, 780-1.

Clinics can foster social justice objectives through using models which provide holistic representation and service,[112] promote community empowerment through community economic development initiatives[113] and international human rights frameworks.[114] A social justice mission is particularly important for those law schools with a close association to a particular religion.[115] Levy-Pounds and Tyner argue that clinicians can prepare students to address 'the needs of under-served communities by incorporating the sub-Saharan African philosophy of Ubuntu into the course curriculum'. Ubuntu recognises 'the universal bonds and sense of interrelatedness of humanity' and by applying this principle, 'law students will be prepared to serve as agents of social change in their local communities and society at large'.[116]

Bloch and Prasad refer to the skills development and social justice dimensions of clinical legal education sharing a 'strong unifying justification' in improving the quality of practical training provided by law schools. Clinic-based practical training serves the public by improving lawyer competence through the use of socially and professionally relevant experiential teaching and learning methods. While there are plenty of lawyers in most countries, 'there is a real shortage of good lawyers – especially in lower-income communities. Lawyer incompetence is its own form of injustice.'[117] Students need to learn more than the techniques of advocacy so as to understand the

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[112] Dubin, above n 27, 1490-1493. 'Recognising that clients often present interrelated legal problems cutting across the subject matter of two or more clinical programs, St Mary's has created a holistic model of clinical representation and collaboration. Priority is given to addressing the multiple needs of clients in order to represent the whole person.' (at 1491).

[113] Ibid, 1493-1495. Dubin refers to the contribution of Community Economic Development lawyers who, through applying "corporate law for the poor", 'can create institutions such as community development corporations (CDCs) that can obtain grants and funds and provides much needed services and institutions in underserved areas such as infrastructure improvement, child care, job training and affordable housing'.

[114] Ibid, 1495-1498. 'Consistent with the globalisation of economic and legal arrangements generally, the future of lawyering for low-income and subordinated persons and groups will be increasingly linked to understanding global political and economic ripple effects and cooperating with public interest lawyers across national borders.' (at 1495).

[115] Dubin quotes Barbara Aldave, Dean at St Mary's University School of Law at the time of establishment of their in-house clinic: 'If any one thing should be of central importance in a Catholic law school, it is a commitment to justice – not only justice under the law, but justice and fairness in society.' Dubin, above n 27, 1483.

[116] Nekima Levy-Pounds & Artika Tyner, 'The Principles of Ubuntu: Using the Legal Clinical Model to Train Agents of Social Change' (2008) 13 *International Journal of Clinical Legal Education* 7, 8. They refer to Archbishop Tutu's characterisation of a person with Ubuntu being 'available for others and to know that you are bond up with them in the bundle of life, for a person is only a person through other persons. And so we search for this ultimate attribute and reject ethnicity and other such qualities as irrelevancies'.

[117] Bloch & Prasad, above n 22, 171.

importance of advocacy in enabling people to solve problems, defend their rights and achieve their goals.[118]

Clinics have pursued social justice objectives by working well beyond the traditional service delivery model of advice and representation for individual clients. Some new approaches have been focussed on enriching student learning while others have been designed principally to enhance the community benefits of the work of clinic teachers and their students. The range of different types of individual client work and community work, including specialist models, will be examined closely in Chapter Three.

A Focus for Effective Integration

This chapter has identified a wide range of educational contributions which can be pursued through clinical programs. The clinic has been described as providing the best opportunity for integration of such goals.[119] These various contributions tend to be integrative in nature and are not easily or helpfully isolated and compartmentalised. Each clinical experience will need to be crafted through choice of model, supervision, resourcing and sequencing. Supervision issues will be addressed later in this chapter while the selection of clinical models and sequencing of clinical experiences will be the focus of Chapter Three. Concerns related to resourcing will be addressed in Chapter Four and in the case studies.

Australian clinician Mary Anne Noone is prominent in the scholarship regarding the benefits of integrated (holistic) provision of legal services. She has identified a range of terms that are used in relation to inter-organisational efforts to work together. These include integration, co-ordination, partnership and collaboration.[120] The community legal centre and legal aid backgrounds of many Australian clinicians mean they tend to be comfortable with multi-disciplinary collaborative practice models[121] and this augurs well for the prospects of clinics continuing to foster collaborative arrangements.

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[118] Steven Wizner, 'Beyond Skills Training' (2001) 7 *Clinical Law Review* 327, 328.
[119] AALS, above n 3, 516.
[120] Noone, above n 51, 205.
[121] Ibid. Noone states that the 'multidisciplinary (or integrated) approach of Australian community legal centres has received little analysis to date but is now of renewed interest' given recent research findings.

Promoting Enduring Pro Bono Contributions

Clinics are often identified as important in enhancing the commitment of students to professional ideals and values, fostering the values that promote pro bono contributions.[122] The sense of personal responsibility engendered by clinic-based work for real clients can develop into a sense of social responsibility for providing marginalized people with access to legal services.[123] While Evans refers to 'the dream of every clinical teacher to prove that a "clinical experience" in law school will direct law students towards public interest lawyering,[124] statements of this nature are challenging to corroborate with empirical data.[125]

Australia, South Africa and the USA provide examples of early clinical programs developing out of student volunteer programs. Springvale Legal Service operated with very substantial volunteer input from Monash law students for two years before it became Australia's first clinical legal education site.[126] Like various US law schools, Yale Law School students first became involved in organized volunteer programs many years before their volunteer commitment developed into a for-credit clinical

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[122] The Best Practices Report identifies the principle that clinic teachers should focus on educational objectives that can be most effectively achieved through experiential education, including helping students to adjust to their roles as professionals. (at 168-170) The Carnegie Report argues that 'ethical deportment depends on complex traditions of living that can only come alive through apprenticeship experiences with exemplars of judgment and skill. Thus, the apprenticeship of practice takes on aspects of the critical apprenticeship of ethical engagement'. (at 119) See also Lucy White 'The Transformative Potential of Clinical Legal Education' (1997) 35 (3) *Osgoode Hall Law Journal* 603, 606; Les McCrimmon (2003-4) 'Mandating a Culture of Service: Pro Bono in the Law School Curriculum' 14 (1) *Legal Education Review* 53, 58; Julie Bennett & Sharon Fishlowitz, 'Risks and Rewards of Law Student Volunteer Service: A Supervisor's Perspective' (2003) 30 (1) *William Mitchell Law Review* 109, 113. Styles and Zariski consider clinics well placed to counter some of the negative influences of traditional legal education on students' commitment to the public interest. Styles & Zariski, above n 26.

[123] Wizner, above n 118, 329.

[124] Adrian Evans, 'Efficacy Beyond Reasonable Doubt?' (2001) 19 *Law in Context* 89.

[125] Meltsner and Schrag note that while there are no empirical studies which compare law graduates who took clinics with those who did not. Nonetheless, they state 'it seems safe to say that as a result of taking clinics, many thousands of lawyers have begun their careers much better able to take responsibility for helping clients, with much greater understanding of how social institutions really work, and with greatly heightened awareness of ethical issues and how to address them.' Philip Schrag & Michael Meltsner, *Reflections on Clinical Legal Education*, (1998) 9.

[126] Giddings, above n 42, 38-40.

program.[127] The clinic at the University of Cape Town was run on a voluntary basis by both students and the local practitioners who supervised their work.[128]

This history suggests that clinical programs can emerge from law school pro bono initiatives. Some writers do not differentiate between pro bono service and clinical legal education, seeing them as one and the same.[129] Funding constraints may mean that strategies beyond clinical programs need to be used in efforts to promote a commitment to community service amongst law students.[130] A volunteer program may be a stepping-stone to the establishment of a clinical program with a strong focus on community service. Increasing Australian government interest in the development of pro bono legal services over the past decade has seen the development of more formalised pro bono contributions from the practising profession.[131]

Sandefur and Selbin have reported on the clinical legal education dimensions of the *Beyond the JD* Research Project, a national longitudinal of early-career US lawyers.[132] They state that there is 'surprisingly little empirical evidence about the relationship

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[127] Volunteer services began at Yale in the late-1920s but it took more than 40 years for such activities to attract academic credit. See Laura Holland (1999) 'Invading the Ivory Tower: The History of Clinical Education at Yale Law School' 49 (4) *Journal of Legal Education*, 504, 510-11. See also Chapter 1 of this thesis, footnotes 64-69 and related text.

[128] Peggy Maisel, 'Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn From South Africa' (2007) 30 *Fordham International Law Journal* 374, 380.

[129] Former Australian High Court Justice Michael Kirby conflates pro bono and clinical experience in his Foreword to Patrick Keyzer, Amy Kenworthy & Gail Wilson (eds), *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service Learning* (2009) especially at viii.

[130] Les McCrimmon, 'Law School Clinics Plus' (2001) 19 *Law in Context* 92, 94.

[131] A National Pro Bono Law Conference was held in mid-2000, organised on the initiative of then Federal Attorney-General, Daryl Williams. See Chris Arup & Kathy Laster 'Introduction' (2001) 19 *Law in Context* 1-2. In 2001, the National Pro Bono Task Force reported to the Attorney-General, emphasising the importance of clinical experiences in enabling all law students to enhance their appreciation of ethical standards and professional responsibility. See McCrimmon, above n 122, 53-4. The National Pro Bono Resource Centre was established in 2002 and has developed to include a strong focus on promoting pro bono and voluntary service opportunities to law students. See http://www.nationalprobono.org.au. (last accessed 30 October 2010). In 2004, the National Pro Bono Resource Centre published an Information Paper, *Pro Bono and Clinical Legal Education Programs in Australian Law Schools*, which identified a diverse range of clinical courses and not-for-academic-credit pro bono activities in Australian law schools. The paper noted that clinical and pro bono programs are likely to have different goals but described both as 'vital components of a comprehensive social justice education at law school'. National Pro Bono Resource Centre *Pro Bono and Clinical Legal Education Programs in Australian Law Schools* (2004) 11. The Information Paper emphasised that both clinical education and pro bono activities are on the rise in Australian law schools. Amongst a general diversification of clinic sites and the emergence of public interest law clinics, pro bono agencies like the Public Interest Law Clearing Houses in Victoria, New South Wales and Queensland now host clinics and are also reliant on the volunteer contributions of students.

[132] Sandefur & Selbin, above n 44, 57.

between clinical legal education and the practical and professional development of law students'.[133] Their data indicates that early-career lawyers value clinical experience more highly than any other aspect of the formal law school curriculum in preparing them to make the transition to the profession.[134] The analysis addresses the contributions made by clinical experiences in a stand-alone sense and could usefully have been extended to consider further contributions made through integration of clinical insights across the broader law curriculum.[135]

Attention should be paid to mapping the various ways in which it may be possible to strengthen the links between clinic courses and pro bono legal service providers.[136] At the same time, it is important to consider whether a greater emphasis on pro bono initiatives may have an adverse impact on clinics. Sylvester notes that English clinics 'have always had, at their forefront, educational priorities. The increase in pro bono initiatives and greater involvement of students in legal practical work may compromise this.'[137]

Concerns of this nature also arise when those advocating the importance and value of student pro bono schemes demonstrate a limited understanding of the importance of effective supervision and structure in enabling students to maximise their learning from clinical experiences. In writing about the emergence of Pro Bono Students Australia at the University of Western Sydney, Sappideen and Cingiloglu emphasise the contributions of students in the governance and delivery of projects. They refer to a part-time student co-ordinator having responsibility for activities including recruitment of volunteer students, advertising, co-ordination, evaluation and, perhaps most

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[133] Ibid 58. They go on to state that the existing research 'does little to reveal, explain or otherwise inform our understanding of the relationship between clinical legal education and the practical and professional development of law students.

[134] Sandefur & Selbin, above n 44, 58-59. See also Table 1, at 85. The significance of the clinic experience is reinforced by the contributions which clinical experiences can make to legal ethics teaching.

[135] While such contributions would be difficult to measure, Sandefur & Selbin refer to the *Carnegie Report* recommendations regarding an curriculum which integrates the cognitive, skills and civic dimensions of legal education. Ibid 70.

[136] In Australia, a National Pro Bono Task Force was established in 2000. One recommendation of the Task Force was for the Council of Australian Law Deans to review the policies and institutional commitment of member law schools to clinical and pro bono placement programs. See John Corker, 'Student Experiential Learning in a Social Justice Context: The Way Forward' in Patrick Keyzer, Amy Kenworthy & Gail Wilson (eds.) *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service Learning* (2009) 11, 13.

[137] Cath Sylvester, 'Bridging the Gap? The Effect of Pro Bono Initiatives on Clinical Legal Education in the UK' (2003) 3 (1) *International Journal of Clinical Legal Education* 29, 36.

significantly, supervision.[138] This indicates a fundamental lack of recognition of the importance of close and supportive expert supervision in enabling students to draw useful insights from experience. It also underestimates the complexity of legal issues that arise in the context of pro bono legal work.

In reflecting on his experiences in developing extra-curricular student clinics at the Universities of Bristol and Strathclyde, Nicolson emphasises the validity of community service as a focus for clinical programs. Nicolson considers service-focussed clinics to be more valuable in terms of both the services provided and avoiding the problematic messages students absorb in education-focussed clinics which prioritise student learning over community need.[139] The weakest link in Nicolson's argument relates to his failure to recognise the importance of effective supervision in ensuring the quality of services delivered to the community and in providing students with effective frameworks for reflecting on their experiences in clinic-based work.[140] As will be discussed in the next section of this chapter, effective supervision is fundamental to enabling students to make sense of their practice-based experiences.

Student Supervision

Student supervision is a hallmark of clinical legal education and should be understood as directly related to the design and implementation of objectives for a clinical program. Whichever objectives are prioritised, student experiences need to be structured and supervised in order to advance those objectives. The practice-based context of clinical legal education has the potential to offer a very rich learning environment. However, the benefits of such an environment may be lost or diluted without close supervision or if the supervision is not focussed on facilitating student

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[138] Carolyn Sappideen & Figen Cingiloglu, 'Law Student Pro Bono: Report of the Australian Pilot' in Patrick Keyzer, Amy Kenworthy & Gail Wilson (eds.) *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service Learning* (2009) 21, 35-6. Endnote 139 refers to the Co-ordinator's workload averaging out at 2 days per week across the semester.

[139] Donald Nicolson, 'Legal Education or Community Service? The Extra-Curricular Student Law Clinic' (2006) 3 *Web Journal of Current Legal Issues* 6.

[140] Nicolson states that close supervision of students in education-focussed clinics should reduce the risk of mistakes by students but then refers to the lack of instances in his twelve years of involvement in voluntary student programs where mistakes had been irreparable. Nicolson has subsequently written elsewhere referring to educational theory which indicates that 'lessons learnt from experience are likely to be far more profound and sophisticated if accompanied by reflection on the experience through dialogue with others, especially those with relevant expertise and experience, and an exploration of the relevant academic literature'. See Donald Nicolson, '"Education, Education, Education": Legal, Moral, Clinical' (2008) 42 (2) *Law Teacher* 145, 170.

learning as well as on controlling casework. Developing an environment in which students feel both suitably supported and challenged is a key aspect of the work of the clinic supervisor.[141] It is also what makes clinical teaching more expensive than lecture and seminar-based teaching methods.

Clinical supervision involves an unusual form of legal practice, where partial responsibility for client work is delegated to the student for the purpose of student learning.[142] In most legal practices, supervisors delegate work to less senior lawyers and paralegals because of pressure of business and to maximise fee-generation.[143] As was already noted, the legal work required by a client can almost always be done quicker and more effectively by an experienced lawyer than by a student.[144]

While the clinical legal education literature emphasises the importance of effective supervision, the literature on legal professional supervision more generally is under-developed. Its focus tends to be on risk management with limited attention paid to aspects including fostering awareness of ethical and client-focussed practices, fostering resilience, enhancing quality and promoting work practices which are sustainable in the long-term. In their review of the substantial literature on supervision in health-related disciplines, Kilminster and Jolly describe clinical supervision as a 'complex activity, occurring in a variety of settings, [which] has various definitions, functions and modes of delivery'.[145]

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[141] Barry refers to the risks involved in clinical supervision as including the 'risk of destroying confidence in the very attempt of building it. The risk of allowing creative tension to dissolve into hostility. The risk of permitting clinic precepts of social justice, commitment and professionalism to deconstruct into alienation, intolerance and mediocre performance.' Margaret Martin Barry, 'Clinical Supervision: Walking That Fine Line' (1995) 2 (1) *Clinical Law Review* 137, 138.

[142] Chavkin emphasises that the process involves supervision rather than direction: 'Students need to invest in the quality of their decisions and this process is facilitated by having supervisors help students reflect on their experiences and not by displacing students as the *lawyers* for their clients.' See Chavkin, above n 3, 17.

[143] See Marc Galanter & Thomas Palay, *The Tournament of Lawyers: The Transformation of the Big Law Firm* (1991).

[144] See Chavkin, above n 10, 257-8.

[145] For a comprehensive cross-disciplinary review of the clinical supervision literature, see S. M. Kilminster & B. C. Jolly, 'Effective Supervision in Clinical Practice Settings: A Literature Review' (2000) 34 *Medical Education* 827, 828. Despite supervision practices in medicine being considerably further developed than in law, Kilminster & Jolly contend that there are no adequate theoretical accounts of supervision in medicine. Their review included databases covering medicine, health care, nursing, education, social work and psychology.

Quigley refers to insights from Schon, Dewey and Brookfield in identifying that the clinic setting facilitates experiential learning because it provides structured opportunities to learn by reflecting on the experience provided.[146] The relationship between the student and their supervisor is central to structuring the learning process. The process can challenge students because they are required to 'begin to practice before they know everything'. This can be a 'difficult and scary process that requires honest and searching inquiry about paths taken and mistakes made'.[147] Reflective practice is also considered central to professional development in other disciplines although 'total reliance on reflection may not always be appropriate in supervision because beginners need direction'.[148]

Australian clinicians have tended to receive very little training in relation to student supervision.[149] Their experiences of client-focussed legal practice makes the transition to student-focussed supervision easier. Clinical models involving provision of advice to real clients require students to assume responsibility for their actions in a much more direct way than in other forms of legal education. In such programs, students are compelled to recognise that their actions will influence the well-being of others, namely their clients. 'It necessarily follows from the touchstone of "realism" that a student in role must bear responsibility for the resolution of the problem.'[150]

Clinical experiences direct the student into relatively 'uncharted waters' but do so with a safety net of support structures involving preliminary preparation and close supervision. As their skills and confidence develop, the student can be provided with opportunities to take greater control over their future learning as they test for themselves the best ways to approach issues and problems. This relates to the norms of current legal practice but also and most importantly extends to assisting students to

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[146] Quigley, above n 110, 50. She states: 'Adults' capacity for self-direction is dependent on their ability to be self-aware and to reflect on the implications of their experiences for future action.'

[147] Bryant & Milstein, above n 3, 215.

[148] Kilminster & Jolly, above n 145, 831, referring to J. Fowler & M. Chevannes, 'Evaluating the Efficacy of Reflective Practice Within the Context of Clinical Supervision' (1998) 27 (2) *Journal of Advanced Nursing* 379.

[149] Interviews conducted for the case study chapters revealed that clinicians had limited understanding of the complexities of student supervision prior to becoming a clinical supervisor. Supervision skills workshops have been held as part of each of the last 5 Australian national clinical legal education conferences – 2000 (La Trobe), 2003 (Griffith), 2005 (Monash), 2007 (Griffith) and 2009 (Murdoch) - with a view to addressing this limited experience.

[150] Andrew Boone, Michael Jeeves & Julie MacFarlane, 'Clinical Anatomy: Towards a Working Definition of Clinical Legal Education' (1987) 21 *Law Teacher* 61, 67.

develop a framework for how they will approach the need for ongoing learning and development throughout their professional life.

Effective supervision can also reveal the range of uncertainties which legal professionals must address in their work. These include uncertainty as to what has taken place and why, whether a client's account is likely to be accepted by relevant third parties, which legal doctrines are relevant to the issues facing the client and how those doctrines are likely to apply. Assisting students to develop the ability to deal with unstructured situations has been referred to earlier as a key objective of live-client clinical programs.

Supervision issues have been an area of disagreement in the US clinical field between the advocates of different clinical models, particularly between those endorsing externships and those supportive of in-house clinics. Divergent views have been taken of the particular benefits students derive from being supervised by a practitioner-academic rather than an external person who, while often having lengthy practice experience, must prioritise other responsibilities and may have little experience in working supportively with students.[151]

Givelber et al questioned the significance of academic supervision of clinic students. On the basis of their analysis of the 'co-op' externships program at Northeastern University, they argued that:

> 'the nature and intensity of the work are at least as important as any aspect of supervision in explaining what distinguishes as good learning environment. This finding challenges one of the bedrock assumptions of clinical methodology - the centrality of an intensive, education-focused supervisory relationship.'[152]

[151] This tension is usefully highlighted in the 1991 AALS Committee Report referred to earlier in this chapter which noted: 'There is a marked difference in how schools rated the level of extern supervision. Schools without in-house clinics tended to rate their level of extern supervision as high, while schools that had in-house clinics most frequently rated extern supervision as low.' Various explanations are given for these variations, the most interesting being that they 'represent self-serving statements on both sides, with schools having in-house clinics minimizing the supervision offered to externs, while schools without in-house clinics seek to defend externships as a viable alternative.' AALS, above n 3, 550.

[152] Givelber et al, above n 3, 3.

Further, they insisted that 'there is absolutely no empirical support for the notion that learning can occur only' where 'a professional educator is on the scene.'[153] They found that 'both the characteristics of the job *and* (emphasis in original) the presence of supervision play important roles in students' evaluations of their work experiences.'[154]

There is an interesting divide amongst Australian real-client clinical programs in relation to the provision of advice to the client once the student and supervisor have determined what advice is to be provided to the client. When a client is interviewed for the first time at either the UNSW or Newcastle clinic, the student will not advise the client alone. They do so with their supervisor. Clinical programs outside New South Wales use the approach developed at Monash whereby the student returns to the client and advises them unaccompanied by a supervisor. All programs share a similar approach to preparing students for their involvement in interviewing clients.[155] The approach developed at UNSW is discussed in detail in Chapter Six of this thesis.

Former leading English clinical scholar, Hugh Brayne candidly outlines how he changed his approach to sitting in on student interviews with clients.[156] For his first four years as a clinical supervisor, Brayne 'sat in on every student interview' thinking 'that I had a professional responsibility to do so'. Subsequently, following discussions with clinic teachers in the US, he almost never sat in on student-client interviews. He became concerned to avoid usurping the students' relationship with the client. Brayne considered that his previous approach had come from 'a failure to separate the two goals of legal service and student learning'.[157]

While Brayne's argument in favour of allowing students to conduct their interviews and provide advice without their supervisor present is persuasive, the best model no doubt depends on the individuals involved, both the supervisor and the student. Students who demonstrate the capacity for relatively independent work will benefit from opportunities to assume greater control over the advice process. The extent of

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[153] Ibid 47.
[154] Ibid 38.
[155] In the first weeks of their placement, students observe interviews conducted by their supervisor and former students and are then involved in intensive seminars using simulations to develop their interviewing and advising skills. Such a model allows very competent students to perform to their capacity as opposed to some artificially lower level of responsibility.
[156] Hugh Brayne, 'Law students as practitioners: developing an undergraduate clinical programme at Northumbria University' in Julian Webb & Caroline Maughan (eds),, *Teaching Lawyers' Skills* (1996) 167, 172-173.
[157] Ibid 173.

preparation of students through other developmental activities will also be significant. Students should observe interviews conducted by practitioners as well as experienced students and participate in simulated interviews on which they receive feedback. It may also be useful for students to conduct joint interviews together with fellow students.[158]

One of the dilemmas in clinical legal education relates to too much being expected of a limited number of clinic-based experiences compared with other disciplines. The smaller the number of clinical experiences available to students, the more important effective supervision of each such experience will be. Prior to taking on substantial professional responsibility, students need to be prepared through supervision which directly emphasises the significant duties lawyers owe both to clients and the administration of justice. Such preparation should start with simulated activities in other law studies designed to provide a learning scaffold prior to the start of their clinic-based experience. This should then be followed by closely supervised activities early in the clinical placement. These issues of integration and sequencing of clinical activities will be addressed in detail in the next chapter.

Conclusion

This chapter has considered issues that will continue to influence the selection and implementation of objectives for clinical legal education programs. It has identified the value of recognising the various purposes - for students, law schools and legal academics - that can be advanced through the use of clinical teaching methods. Groups with interests in legal education, including the practising legal profession, have emphasised the benefits that can be gained by students through clinic-based learning about the law. The importance to communities of the legal services provided by clinical programs has also been highlighted. Clinical education has been recognised as important in the development of ethical frameworks and a focus on the interests and concerns of clients.

The sustainability of particular experiences within a broader clinical program requires the setting of realistic objectives, recognising the variables that impact on this process, and then the careful selection of a model that will facilitate achieving those objectives. Different models should then be integrated, where appropriate, and sequenced to

[158] For such a model to work effectively, students will need to be taught how to effectively provide feedback to their peers.

enable clinical experiences to build on the understandings that students have already developed. The complexity of working with real clients should be seen as the next step in refining existing understandings.

Chapter 5 of the *Best Practices* Report provides a very useful framework for such endeavours, including a comprehensive set of best practice standards that can be used to guide the development of experiential learning opportunities.[159] It encourages clinic teachers to focus on promoting those learning opportunities that are particularly well-suited to clinic contexts – ethics and values, skills development and legal problem-solving. The framework also emphasises the importance of course design, particularly the articulation of clear objectives and assessment criteria along with the effective provision of feedback.

Effective supervision is central to operationalising the objectives selected for a clinical program. Supervision needs to be sufficient without being excessive, safeguarding the client while enabling the student to take responsibility for their actions and encouraging the student to reflect on and learn from their experiences. The other key dimension in harnessing the potential of clinical legal education is selection of appropriate models and this is considered in the next chapter.

[159] Stuckey, above n 3, Chapter 5.

Chapter Three – Realising the Potential of Clinical Legal Education

Introduction

This chapter addresses the selection of appropriate models to advance the objectives identified for a clinical program. Chapter Two examined the range of objectives that can be productively pursued through clinical legal education, identifying the potential of clinical methods to foster multiple objectives and the centrality of effective supervision. This chapter considers how to best realise that potential through the selection and sequential use of models which will enable students to make the most of their clinical experiences. It will be argued that an integrative framework should be used to support students in incrementally developing knowledge, values, skills and the capacity to learn from experience. The astute use of a combination of models will foster program sustainability by constructively integrated clinical insights and experiences across the teaching-related activities of a law school.

Most literature on clinical legal education addresses three key models: simulations, externships and real-client clinics.[1] Simulations, which involve students acting in role, are identified as having significant contributions to make in introducing students to practice-related concepts and preparing them for working with real clients.[2] Externship arrangements, involving students being placed with and supervised by an individual outside the faculty, can provide students with a range of experiences not necessarily available within the law school. While raising quality control and other supervision issues, externships are promoted by some law schools as a relatively affordable form of clinical education.

The most clearly recognised model of clinical legal education involves working with real clients. This chapter addresses the particular purposes suited to different types of real

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[1] See Hugh Brayne, Nigel Duncan & Richard Grimes, *Clinical Legal Education: Active Learning in Your Law School* (1998). They devote chapters to in-house real client clinics, working with other agencies and role-play and simulation. See also N. R. Madhava Menon (ed), *A Handbook on Clinical Legal Education* (1998) which focuses on real client clinics while also including 2 chapters on simulations and a chapter on field placements. Milstein refers to in-house live-client clinics, externship programs and simulation courses as the 'three different branches of clinical education in the United States'. See Elliot Milstein, 'Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations' (2001) 51 (3) *Journal of Legal Education* 375, 376.

[2] While traditionally focussed on mooting and advocacy skills, simulations are being used more broadly in Australian law schools. Richard Johnstone & Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee* (2003) 421 & 463.

client work. Generalist clinics emphasise client-focussed practice while specialist clinics address particular areas of substantive law. While clinics which offer advice and representation to clients across a broad range of legal areas remain prominent[3], specialist programs are an increasingly significant feature of the clinical legal education landscape.[4] Such work often takes place 'in-house', in an office operated by the law school but can alternatively involve students being placed with an external agency where supervision is provided by someone employed or engaged by the law school. This type of 'agency clinic'[5] is also known, perhaps inaccurately,[6] as a 'hybrid clinic'.[7] Another description is 'grafted clinic'.[8] Unlike an externship, an agency clinic involves a group of students being supervised on-site by a person whose primary focus is on student learning.

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[3] This remains the most prevalent clinical model in Australia. See Jeff Giddings, 'A Circle Game: Clinical Legal Education in Australia' (1999) 10 (1) *Legal Education Review* 37 & Jeff Giddings, 'Clinical Legal Education in Australia: A Historical Perspective' (2003) 3 (1) *International Journal of Clinical Legal Education* 7. For a recent overview of the use of various in-house clinical models in the USA, see Becky Jacobs, 'A Lexical Examination and (Unscientific) Survey of Expanded Clinical Experiences in U.S. Law Schools' (2008) 75 *Tennessee Law Review* 343.

[4] Jacobs, above n 3. The past fifteen years has seen specialist clinics emerge in Australian law schools in areas including alternative dispute resolution (see Jeff Giddings, 'Using Clinical Methods to Teach Alternative Dispute Resolution: Developments at Griffith University' (1999) 9 (3) *Australasian Dispute Resolution Journal* 206), criminal justice (see Ray Watterson, Robert Cavanagh & John Boersig, 'Law School Based Public Interest Advocacy: an Australian Story' (2002) 2 *International Journal of Clinical Legal Education* 7-37; Lynne Weathered, 'Investigating Innocence: The Emergence of Innocence Projects in the Correction of Wrongful Conviction in Australia' (2003) 12(1) *Griffith Law Review* 64; David Malcolm, 'The Court of Criminal Appeal: A New Scheme to Assist Indigent Appellants' (2000) 29 *Western Australian Law Review* 108 & Paul Moyle, 'The Administration of UCAS' (2000) 29 *Western Australian Law Review* 112), employment law (see Linda Tucker, 'Engaging Students in the Political Process: A Clinical Response to Proposed Changes in the Unfair Dismissal Laws' (Paper presented at the 3rd International Journal of Clinical Legal Education Conference, Melbourne, July 2005, 1-2)), environmental law, family law (see Jeff Giddings & Barbara Hook, 'The Tyranny of Distance: Clinical Legal Education in 'The Bush'' (2002) 2 *International Journal of Clinical Legal Education* 64 & Susan Campbell & Alan Ray, 'Specialist Clinical Legal Education: An Australian Model' (2003) 3 (1) *International Journal of Clinical Legal Education* 67), refugee law (see Alison Vivian & Anna Copeland, 'Human Rights as the Ordinary Work of Clinics' in Bronwyn Naylor & Ross Hyams (eds) *Innovation in Clinical Legal Education: Educating Lawyers for the Future* (2007), 34) and supporting victims of sexual assault (see Adrian Evans, 'Specialised Clinical Legal Education Begins in Australia' (1996) 21(2) *Alternative Law Journal* 79 & Fay Gertner & Carolyn Worth, 'Compensating Sexual Assault Victims: The Development of a Specialist Legal Clinic' in Bronwyn Naylor & Ross Hyams (eds), *Innovation in Clinical Legal Education: Educating Lawyers for the Future* (2007) 53).

[5] John Ferren, 'Goals, Models and Prospects for Clinical-Legal Education' in E. Kitsch (ed), *Clinical Education and the Law School of the Future*, University of Chicago Law School Conference Series No. 20 (1969) 94.

[6] If 'hybrid' is taken to refer to 'a thing composed of incongruous elements'. See Bruce Moore (ed), *Australian Oxford Dictionary* (1999) 648.

[7] Peter Joy, 'Evolution of ABA Standards Relating to Externships: Steps in the Right Direction?' (2004) 10 *Clinical Law Review* 681, see text of footnote 1.

Other clinical models involve students taking on roles other than those traditionally associated with lawyers. These include economic development clinics, where students engage in transactional legal work designed to advance the development of a particular community.[9] Community education clinics, often referred to as Street Law programs, have become increasingly prominent since emerging in the United States of America in the early-1970s[10] and South Africa in 1985.[11] Street Law programs now operate throughout Asia, Central and Eastern Europe and in England[12] and are set to become a more prominent feature of Australian clinical legal education.[13]

This chapter identifies the factors that shape model selection as part of considering how the integration of clinical legal education can be fostered. Various clinical models are examined with attention being paid to the particular contributions each can make to a broader program. Each model can usefully be understood as making distinctive contributions to a broader project. The chapter also addresses the importance of effectively sequencing the use of those various models.

Integrating Clinical Legal Education

In Chapters One and Two, it has been argued that the sustainability of clinical legal education programs can be fostered by utilising integrative frameworks, identifying ways to link clinics to the broader legal education project. The clinical legal education

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[8] Rice and Coss refer to 'grafting a clinic onto a community legal centre'. See Simon Rice and Graeme Coss, *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum* (1996).

[9] Susan Jones, 'Transactional Lawyering for Social Change and Economic Justice' (1997) 4 *Clinical Law Review* 195.

[10] Kamina Pinder, 'Street Law: Twenty-Five Years and Counting' (1998) 27 *Journal of Legal Education* 211. See also Lee Arbetman & Edward O'Brien, *Street Law: A Course in Practical Law*, (8th ed, 2010). See also www.streetlaw.com (last accessed 2 October 2010).

[11] David McQuoid-Mason, 'The Delivery of Civil Legal Aid Services in South Africa' (2000-2001) 24 *Fordham International Law Journal*, S111, S140-141.

[12] David McQuoid-Mason, 'Street Law as a Clinical Program: The South African Experience With Particular Reference to the University of KwaZulu-Natal' (2008) 17 (1) *Griffith Law Review* 27 & Richard Grimes, 'Legal Literacy, Community Empowerment and Law Schools – Some Lessons from a Working Model in the UK' (2003) 37 (3) *Law Teacher* 273.

[13] Jeff Giddings, 'Two Way Traffic: The Scope for Clinics to Facilitate Law School Community Engagement' in Patrick Keyzer, Amy Kenworthy & Gail Wilson (eds.) 2009 *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service Learning* 40, 51. Griffith Law School established a for-credit Street Law program in 2010. A Street Law program has also been proposed at the University of New England Law School and may commence in 2011. See Brian Simpson, *Taking Street Law to Regional and Rural Towns*, University of New England, March 2010. Available at http://www.une.edu.au/faculties/professions/research/ruralresurgence/streetlawreport.pdf (last accessed 20 May 2010).

literature has paid insufficient attention to articulating of linking together the use of different models in a series of clinical experiences as part of an integrated program. Rather than focussing on differences between models, this thesis argues that greater attention should be paid to the ways in which models can be combined.

The effectiveness of particular clinical experiences within a broader clinical program will be enhanced by realistic objectives and careful selection of a model that will facilitate meeting those objectives. Different models should be integrated, where appropriate, and their use sequenced to enable clinical experiences to build on the understandings that students have already developed. The complexities of working with real clients should be recognised as enabling students to deepen understandings already developed elsewhere in the curriculum. Methods such as the clinical case round enable the features of the environment to be revealed in simplified forms so they can be understood by novice practitioners 'who can begin to develop their own perception and judgment'.[14]

In Chapter Two, reference was made to the range of contributions that can be pursued through a clinical program, from various student learning dimensions to fostering community service and research. It was argued that various interested parties can make a range of contributions through clinic-based activities. The involvement of a range of parties, with some common interests, indicates that an integrative framework can be used to advance elements of common interest as well as to understand the extent to which those interests that are not shared can also be advanced. Both the program objectives and the purposes a particular clinical experience is expected to serve within a broader program will influence model selection, as will resource availability and legal professional responsibility issues.

The nature of the learning objectives set, including their specificity, will be important in the choice of suitable clinical models. Students first need to develop certain key understandings and skills (such as structuring an interview, preparing to negotiate and reflecting on personal performance) in order to then extrapolate and generalise from those experiences. Such development takes time and will benefit from repeat experiences. Methods that can facilitate such development include modelling, coaching,

[14] William Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (2007) 10. For discussion of the use of the case round, see Susan Bryant & Elliot Milstein, 'Rounds: A "Signature Pedagogy" for Clinical Education?' (2007) 14 *Clinical Law Review* 195.

supporting students as they move towards mastering a skill (scaffolding) and then, once mastery is achieved, encouraging students to proceed on their own (fading).[15]

It will be argued that simulation-based activities that incorporate systematic opportunities for students to reflect on their experiences can play a very important role in preparing students for further opportunities to learn in clinical settings. Ferber suggests that 'because simulations are designed, rather than just happening, they can be focussed in optimal ways for student learning'.[16] Bergman has referred to the work of educational researchers who emphasise the importance of repetition and iteration in tasks designed to improve students' problem-solving abilities.[17]

Where the learning objectives set for a clinical experience are more general and relate to the student developing an understanding of the dynamics or law-related practices and workplaces, the supervision the student receives will be very important. Without effective supervision, the richness of real-client clinic environments in particular is unlikely to be effectively harnessed. Students may well fail to appreciate what they are experiencing unless their supervisor guides and fosters such appreciation. Students also require feedback about their performances, both in terms of 'what conduct is inappropriate (and requires avoidance) and what conduct is acceptable (and deserves repeating).'[18] The expertise, roles and priorities of the supervisor are likely to vary considerably between different clinical models.

Effective integration and sequencing of clinic-type activities across the broader law curriculum can foster the long-term effectiveness of clinical programs. A curriculum-wide approach to such planning is very important, as is recognition of the wide range of factors which can challenge clinical integration initiatives. Maranville persuasively argues for clinical experiences to be integrated across the law school, with simplified forms (namely simulations) being used in the early years.[19] She further suggests that

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[15] Sullivan et al, above n 14, 61.
[16] Paul Ferber, 'Adult Learning Theory and Simulations' (2002) 9 *Clinical Law Review* 417, 431.
[17] Paul Bergman, 'Reflections on US Clinical Education' (2003) 10(1) *International Journal of the Legal Profession* 109, 113-4.
[18] Roy Stuckey and others, *Best Practices for Legal Education: A Vision and a Road Map*, 2007, Clinical Legal Education Association, 175. They note the theory of 'frustrated non-reward', that the lack of reward where reward is expected has an 'adverse effect much like punishment', and suggest that this 'places a heavy burden on the clinical teacher to give effective feedback and to reinforce good performance'.
[19] Deborah Maranville, 'Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Client Experiences' (2000) 7 *Clinical Law Review* 123, esp. 144-146.

integration 'acknowledges that the quality of learning may vary according to whether it is relatively unconnected to other experiences, or is integrated with doctrinal courses and other learning experiences.'[20] Traditional courses can incorporate experiential learning in a 'dizzying array of configurations',[21] with the use of simulations, lab courses, service learning and mini-clinics attached to substantive courses.[22]

The *Best Practices* Report endorses this type of integrated approach, referring to the value of seeing experiential education 'as parts of a connected whole'[23] while the *Carnegie Report* argues that clinics 'can be a key setting for integrating all the elements of legal education, as students draw on and develop their doctrinal reasoning, lawyering skills, and ethical engagement, extending to contextual issues such as the policy environment.'[24] In 1992, the Association of American Law Schools Committee on the Future of the In-House Clinic characterised integration as meaning that the whole is greater than the sum of its parts.[25] The concept of integrating clinical insights into the broader curriculum is overwhelmingly described in positive terms.[26] What is arguably

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[20] Ibid 133.
[21] Ibid 131.
[22] Ibid 145.
[23] Stuckey, above n 18, especially Chapter 9. See also the quotation at 167 from Kenneth Kreiling, 'Clinical Education and Lawyer Competency: The Process of Learning to Learn From Experience Through Properly Structured Clinical Supervision' (1981) 40 *Maryland Law Review* 284.
[24] Sullivan et al, above n 14, 121.
[25] Association of American Law Schools (AALS), 'Report of the Committee on the Future of the In-House Clinic' (1992) 42 *Journal of Legal Education*, 508, 517.
[26] George Grossman, 'Clinical Legal Education: History and Diagnosis' (1974) 26 *Journal of Legal Education* 162; Robert Condlin, '"Tastes Great, Less Filling": The Law School Clinic and Political Critique' (1986) 36 *Journal of Legal Education* 45, 47; Harold Lesnick, 'Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum' (1990) 37 *UCLA Law Review* 1157; Nancy Schultz, 'How Do Lawyers Really Think?' (1992) 42 *Journal of Legal Education* 57, 62-66; Kathy Mack, 'Bringing Clinical Learning Into the Classroom' (1993) 4 *Legal Education Review* 89; Margaret Russell, 'Beginner's Resolve: An Essay on Collaboration, Clinical Innovation and the First-Year Core Curriculum' (1994) 1 *Clinical Law Review* 135; Rice & Coss, above n 8, Chapter 4.3; Brayne, Duncan & Grimes, above, n 1, Judith Frank, 'Lessons and Ideas: Skills Instruction in Large Law School Classes' (2000) 3 *T. M. Cooley Journal of Practical and Clinical Law* 307; Maranville, above n 19, 133-6; Judith Dickson, '25 Years of Clinical Legal Education at La Trobe Uni' (2004) 29 (1) *Alternative Law Journal* 1; M. Johnson, 'An Experiment in Integrating Critical Theory and Clinical Education' (2005) 13 *American University Journal of Gender, Social Policy and Law* 161; Ross Hyams, 'Clinical Buddies: Jumping the Fact-Law Chasm' in B. Naylor & R. Hyams (eds) *Innovation in Clinical Legal Education: Educating Lawyers for the Future*, (2007) 42; Stuckey, above n 18, 97-100; Sullivan *et al*, above n 14, 9, 13 & 121**;** Susan Martyn & Robert Salem, 'The Integrated Law School Practicum: Synergizing Theory and Practice' (2008) 68 *Louisiana Law* Review 715; Matthew Staver, 'Liberty University's Lawyering Skills Program: Integrating Legal Theory in a Practice-Oriented Curriculum' (2008) 39 *University of Toledo Law Review* 383, 389.

often missing is detail on how to make such integration effective and sustainable.[27] This requires attention to incremental development, utilising models best suited to the particular objectives selected.

Understanding when and how to collaborate is important in making the most productive use of clinical method. A genuine preparedness to recognise and address the interests of others will also be significant.

Control and Compromise - The Dynamics of Model Selection

Choices about the use of particular clinical models are made in a political context, requiring accommodation of the interests and agendas of the various parties referred to in Chapter Two. Should a premium clinical experience be provided to a smaller group of students or should the focus be on enabling a larger group to benefit from some form of clinical experience? There will be a need for compromises but effective design and targeting will enable identification of areas where the interests of the various parties can be integrated. Resourcing issues are obviously central. Some tensions relate to the extent to which those involved are prepared to cede control of the educational experience. Collaboration requires sharing control to a greater extent than in other education models. In the context of clinical legal education, these collaborations will include clinicians, their law school colleagues, legal practitioners and community organisations.

Law school control of the learning environment facilitates greater consistency in the experiences of students, thereby enhancing the likelihood that students will achieve specific learning objectives. This is less important where the learning objectives for clinic students are more general, such as enabling them to learn how to assume professional roles and effectively respond to unstructured situations. At the same time, retaining control significantly increases the financial costs to the law school of providing a clinic experience. It may also limit the flexibility of a program to adapt to changing circumstances and make the most of emerging opportunities.

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[27] Exceptions to this tendency include Robert Hardaway, 'Problems in Clinical Integration: A Case Study on the Integrated Clinical Program of the University of Denver College of Law' (1981-1982) 59 *Denver Law Journal* 459; John Mitchell et al, 'And Then Suddenly Seattle University Was On Its Way To A Parallel, Integrative Curriculum' (1995-96) 2 *Clinical Law Review* 1 & Suzanne Rowe & Susan Liemer, 'One Small Step: Beginning the Process of

Selecting appropriate models to suit the circumstances of a law school requires clear understanding of the various models and their variations as well as the practicalities which will impact on their implementation. Chavkin suggests that clinicians:

> 'should ask and re-ask at least one question: *How can we use the resources available to us in the most effective way to help the largest number of students possible develop into responsible and effective practitioners?*[28]

The development of common understandings and fostering of realistic expectations will be facilitated by recognition of the key variables between different models. Those involved need to understand these factors in order to be able to select an appropriate model and, if necessary, modify it to best fit the circumstances. While the most fundamental differentiating factor relates to the involvement of real clients, there are other significant factors. The following are proposed as the key factors influencing model selection:

- *The students* – in terms of their numbers, their level of previous study, their preparation for the clinic experience, their motivations for being involved (for example, exposure to the dynamics of legal practice, skills development, professional accreditation requirements), the roles expected of them, and their workload and assessment responsibilities;
- *The supervisor(s)* – particularly their levels of expertise as a practitioner, as an academic and in these dual roles. The presence of competing responsibilities, such as fee-earning and management responsibilities, will impact on the capacity of a supervisor to work closely with students but will also highlight to students the complexities of the professional roles played by lawyers;
- *The clients or service users* – particularly whether they are real or virtual. Clinic students need to be effectively prepared for the responsibilities involved in working with real clients;
- *The services provided* – whether the services are limited to referral (possibly within a multi-disciplinary environment) or extend to forms of advice and representation.

Institutional Change to Integrate the Law School Curriculum' (2002) 1 *Journal of the Association of Legal Writing Directors* 218.

[28] David Chavkin, 'Spinning Straw Into Gold: Exploring the Legacy of Bellow and Moulton' (2003) 10 *Clinical Law Review* 245, 256.

Some clinics, such as Street Law programs, will have as their focus the delivery of community legal education rather than individual casework services;

- *The resources available* – in terms of the amount and their source, be it from the law school, the university, an authority with responsibility for legal service provision or a philanthropic source. The availability of in-kind support and the participation of volunteers and other professionals will also be influential. Technological support will be of particular importance to simulation-based clinics;
- *The site used* – whether it is within the law school or run by the law school off-site, grafted onto an existing agency or placing students in a range of law-related business offices; and
- *The law school* – the nature and extent of law school involvement will depend on a range of matters including its mission and priorities as well as accreditation requirements.

Law schools can usefully consider ways in which they can collaborate with external agencies (for resources, placement sites, supervision) and how this may impact on what the law school can realistically expect to achieve through its clinical program. In the USA in particular, there have been tensions between the advocates of different clinical models. Such tensions have related principally to the issue of student supervision, something very closely linked to matters of control and structuring of the educational process. Limited resourcing and a preoccupation with lecture-based teaching mean considerable compromise will almost inevitably be needed in the development of Australian clinical programs.

Both effective design and the capacity to productively compromise will be important in constructively deploying limited resources to achieve identified aims and objectives. Integrative negotiation theory is relevant here. Integrative negotiators need to identify how their respective interests and preferences differ with a view to identifying possibilities for agreements that enable their respective interests to be advanced in tandem.[29]

[29] Roy J. Lewicki, Bruce Barry & David M. Saunders, *Negotiation* (6th ed, 2009) Chapter 3; Carrie Menkel-Meadow, Andrea Schneider & Lela Love, *Negotiation: Processes and Problem Solving* (2006) Chapter 3 & G. Richard Shell, *Bargaining for Advantage*, (2nd ed, 2006) Chapter 5.

All clinical models place a significant emphasis on planning and coordination issues. According to Feinman, the key to a successful simulation is in clearly defining its goals.[30] The involvement of real clients introduces significant elements of both responsibility and uncertainty, necessitating increased control in terms of close supervision of students. Students need to be closely directed and supported in order to safeguard the clients and enable students to maximise the benefits they derive from the learning environment.

Clear planning, a thorough understanding of the models available and an incremental development framework will assist the planners of a clinical program to make effective choices and avoid problematic compromises. For new programs, this is likely to involve a mix of express choices of particular clinical models with pragmatic compromises driven by limited resources as well as adopting or adapting approaches taken elsewhere. Much will depend on the particular context of the law school as well as its students, staff and any clinical partners. Clarity of purpose and continuity of arrangements, both of which are analysed more comprehensively in Chapters Four[31] and Nine,[32] are also important to the sustainability of a clinical program.

Different Clinical Models

This next section examines each different clinical model, reviewing them in terms of what particular contributions they can make to clinic-based learning. Particular attention is paid to which contributions may best be fostered by each model as well as how particular experiences can be viewed as parts of both a broader clinical project and legal education more generally. These issues have not been comprehensively addressed elsewhere in the literature on clinical education. Understanding and utilising a range of models enables a more sustainable framework to be developed.

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[30] Jay Feinman, Simulations: An Introduction, (1995) 45 *Journal of Legal Education* 469, 471. Rice and Coss consider that 'Control of content is again the key factor in use of simulations: particular aspects of the curriculum, perhaps those not covered in class, can be targeted in a specially prepared simulation, in much the same way as a problem solving exercise.' Rice & Coss, above n 8, 103.

[31] See Chapter 4 of this thesis, footnotes 168-185 and related text. (Cross-refer to coverage of the section on Law School Commitment to Clinical Method, especially the sub-section on Pedagogical Commitment and Understanding of Clinical Models)

[32] See Chapter 9 of this thesis, footnotes 96-112 and related text.

Simulations

Simulations involve the playing of roles within an overall 'imaginary' structure.[33] They provide the context within which learners can take on roles. A simulation resembles something without being the thing itself. 'In law school, a simulation resembles the activity of lawyers; the essential attribute of a simulation is that students do something like what lawyers do.'[34] Simulations can vary greatly in terms of complexity, from simple to extended.[35] Extended simulations can be used for teaching students about substantive law, professional skills and professionalism.[36] They can be designed to address any of the major lawyering contexts: transaction planning, pre-action advice-giving and dispute resolution[37] as well as creative problem solving.[38] Simulations can also be structured to enable law students to develop their understanding of other professional disciplines.[39]

A range of benefits and advantages of simulations as a vehicle for learning are identified in the literature. Perhaps the principal advantage is that simulations can provide a safer environment in which students can learn. Because simulations are not real, 'the learner can take risks which might produce disastrous results for a client in the real world and learn from them without causing harm.'[40] Further, no client

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[33] Edward Errington, *Role Play*, HERDSA Green Guide no. 21 (1997) 4 citing T. Jones & K. Palmer, *In Other People's Shoes: the Use of Role Play in Personal, Social and Moral Education* (1987).

[34] Ferber, above n 16, 469.

[35] Michael Schwartz, Sophie Sparrow & Gerald Hess, *Teaching Law by Design: Engaging Students From the Syllabus to the Final Exam* (2009) 126.

[36] Ferber identifies the value of simulations in law students learning substantive law (knowledge), professional skills (abilities) and personal and professional development (attitudes). While there is no 'single magical definition of "simulation"', Ferber argues the term can be used to refer to an activity composed of three essential elements: 'the performance of a lawyering task; using a hypothetical situation which emulates reality: and a "significant" (relative to the task to be performed) period of time to perform the task.' Ferber, above n 16, 418.

[37] Ibid 426. Ferber emphasises the use of simulations in the learning of transactional lawyering, in part to contribute to correcting the over-emphasis on litigation elsewhere in legal education but also because such legal work involves a very different problem-solving process.

[38] Gregory Baker, 'Do You Hear the Knocking at the Door? A "Therapeutic" Approach to Enriching Clinical Legal Education Comes Calling' (2006) 28 *Whittier Law Review* 379.

[39] C. K. Gunsalus & J. Steven Beckett, 'Playing Doctor, Playing Lawyer: Interdisciplinary Simulations' (2008) 14 (2) *Clinical Law Review* 439.

[40] Ferber, above n 16, 431. Maher states 'No one needs to worry about whether the student is adequately protecting the client's interests.' See Stephen Maher, 'No Easy Walk to Freedom' (1992) 1 *District of Columbia Law Review* 243, 251. Hoffman also refers to simulations removing the potential for real clients to be harmed by inexperienced student advisors. See Peter Hoffman, 'Clinical Course Design and the Supervisory Process' (1982) *Arizona State Law Journal* 277 at 290-91. Sullivan et al refer to the opportunity for performance to be 'rehearsed, criticized, and improved "off-Line". This removal from the exigencies of actual practice permits

confidentiality concerns will need to be addressed. Practical advantages of simulations as compared to real client situations also include the ability to overcome space and time constraints.[41] Such advantages are particularly significant for introductory activities.[42]

The use of simulated situations makes it easier to provide students with a set of scaffolds to support them as they begin to engage with the issues and interests raised by particular legal situations.[43] Recent research supports the view that simulations may be more effective than real client clinics for the teaching of legal skills. Research conducted for the US Air Force emphasises the value of successive approximation in training contexts recognising that simulations provide opportunities for the timely provision of feedback and reinforcement.[44] Proper behaviour is seen as best developed:

> 'by slowly "shaping" the trainee's response. This "small steps" approach reinforces for the trainee each response made that is somewhat closer to the ultimate correct response than the previous response.'[45]

'Simulations provide a transitional experience in which students may apply theoretical knowledge within a context of practical relevance.'[46] Students can be prepared for their

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the instructors to focus on particular aspects of the complex ensemble of skills they are trying to teach.' See Sullivan et al, above n 14, 99.

[41] 'Student cases do not need to be covered by faculty during holidays and exam periods. The teacher, not the judge or the client, is in charge of the case.' See Maher, above n 40, 251. See also Ferber, who refers to the benefits of simulations being able to 'alter real world time constraints, because students need not wait days, months or years to gain some sense of the consequences of their decisions and actions. Learning with in the real world would take months or years can occur in a day or two.' Ferber, above n 16, 431. Further, Gross notes that simulations, unlike real cases, can also be structured so as to effectively fit into both the law school calendar and the pedagogical goals of the course. See Samuel Gross, 'Clinical Realism: Simulated Hearings Based on Actual Events in Students' Lives' (1990) 40 *Journal of Legal Education* 321.

[42] Maranville notes the 'ugly side' of the reality of legal practice – 'difficult clients, overly aggressive opposing counsel, intemperate judges, overwhelming workloads. Too much reality too soon, or a heavy dose of the down sides of reality can discourage rather than motivate students.' Maranville, above n 19, 134.

[43] Sullivan et al, above n 14, 102.

[44] Dee Andrews & Herbert Bell, 'Simulation-based Training' in Sigmund Tobias & John Fletcher, *Training and Retraining: A Handbook for Business, Industry, Government, and the Military* (2000) 357, 382. See also Bergman, above n 17, 113-114.

[45] Andrews & Bell, above n 44, 382.

[46] Karl Okamoto, Learning And Learning-To-Learn By Doing: Simulating Corporate Practice In Law School, (1995) 45 (4) *Journal of Legal Education* 498, 502. Ferber refers to simulations assisting students to 'understand what it will take to become expert lawyers', providing 'an

later contact with real clients, particularly in terms of skills such as interviewing.[47] A major advantage of simulation is its capacity to 'expose students to the complex intergroup and interpersonal dynamics of lawyering'.[48] This can assist students to better understand their own feelings: why they are likely to over-identify with their client's perspective, come into conflict with the representatives for the other party, forget ethical precepts and have their judgement clouded by strong feelings.[49]

Simulations can also enable coverage of commercial law and other substantive areas that do not lend themselves to law school-based real client clinical experiences. Okamoto refers to a simulation-based corporate practice course enabling students to re-examine corporate law doctrine from an *ex ante* problem solving perspective. This involves students posing a different set of questions. 'Not *legal or illegal* or *liable or not liable* but *How do I get there from here?*[50] While Maher argues that simulations are less expensive for the law school and can be conducted in the classroom,[51] Dallas and Vaughn both identify the substantial preparation required by a teacher developing, refining and implementing a simulation exercise.[52]

Simulations can be designed to enable the effective use of various forms of technology. Positive aspects of simulations include the ability of student performances to be repeated or video-taped where this is useful.[53] There is also the important benefit of increasing the uniformity of clinical experience amongst students. In his comprehensive analysis of the potential for incorporating multi-user virtual environments (MUVEs) like *Second Life* in legal education, Maharg has drawn on

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experiential context for developed expertise as a legal problem-solver'. This can include exposing students 'to opportunities for schema development and systematic problem-solving'. Ferber, above n 16, 435.

[47] Maranville, above n 19, 130 notes that many in-house clinics incorporate simulations to train students on lawyering skills before they take on real cases. See also Ian Weinstein, 'Teaching Reflective Lawyering in a Small Case Litigation Clinic: A Love Letter to my Clinic' (2006) 13 *Clinical Law Review*, 573, 581.

[48] Philip Schrag & Michael Meltsner, *Reflections on Clinical Legal Education* (1998) 34.

[49] Ibid 36-7.

[50] Okamoto, above n 46, 503.

[51] Maher, above n 40, 251.

[52] Lynne Dallas, 'Limited-Time Simulations In Business Law Classes' (1995) 45 *Journal Of Legal Education*, 487. Vaughn also states preparation for the discussion of simulations slightly exceeds that required for presentation of the material without them. Robert Vaughn, 'Use of Simulations in a First-Year Civil Procedure Class', (1995) 45 *Journal Of Legal Education*, 480, 482.

[53] Peter Hoffman, 'Clinical Course Design and the Supervisory Process' (1982) *Arizona State Law Journal* 277, 290-91.

educational research that indicates that such environments are valuable in assisting learners to simulate a broad range of experiences.[54]

There are also disadvantages of using simulations, many being the flipside of the benefits set out above. Given that realism is important to clinic-based experiences, the artificiality of simulations can generate difficulties. Students may also be pre-disposed to doubt the authenticity of simulations even when they are based on actual occurrences.[55] Andrews and Bell refer to the importance of fidelity in simulations: physical fidelity (the look and feel of the real world); functional fidelity (the need to 'act' like its real world counterpart); and psychological fidelity (whether the simulation 'feels right' – or at least is not inconsistent with the lived experiences of the student).[56] The richness of data will be 'critical to the authenticity of the simulation, not only to create the alternative pathways that students can choose, but also to create the sense of the sheer randomness within the simulation world'.[57]

The literature indicates that simulations can assist with student learning in a range of ways, provided they are carefully designed and refined. They can be valuable within an integrated clinical framework, taking on an important preparatory role. They have advantages in allowing for iterative learning processes and, with the application of technology, enabling students to develop their understanding and proficiency with various legal practical skills. The environment can be controlled, thereby keeping it relatively safe, ensuring that no client will suffer and the enabling the activities involved to be repeated. Timing issues and time constraints are also less likely to be a difficulty than where real clients are involved. Simulations have the potential to be utilised effectively across the range of objectives referred to in Chapter Two and can be designed to address specific objectives.

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[54] Paul Maharg, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-first Century* (2007) Chapter 6.

[55] Schrag & Meltsner, above n 48, 16. They encountered four problems with minisimulations (legal practice role plays in which students played all the key roles): they were time-consuming for students; the students often struggled with playing non-lawyer roles; the 'facts' were often incomplete; and some students 'simply hated the role-playing'.

[56] Andrews & Bell, above n 44, 365-6.

[57] Maharg, above n 54, 153.

Externships

External placements differ from other clinical experiences in terms of both the environment and, in particular, the other responsibilities of the student supervisor. While externship students are generally placed in a law office, the interests of some students will be best served by involvement in some other type of law-related workplace.[58] Externship programs have long been a feature of the legal education landscape in the USA[59] but have been less prominent in Australia[60] and not always characterised as a model of clinical education.[61]

Externships involve the law school retaining less control over the learning experience than is the case with other clinical methods. Students are placed in an organisation, be it public or private sector, with principal supervision provided by a member of that organisation rather than a law school staff member. Reliance on an external supervisor makes for more varied experiences and raises significant quality control issues. Much has been written regarding the difficulties involved in external supervision arrangements.[62] There now appears to be greater acceptance of the potential for externships to make a significant contribution to legal education. A range of writers including Givelber et al,[63] Kibble,[64] Milstein,[65] Condlin[66] and Smith[67] have argued that

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[58] Such workplaces can include in-house legal departments, government departments, statutory authorities and community sector organisations. See Jeff Giddings, 'Why Should Lawyers be Different? Professional Placements in Legal Education' (2000) 4 (1) *Practical Experiences in Professional Education* 1 & Graeme Coss, 'Field Placement (Externship) – A Valuable Application of Clinical Education?' (1993) 4 *Legal Education Review* 29.

[59] A 1990 survey of the 155 Law Schools then accredited with the American Bar Association found that externships were offered by 130 of the schools. In 2004, Sandy Ogilvy and Bob Seibel completed a survey of US externship programs, finding that with 'only a couple of exceptions, every ABA-accredited law school in the country has one or more legal externship courses'. See J. P. Ogilvy, 'Introduction to the Symposium on Legal Externships: Learning From Practice' (2004) 10 *Clinical Law Review* 469. Research by Peter Joy found that in 2001-2002, the numbers of US law students participating in externship programs was 14,857. This was just slightly less than the number of students participating in in-house real client clinics. See Peter Joy, 'The Ethics of Law School Clinic Students as Student-Lawyers' (2004) *South Texas Law Review* 815, 822-824.

[60] Giddings, above n 58 & Coss, above n 58.

[61] Giddings, above n 58.

[62] For example, Menon states: 'An unsupervised clinical experience, no matter how carefully selected, really offers students nothing beyond what they can learn through trial and error during their first year of law practice.' N. R. Madhava Menon (ed), *A Handbook on Clinical Legal Education* (1998) 15. See also Brayne, Duncan & Grimes, above n 1, 157-159 & 244-245 & Neil Kibble, 'Reflection and Supervision in Clinical Legal Education: Do Work Placements Have a Role in Undergraduate Legal Education?' (1998) 5 (1) *International Journal of the Legal Profession* 83, 84-5.

[63] David Givelber et al, 'Learning Through Work: An Empirical Study of Legal Internships' (1995) 45 (1) *Journal of Legal Education* 1. They refer to the particular capacity of an externship placement to expose the student to the 'interpersonal ecology of the workplace', an 'elaborate web of interpersonal relationships that compose the workplace, a social field rich with

external placements can effectively meet legal education goals related to developing the capacity of students to understand the dynamics and requirements of law-related workplaces.

Smith and Condlin have each identified that externship arrangements are particularly well suited to students engaging in critique of legal institutions and practice as well as of the roles played by lawyers.[68] Involvement in legal environments outside the law school can enable students to generate novel insights about their previous learning. Externships can also provide opportunities for cross-disciplinary research and applied legal scholarship.[69] Externships enable students to develop their 'understanding of professional values and commitment to those values, including seeking justice, fostering respect for the rule of law, and dealing sensitively with diverse clients and colleagues'.[70] Placements with human rights and legal services organisations can be 'the quickest way in which clinical legal education can help meet the need for *pro bono publico* legal services', developing student commitment to continuing service.[71]

Externships can be considerably less expensive to operate than in-house clinics. The absence of direct supervisory responsibility allows law school resources to be directed to coordination of a larger number of student placements. The cost differential between externships and in-house clinics will be influenced by the resources the law school commits to supporting externship students and supervisors along with the nature of the classroom program developed to complement the externship experience. Infrastructure and legal practice-related costs incurred by the university are also limited by the use of externship arrangements. Rose refers to externships as the 'one

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connection, relationship, and interdependency.' (at 12) Their analysis suggested 'that the nature and intensity of the work are at least as important as any aspect of supervision in explaining what distinguishes a good learning environment. This finding challenges one of the bedrock assumptions of clinical methodology - the centrality of an intensive, education-focused supervisory relationship.' (at 3).

[64] Kibble, above n 62, 87.

[65] Milstein, above n 1, 380 refers to externships 'providing students with a milieu within which to learn a substantive area in depth while developing a critical perspective on the organization of legal work' along with enabling exploration of ethical and access to justice issues.

[66] Condlin, above n 26, 45.

[67] Linda Smith, 'Designing an Extern Clinical Program: or as You Sow, so Shall You Reap' (1999) 5 (2) *Clinical Law Review* 527.

[68] Ibid 535-6. See also Condlin, above n 26, 50-51.

[69] Smith, above n 67, 527-528.

[70] Stuckey, above n 18, 279.

[71] Stacey Caplow, Mary Jo Eyster, M. & Kenneth Gallant, 'Field Placement Programmes' in N. R. Menon, (ed), *A Handbook on Clinical Legal Education* (1998) 219, 221.

type of clinical experience that has the potential to reach all students'.[72] A 1980 US study calculated the median cost per student credit hour of externships at less than 8% of the corresponding figure for in-house clinic programs.[73]

Externships can see a student 'exposed to a memorable set of practice exemplars, some positive, some negative, which can serve as models of emulation or avoidance for their own performances.'[74] Students may encounter and learn from master practitioners, often with lawyering skills beyond those possessed by many law school supervisors.[75] There is also likely to be greater flexibility to tailor the clinical experience to the particular interests of the student, providing an opportunity to work in an office not run by the school which will often feel more like the 'real world'.[76] As with simulations, externships can be used to enable students to develop their understanding of substantive areas that tend not to be addressed through in-house clinical experiences, especially commercial law areas.

It is also important to recognise the disadvantages of externship arrangements. The central difficulty with externships is potential variability in the opportunities students have to learn from their experiences. Support from a supervisor with the time and skills to facilitate student learning is central to the effectiveness of such experiences.[77] Variety of both supervisors and sites necessarily brings with it variability of experience. There can also be a fundamental conflict of goals existing in many externship placements. Law schools place students in law offices to provide them with valuable educational experiences. Law offices, on the other hand, may in part contribute to an externship programs to obtain assistance with their own caseloads. The

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[72] Henry Rose, 'Legal Externships: Can They Be Valuable Clinical Experiences For Law Students?' (1987) 12 *Nova Law Review* 95, 96.

[73] Ibid 102. Rose calculated the cost for externships at $40 per student credit hour. Given the very limited publicly-available information on the costs involved in Australian clinical programs, all that can be stated is that externship programs are recognised as less expensive for law schools to run than in-house clinics. Rice & Coss, above n 8, 50-51.

[74] Givelber et al, above n 63, 12.

[75] Gary Laser, 'Educating For Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law' (1992) 68 *Chicago-Kent Law Review* 243, 265.

[76] Janet Motley, 'Self Directed Learning and the Out-of-House Placement' (1989) 19 *New Mexico Law Review*, 210, 210. Of course, this pre-supposes that students are clear about the nature of the workplace they wish to experience. As a counterpoint, Maranville refers to two main reasons limiting the potential for using externships to teach lawyering skills: - they tend to expose students to a relatively narrow set of skills, generally research and memo writing. Maranville, above n 19, 125.

[77] Maranville, above n 19, 142 'Secondly, supervision of externships, by means either of task clarification, or feedback on the completed product tends to be uneven, especially where students are assigned tasks beyond research and writing.'

appropriateness of having law firms and other commercial organisations supervise externs has been a matter of ongoing debate.[78] Motley argues that '*The supervising attorney's primary motivation for participating in the program must be an educational one'.* (emphasis in the original)[79] yet Rose accurately identifies that law schools 'lack leverage with site supervisors to guarantee effective supervision.'[80]

The opportunities for students to take on client responsibilities in externship contexts are likely to be more limited than with in-house and agency clinics.[81] This tends to result in externships emphasising students learning through observation of their supervisor. A classroom component is often important in promoting student reflection and critique.[82] As well as self-reflection, students can learn from the experiences of colleagues and, within limits, de-brief. If facilitated skilfully, the classroom component provides students with the opportunity to learn about a diversity of workplaces.

Training and resourcing of external supervisors will be important to ensuring that an externship is a valuable learning experience for the student.[83] Training should address student learning issues, providing guidance on effective extern supervision.[84] The

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[78] Bernadette Feeley, 'Examining the Use of For-Profit Placements in Law School Externship Programs' (2007) 14 *Clinical Law Review* 37, 46-48. While recognising that there are benefits of involving 'for-profit' organisations in externship programs, Feeley notes a range of reservations regarding the trend towards such arrangements. These reservations include clinical legal education moving away from its social justice mission, as well as students working for free while receiving limited supervision and reducing the opportunities for students to engage in paid employment.

[79] Motley, above n 76, 214.

[80] Rose, above n 72, 104.

[81] Maher offers a contrary view: 'Students in placements are often in an environment where, because there is less supervision and control than is characteristic of some in-house programs, they may be allowed to assume significant responsibility as they demonstrate competence.' Maher, above n 40, 545.

[82] See Chapter 2, footnotes 79-81 & 141-158 and related text.

[83] Coss argues that the training of on-site supervisors is critical to the success or otherwise of externship programs. See Coss, above n 58, 42.

[84] The *Best Practices Report* provides useful detail in relation to supervision. Stuckey, above n 18, especially 174-177.

Ryan Cole sets out various techniques for supervising externship students:

- Shadowing. Students should spend at least part of each placement day working alongside their supervisor.
- Providing Three Case Files. Students should be allocated at least 3 case files; one almost complete, one in process and one just starting
- Brief meetings on a daily basis.
- Putting requests to students for information or research in writing.
- Allocating the student some type of ongoing project in addition to their daily work.

See Liz Ryan Cole, Techniques For Working With Law Students in a Practicum, (1994) Vermont School of Law.

importance of self-reflection should be emphasised.[85] Where students are to be assessed on the basis of their placement performance and host organisation supervisors are to participate in this assessment, supervisor training regarding such assessment will be essential.[86] Academic staff rather than external supervisors should grade externship students.[87] Non-graded courses and hybrid models, in which students receive a grade for one unit and pass/fail for the remainder, can be used in order to at least partially address such assessment concerns.[88]

Well-planned and adequately resourced externships can make significant contributions to a clinical program. The literature indicates that they are suited to providing students with opportunities to critique legal work and workplaces. They can also facilitate experiences focussed on the particular interests of each student. From a law school perspective, externships are less expensive than in-house clinics and can foster professional links. When combined with an effective classroom component, externship students can share and learn from diverse experiences in different workplaces. These strengths need to be balanced against the greater variability in supervision arrangements and the limitations arising from there not being an educator present whose focus is to facilitate the assumption by the student of responsibility for the legal work required by clients.

The challenges encountered with external placements need to be effectively addressed for such programs to operate in a sustainable manner. Processes are needed to promote consistency in student supervision and the provision of appropriate learning opportunities involving neither too little nor too much supervision. Resources are also required to monitor the program, ensuring that the effective operation of the quality-control processes. Smith very effectively sums up the planning challenges when she refers to law schools reaping what they sow when they design an externship program.[89]

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[85] See Chapter 2, footnotes 79-81 & 148 and related text.
[86] Motley suggests a written Memorandum of Agreement be made between the supervisor and the Faculty, setting out commitments including the work to be done, the participation of the student in strategic decision making on cases rather than only observation and arrangements for the supervisor to provide regular feedback to the student. Motley, above n 76, 225.
[87] Joy, above, note 7, 710-711.
[88] Motley, above n 76 at 213. See also Giddings, above n 58, 13-14.
[89] Smith, above n 67.

Working in-house with real clients

This next section examines the model most clearly associated with clinical legal education - students working with real clients under academic supervision.[90] This covers both general clinics and those which specialise, providing legal services only in relation to particular areas of substantive law. It focuses on the operation of in-house clinics, controlled by the law school, while also considering agency clinics, where students work in an external agency but with academic supervision.

Collaborating with a supervisor to identify and address the legal issues faced by clients provides students with a very intensive learning opportunity. The real client clinic emphasises the value of intensive supervision of students accompanied by detailed critique of their actions. The presence of a supervisor whose role includes providing detailed feedback should assist students to develop their skills in both self- and peer-critique. Closer supervision and greater assumption of responsibility are the characteristics which most clearly distinguish clinic-based experiences from externships.[91] Supervision is also critical to ensuring appropriate levels of service to clients, particularly where students are working with clients for the first time.

Work with real clients provides particular opportunities for students to develop their understanding of the lawyer-client relationship and to refine their legal practice-related skills. Such clinics enhance 'the learning experience because of the way in which the student must interact with the client'. This emphasises the fundamental individuality of the relationship between lawyer and client and the need for the competent lawyer to respond to the particular set of facts that arise in each case.[92] Students can also develop their ability to reflect on and learn from their experiences and gain a range of insights into the ethical dimensions of lawyering. Writers across jurisdictions have highlighted the value of real client work in developing ethical judgement.[93] Many

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[90] Elliot Milstein, above n 1, 376; Rice & Coss, above n 8, 58-59 & Coss, above n 58, 61.

[91] AALS, above n 25, 552. The AALS Committee stated 'Good supervision is the hallmark of any high-quality clinical program.'

[92] John Boersig, James Marshall & Georgia Seaton, 'Teaching Law and Legal Practice in a Live Client Clinic' (2002) 6 (2) *Newcastle Law Review* 51, 64.

[93] For example, see Nigel Duncan & Susan Kay, 'Addressing Lawyer Competence, Ethics, and Professionalism' in Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (2010) 183, Nigel Duncan, 'Ethical Practice and Clinical Legal Education' (2005) 7 *International Journal of Clinical Legal Education* 7, 13 & Amy Ronner, 'Some In-House Appellate Litigation Clinic's Lessons in Professional Responsibility: Musical Stories of Candor and the Sandbag' (1996) 45 *American University Law Review* 859.

writers have emphasised the importance of justice education for law students and it is clear that real client work is uniquely suited to such learning.[94]

Tokarz *et al* refer to community lawyering as a longstanding and important focus of clinical programs. They describe an approach to clinical legal practice focussed on 'building and sustaining relationships with clients, over time, *in context*, as a part of and in conjunction *with* communities' which is designed to empower and assist them in 'the larger economic, political and social contexts of their lives, beyond their immediate legal problems'.[95] This involves integrating clinical legal education with other disciplines and directing their collective efforts to meeting the broader needs of client communities. Such arrangements are likely to fit well with the collaborative framework discussed in Chapter Two.

Clinic-based work with real clients should not be seen as confined to traditional legal service delivery models. The work of community economic development clinics, where students engage in transactional lawyering designed to benefit disadvantaged communities, demonstrate the flexibility of clinical methodologies to address a broad range of objectives. Work focussed on transactions rather than litigation provides students with a broader view of critical lawyering, including models of collaborative and facilitative legal practice.[96] Such clinics are suited to fostering public interest lawyering and collective mobilisation.[97]

Bond has described the emergence of clinics involving the application of international human rights in a non-direct-service situation, emphasising the educational and social

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[94] For example, see Judith Dickson, 'Clinical Legal Education in the 21st Century: Still educating for Service?' (2000) 1 *International Journal of Clinical Legal Education* 33, 42-43; Fran Quigley, 'Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics' (1995) 2 (1) *Clinical Law Review* 37; Mary Anne Noone, 'Australian Community Legal Centres – the University Connection' in Jeremy Cooper & Louise Trubek (eds) *Educating for Justice: Social Values and Legal Education*, (1997) 257 & Adrian Evans, 'Developing Socially Responsible Lawyers', (1990) 15 (5) *Legal Services Bulletin* 218.

[95] Karen Tokarz et al, 'Conversations on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education' (2008) 28 *Journal of Law and Policy* 359, 364.

[96] Jones, above n 9, 224. See also Laurie Hauber, 'Promoting Economic Justice Through Transactional Community-Centered Lawyering' (2007) 27 (1) *St Louis University Public Law Review* 3.

[97] Sameer Ashar, 'Law Clinics and Collective Mobilisation' (2008) 14 *Clinical Law Review* 401. Alvarez argues that Community Development Clinics must go beyond teaching students to be good transactional lawyers to 'acknowledge and focus their efforts on the elimination and reduction of poverty'. Alicia Alvarez, 'Community Development Clinics: What Does Poverty Have to do With Them?' (2007) 34 *Fordham Urban Law Journal* 1269. It would, of course, be possible to tailor such clinics to also address other purposes.

benefits achievable through such work.[98] Work of this nature has become increasingly prominent in US law schools since the late-1990s[99] through 'combined advocacy clinics' that involve students in representing individual clients 'while simultaneously participating in efforts to achieve broader social change'.[100] This combination enables students to consider professional identity issues 'by contrasting their experiences in two very different contexts.'[101]

Work with real clients also raises issues regarding the size of cases that best foster student learning. Weinstein argues that clinics focussing on small cases provide 'a useful structure in which our supervision helps our students develop a desirable version of the complex, deeply moral habit we know as good lawyering'.[102] The small case format enables students to see the litigation process 'in its individual parts and as a whole'.[103] Chavkin offers a similar analysis, arguing that the preferred approach is 'built around a small-case model in which students can competently handle a small caseload and have time to reflect critically about their experiences'.[104]

Ashar argues for clinicians to 'engage in a collective critical project re-coding the design elements and pedagogical approaches of law clinics' in order to more effectively meet the needs of poor people.[105] He emphasises the importance of being community-centred rather than case-centred and focussing on multi-disciplinary work fostering collective mobilisation.[106] Brodie characterises community lawyering work in a neighbourhood-based context as a middle ground between 'pure service' and 'impact'

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[98] Johanna Bond, 'The Global Classroom: International Human Rights Fact-Finding as Clinical Method' (2001) 28 *William Mitchell Law Review* 317, 319.
[99] Ibid 320-324.
[100] Jayashri Srikantiah & Jennifer Lee Koh, 'Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications of a Combined Advocacy Clinic' (2010) 16 (2) *Clinical Law Review* 451, 452.
[101] Ibid 487.
[102] Weinstein, above n 47, 575. This problem solving is alternatively called practical judgment, reflective professional judgment, craft and expertise.
[103] Ibid 586.
[104] Chavkin, above n 28, 265. He emphasises the benefits to students of 'taking responsibility for a matter from beginning to end and in which they and their clients can work through the major decisions without intervention'. (at 262)
[105] Sameer Ashar, 'Law Clinics and Collective Mobilisation' (2008) 14 (2) *Clinical Law Review* 355, 414.
[106] Ibid 357 & 385-390.

clinics.[107] She also describes the potential of such clinics to provide specialised training for future public interest lawyers.[108]

The real client clinic is the most expensive way of implementing clinical method when the law school establishes a physically separate and fully functioning legal office.[109] Various approaches can be taken to reducing the cost to the law school of operating such a legal office. As will be referred to in Chapter Four and each of the case studies, any legal service-related funding brings with it substantial service expectations. Another, more contentious approach to reducing the law school's clinic-related costs, also addressed in Chapter Four, is the development of a fee-generating clinic. A wide range of criticisms have been made of fee-generating clinics, including that they involve:

> 'an inherent conflict … pitting the faculty's responsibility to its students and the time spent in "non-billable" instruction against the immediate, personal need to meet individual financial goals and salary expectations.'[110]

These developments demonstrate the diverse ways in which clinics can address the legal issues faced by their clients and support the advancement of the interests of those client communities. In 1990, a committee convened by the Association of American Law Schools noted that 'one of the great strengths of the in-house clinic is the opportunity it provides for multiple emphases and goals.'[111] While such goals can be addressed through other forms of clinical education, the committee contended that the live-client in-house clinic model does so very effectively[112] and flexibly.[113]

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[107] Juliet Brodie, 'Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighbourhood-Based Community Lawyering Clinics' (2009) 15 (2) *Clinical Law Review* 333, 337.
[108] Ibid 370-379.
[109] Rice & Coss, above n 8, 61.
[110] Andrew Rothman, 'Preparing Law School Graduates for Practice: A Blueprint for Professional Education following the Medical Profession Example' (1998-99) 51 *Rutgers Law Review* 875, 882.
[111] AALS, above n 25, 512-517.
[112] Ibid 516-17.
[113] Ibid 561. The Report noted that there 'is no one model of in-house, live-client clinical legal education.'

General In-House Clinics

Many clinics, especially those with a strong emphasis on community service, involve students in providing advice to clients on the range of issues they raise. Australian clinical programs tend to take this 'problem-first' approach, bolstering the significance of community service within their operations.[114] Such programs involve students engaging in a variety of lawyering activities in the course of client representation. This can generate considerable variation in the work encountered by students involved in the same course.'[115]

This general in-house clinic model has strong similarities to the approaches taken by community legal centres and 'high street' legal firms. While much has been written about the educational value of work involving real clients, discussion of the specific value of general real client clinic experiences is surprisingly limited. The general clinic has a major role to play in providing opportunities for students to develop both skills related to legal practice and awareness of the social justice responsibilities of legal professionals. Such a clinic can be designed to enable students to develop their appreciation of the dynamics of lawyering, including the uncertainty of working with a range of clients about a multitude of legal issues.[116]

Students participating in a general clinic can be provided with opportunities to develop a range of attitudes, skills and understandings associated with legal practice. These can relate to the interviewing of clients[117] and witnesses, problem identification and characterisation, research of the relevant law, fact gathering, theory development and verification as well as document drafting. Relatively straightforward work can be assigned to students to begin with, requiring them to focus on identifying legal issues and strategising how to address such issues. The extent of the work that students can do for clinic clients is another factor with significant resource implications. Ongoing

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[114] Anna Copeland, 'Clinical Legal Education Within a Community Legal Centre Context' (2003) 10(3) *Murdoch University Electronic Journal of Law* 103. Some such clinics operate on an agency basis. For example, La Trobe Law School operates its clinics with West Heidelberg Community Legal Service and Victoria Legal Aid while Griffith operates agency clinics with community legal centres and the Dispute Resolution Branch of the Department of Justice and Attorney-General. See Kingsford Legal Centre, *Clinical Legal Education Guide 2009-2010* (2009) 12-15 & 17-18.

[115] Bergman, above n 17, 115.

[116] Such exposure is likely to benefit those students who are unclear as to the areas of law on which they might wish to focus in practice.

[117] Laser refers to the client interview, 'the most common, early in-house clinical experience' as involving most of the fundamental lawyering skills. Gary Laser, 'Significant Curricular Developments: The MacCrate Report and Beyond' (1994) 1(1) *Clinical Law Review* 425, 433.

casework services are considerably more expensive for the clinic, more challenging and rewarding for the students and more stimulating for the supervisors.

The general real client clinic is likely to involve students in addressing areas of law with which they are only partially familiar. As with Problem Based Learning, the general clinic is well suited to enabling students to learn how to learn from experience as well as to collaborate on the completion of tasks and projects.[118] Students in a clinic will need to collaborate closely with their supervisor as well as with other law students and law office staff. Externships tend to involve interaction with a more diverse range of workplace colleagues, exposing students to different types of collaboration including between different levels within a law office hierarchy.

General real client clinics are well suited to introducing students to the dynamics and uncertainties of legal practice, facilitating the development of client-centred practices that can be refined in subsequent clinical experiences as well as in legal practice. Meltsner and Schrag state that a clinic supervisor's value as a resource is greatest if they have experience with the relevant areas of law. Students were 'better able to learn from each other if they were working on problems that had some common threads.'[119] While such a concern relates most directly to higher-level clinic-based experiences, it provides strong support for specialisation opportunities, both for students and for clinic supervisors.[120]

Specialist In-House Clinics

The past decade has seen specialist clinical programs become more prominent in Australia.[121] Live-client clinics which specialise in particular legal areas are used extensively in the USA with 'numerous examples of discrete subjects being taught through appropriately tailored client clinics.'[122] Despite this, literature specifically

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[118] David Chavkin, 'Matchmaker, Matchmaker: Student Collaboration in Clinical Programs' (1994) 1 *Clinical Law Review* 199 & Catherine Gage O'Grady, 'Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy and the Realities of Practice for the New Lawyer' (1998) 4 (2) *Clinical Law Review* 485.

[119] Schrag & Meltsner, above n 48, 54.

[120] It should be noted that the poverty law work undertaken by many general clinics could legitimately be regarded as a specialisation in itself. Menkel-Meadow refers to legal service attorneys developing expertise in poverty law, covering both substantive areas and procedural law. Carrie Menkel-Meadow, 'Legal Aid in the United States: The Professionalisation and Politicisation of Legal Services in the 1980's' (1984) 22 *Osgoode Hall Law Journal* 29, 64.

[121] See footnote 4 above as well as Chapter 1, footnote 49-51 and related text.

[122] Jacobs, above n 3, 354-6. Jacobs documents the range of 523 separate in-house clinics offered at the top 100 US law schools. These cover areas of civil practice, criminal justice,

examining this clinical model is limited. Often, no distinction is drawn between specialist and generalist clinics. Neither the *Best Practices Report* nor the AALS Committee Report[123] specifically consider the roles of specialist clinics.

Specialist clinics may well enable greater consistency of student experience by reason of the greater uniformity of the legal issues of concern to clients. They can combine student responsibility for clients with the concentrated focus on a particular area of law available through an externship. Brayne refers to specialist clinics working best 'where the student has chosen, and is simultaneously pursuing, an academic subject in that area', noting that students 'can be resistant to specialising in an area they did not choose'.[124] Australian specialist clinics have often operated as advanced clinics, designed for students who have successfully completed general clinical and classroom-based learning experiences.[125]

Sedillo Lopez usefully summarises the reasons why a clinic might choose to specialise, referring to the increasingly specialised nature of legal practice, more efficient delivery of legal services, greater predictability of the teaching process, pursuit of a particular service or social justice agenda, the expertise and interest of faculty, student interest as well as funding opportunities.[126] She also notes that specialisation may be the 'only practical means to deliver legal services in our increasingly complex world'.[127]

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juvenile justice and children's rights, immigration and refugee law, economic development, ADR, environmental law, international human rights among many others.

[123] AALS, above n 25.

[124] Hugh Brayne, 'Law Students as Practitioners: Developing an Undergraduate Clinical Programme at Northumbria University' in Julian Webb & Caroline Maughan (eds), *Teaching Lawyers' Skills* (1996) 167, 183.

[125] This is the approach used by Griffith and Monash Law School for their family law specialist clinics (see Giddings & Hook, above n 4 & Campbell & Ray, above n 4) and by Murdoch Law School for its Refugee Clinic (see Copeland, above n 114).

[126] Antoinette Sedillo Lopez, 'Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training' (2001) 7(2) *Clinical Law Review* 307, 309.

[127] Ibid 317. Sedillo Lopez sees specialised clinics as limiting access to justice, leaving the needs of clients 'partially unmet'. This 'limits the students' learning about the myriad needs of clients and affects the students' ability to see inequities in the legal system.' (311) Specialist clinics are likely to focus on larger cases, oriented towards legal reform. Whilst such cases can provide 'a unique and valuable experience about systemic change ... smaller cases may be a better vehicle for teaching lawyering skills.' (318) She is concerned that specialisation may limit the ability of students to consider their clients' problems holistically. '[T]he student who is taught in a specialized clinic begins by editing out the client's story that is not relevant to the specialty.' (322) She considers that the diversity of cases encountered in a general clinic enriches the students' learning experience. 'Between the ease of a single subject, and the richness of diverse legal problems, I support diversity.' (325)

Other opportunities available through a specialist clinic include the opportunity for students to work on more complex cases. Students may be able to take more responsibility because they are working in a more defined area of law about which they can be expected to know more.[128] Greater control may be achievable over the nature of the casework undertaken, enabling a closer tailoring of cases to the objectives of the program. A key strength of specialist real client clinics is the enhanced opportunities they can provide for developing interdisciplinary insights. Stronger links can be forged with workers and professionals in related fields.[129] Specialist clinics may also generate increased access to funding from, for example, government departments and charitable organisations.[130]

In their analysis of attempts to introduce specialised clinics at Monash Law School, Campbell and Ray identify three factors necessary to ensure their effective operation: client demand, student demand and funding.[131] They refer to the general educational aims of a specialist clinic being 'the same as for any other form of clinical legal education' but capable of extending students in terms of the complexity of the legal and factual issues involved and the work to be undertaken by the student.[132] They also raise a particular issue in relation to the service expectations likely to be raised by the operation of a specialist clinic: 'Should we be filling the gap in public legal aid and thereby letting governments off the hook?'[133]

A specialist clinic could be usefully focussed on an area of substantive law in which the Law School has significant strength. This could have the added benefit of encouraging Faculty members to become involved in a clinic related to their area of expertise. Drawing on the substantive law, research and policy expertise of academics might also address the potential difficulty of finding and retaining staff with both the requisite substantive knowledge to run a specialist legal practice and the skills to teach students in clinical settings. While specialist clinics may be subject to criticism due to uniformity of the cases being addressed, there are always intricacies surrounding the personal circumstances of the client, the student's personality, the interplay between them and

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[128] Interview with Simon Rice (Sydney, 10 December 2002).
[129] Rice & Coss refer to the scope for interdisciplinary work, noting that lawyers do not practice in isolation. Rice & Coss, above n 8, 60.
[130] Ibid 87.
[131] Campbell & Ray, above n 4, 67.
[132] Ibid 73.
[133] Ibid 77.

the interview process.[134] However, there will always be significant limits on the number of clinical specialisms a law school can offer.

The literature indicates that specialist clinics can provide students with a more intense connection with a particular client group or area of law. Developing an awareness of social justice, engaging with a particular community and fostering collaboration are all objectives that are well suited to specialist clinics. Students can take on responsibility for clients and be encouraged to engage in structured reflection. General and specialist real-client clinics should never be viewed as mutually exclusive. They are better viewed as complementary components of clinic-based learning. Often, law schools will operate specialist and general clinics from the same or linked premises with the various academics involved effectively supporting each other.[135]

Agency Clinics

The term 'agency clinic' is used to describe a program located within a community agency rather than in-house but with supervision provided either by a law school academic or a supervisor engaged, supported and trained by the law school. It draws on a description provided in 1969 by Ferren[136] referring to the potential for law schools to develop a wide range of clinics, often involving external organisations including courts, neighbourhood law offices as well as lay agencies such as neighbourhood houses and churches.[137]

Agency clinics aim to provide learning opportunities similar to those available through in-house real client clinics while utilising the infrastructure of external organisations. While the student learning objectives will be similar to those for an in-house clinic, agency arrangements will not enable students to take on the same intensity of client responsibility as can be achieved in the more student-focussed environment of an in-house clinic. Agency clinics are likely to have a stronger focus on service where they are situated in agencies designed to promote public accessibility.

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[134] Interview with Adrian Evans (Sydney, 10 December 2002).

[135] Three of the four case studies addressed in the second part of this thesis (Monash, UNSW and Murdoch) operate general and specialist clinics from the same site. See Chapters 5, 6 and 8 respectively.

[136] Ferren, above n 5.

[137] Ibid 98-104. Other models referred to included law reform institutes developed to undertake testcase litigation, private law firms, government legal departments and taskforces designed to investigate public policy issues.

As partnership arrangements, agency clinics are less expensive than in-house clinics as infrastructure costs are shared. This may enable clinical academics to be less tied to the clinic and to casework, thereby enabling them to engage in more research as well as teaching in other, non-clinic courses. Such a structure does not tie the law school to the provision of a year-round service and can see the involvement of clinic students and supervisors contained within normal university semesters. An agency clinic situated with a relatively large organisation can also enable students to learn from a range of lawyers, not only those with an academic focus.

Reference was made earlier to the relatively expensive nature of the provision of legal services, in particular ongoing client representation. The agency clinic can address this resource constraint through integrating the work undertaken by clinic students with that already being undertaken by host agency staff along with utilising the host's infrastructure. Learning in community settings also enhances the prospects of having students involved in more integrated service delivery.[138] Conversely, an agency-based clinic will not provide the same prospects for integrating activities and insights across the broader law curriculum as available with an in-house clinic.

Like externships, agency clinics are more likely to generate supervision and control issues. A law school can address such concerns by having suitable academics supervise students or by engaging, preparing and resourcing appropriate legal staff working for the partner agency. An agency clinic provides the law school with greater control than externships but less than with an in-house clinic. Perhaps the most significant sustainability issue raised by agency clinics is that they involve law schools relying on arrangements with other organisations. This leaves open the potential for major changes to be made, perhaps to the detriment of the clinical program, at short notice. Significant attention needs to be paid to the maintenance of productive relationships with partner agencies and to structuring such relationships in ways that foster continuity. Where the agency and the law school share common interests, such partnerships can be constructive.

[138] Mary Anne Noone, 'Towards an Integrated Service Response to the Link Between Legal and Health Issues' (2009) 15 *Australian Journal of Primary Health* 203.

Clinics Delivering Non-traditional Services

Burridge notes that in emulating the 'professional lawyer client model of dealing with the personal plight of individuals', the live client clinic 'presents only a limited and partial account of modern legal work'.[139] The *Best Practices Report* refers to clinical education extending to opportunities for students to take on 'professional roles' under academic supervision, referring to mediation roles as well as in the teaching of Street Law.[140] This next section notes the particular contributions that can be made by clinical models that involve students in other forms of law-related work. Such clinics may well be a key area for future growth and development, especially with the emergence of new technologies.

Community Education Clinics – Street Law

Community education programs, involving activities designed to enhance community understanding of law and legal processes, have the potential to provide a valuable clinical experience for law students. These sorts of programs, often referred to as Street Law[141], have become increasingly prominent with the support of US organisations including the American Bar Association, the Ford Foundation and the Soros Foundation.[142] Street Law is 'public legal education in interactive form.'[143] It involves 'a legal literacy program designed to enable law students and others to make people aware of their legal rights and where to obtain assistance.'[144]

While some programs operate without the structured involvement of law students, various writers have emphasised the clinic-related opportunities presented by such programs.[145] Students can be involved in consulting with a community group, be it a school or some other organisation, and then developing and delivering educational

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[139] Roger Burridge, 'Learning Law and Legal Expertise by Experience' in Roger Burridge et al (eds) *Effective Learning and Teaching in Law* (2002) 35.
[140] Stuckey, above n 18, 166.
[141] The development of Street Law™ and Street Law Inc. from its emergence at Georgetown University is detailed by Grimes. See Grimes, above n 12, 274. See also Streetlaw.org (last accessed 2 October 2010) & McQuoid-Mason, above n 12.
[142] Richard Wilson, 'Training for Justice: The Global Reach of Clinical Legal Education' (2004) 22 (3) *Penn State International Law Review* 421, 424-426. He outlines five international funding sources for law school clinics. See also Grimes, above n 12, 275.
[143] Grimes, above n 12, 274.
[144] McQuoid-Mason, above n 12, 27.
[145] McQuoid-Mason, above n 12; Pinder, above n 10; Patricia Montana, 'Lessons From the *Carnegie* and *Best Practices Reports*: A Look at St John's University School of Law's Street Law Program as a Model for Teaching Professional Skills' (2009) 11 *Thomas M Cooley Journal of Practical and Clinical Law* 97; Elizabeth MacDowell, 'Law on the Street: Legal Narrative and the Street Law Classroom' (2008) 9 (2) *Rutgers Race and Law Review* 285.

presentations designed to be of interest to members of the particular group. The nature of the organisations involved will influence the work students undertake. The mock trial, opinion polls, debates and street theatre are amongst the activities often used in Street Law programs.[146]

Street Law provides 'students with an understanding of how the legal system works and how it may be utilized to safeguard the interests of people on the street' rather than people 'in the text book'.[147] They can improve their understanding of notions of social justice through this practical engagement[148] and develop 'lawyering and transferable skills, notably research, problem solving, communication, drafting and team work' along with providing the opportunity for 'reinforcing learning through application and reflection'.[149]

MacDowell addresses the transformative potential of Street Law experiences, describing the Street Law classroom as 'a laboratory for counter-hegemonic consciousness and practice'.[150] An opportunity is provided 'for a person in the law to become familiar again with the extra-legal language of rights which will be essential to hearing what clients want and need, and to do so in a contextualised setting where that language has more descriptive power'.[151]

Other learning objectives suited to public legal education programs include developing the ability of students to conceptualise and implement a project, to work in a client-focussed manner, to better understand communication processes[152] and to collaborate with other students. Public education clinics are also well suited to priming students for other clinic experiences. The pilot offering of the Griffith Law School Street Law program identified the transferability of the skills and capacities developed by participating law students. Students needed to articulate concepts about law in a

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[146] McQuoid-Mason, above n 12, 30.
[147] McQuoid-Mason, above n 11, S140.
[148] David McQuoid-Mason, 'Teaching Social Justice to Law Students Through Community Service: the South African Experience', Paper presented at Symposium on Clinical Legal Education in Central and Eastern Europe, March 20-21 1998, Budapest, Hungary, 10.
[149] Grimes, above n 12, 276.
[150] MacDowell, above n 145, 331.
[151] Ibid.
[152] Grimes states: 'There is perhaps no better test of understanding than having to explain something effectively to someone else.' Grimes, above n 12, 277.

particular way, having come to understand those concepts and build important associations and relations in the use of those concepts.[153]

There are other advantages for a law school, particularly the ability to avoid the costs of establishing and operating a legal office, opportunities to attract external funding and for both students and staff to engage with local communities.[154] This engagement brings with it the challenge of managing the expectations generated by a greater awareness of rights as well as the interest of students in providing individual advice.[155]

This section has addressed the particular contributions that can be made through utilising the range of clinical legal education models. With their focus on experiential learning, the models have much in common. Each also has distinctive qualities. Simulations are valuable for early developmental experiences as well as for refining specific skills and understandings. Work with real clients highlights to students the dynamics of professional responsibility, facilitates reflective practices and critique of legal institutions. Externships can be tailored to address a range of objectives related to institutional critique, collaboration and cross-disciplinary work. Street Law clinics have particular strengths in developing collaborative practices – between students, law schools and community organisations. All of these models can be utilised in ways that integrate and enhance student appreciation of social justice concerns. Sustainability is promoted by deep understanding of the potential contributions of each model and how they can be constructively combined.

Integrating and sequencing clinic across the curriculum

Integration of clinical elements across a law program is an approach that offers great potential to enhance the ways students learn both in clinics and in their law studies more generally. It is argued here that integration is actually an approach to legal education more generally rather than a model of clinical legal education, especially given that integration is also referred to in relation to the teaching of ethics and legal

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[153] Jeff Giddings & Zoe Rathus, 'Integrating and Sequencing Clinical Insights and Experiences Across the Law Curriculum', in S. Billett (ed), *Curriculum and Pedagogic Bases for Effectively Integrating Practice Based Experiences Within Higher Education*, papers presented at the National Teaching Fellowship Dialogue Forum, Griffith University, Brisbane, 28-29 June 2010, 146.

[154] Simpson refers to particular community engagement benefits from Street Law programs delivered in regional areas where access to legal services is limited. Simpson, above n 13, 7-9. See also Montana, above n 145, 124-5.

[155] Grimes, above n 12, 283.

theory.[156] Integration enables a move beyond reliance on one intensive clinical experience to address a range of objectives and recognises that incremental development is important.

Clinical integration involves the use of simulations and case studies along with real client experiences. It also involves drawing on real client experiences to inform the non-clinical law curriculum.[157] The *Best Practices* Report emphasises that, where the objective is for students to develop proficiency in the application of professional skills, students should 'have repeated opportunities to perform the tasks to be learned or improved upon until they reach the desired level of proficiency.'[158] A focus on integration also enables insights from clinical teaching methods to be made available to more students than those choosing or able to participate in a real client clinical experience.

Clinical teaching methods and insights can be constructively integrated into classroom-based courses. Chalk and talk teaching can include references to clinics and can be taught by current or former clinicians who bring their clinic insights with them. Integration emphasises the client focus so important to both clinic-based learning and legal practice. The law and legal processes can be examined, analysed and critiqued within the framework of client concerns and interests.

Brief simulations or short field placements can be utilised as a primer for more intense clinical experiences later in a law program. The use of complementary clinical experiences in doctrinal courses enables students to acquire additional skills and enhance their understanding of the law as practiced.[159] Such an approach was introduced in 1998 by the University of New South Wales for the *Law, Lawyers and*

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[156] Guy Powles, 'Taking the Plunge: Integrating Legal Ethics in Australia' (1999) 33(3) *Law Teacher* 315. See Stuckey, above n 18, 97-100 for discussion of the integration of legal theory-related teaching. See also Karen Gross, 'Process Reengineering and Legal Education: An Essay on Daring to Think Differently' (2004) 49 *New York Law School Law Review* 435.

[157] Mack refers to many of the benefits of clinical legal education relating to 'integration of different areas of law, integration of law and fact, synthesis of legal and non-legal materials and improved problem solving skills such as issue recognition, planning, strategy, tactics, analysis, synthesis and decision making. These are the sorts of "generic" skills which legal education must foster, since legal knowledge rapidly becomes outdated.' Kathy Mack, 'Bringing Clinical Learning Into a Conventional Classroom' (1993) 4 *Legal Education Review* 89, 99.

[158] Stuckey, above n 18, 178.

[159] Smith, above n 67, 531. At 533, she further suggests linking 'simulation courses to live clinical work so that the simulations provide a framework for analysis, while the live work

Society subject.[160] Burg outlines a similar process, involving a clinical teacher in a classroom-based subject providing a role-model for students to scrutinise.[161] 'As a prelude to a clinical experience, or as a limited substitute for that experience (in the case of those students who are unwilling or unable to avail themselves of clinical opportunities), the presentation of a 'model' has substantial educational value.'[162] A mini-clinic can provide 'context for the students' doctrinal learning, rather than intensively teaching lawyering skills, though inevitably considerable skills learning will take place.'[163]

Clinical integration has been promoted as assisting students to develop appropriate professional values and the ability to reflect critically on their own work. Munger argues that without the use of clinical teaching methods, 'students have no model for sequencing steps in the handling of a case or for integrating facts, law, personal doubts, client pressures and values.'[164] Vaughn promotes clinical integration as alleviating concerns regarding the monotony and mental fatigue which can develop in any course governed by a single teaching methodology.[165]

Integrative approaches are likely to be most effective where they culminate in real client work building on simulations and class-based discussions. Real client work enables students to learn about the uncertain, dynamic nature of law-related professional practice. Students interact in relatively unstructured situations involving clients, supervisors, witnesses, bureaucrats and other professionals. Condlin argues for starting with classroom-based survey courses on lawyering and progressing to simulation-based seminar courses with real-client clinics as the culmination of an ideal 'clinical curriculum'.[166]

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provides the richness of reality, additional practice, opportunities to learn from experience and experiences for contemplation'.

[160] Kingsford Legal Centre & University of New South Wales, *Guide to Clinical Legal Education Courses in Australian Universities 2007-8*, 32. This program is described in more detail in Chapter Six of this thesis.

[161] Elliot Burg, 'Clinic In The Classroom: A Step Toward Cooperation', (1987) 37 *Journal of Legal Education* 232, 249.

[162] Ibid 249-50.

[163] Maranville, above n 19, 131.

[164] Frank Munger, 'Clinical Legal Education: The Case Against Separatism' (1980) 29 *Cleveland State Law Review* 715, 726.

[165] Vaughn, above n 52, 485.

[166] Condlin, above n 26, 47 at footnote 6.

The Seattle University Law School provides an instructive example of efforts to develop a curriculum integrating a range of clinical methods and activities.[167] A series of factors contributed to the school's acceptance of a proposal to move towards an integrated curriculum. The support of the Dean[168] and the use of informal collaborations with a range of academic colleagues generated organisational momentum[169] which enabled the development of a series of simulated and real-client clinical components operating in parallel with the substantive courses. What appears distinctive about this example is the success of clinical academics working informally to include colleagues in the implementation of a clearly articulated integration framework. Over the ensuing decade, the academic credit awarded for some of these integrated clinical components increased in recognition of the work involved for students.[170]

In a useful account of integration efforts at the University of Denver College of Law, Hardaway identified intellectual incompatibility between clinicians and other law teachers 'nurtured on Langdellian methodology' as a 'primary obstacle to true integration of clinical programs into the main academic curriculum'.[171] This 'clear-cut division of teaching methodology' often resulted in 'neither sphere complementing or intellectually supporting the other'.[172] Integration efforts should be focussed on those areas of substantive law being addressed both in the clinic and the classroom.[173] He emphasised the importance of an energetic and supportive Dean to the success of clinical integration efforts[174] and described a rotation system for involving a larger number and broader range of academics in the clinical program.[175]

The Nigerian Law School, which is responsible for the one-year vocational program that law graduates must complete in order to be eligible to practice, has recently implemented a more integrated framework following a comprehensive review of its lecture-based teaching methods.[176] Simulation-based work is now used to reinforce the substantive law coverage and team teaching now features more prominently. Real

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[167] See Mitchell et al, above n 27.
[168] Ibid 6.
[169] Ibid 7-9.
[170] Telephone interview with Raven Lidman (Seattle, Washington 15 October 2009).
[171] Hardaway, above n 27, 464.
[172] Ibid.
[173] Ibid 471.
[174] Ibid 464.
[175] Ibid 478-479.
[176] Richard Grimes, 'All Change Please: Lessons to Learn From Legal Education Reforms in Nigeria' (2009) 43 (1) *The Law Teacher* 82.

client advice work and Street Law initiatives are also being developed to complement the eight-week placement students complete in a law-related organisation.[177]

Comprehensive integration will also include inclusion of both general and specialist experiences within a broader clinical program. This will rely on close collaboration among the different clinics to address concerns about compartmentalisation.[178] Specialist clinics also have the potential to foster the involvement of non-clinic academics – people with expertise and interest in a particular substantive area rather than in the practice of law. Integrative frameworks enable real client work to build on simulations and class-based discussions.

Sequencing

The effective sequencing of clinical experiences, whether or not they involve real clients, has the potential to promote the sustainability of a clinical program. It is important to look beyond what any one particular clinic-based learning environment can provide for a student to consider what a program involving several clinical experiences can offer. The literature reveals a lack of focus on the sequencing of clinical experiences for law students. The Carnegie Report refers to the widespread use of simulations in many disciplines, utilising devices which provide scaffolds to support student efforts at improved performance.[179] The Report also states:

> 'Because case-dialogue teaching is seldom explicitly connected with clinical teaching, few law schools achieve the full impact that an integrated ensemble could provide.'[180]

Clinics are described as the primary means of enabling students to connect 'abstract thinking formed by legal categories and procedures with fuller human contexts'.[181] In Australia, this lack of attention might be explained by the 'add-on' nature of clinical programs. Clinical experiences have not been seen as central to the mission of Australian law schools and are overwhelmingly offered in elective courses.

The various clinical models should be viewed as complementary, often working best in combination. Which model or combination of models should be used in any given

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[177] Ibid 83-86.
[178] Sedillo Lopez, above n 126, 324.
[179] Sullivan et al, above n 14, 26.
[180] Ibid 59.

situation will depend principally upon the aims and objectives of the program in question along with the availability of resources. It is possible to characterise clinical models on the basis of a continuum with the key variables being faculty control and the degree of structure provided for the experiences. Simulation models are those over which teachers can impose the most structure while externships are arguably the least structured as they involve less faculty participation. Feinman[182] refers to a continuum of simulations while Ferber describes a 'wide continuum of formality and complexity' of simulations.[183]

Ferber draws on Schon's work to outline two contrasting views of professional education: the 'teaching of applied science' and the 'coaching in the artistry of reflection-in-action', noting that the 'expert professional must combine both the rational and the artistic.'[184] He asserts that the 'only way to develop the ability for reflection-in-action is by taking action' through a clinic-based experience. 'Simulations give students the opportunity to learn what reflection-in-action is and to begin to develop that ability.'[185]

Sequencing is critical to effectively preparing students for real client clinical experiences. Meltsner and Schrag found that when 'hit with the full force of responsibility for the outcome of the cases, as well as for the quality of their own experience' their clinic students at Columbia Law School in the 1970s and 1980s 'complained that they were ill-prepared by their previous education.'[186]

A wide range of variations, hybrids and, importantly, combinations of the clinical models referred to above can be used effectively. The Association of American Law Schools has guidelines for in-house live-client clinics which have, for many years, recognised the value of flexibility in model selection: 'These guidelines set down broad standards within which extensive variation is not only possible but desirable.'[187] It is also important to recognise that these classroom-clinic relationships often work in both

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[181] Ibid 52-53.
[182] Feinman, above n 30, 471.
[183] Ferber, above n 16, 419.
[184] Ibid 436.
[185] Ibid 436-7.
[186] Schrag & Meltsner, above n 48, 55. Stuckey, above n 18, 277.
[187] AALS, above n 25, 560-61.

directions. 'New insights derived from careful analysis of practice can be fed back into the stream of expert practice.'[188]

Conclusion

Clinical teaching can be approached in several different ways with the main distinguishing factors being the involvement of actual clients with real problems and the participation of external organisations. It has been argued that these distinguishing factors are closely related to the notion of control of the educational experience. Students tend to be attracted to clinical programs by the prospect of improving their practical legal skills and also making contact with the 'real world'. Once they begin their participation, many students become more aware of the importance of reflection and critique. This focus supports the place of live-client clinical teaching where the student is in close contact with a supervisor whose role it is to assist the student to learn from their experiences.

Low risk, introductory experiences, generally in the form of simulations, can motivate new students to learn and enable them to better understand the context for what they are learning.[189] Integration of clinical insights in a range of courses should then be followed by increasingly complex experiences, whether in-house or agency-based with opportunities for more tailored, specialist placements for students with a particular interest. Externships are best suited to use towards the finish of a law degree once students have become more self-directed in their learning. Laser argues: 'If the students first receive enough reflective learning in the in-house setting to learn the rudiments of the art of lawyering before being sent out to extern, the concerns about externships are largely abated.'[190]

It has been argued that clinical methodologies can make a more substantial contribution as part of an integrated and effectively sequenced program than on a stand-alone basis. Further, such contributions are more likely to be sustained as part of an integrated program. Integration should be viewed as an approach to legal education involving attention being paid to a wide range of insights, including ethics, theory and culture as well as from clinical practice. This characterisation is designed to emphasise rather than undermine the significance of clinical integration. Indeed, it is

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[188] Sullivan et al, above n 14, 9.
[189] What Maranville sums up as 'generating passion'. Above, note 19, 126-128.
[190] Laser, above n 75, 264.

argued that effective integration is likely to promote sustainability in clinical programs by effectively preparing students for further, more substantial clinical experiences.

The presence of effective integration of clinical insights into other courses is likely to be a good indicator of the general well-being of a clinical program (and perhaps of a law school). Effective integration involves collaboration, planning and attention to learning objectives, all of which are likely to be important to the sustainability of clinical programs. The law school will need to be clear about what elements are to be integrated and for what purposes. The purposes can include the development of insights from the practice of law, a focus on reflection and learning by doing as well as enhancing the capacity of the student to focus on the needs and interests of clients. The challenge is to do this in a systematic manner, involving incremental development through sequencing of experiences.

It could be said that size matters in the sense that a clinical program that is large enough to provide specialist opportunities for both students and staff is likely to be better able to implement a sequenced approach – from threshold simulations through scaffolded activities (enabling students to benefit from iteration) to opportunities to engage directly with clients and practising lawyers, culminating in specialised experiences that enable students to engage in more in-depth work.

This chapter and Chapter Two have focussed on the pedagogical sustainability of clinical programs – the need for clarity in relation to the objectives and models suited to pursuing carefully selected objectives. It is also important to address the political dimensions of sustainability – understanding ways in which to integrate a variety of interests. This forms the backdrop for consideration in the next chapter of the range of factors likely to impact upon the political sustainability of clinical programs.

Chapter Four – Factors Influencing the Establishment and Sustainability of Clinical Programs

Introduction

This chapter addresses the practical and political dimensions of starting and sustaining a clinical legal education program. Chapters Two and Three focussed on the pedagogical sustainability of clinics, considering appropriate objectives for clinic-based learning and the models available to pursue those objectives. This chapter broadens the analysis of sustainability to consider the range of factors likely to influence the outcome of efforts to establish a clinic and to sustain a clinic once it is up and running. It will be argued that clinics face a tenuous existence unless external institutional support promotes their existence and legitimacy. In the absence of certain key factors, a clinical program is unlikely to be sustained.

While the clinical legal education literature has not focussed on sustainability, it contains important insights into what influences program establishment and sustainability. This chapter sets out a series of factors which I argue are influential in the establishment and sustainability of programs. Each factor is illustrated with examples drawn from the literature and from primary research. These examples include programs that were planned but not established, others that commenced operations but did not continue as well as programs that have been sustained. The validity of the factors proposed in this chapter as relevant to establishment and sustainability will be tested by use of the four case studies examined in Chapters Five to Eight of the thesis. The identified factors also provide the framework for the analysis of the case studies in Chapter Nine.

The factors are grouped together as relating principally to either the particular law school, to the university or to more external influences, in particular government policy related to education and legal services. Inevitably, there is some overlap between factors and consequently some examples are referred to several times. Consistent with the argument made in earlier chapters that integrative frameworks should be used in the development and operation of clinical programs, the factors are examined from an integrative perspective. This suggests that clinics should consider appropriate collaborative opportunities within their law school, within their university, with other clinics as well as other organisations more broadly.

The chapter argues that while there appears to be no single factor that can be taken to ensure the establishment and sustainability of a clinic program, the commitment of key staff (both clinic supervisors and law school leaders) is especially important to sustainability. It appears that contextual factors beyond the law school often drive the *establishment* of clinical programs. *Sustainability* and *continuing development* appear more closely linked to factors more specific to each individual law school. Law school commitment to the use of clinical method and understanding of the particular contributions clinics can make will be central to sustainability. For longstanding clinical programs, sustainability is closely linked to the ability of those responsible to adapt to changing circumstances. Some sense of this comes from Laura Holland's account of the clinical program at Yale Law School:

> 'Clinical education in this seemingly inhospitable environment succeeded because of a progressive and determined student body, the vision of Jerome Frank, the financial assistance of [the Council on Legal Education for Professional Responsibility], and a politically wise clinical faculty.'[1]

The influential factors are considered in three sets, starting with the broad contextual factors, highlighting the importance of government policy and the response of the legal profession and judiciary to developments in clinical legal education. University factors are then addressed in terms of fostering the establishment of clinics as well as either supporting or undermining their ongoing operation. Ultimately, it is the law school that needs to drive sustainable practices and the chapter examines law school factors in close detail.

External Factors

Clinical programs tend to operate within multiple systems – involving students, clients, the law school and university, as well as the legal profession and policy makers. This complexity generates potential for both conflict and collaboration. As small organisations, clinics are likely to rely on the expertise and commitment of key people and will need to make effective use of the resources available to them. Economic circumstances, government policy and legal professional attitudes are all influential here.

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[1] Laura Holland, 'Invading the Ivory Tower: The History of Clinical Education at Yale Law School' (1999) 49 (4) *Journal of Legal Education* 504.

Economic and Social Context

Progressive and prosperous times are said to be conducive to the development of clinical programs. The activism of the late 1960s is considered to have been very important to the establishment of early programs in Australia, the USA and South Africa. Schrag and Meltsner provide the oft-quoted summary, 'Clinical legal education was born in the social ferment of the 1960's.'[2] In Australia, many of the teachers in the newly established 'red-brick'[3] universities were 'babyboomers', young and interested in developing new teaching approaches to enhance the case method of law teaching.[4] The establishment in 1970 of South Africa's first law school clinic, at the University of Cape Town, was 'related to the increased resistance to the apartheid government … and the imposition of one state of emergency after another.'[5]

Holland notes that Jerome Frank's vision of a law school clinic at Yale to serve not only the poor but also governmental agencies and other institutions was not achieved in his lifetime. While this was in part due to the concern of legal academics with the potential impact of training in the practical art of lawyering on the purpose and mission of the academic law school, the 'most significant obstacles for Frank's reforms, however, were the institutional and economic constraints of the 1930s and 1940s. Neither Yale nor Harvard could afford to implement Frank's plan.'[6] Holland argues that efforts in the 1960s by Yale law students aimed at development of for-credit clinical programs were 'but one battle in a war against the academic law school as an institution.' Student efforts to inject practical education into the Yale law curriculum were 'fought in a maelstrom of civil rights marches, antipoverty agitation, and student protests.'[7]

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[2] Philip Schrag & Michael Meltsner, *Reflections on Clinical Legal Education* (1998) 3. The Carnegie Report notes that US law schools, 'located at the junction between academic and practitioner interests' have tried at different moments to go in different directions. 'Thus, during the 1960s and 1970s, when law schools were expanding, there was new concern for social purpose, manifested in developments such as clinical-legal education. Yet, at the same time, internal academic norms emerged as more powerful than ever, so that faculty research became more intensive and more like scholarship in the arts-and-sciences disciplines.' William Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (2007) 7.

[3] As opposed to the well-established 'sandstone' universities. See Simon Marginson & Mark Considine, *The Enterprise University: Power, Governance and Reinvention in Australia* (2000) 15-16. The 'sandstone' and 'red-brick' universities were subsequently joined by the 'gumtree' universities established in the 1970s, the 'universities of technology' and the 'new universities'.

[4] Interview with Simon Smith (Clayton, 20 November 1996).

[5] Peggy Maisel, 'Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn From South Africa' (2007) 30 *Fordham International Law Journal* 374, 380.

[6] Holland, above n 1, 509.

[7] Ibid 514.

A different perspective is provided by the development and sustainability of clinical programs in Chile.[8] Clinics were established at the University of Chile[9] and the Diego Portales University Law School[10] during the rule of the brutally repressive military dictator Augusto Pinochet. Wilson seeks to explain the paradox of clinics taking root under a repressive regime by reference to several factors. The provision of legal services to the poor was important, as was the fact that law schools and lawyers were not seen as a threat by the Pinochet regime. Further, the clinics cast themselves in apolitical terms, focussing on education and providing legal services for the poor.[11] Many of the choices facing the developing clinics in Chile were driven by factors external to the programs themselves.[12] Further, Chile's economy was viewed as relatively prosperous during the reign of Pinochet's regime.

External financial support will be more readily available in progressive times. In the UK, Sylvester has noted that clinics 'have come and gone and are often the first to feel the effect of resource crises.'[13] In the US, charitable funds (particularly from the Ford Foundation via the Council on Legal Education for Professional Responsibility [CLEPR]) were very important to the establishment of clinics, bringing into the legal academy an innovative teaching method.[14] Subsequently, Federal Government support, through what became known as Title IX grants became significant once CLEPR funds were no longer available.[15]

Higher Education Policy and Practice

Government policy on higher education will significantly influence the prospects for developing and sustaining clinical legal education programs. Many countries have adopted policies to ensure greater participation in higher education, including

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[8] Richard Wilson, 'Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South' (2002) 8 *Clinical Law Review* 515, 576-77.

[9] Ibid 538. At the University of Chile, volunteer student programs had begun in the 1920's then disappeared before being restarted in the early 1970s in the time of the progressive Allende government. A formal clinical program began in 1975, two years after the military coup.

[10] Ibid 549. The Diego Portales University Law School established its clinical program in 1987. This new and innovative law school sought to take a student-focussed approach to legal education from its establishment in 1982.

[11] Ibid 577-79.

[12] Ibid 581. Wilson notes the nature of the military government and the lack of effort on the part of the Chilean legal profession to hold the government to account as important in the 'broader social, economic, political and cultural contexts' in which the clinics operate.

[13] Cath Sylvester, 'Bridging the Gap? The Effect of Pro Bono Initiatives on Clinical Legal Education in the UK' (2003) 3 (1) *International Journal of Clinical Legal Education* 29.

[14] Schrag & Meltsner, above, note 2, 7-8.

[15] See Nina Tarr, 'The United States Experience' in Hugh Brayne, Nigel Duncan & Richard Grimes, *Clinical Legal Education: Active Learning in Your Law School* (1998) 232, 242-3.

university-based legal education. In Japan, clinical legal education is playing a significant role in government efforts to enhance the performance of graduate law schools. Seventy-four new graduate law schools opened in Japan between 2004 and 2006 and more than 50 of these offer clinic-based courses using various models based on US clinics.[16] These schools developed as a result of the Justice System Reforms of 2004 and clinic-based experiences are considered a way to 'bridge theory and practice.'[17]

Undergraduate education has been a focus for government regulation and quality assurance in the UK since the 1980s. While practice-oriented learning has been encouraged, some policy initiatives have limited the prospects for clinic-based learning. National and European education policy, rather than professional competence, are the focus of higher education reform, further distancing the professions from the academies. The rapid expansion of higher education exacerbated the resource tensions. The 'traditional "pile-them-high-and-teach-them-cheap" lecturing model' will remain prominent so long as government funding models place law among the cheapest disciplines to teach.[18]

In Australia, the sweeping higher education reforms presided over by John Dawkins in the late 1980s freed up the processes required of universities to establish new law schools. Since 1989, the number of Australian law schools has risen dramatically, from 12 to 32.[19] Dawkins presided over a 'fundamental transition from universities as public funded institutions towards universities as service providers to a range of clients including government, students and industry'.[20] Existing higher education institutes and colleges were merged and elevated to university status and moves were made towards user payments and other market-type mechanisms were introduced. Participation rates

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[16] Peter Joy et al, 'Building Clinical Legal Education Programs in a country Without a Tradition of Graduate Professional Legal Education: Japan Educational Reform as a Case Study' (2006) 13 *Clinical Law Review* 417, 445.
[17] Ibid 429.
[18] Jeff Giddings et al, 'The First Wave of Modern Clinical Legal Education: The United States, Britain, Canada, and Australia' in F. Bloch (ed.) *The Global Clinical Movement: Educating Lawyers for Social Change* (2010) 3, 9-10.
[19] Much of this development occurred in the 1990s. By 2003, there were 29 law schools in Australia. See Richard Johnstone & Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee* (2003) 3. In 2010, there are 32 Australian law schools. See www.cald.asn.au/schools.htm (last accessed 3 August 2010).
[20] Vivienne Brand, 'Decline in the Reform of Law Teaching?' (1999) 10 *Legal Education Review* 109, 117.

were also expected to increase significantly.[21] These changes have contributed to the development of new clinical programs but not to the extent that might have been expected. Reduced government funding per student (both in overall terms and in comparison with other disciplines) and higher staff-student ratios than most other disciplines have limited the scope for innovation in law teaching methods.[22]

A key difficulty limiting the development of clinics in Australia is the Relative Funding Model used since 1991 to allocate Federal Government operating grants to universities. Law was placed in the bottom of five discipline clusters, along with economics, accounting and various humanities disciplines.[23] At the same time, law students contribute to the Higher Education Contribution Scheme (HECS) at the highest of three differential rates.[24] Consequently, the least expensive ways of teaching have become the default approach in Australian law schools. The absence of a strong tradition of clinic-based experiential learning in law and the funding of law at a minimal level make it less likely that law schools will prioritise clinical programs given that they are a relatively expensive form of legal education.

Clinical legal education may be promoted by increasing government recognition of the value of workplace learning. The Dawkins reforms have led universities to emphasise 'Work Integrated Learning' as a mechanism to develop graduate attributes and employability skills.[25] Efforts have been made to institutionalise Work Integrated Learning 'as a teaching and learning approach which has the potential to provide a rich, active and contextualised learning experience for students which contributes to their engagement in learning'.[26] While law as a discipline is not central to this Work Integrated Learning agenda, the setting of institutional goals is likely to increase

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[21] Marginson & Considine, above, note 3, 30-31.
[22] Andrew Goldsmith, 'Why Should Law Matter? Towards a Clinical Model of Legal Education' (2002) 25 (3) *UNSW Law Journal* 721, 721-730.
[23] Ibid 730. Law was given a weighting of 1. By contrast, the top cluster (comprising medicine, dentistry and veterinary science) has a weighting of 2.7. See also Johnstone & Vignaendra, above n 19, 3-4; Les McCrimmon, 'Mandating a Culture of Service: Pro Bono in the Law School Curriculum' (2003-4) 14 (1) *Legal Education Review* 53, 72-3 & Mary Keyes & Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' (2004) 26 (4) *Sydney Law Review* 556.
[24] This means that while HECS payments by law students are at the highest level, government funding is at the lowest level. Goldsmith, above n 22, 722. Goldsmith notes that in 1998, the Federal Government paid universities less than $7,000 per law student while the figure paid for each dentistry and medicine student exceeded $18,000.
[25] Carol-joy Patrick et al, *The WIL [Work Integrated Learning] Report: A National Scoping Study*, [Australian Learning and Teaching Council (ALTC) Final report] (2009) 3.
[26] Ibid.

pressure on law schools to make workplace learning opportunities available to their students.[27] Clinics may be seen as the best vehicle for enabling law schools to address such pressure.

Legal Services Policy

The adequacy and focus of existing legal aid infrastructure will be significant in delineating possible roles for law students in the delivery of legal services. Where those involved expect clinics to play a major service delivery role, models need to be tailored to meet service delivery objectives. In South Africa and India, limited legal aid resources have resulted in students playing an important role in efforts to meet constitutional rights to representation.[28] Bloch and Ishar note that in India, 'when the legal aid movement took hold in the 1960s, it was assumed that law schools would have a significant role in clinics.'[29] In the USA, the 1969 decision of the Supreme Court in *Gideon v Wainwright* 'created a serious question as to how and from where representation would be provided to the new class of criminal defendants now entitled to it under the US Constitution'.[30] Chinese universities and students have played an ongoing role in the development of legal aid, initially through student volunteer programs and more recently through clinical programs.[31]

The Saskatoon Legal Assistance Clinic (and the College of Law) made 'an enormous, shaping contribution to the form of the first comprehensive legal aid plan in

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[27] See Melinda Shirley et al, 'The Challenge of Providing Work-Integrated Learning for Law Students – the QUT Experience' (2006) 9 *International Journal of Clinical Legal Education* 134.

[28] Haupt refers to s35 of the South African Constitution creating a positive right to legal representation in relation to criminal law matters and a qualified right for children involved in civil law matters. See Franciscus Haupt, 'The CLE Agenda: A South African Perspective' (Paper presented at the 2nd International Journal of Clinical Legal Education Conference, Edinburgh, 15 July 2004) 5. All South African clinical programs receive funding for a Clinic Director (at Senior Lecturer level) from the Attorney's Fidelity Fund. See also Maisel, above n 5, 388 & David McQuoid-Mason, 'The Delivery of Civil Legal Aid Services in South Africa' (2000) 24 *Fordham International Law Journal* S111, S129-130. McQuoid-Mason refers to the possibility of each final year law student taking on ten criminal defence cases per year. This would ease criminal law caseloads for other legal aid service providers, enabling them to spend more time on civil matters. Bloch & Ishar refer to Article 39A of the Indian Constitution under which the State is committed to securing that 'the operation of the legal system promotes justice on a basis of equality' and 'providing free legal aid 'to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability'. See Frank Bloch & Iqbal Ishar, 'Legal Aid, Public Service and Clinical Legal Education: Future Directions From India and the United States' (1990) 12 *Michigan Journal of International Law* 92, 96.

[29] Ibid.

[30] Judith Dickson, 'Clinical Legal Education in the 21st Century: Still Educating for Service?' (2000) 1 *International Journal of Clinical Legal Education* 33, 37.

[31] Anon, 'Adopting and Adapting: Clinical Legal Education and Access to Justice in China' (2007) 120 *Harvard Law Review* 2134.

Saskatchewan, Canada in 1974'.[32] However, a change of government led to a restructuring of legal aid, moving away from community governance models. The legal aid agency withdrew from its partnership in the clinical program in 1983 and following the 1986-87 academic year the clinic was discontinued.[33] A clinical program re-emerged in Saskatoon in 2005 as a result of student initiatives designed to provide opportunities to engage in poverty law work.[34] Relatively generous legal aid funding may have limited the development of clinics in the UK[35] with clinics not expected to become major legal aid service providers. At the same time, this may have enabled clinics, once established, to unrealistic service expectations.[36]

Momentum as a Movement

In a community development context, Kenny refers to the importance of the 'establishment of supportive communities, based on developing and sharing resources, social interaction and participation, self-help and mutual support activities.'[37] Organisations for clinical teachers and programs, including the Clinical Legal Education Association in the USA,[38] the Clinical Legal Education Organisation in the UK,[39] the Association of University Legal Aid Institutions in South Africa[40] and the Global Alliance for Justice Education[41] promote such community development. The now 'global reach of clinical legal education has aided and facilitated its growth and acceptance'.[42] The

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[32] Giddings et al, above n 18, 16. See Frederick Zemans 'Legal Aid and Advice in Canada: An Overview of the Last Decade in Quebec, Saskatchewan and Ontario' (1978) 16 *Osgoode Hall Law Journal* 663, 676-679.

[33] Giddings et al, above n 18, 16.

[34] Ibid 18.

[35] Richard Moorhead, 'Legal Aid and the Decline of Private Practice: Blue Murder or Toxic Job?' (2004) 11 (3) *International Journal of the Legal Profession*, 159, 162-168.

[36] Sylvester refers to clinical legal education in the UK as not having been 'demand led by a need for free legal services...The existing programmes have always had, at their forefront, educational priorities.' Sylvester, above n 13, 36.

[37] Susan Kenny, 'The Nature of Community Development' in Susan Kenny, *Developing Communities for the Future* (3rd ed, 2006) 7.

[38] http://www.cleaweb.org (last accessed 7 October 2010).

[39] Margaret Barry et al, 'The Role of National and Regional Clinical Organizations in the Global Clinical Movement' in Frank Bloch (ed.) *The Global Clinical Movement: Educating Lawyers for Social Change* (2010) 279, 292. See also Hugh Brayne, Nigel Duncan & Richard Grimes, *Clinical Legal Education: Active Learning in Your Law School* (1999) 6.

[40] Maisel, above n 5, 392-4.

[41] http://www.gaje.org. (last accessed 7 October 2010) See also Edward Santow and George Mukendi, 'The Global Alliance for Justice Education' in Frank Bloch (ed.) *The Global Clinical Movement: Educating Lawyers for Social Change* (2010), Chapter 25.

[42] Frank Bloch, 'Introduction' in Frank Bloch (ed.) *The Global Clinical Movement: Educating Lawyers for Social Change* (2010), xxvii. He refers to the support of clinical programs from around the world in assisting the Committee of Chinese Clinical Legal Educators to push for the expansion of clinics in China as well as to examples of cross-border clinical initiatives including

establishment of clinic-focussed journals, namely the *Clinical Law Review*,[43] the *International Journal of Clinical Legal Education* and the *Thomas M. Cooley Journal of Clinical and Practical Law*, has enhanced the mechanisms available to clinicians to develop their scholarship.

A vibrant clinical movement enables support and a sense of collegiality to be generated for clinicians who might otherwise feel isolated in their own faculty. Insights and practices can be shared with a view to enhancing existing programs and fostering new initiatives. The *Best Practices For Legal Education* Report published by the US Clinical Legal Education Association is an outstanding example of clinicians working to promote effective practices in clinics and legal education more broadly.[44] Often, the closest colleagues for clinicians will be their peers in other law schools rather than fellow academics within their own school. The presence of a small number of clinics can prompt the development of support mechanisms fostering the growth of other clinics.[45]

The experiences of unsustainable programs may check the momentum of such movements, limiting opportunities for other programs to develop. Antioch Law School was a pioneering public interest law school which had a turbulent existence in Washington D.C. from 1972 to 1986. Developed by Jean and Edgar Cahn, influential public interest lawyers, it was designed to be the first clinical law school in the country.[46] Antioch's ambitious program faced very high staff turnover, challenges in balancing service responsibilities with student interests, low bar examination pass rates amongst its graduates as well as a tense relationship with its host university based in Ohio. While Antioch's strong emphasis on clinical legal education inspired some US

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the support of South African clinicians in Nigeria and the work of Polish and Russian clinicians to support clinics in Central and Eastern Europe.

[43] The foreword to the first issue of the *Clinical Law Review* outlines the efforts of US clinicians to develop 'a specialised journal for scholarly pieces related to clinical legal education. Like many an idea whose time has come, the proposal seemed to emerge simultaneously in several different places.' See Stephen Ellmann, Isabelle Gunning & Randy Hertz, 'Why Not a Clinical Lawyer-Journal?' (1994) 1 *Clinical Law Review* 1, 3.

[44] Roy Stuckey and others, *Best Practices for Legal Education: A Vision and a Road Map*, (2007).

[45] Brayne, Duncan & Grimes, above n 39, 6.

[46] Schrag and Meltsner credit the Cahns with having 'conceived the idea of the "neighbourhood law firm" to provide to poor people both traditional advocacy and law reform efforts, and they went on to found Antioch University Law School as an alternative model of "public interest" law school.' Schrag & Meltsner, above n 2, 4. Kilwein described the Cahns as legal service advocates with an 'activist approach to improving the poor's status before the justice system'. See John Kilwein, 'The Decline of the Legal Services Corporation: "It's Ideological, Stupid"' in Francis Regan et al, *The Transformation of Legal Aid: Comparative and Historical Studies* (1999) 46.

clinicians,[47] others criticised Antioch as failing to deliver on its promise to provide a distinctive legal education. In 1977, John Kramer from Georgetown Law School noted that a 'clinical legal education is a very expensive kind of education and there are only so many sugar daddies around with big grants. If Antioch fails no other law school may ever get the chance to try the idea again.'[48]

In 1988, MacFarlane wrote of the 1976 closure of the first clinical program in England, established at the University of Kent – Canterbury in 1973. The memory of the Kent clinic 'left many in legal education with a lingering mistrust of the term "clinical". This was the most public and embarrassing dispute to have taken place within legal education within memory.'[49] This experience may have contributed to the relatively slow development of clinical legal education in the United Kingdom. A clinic was subsequently re-established at Kent in the 1990s and other clinics, particularly at Warwick University and the University of Northumbria, have taken on leadership roles.

Attitude of Legal Professional Bodies

Legal professional bodies can be very significant in the development of clinical programs. As a form of legal education based and focussed, at least in part, on the practice of law, clinics tend to be supported by the organised legal profession. However, there are examples of legal profession opposition to clinics. Sylvester identifies the lack of action from the profession as a reason for the limited development of clinic in England[50] while also noting that the academy has always been resistant to what it interprets as interference by the profession.[51]

Strong resistance to the development of clinical programs in Argentina came from lawyers' professional bodies, 'given that proposals to include clinical methods carry

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[47] In 1981, Anderson & Catz provided an account of the influence of the Antioch program on development of the clinic at the Cleveland-Marshall College of Law at Cleveland State University, referring to Antioch having 'for a brief shining moment' operated a comprehensive and integrated model of clinical legal education. Terence Anderson & Robert Catz, 'Towards a Comprehensive Approach to Clinical Education: A Response to the New Reality' (1981) 59 *Washington University Law Quarterly* 727. In 1992, Maher wrote 'Few educators embarked on such bold and important experiments to improve the way that we educate our law students.' Stephen Maher, 'No Easy Walk to Freedom' (1992) 1 *District of Columbia Law Review* 243.

[48] Juan Williams, 'Clinical Education Test at Stake' Washington Post (Washington DC, USA) May 25 1977.

[49] Julie MacFarlane, *An Evaluation of the Role and Practice of Clinical Legal Education, With Particular Reference to Undergraduate Legal Education in the United Kingdom*, (PhD Thesis, Brunel University, 1988) 150.

[50] Sylvester, above n 13, 38.

[51] Ibid 32. See also Giddings et al, above n 18, 6-7.

with them a strong reformist and critical attitude to the dominant system'.[52] The resistance of the bar resulted in part from '[p]rofessional ethical norms and interpretations of them that regard working for free as professionally disloyal'.[53] The early legal aid clinics in South Africa faced initial opposition from law societies in several provinces, with concerns expressed about 'touting, inadequate supervision, competition by the clinics for clients, and the fact that much of the work would involve social welfare not law'.[54]

The clinical program established by the Osgoode Hall Law School in the early 1970s faced initial opposition from the Law Society of Upper Canada.[55] The concerns related to the clinic's role in legal aid service delivery and competition with local private practitioners.[56] Once the confrontational mood cooled, the relationship between the clinic and the profession 'was polite but distant'.[57] Similar concerns were raised in relation to the advocacy-oriented project, Legal Assistance of Windsor, established by students and faculty of the University of Windsor. The local private profession 'strenuously opposed the entry of students into the city's courtrooms on the grounds that they lacked professional qualifications and would therefore put clients at risk'.[58]

The American Bar Association (ABA) has strongly supported clinical programs in the USA. The requirements for law schools to gain accreditation from the ABA include that schools make clinical experiences available to students.[59] First through promoting student practice rules and then through accreditation actions, the ABA facilitated the development of clinics. Even so, it took almost three decades for clinics to become a well established common feature in US law schools. The ABA introduced an accreditation standard in 1980 requiring law schools to accord clinical faculty status substantially equivalent to that of other faculty members. While this standard has met

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[52] Mariela Puga, 'Challenges for Legal Clinics in Argentina' (2003) 37(3) *Law Teacher* 239, 252.
[53] Ibid 255.
[54] David McQuoid-Mason, *An Outline of Legal Aid in South Africa* (1982) 146 & 164.
[55] Frederick Zemens, 'The Dream is Still Alive: Twenty-five Years of Parkdale Community Legal Services and the Osgoode Hall Law School Intensive Program in Poverty Law' (1997) 35 (3) *Osgoode Hall Law Journal* 499.
[56] Ibid 514-515.
[57] Ibid 515. In Australia, the hostility of the practising profession was directed more towards legal aid commissions. See Mary Anne Noone & Steven Thomsen, *Lawyers in Conflict* (2006), Chapter 3.
[58] Rose Voyvodic & Mary Medcalf, 'Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor' (2004) 14 *Journal of Law & Policy* 101, 112.
[59] Peter Joy, 'Evolution of ABA Standards Relating to Externships: Steps in the Right Direction?' (2004) 10 *Clinical Law Review* 681, 684.

with various forms of law school resistance, it indicates ABA support for 'the full integration of clinical courses and the faculty teaching those courses into law schools'.[60] In 1992, the ABA-commissioned MacCrate Report[61] and the Report of the Association of American Law Schools Committee on the Future of the In-House Clinic[62] strongly endorsed clinical legal education. This was important in the ABA adopting its accreditation standard in 1996, firmly cementing some type of clinical program for all accredited law schools.

Australian law schools need to obtain approval for their degrees from the admission authority in their state, usually the Supreme Court. There have been no moves towards requiring Australian law schools to provide students with opportunities to participate in clinical programs.[63] Nonetheless, there has been judicial support for clinical programs. The Western Australian judiciary was instrumental in the development of a specialist criminal law clinic at the University of Western Australia (UWA). The Unrepresented Criminal Appellants Scheme (UCAS) was established by the Court, the Law School and the WA Ministry of Justice in 2000 as a two-year pilot program.[64] Despite being considered a significant success, UCAS did not attract continuing funding from the State Ministry of Justice. Supreme Court Chief Justice David Malcolm expressed bitter disappointment at the demise of UCAS.[65]

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[60] Peter Joy & Robert Kuehn, 'The Evolution of ABA Standards For Clinical Faculty' (2008) 75 (2) *Tennessee Law Review* 183, 232.

[61] American Bar Association, Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development - An Educational Continuum* (1992).

[62] Association of American Law Schools, 'Report Of The Committee On The Future Of The In-House Clinic', (1992) 42 Journal Of Legal Education 508.

[63] In 1992, the Consultative Committee of State and Territory Law Admitting Authorities (the Priestley Committee) prescribed 11 areas of substantive law that law graduates must have studied in order to be eligible for legal profession admission. Richard Johnstone & Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law* (2003) 4. While the Priestley Committee identified twelve important skills for practising lawyers, these were to be developed during post-degree practical legal training rather than in the undergraduate law degree. The preoccupation of the Priestley Committee requirements with substantive areas of law and lack of focus on legal skills and 'what lawyers need to be able to do' has been strongly criticised by the Australian Law Reform Commission in its landmark 2000 report, *Managing Justice*. For an overview, see David Weisbrot, 'What Lawyers Need to Know, What Lawyers Need to Be Able to Do: An Australian Experience' (2002) 1 *Journal of the Association of Legal Writing Directors* 21. Keyes & Johnstone further note that the Priestley Rules 'do not explicitly require attention to theoretical perspectives'. See also Keyes & Johnstone, above n 23, 544.

[64] In 1998, the Chief Justice of Western Australia, David Malcolm had approached then UWA Law Dean, Ian Campbell seeking law school involvement in a proposed scheme to have students assist unrepresented criminal appellants. See David Malcolm, 'The Court of Criminal Appeal: A New Scheme to Assist Indigent Appellants' (2000) 29 *Western Australian Law Review* 108, 110-111.

[65] David Malcolm, *2001 Annual Review of Western Australian Courts* 13.

These examples indicate that where clinical programs encounter opposition from legal professional organisations, it has been focussed on pioneering programs. There is greater likelihood of professional support and endorsement once the clinical method can be seen to advance professional objectives. In many instances, legal professional organisations have become strong supporters of clinical programs once they have been established.

Partnership Programs – Opportunities for Collaboration

Partnerships between law schools and external agencies, operating what were described in Chapter Three as agency clinics,[66] have the potential to enhance the clinic opportunities provided to students. Developing the common understandings required for such partnerships to operate effectively is time-consuming but critical to identifying opportunities for collaborative advantage. Australian clinical programs, including those that have operated as in-house clinics, have relied heavily on community partnerships. The key academic staff in most Australian clinical programs have come to law teaching from the legal aid sector, principally from community legal centres.[67] Familiarity and cooperation with the community legal centre movement has been critical to development of the Griffith Law School clinical program.[68] For such partnerships to be effective, it is clearly valuable for the parties to have personal links and some history of working together.

In 1990, the Queensland Association of Independent Legal Services (QAILS) received a small grant from the Grants Fund of the Queensland Law Society to explore the development of a clinical legal education program in Queensland.[69] A Committee with membership from four law schools,[70] community legal centres and the Queensland Law Society was charged with investigating 'both the desirability and feasibility of

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[66] See Chapter 3, footnotes 136-138 and related text.

[67] Jeff Giddings, 'A Circle Game: Issues in Australian Clinical Legal Education' (1999) 10 (1) *Legal Education Review* 33, 38.

[68] Having developed its first clinic in 1995 with Caxton Legal Centre, Griffith Law School operated seven clinic courses by 2004, involving three community legal centres and a range of other community organisations. Jeff Giddings, 'Two-Way Traffic: The Scope for Clinics to Facilitate Law School Community Engagement', in Patrick Keyser, Amy Kenworthy & Gail Wilson (eds), *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service Learning* (2009) 40, 52.

[69] Alan Chay, 'A Clinical Legal Education Program for Queensland?' (1991) February, *Queensland Law Society Journal* 49.

[70] Bond University, Griffith University, Queensland University of Technology and the University of Queensland.

introducing a Clinical Legal Education programme into Queensland'.[71] The committee proposed a clinical partnership involving the four law schools and several community legal centres with a view to maximising the support available to the clinic from a range of sources. Reluctance from the various parties to commit to the project until others also committed left the proposal unrealised.[72] A program involving all the law schools was not viable due to the competitive nature of their relationships.[73] The negotiation literature indicates that parties with a history of competitive relationships around incompatible goals have limited capacity to act collaboratively.[74]

The clinical program established by the Legal Studies Department at La Trobe University in the late 1970's was novel in several respects. The students were studying legal studies rather than law and the clinic was located within the West Heidelberg Community Health Centre. Kevin Bell, the clinician responsible for the program from 1981-85, notes that at that time, the possibility of closer links between various professionals across civil society – architects, accountants, doctors, lawyers, social workers, chiropractors, anthropologists – was a radical concept.[75] Collaborative service delivery raised particular ethical challenges for doctors and lawyers. When he arrived, Bell found that the other professionals in the health centre did not understand the duties lawyers owed to their clients.[76] Through its long-serving Director, Mary Anne Noone, the La Trobe clinical program has since become a leader in scholarship regarding the potential benefits of integrated service delivery models.[77]

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[71] *Report of the Working Party on Clinical Legal Education*, October 1990, 1. Six members of the committee visited clinics in Victoria and New South Wales and considered that the Springvale Legal Service provided the most suitable model for the Queensland program. *Report of the Working Party on Clinical Legal Education*, 3.

[72] While $20,000 was sought from the Queensland Law Society Grants Committee for establishment of the program, only $3,000 would be made available and only once other sources also committed resources. Letter to Mr Jim Gibney, Chair of the QAILS Clinical Legal Education Committee from Mr Michael White. Chief Executive Officer, Queensland Law Society, 23 May 1991.

[73] Virginia Ryan, Chair of the Committee, considers that the proposed program faced difficulties due to rivalry between law schools as well as between community legal centres. Telephone interview with Virginia Ryan (19 October 2004).

[74] Roy J. Lewicki, Bruce Barry & David M. Saunders, *Negotiation*, (6th ed, 2009), Carrie Menkel-Meadow, Andrea Schneider & Lela Love, *Negotiation: Processes and Problem Solving*, 2006, G. Richard Shell, *Bargaining for Advantage*, (2nd ed, 2006) & Larry Crump & Jeff Giddings, 'Strategy, Choice and the Skilled Legal Negotiator' (2005) 31 (2) *Monash University Law Review* 258, 265-266.

[75] Interview with Kevin Bell (Melbourne, 13 September 2002).

[76] Ibid. Bell stated: 'I felt that the whole thing was a bit loose and needed to be roped in.'

[77] Mary Anne Noone, '"They All Come in the One Door" The Transformative Potential of an Integrated Service Model: A Study of the West Heidelberg Community Legal Service' in Pascoe Pleasence, Alexy Buck & Nigel Balmer (eds) *Transforming Lives: Law and Social Process* (2007)

Clinical programs can involve a broad range of relationships, offering significant scope for collaboration. Understanding this partnership potential includes recognising that productive relationships require careful development and maintenance. While organisations with competing goals, such as law schools, will find it difficult to collaborate,[78] clinical programs appear well placed to collaborate across institutions on advancing their shared interests in clinical legal education.

Opposition From Outside

Opposition from beyond the law school and university has clear potential to undermine both the establishment and sustainability of clinical programs. External challenges to the work of clinical programs tend to relate to the politicised nature of the legal work done by some clinics rather than to questions of student competence or educational merit. The involvement of students and their supervisors in 'bringing suits that wouldn't be brought at all if the clinic didn't do it'[79] has in some instances generated serious antagonism towards such programs. Puga refers to external concerns that Argentinian clinics have politicised their universities. 'Many legal professionals and politicians see the activities of clinics as interference by universities in matters of politics in which they should not be involved.'[80]

The highly politicised nature of the legal work they undertake and the limited availability of legal aid services have resulted in some US clinical programs facing very strong opposition from powerful political interests, including state governments. Attempts have been made to have universities close down clinical programs. A comprehensive outline of attempts at such political interference is provided by Kuehn and Joy[81] who explain that the 'interests of politicians and of university alumni and donors add an additional level of outside interest and potential interference in law school clinic activities.'[82]

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93 & Mary Anne Noone, 'Towards an Integrated Service Response to the Link Between Legal and Health Issues' (2009) 15 *Australian Journal of Primary Health* 203.

[78] Crump & Giddings, above n 74, 265-266.

[79] Robert Kuehn & Peter Joy, 'An Ethics Critique of Interference in Law School Clinics' (2003) 71 (5) *Fordham Law Review* 1990.

[80] Puga, above n 52, 254.

[81] Kuehn & Joy, above n 79, 1971. See also Peter Joy, 'Political Interference in Clinical Programs: Lessons From the US Experience' (2005) 8 *International Journal of Clinical Legal Education* 83.

[82] Kuehn & Joy, above n 79, 1974.

In 1968, the University of Mississippi Law School Dean sought to place a condition on the continuing employment of clinical academics that they cease their involvement with a legal services program responsible for school desegregation litigation. The restriction was held unconstitutional by an Appeals Court. Facing expulsion from the Association of American Law Schools, the law school removed the condition.[83] The early 1980s saw state governments attacking clinical programs at state-funded law schools in Colorado, Idaho, Iowa and Tennessee in relation to legal actions taken against state authorities.[84]

The most intense and persistent attacks have been reserved for environmental law clinics. From the early 1980s, the University of Oregon Environmental Law Clinic was placed under substantial pressure by the timber industry. In 1993, continuing pressure and adverse publicity resulted in the Environmental Law Clinic being reorganised so that all litigation activities became the responsibility of an independent not-for-profit organisation.[85] The work of the Tulane University Environmental Law Clinic in Louisiana resulted in serious conflict between the university and successive state governors,[86] while the University of Pittsburgh Environmental Law Clinic faced similar opposition starting in 2001 from timber and other business interests as well as the judiciary.[87]

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[83] Ibid 1976-7. Attempts in Connecticut and Arkansas in the early 1970s by legislators and local bar associations to persuade universities and courts to close down clinics practising in politically contentious areas of law were unsuccessful.

[84] Ibid 1977-8. Of these, only the clinic at the University of Tennessee College of Law had its position fundamentally changed, when the university board of trustees 'forced the clinic to separate from the local legal aid office and directed that "no suits of significance shall be brought by the University of Tennessee Legal Clinic on behalf of any litigant against the State."' Blaze notes that this change had positive as well as negative dimensions. The mission of the clinic once again focussed primarily on education and clinical faculty were placed on the same unified tenure track as their non-clinic colleagues. Douglas Blaze, 'Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education' (1997) 64(4) *Tennessee Law Review* 939, 960.

[85] Kuehn & Joy, above n 79, 1982.

[86] Suzanne Carey, 'An Essay on the Evolution of Clinical Legal Education and its Impact on Student Trial Practice' (2003) *University of Kansas Law Review* 509, 536. In 1993, the Governor told the University that various forms of state support would cease if the University failed to silence or remove the clinic director. Kuehn & Joy, above n 79, 1983. The University was threatened with the loss of state financial support for a new downtown arena, denial of state financial assistance to Louisiana residents attending the University and a prohibition on Tulane medical students working in state hospitals. The University President declined to intervene and government efforts to have the Louisiana Supreme Court limit the work of the clinic were, on that occasion, unsuccessful. Kuehn & Joy, above n 79, 1984. In 1997, a new Governor again applied significant pressure with threats to revoke the University's tax-exempt status and institute an economic boycott. While the University did not yield, clinic opponents successfully lobbied the elected justices of the Supreme Court to impose new restrictions on the operations of the state's law clinics. Student representation of non-profit community organisations was banned as was students making contact with potential students.

[87] One Supreme Court Justice, who chaired the Law School's Board of Visitors, strongly criticised the clinic, suggesting that student work on a case to compel the state department of

In 2003, Washington and Lee Law School in Virginia closed a long-standing clinic which involved the law school advising inmates of the Alderson Women's Prison. The Bureau of Prisons sought to impose conditions in its contract with the Law School to prevent the federally-funded clinic from assisting inmates to take legal action against the United States or its employees.[88] Ultimately, the Law School concluded that it could no longer provide legal services at the Prison, closing what had been a core component of its clinical program for decades.[89] Similar restrictions were placed on the work of the clinic at the University of Southern California in a comparable program.[90] While some Australian clinics have pursued impact litigation, this work has not generated similar levels of external interest and pressure. The Australian experience has been more one of support from outside, particularly from the legal profession and judiciary.

External support is obviously valuable both to countering opposition as well as fostering clinical legal education more generally. CLEPR played a central role in supporting the development of clinics in the USA while funders including the Ford Foundation, American Bar Association, Open Society Justice Initiative and the Public Interest Law Initiative have been major contributors to the spread of clinical legal education across the globe.[91] In South Africa, the establishment of the Association of University Legal Aid Institutions with support from the Ford Foundation and the International Commission of Jurists – Swedish Section 'has been instrumental in

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transportation to comply with environmental planning requirements constituted 'the teaching of rudimentary social activism rather than law'. The University initially took steps designed to ensure that the clinic would not be subsidised by the university and would not be able to take on controversial cases. This approach changed after the University's Tenure and Academic Freedom Committee found that the administrations actions involved a clear breach of the principles of academic freedom. The Law School then announced that the clinic would remain part of the school and be supported through private funds. Kuehn & Joy, above n 79, 1987-88.

[88] Ibid 1981.

[89] Letter from Professor C. E. Belmont, Director, Alderson Legal Assistance Program, University of Washington & Lee to Mr B. Burlington, Federal Bureau of Prisons, 22 November 2002.

[90] Kuehn & Joy, above n x, 1981. The law school identified that the proposed restrictions would compromise the professional responsibility of clinic supervisors. Letter from Professor C. E. Belmont, Director, Alderson Legal Assistance Program to Ms D. Stevens, US Department of Justice, Federal Bureau of Prisons, 20 September 2002. Belmont identified rules regarding the lawyer as an independent advisor, accepting compensation for representation from one other than the client and regulation of a lawyer's professional judgement by a third party. The Law School also noted that the restrictions would also create difficulties through reducing the pedagogical value of the work done by students and not enabling clinic staff to model best lawyering practices and service underserved populations. Letter from Professor C. E. Belmont, Director, Alderson Legal Assistance Program to Ms D. Stevens, US Department of Justice, Federal Bureau of Prisons, 8 October 2002.

[91] Richard Wilson, 'Training for Justice: The Global Reach of Clinical Legal Education' (2004) 22 (3) *Penn State International Law Review* 421, 424-427.

improving the performance and increasing the resources for the university clinics'.[92] While external support can be particularly important in establishing clinics in developing countries, reliance on external support is likely to generate challenges for sustainability unless the operation of the clinic fosters commitment on the part of law schools and their universities.[93]

This section of the chapter has identified a range of macro-level factors as capable of providing the impetus for the development of clinical programs while educational and professional structures are important in supporting the continuing operation of clinics. There is scope for both collaboration and conflict in the various ways in which clinics link with organisations beyond their university.

University Commitment to Clinical Method

This section looks at factors that influence the interest and ability of universities, rather than law schools, to influence prospects for the establishment and sustainability of clinical legal education programs. While a university may provide strategic support for the establishment of clinical programs, it is less likely to provide continuing financial support when attention shifts to new projects.

Becoming a University Priority

Benefits in relation to status and the ability to attract high calibre students have resulted in the establishment of 20 new law schools at Australian universities over the past 15 years.[94] Universities have used a range of mechanisms including the development of clinics and enhanced skills training to promote themselves and their new law schools in a crowded and competitive market. Gaining strong support from senior university management has been important in the development of clinical programs in some Australian law schools.[95]

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[92] Maisel, above n 5, 383 & 392-394.

[93] Peggy Maisel, 'The Role of US Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration' (2008) 14 *Clinical Law Review* 465, 504; Leah Wortham, 'Aiding Clinical Legal Education Abroad: What Can Be Gained and the Learning Curve on How To Do So Effectively' (2006) 12 *Clinical Law Review* 615.

[94] Brand describes how law schools became 'cash-cows' for Australian universities which were increasingly dependent on their ability to attract undergraduate students. Brand, above n 20, 119. Legal education became 'captive to the higher demands of an education policy which made the expansion of law very attractive to the universities.' See Christine Parker & Andrew Goldsmith, '"Failed Sociologists" in the Market Place: Law Schools in Australia' (1998) 25 *Journal of Law and Society* 33, 36-7.

[95] For example, the Vice-Chancellors at Griffith and Murdoch Universities provided substantial financial support for clinic courses at their institutions.

Clinical programs, combining small class sizes with community engagement opportunities, have been used by universities to showcase excellence in teaching. Clinicians have been well represented in university teaching awards, both within their institutions and nationally. In the first five years of the Australian Awards for University Teaching (1997-2001), clinical teachers from Griffith (1999), Monash (1998) and UNSW (2001) were finalists for the Australian Award for University Teaching in Law and Legal Studies.[96] In the UK, there has been similar recognition with a series of National Teaching Fellowships awarded to leading clinical educators.[97]

Becoming a University Battleground

Substantial conflict between a clinic and its university is very likely to undermine the program's sustainability. Indeed, significant conflict is likely to herald the final stage in the demise of a clinic. As noted above, a campus-based clinic opened at the University of Kent in 1973 and was closed by the University Senate in controversial circumstances in 1976. Despite receiving no credit for work on clinic cases, students were enthusiastic to be involved, as were some law school staff.[98] The Kent clinic soon faced difficulties on a range of fronts. Local solicitors were concerned that 'some of their potential clients were obtaining free legal services at the clinic'.[99] The University Senate became

[96] The Griffith and UNSW teachers had the good fortune to receive the National Award in 1999 and 2001. The work of the Murdoch clinical program was a key feature of Murdoch University's successful nomination for the 1998 Australian Award for University Teaching for services to students and the Rockingham region.

[97] In 2004, Nigel Duncan (Inns of Court School of Law) received a fellowship to pursue a project on teaching ethics in the undergraduate curriculum. In 2005, Philip Plowden (University of Northumbria) received a fellowship for a project on assessment in clinical programs. In 2010, Kevin Kerrigan (University of Northumbria) received a fellowship for a project on the use of clinical methodology in the undergraduate law degree.

[98] MacFarlane, above n 49, 145. The Kent law program had taken a non-traditional approach from its inception in 1966, with the law program integrated within the Department of Social Studies. See Peter Smith, 'Developments in Clinical Legal Education in England' (June 1979) XI (3) *Council on Legal Education for Professional Responsibility* 8. Smith refers to the major impetus for establishment of the clinic as coming from one faculty member, Adrian Taylor who sought to develop a program to unify the teaching of theory and practice under the title, 'Praxis'. (at 9). Taylor saw the clinic as providing 'valuable skills-training for intending lawyers (and could never be satisfactorily reproduced by simulation) and would eventually produce "a greater number of methodical, scientific and socially relevant lawyers."' The Kent praxis program was intended to 'affect the entire law curriculum, rather than being a separate but integrated part of the overall undergraduate programme. There was also a huge demand for the services of the clinic in part because in 1973, there was not a single legal aid practitioner in the local city, Canterbury. MacFarlane, above n 49, 149.

[99] Smith, above n 98, 10.

unhappy with the political and public nature of the cases taken on by the clinic.[100] Practical and personality issues caused great difficulty at Kent, as well as issues of principle.[101]

Antioch Law School provides an important example of a clinical program being undermined due to tensions between a law school and its university. The school opened in Washington DC in 1972 as a campus of Ohio-based Antioch University.[102] The School received substantial financial support from the Legal Services Corporation and operated a year-round legal practice model rather than a semester-based system.[103] Strongly committed to encouraging minority and disadvantaged students to study law,[104] the school was unfortunately beset with management difficulties and encountered extremely high rates of academic staff turnover. Between 1972 and 1977, 36 of the 49 professors who had been faculty members left, including 10 African-Americans.[105] Intra-law school disputes raised allegations of racism and the management skills of the Cahns fell short of their abilities as legal service innovators and policy advocates.[106] This level of turmoil raises obvious issues for the viability of a teaching methodology focussed on cooperation in the face of such a lack of trust and collegiality. In 1977, Edgar Cahn observed that '[a] large number of our problems flow

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[100] MacFarlane, above n 49, 149. One such case related to judicial review of the University's discipline of students following a sit-in. Others included representing city refuse collectors in an action against the city council, resulting in an inquiry into the management of a psychiatric hospital, one of whose board members was the wife of the University Vice-Chancellor. The clinic also represented a journalist accused of spying on the Central Intelligence Agency of the US Government. Smith, above n 98, 9.

[101] Avrom Sherr, 'Clinical Education at Warwick and the Skills Movement: Was Clinic a Creature of its Time?' in G. Wilson (ed) *Frontiers of Legal Scholarship* (1995) 108, 113. Smith also notes the impact of the personalities of both Adrian Taylor (Director of the clinic) and Larry Grant (solicitor, formerly a lawyer for the National Council on Civil Liberties). Both are described as not about to compromise on the cases they were taking or their view of the local or University establishments. Smith, above n 98, 10.

[102] Laura Lawson, 'Antioch Law School: Business as Un-usual' (1981) 38 *NLADA Briefcase* 14.

[103] Ibid.

[104] Ibid. The school considered that 'personal characteristics such as maturity and dedication to helping the disadvantaged count more in making a good lawyer than high LSAT scores'.

[105] Juan Williams, 'Strife Impedes Antioch Law School's Reach for Goal', Washington Post (Washington DC, May 25 1977). In a letter to Antioch President, William Birenbaum, nine professors who had left the law school attributed their departure to the law school leaders, Jean and Edgar Cahn. By May 1977, Co-Dean Jean Cahn was the only remaining African-American on faculty. Juan Williams, 'Clinical Education Test at Stake', Washington Post (Washington DC, May 25 1977).

[106] Williams, above n 105. (Strife article). In 1974, the faculty had become the first US Law School to be unionised. A contract was signed between the administration and the faculty, described by one staff member as needed to protect faculty members from 'arbitrary and autocratic decisions' from the Cahns. Williams, above n 105. (Test at Stake article).

from the conflict between the need to devote time to the classroom and to our clients.'[107]

In May 1979, Antioch University found itself unable to meet its salary expenses and directed all available funds be pooled and administered through its Central Office in Ohio.[108] The Law School had persistently run a substantial deficit since its establishment and the Cahns refused to accept this new direction from the university. In November 1979, the University revoked the spending authority of the Law Deans. With support from the Law School Board of Governors, the Cahns sought an injunction against the University's actions, arguing that the Law School was a separate entity.[109] In January 1980, the Cahns lost their injunction application and, after refusing to resign, were sacked.[110] Antioch Law School subsequently faced difficulties with its ABA accreditation,[111] closing in 1986 then re-opening in 1988 as the DC School of Law.[112] In 1996, DC School of Law merged with the University of the District of Columbia Law School[113] and the UDC Law School now has a highly regarded clinical program as part of what it describes as 'the District of Columbia's public interest public law school'.[114]

Significant conflict between a law school, its clinical program and its university has the potential to become public and, if this occurs, is likely to attract considerable publicity. These examples suggest that a breakdown in these types of relationships is likely to close down opportunities for the clinic.

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[107] Edgar Cahn saw such disagreements as posing 'major questions about the principles underlying a clinical education. They are questioning our ability to effectively serve our clients and run a law school.' Williams, above n 105. (Test at Stake article).

[108] Lawson, above n 102, 14.

[109] The Cahns put up their Washington house as collateral for loans to pay the faculty and staff during this period. Kenneth Bredemeir, 'Controversy a Constant at Antioch Law School', *Washington Post*, 28/01/80.

[110] Subsequently, the Law School faced reductions in the funding grants received from the Legal Services Corporation as the actions of the Reagan administration seriously impacted on the activities of the Legal Services Corporation. Alan Houseman & Linda Perle, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance* (2003) 28-9.

[111] John Metaxas, 'Antioch Confronts a Serious Crisis: Raise $2.5 Million or Risk Closing', *National Law Journa*l (November 4 1985). The 1984 ABA Accreditation Committee severely criticised the school in relation to physical plant, record keeping, library collection and allocations for student scholarships.

[112] S. Miller, 'UDC's Law School Misses Full Credentials', *Washington Times* (Washington DC, June 24 2003).

[113] Ibid.

[114] http://www.law.udc.edu/ (last accessed 31 October 2010).

Lack of Academic Conditions – Squaring the Circle

This section considers the challenges generated when there is a lack of an effective fit between the employment arrangements used by universities and the work undertaken by clinicians. Status and equal treatment of clinic staff have been enduring concerns for clinicians, especially in some US law schools. A 1978 CLEPR report found that only 14 percent of those involved exclusively in clinical work were on a tenure producing track and that this lack of academic conditions was 'the most difficult issue facing clinical legal education'.[115] In 1993, Nina Tarr wrote of clinic teachers in some US law schools facing 'uncertain one-year contracts, no meaningful relationship to, participation in, or responsibilities within the institution' and receiving 'salaries and benefits substantially lower than the rest of the faculty'.[116] The Carnegie Report noted in 2007 that the failure of law schools to fully incorporate clinical faculty and clinical courses into the law school sends a message to law students that such courses are not valued.[117]

The UCAS program established by the University of Western Australia faced issues concerning the status of the Supervising Solicitor, Karen Farley. Farley's designation as both Senior Lecturer and Supervising Solicitor of UCAS did not fit easily into the university employment structure.

> 'There would have been nowhere for me to move within the university. As a clinician within UWA, there would be no career path whatsoever. You're there, you're in a strange spot. You're given a label because you have to be under the hierarchy. There was no room for a solicitor or, as it turned out, a solicitor-barrister.'[118]

Farley recalls considerable discussion within the law school and university about whether she should have been an administrative appointment, something she found disappointing.

Puga refers to similar institutional obstacles to Argentinian clinics. Clinics introduce elements that generate resistance and blocking tactics and the scope for clinics to earn

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[115] Schrag & Meltsner, above n 2, 8. The significance attached by clinicians to tenure is well summed up by Stephen Wizner, who in 1991 received a chair as a clinical professor in law at Yale Law School. 'A chair is really nothing, but it is not nothing when [the academic faculty] all have chairs.' Holland, above n 1, 530.

[116] Nina Tarr, 'Current Issues in Clinical Legal Education' (1993) 37 (1) *Howard Law Journal* 31, 41.

[117] Sullivan et al, above n 2, 87-88.

[118] Interview with Karen Farley (Perth, 18 August 2003).

fees does not fit with university financial arrangements.[119] Where there are aspects of the operations of the clinic that are unfamiliar to others within the university, support from the top is likely to be important in overcoming university inflexibility.

These examples demonstrate the particular value of university support in establishing a clinical legal education program. They also indicate that significant antagonism between a university and its clinical program is likely to result in closure of the program. Universities are more likely to provide support during the development of a clinical program with an expectation that the law school would commit to making the program a sustainable operation.

Law School Commitment to Clinical Method

This section of the chapter considers various aspects of the commitment a law school may make to establishing and sustaining a clinical program. It considers strategies for program development, financial commitment (resources), pedagogical commitment (including understanding of clinical teaching method), student commitment as well as commitment to community service and professional engagement. It then considers the importance of key individual staff and how some clinics have responded to changing law school priorities. It will be argued that continuing commitment from the law school is central to the sustainability of its clinical program.

Nature of the Law School – Status, Direction, Location

Recent developments in Australian clinical legal education suggest that a broader range of law schools is seeking to develop clinics.[120] Previously, clinics tended to be developed by newer Australian law schools but there are now some new programs linked to the older 'sandstone' universities.[121] It appears, however, that there is a greater likelihood of developing a sustainable clinical program at a relatively new law school. Getting in 'on the ground floor' may enable a clinical program to establish its beachhead within the law school and university and develop 'clinic fluency' and a critical mass of support.

For example, Griffith University was established in 1975 and enrolled its first law students in 1992. Its clinical program started in 1995 and it now offers a diverse group

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[119] Puga, above n 52, 256.
[120] See Chapter 1, footnotes 46-51 and related text.
[121] See Chapter 1, footnotes 50-51 and related text.

of clinic-based courses.[122] By contrast, proposals at several long-established Australian law schools (Melbourne University, University of Western Australia (UWA) and University of Queensland) for the development of clinics either did not come to fruition or were not sustained.[123] The English law schools that first developed clinical programs in the mid-1970's were also part of recently established universities. The University of Kent at Canterbury was 'one of the new provincial universities that sprang up during the more prosperous decade of the 1960's.[124] The University of Warwick was similar, with the university established in 1961 and the law school developed in the late 1960s.[125]

While some new law schools have developed clinics as a marker of difference, the closure of an existing program could indicate a change of direction for an established law school. This may in part explain the closure of the longstanding clinic at Duke Law School in 1959, when John Bradway left after 28 years teaching in the in-house clinic he had established in 1931. In 1980, Bradway wrote: 'Naturally I would have been glad to see the experimental work continued. However I had no standing to attempt to decide the question of continuance.'[126] Duke may have wanted to assert its credentials as an academic law school with a national and commercial focus, emphasising that, like the top tier US law schools, it was strongly committed to more traditional aspects of legal academic work.[127]

ABA accreditation requirements have resulted in greater availability of clinic opportunities for US law students. This makes it difficult to discern any trend in relation to the age and nature of those law schools leading the development of clinical teaching

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[122] See Chapter 1, footnote 48 and related text.

[123] See below, footnotes 143-145 and related text in relation to the Melbourne University proposal and above, footnotes 64-5 and related text in relation to the UCAS program at UWA.

[124] Smith, above n 98, 8. The Kent law program took a non-traditional form from its inception in 1966 and was integrated within the Department of Social Studies.

[125] Ralph Folsom & Neal Roberts, 'The Warwick Story: Being Led Down the Contextual Path of the Law' (1979) 30 *Journal of Legal Education* 173-4. By the 1980s, the four clinical legal education programs operating in England were at Warwick, Birmingham Polytechnic, Southbank Polytechnic and Northumbria. See Sylvester, above n 13, 29.

[126] Letter from John S. Bradway to Miss Fuller, February 2, 1980, 3.

[127] Douglas Beskind<dbeskind@nctrial.com> email to Jeff Giddings, 25 August 2004. Mr Beskind notes that at that time, Duke's focus was seeking to develop a reputation as a national law school with an emphasis on corporate and business law. Interestingly, Duke re-established in-house clinics in the mid-1990s and now operates a range of specialist programs. It now offers a Child Advocacy Clinic, an AIDS Living Wills Clinic and a Community Enterprise Clinic as well as an externship-based Death Penalty Clinic. See Jonathan Goldstein, 'Hands-On Learning: Clinics, Pro Bono Opportunities and Public Interest Programs Enrich the Duke Law Experience' (2003) 21 (1) *Duke Law Magazine* 17-28.

methods. While it appears difficult to generalise, a project done for CLEPR in 1975 examined the emergence of clinics in US law schools. It found that 'schools with higher resource rankings more frequently adopted clinical programs', thus contradicting the assumption that clinics are the domain of lower status schools.[128] More recently, Edwards has argued that elite US law schools possess a competitive advantage borne of academic prestige and do not gain an advantage from offering clinical programs. 'Students want to be at elite schools and they want the opportunities only available at those elite schools – and elite schools are determined by the scholarship and pedigree of their faculties.'[129]

Securing and Maintaining Law School Commitment

While a significant commitment is required to see a clinical program established, such commitment could come from the university or external sources as well as from the law school. Law school commitment appears to be of particular significance to the sustainability of a clinical program.

A range of approaches can be used for the development of a new clinical program. The key strategic variables relate to the size and comprehensiveness of the proposed clinic initiative, the level of integration with other aspects of the law school's activities and the extent of the planning done prior to the first offering. Moving the clinic from the pilot stage to being seen as part of the core mission of the law school is a critical transition. What assists one phase may create challenges for the other. The extent of external support provided during the establishment stage is likely to shape the process of seeking to secure continuing commitment from the law school.

External support and the adoption of an informal approach enabled the program to creep under the guard of the mainstream academics when Yale Law School applied for a CLEPR grant in 1969. Faculty concerns that clinical work was inappropriate in a law school dedicated to scholarly endeavours were overcome as the academics believed that the 'minor reforms required by the CLEPR grant would not really affect them or their absolute control of the curriculum.'[130] The early Yale clinicians turned the inattentiveness of their academic colleagues into an opportunity to steer the clinical program 'in the direction of a permanent in-house clinic without arousing a political

[128] E. Gordon Gee & Donald W. Jackson, *Following the Leader? The Unexamined Consensus in Law School Curricula* (1975) 45.
[129] Kirsten Edwards, 'Found! The Lost Lawyer' (2001) 70 *Fordham Law Review* 37, 90.
[130] Holland, above n 1, 518.

uproar.'[131] Resource concerns were neutralised by keeping the early hiring procedures as informal as possible and ensuring the clinic was not a separate item in the budget.[132]

Reference was made earlier to the efforts of community legal centres and law schools in South-East Queensland to establish of a joint clinical program in the early-1990s.[133] The partnership approach, designed to involve multiple parties in the one program, might have been useful to ensuring the sustainability of any joint program that eventuated but clearly created establishment difficulties due to the lack of a track record of collaboration between the parties, particularly between the law schools. The Queensland Association of Independent Legal Services Committee was comprised of people with legal aid expertise and had no members with a clinic background.[134]

Grossman describes how the University of Minnesota in-house clinic avoided the downsides associated with service-oriented clinics by careful planning and keeping the initial educational goals relatively modest. Caseloads were limited, cases were selected to suit the clinic's purposes and close supervision was maintained. As the program became established, it gained momentum with non-clinic faculty members involving themselves in supervision in their fields of expertise.[135]

The commitment of La Trobe Law School to its clinical program was strengthened by the development of a clinic-based ethics course in its law degree. Mary Anne Noone, as the senior clinic teacher, was part of the Curriculum Committee which developed the new program and developed the proposal that the ethics course could be taught

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[131] Holland, above n 1, 525.
[132] Ibid.
[133] Above, notes 69-74.
[134] The proposed partnership arrangement would also have meant none of the law schools would be able to claim that the clinic distinguished their school from the local competitors. Griffith Law School operates a much more substantial clinical program than the other South East Queensland law schools, Bond University, Queensland University of Technology and University of Queensland. Griffith Law School offers eight different clinical courses which feature heavily in promotional literature from both the law school and the university. In particular, the prospect of students having opportunities to take responsibility for legal issues faced by real people has been emphasised. See Kingsford Legal Centre, *Australian Clinical Legal Education Guide* 2009-2010 (2009) 12-15.
[135] George Grossman, 'Clinical Legal Education: History and Diagnosis' (1974) 26 *Journal of Legal Education* 162, 192.

through a clinical program. Approval was obtained from the Council of Legal Education on that basis.[136]

The experience of the Antioch Law School outlined earlier provides a clear example of the challenges generated by high expectations. Anderson and Catz refer to the Antioch program having substantially modified 'its curriculum, its graduation requirements, and the organization of the teaching law firm partly because the School could not sustain the fiscal and workload pressures the model imposed and partly because the faculty was persuaded that other approaches were more promising.'[137]

Making the clinic the centrepiece of a law school is obviously likely to facilitate the introduction of clinical teaching methods. However, it may raise real issues about sustainability. Not all staff may share the same commitment to clinic. Financial issues may create difficulties, especially in a mass-participation higher education market. This sets up an interesting tension in terms of the value of the clinic being an integral part of the law school but not being viewed as the be all and end all of the education provided.

Resources

While resources are a critical issue for the establishment and sustainability of clinics, financial commitment from the law school is not the only factor influencing program development. If it were, programs would not be established except with exclusively external funds. Resources also impact on the size of program that can be established. Despite relatively rapid expansion in program numbers,[138] clinics in China face significant resourcing issues and are likely to remain small in size. Until larger and more stable pools of funding materialise, clinics will be 'available only to a select group of the brightest students through an application process'.[139]

Several Australian law schools considered the establishment of clinical programs in the late 1970s but did not proceed due to resource issues. In 1975, moves to establish a clinical program at the Australian National University (ANU) came to nothing after the

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[136] Mary Anne Noone & Judith Dickson, (2002) 'Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers' 4(2) *Legal Ethics* 127.
[137] Anderson & Catz, above n 47, 731.
[138] Following the establishment of the first clinical program in China in 1992 at Wuhan University, there was rapid development of clinical programs. By 2007, clinics had been established at 4 universities. See Anon, above n 31, 2139.
[139] Ibid 2147-8.

Federal Budget failed to deliver anticipated additional funding for universities.[140] The call for a clinical program at the ANU was renewed in 1978. Jack Goldring and Roger Hamilton produced a discussion paper which suggested that without a clinical program, students 'are denied a perspective of the law which, in our view, is essential to a critical awareness of the workings of the legal system.'[141] Again, despite support, the clinic proposal was not adopted due to resource issues. Plans to collaborate with the Legal Aid Commission (ACT) were not realised.[142]

In October 1994, Fitzroy Legal Service (FLS) forwarded a comprehensive (and impressive) proposal drawn up in collaboration with senior Melbourne Law School academics for a clinical program to Melbourne University. The proposal addressed a range of issues including placing clinic within the broader curriculum, goals and objectives, course content,[143] assessment, evaluation and review, areas of responsibility between the clinic sites and the law school. FLS Legal Projects Officer, Greg Connellan 'thought there would be so much momentum to go down this path that Melbourne University would have to do it' but he was proven wrong.[144] The proposal included a costing of $322,650 per year but did not address in any respect where the funding would come from. Ultimately, Melbourne Law School did not endorse the proposal and the clinic was not established. Greg Reinhardt, a key law school supporter recalls that the lack of external funding stopped the proposal moving ahead:

> 'The delivery of community services was not something which the law school saw as part of its responsibilities. There was no need for the law school to be involved in terms of this assisting the law school to continue to attract quality students.'[145]

One mechanism used by some US law schools to limit the resource implications of introducing a clinic has been to structure the program to generate legal fees for services provided. Since the early-1990's, the Chicago-Kent College of Law at the Illinois Institute of Technology has operated programs where clinicians have had their

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[140] The then Dean of Law at ANU, Leslie Zines was very supportive of moves to establish the clinic but could not allocate funds for its establishment. Interview with Jack Goldring (Sydney, 9 September 1997).
[141] John Goldring & Roger Hamilton, A Course of "Clinical Legal Education" as part of the Law Degree course at A.N.U., Discussion Paper (14 April 1978) 1.
[142] Ibid 5-7.
[143] Two options were presented, one being a research project and the other being both casework and research project.
[144] Interview with Greg Connellan (Melbourne, 5 May 2001).
[145] Interview with Greg Reinhardt (Melbourne, 13 December 2000).

salaries linked to the level of legal fees they generate from clients they represent through the clinic.[146] Laser describes how this approach has enabled Chicago-Kent to attract and retain experienced clinicians as well as providing clinic opportunities beyond the confines of poverty law thereby more closely representing the pressures and intensity of real practice settings.[147] Santa Clara University established a fee-generating clinic in 1995 and those involved wrote of the scope to achieve pedagogical objectives, maintain program integrity and clinician status while also 'generating money on which the future of clinical education depends'.[148]

A range of writers have expressed various strong reservations regarding clinics focussed on paid work, in terms of the compromising of student supervision[149], departing from the social justice mission of clinics,[150] reducing the client responsibility given to students[151] and reinforcing the different treatment of clinical academics.[152] Lerman has identified further sustainability-related issues in terms of the position of the clinic within the law school and the potential to alienate the local private profession.[153]

These examples indicate that all established clinical programs should expect to face resourcing issues, whether they arise from within the law school or externally. Sustainability is likely to have much to do with how the program responds to such issues.

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[146] See Gary Laser, 'Significant Curricular Developments: The MacCrate Report and Beyond' (1994) 1(1) *Clinical Law Review* 425 and Richard Matasar, 'The MacCrate Report from the Dean's Perspective' (1994) 1(1) *Clinical Law Review* 457.

[147] Laser, above n 146, 438.

[148] Patricia Pierce & Kathleen Ridolfi, 'The Santa Clara Experiment: A New Fee-Generating Model for Clinical Legal Education' (1997) 3 (2) *Clinical Law Review* 439, 470.

[149] 'The pursuit of profit carries with it too many real-life needs that interfere with the educational enterprise.' See Martin Guggenheim, 'Fee-Generating Clinics: Can we Bear the Costs?' (1995) 1 (3) *Clinical Law Review* 677, 679.

[150] Ibid 683.

[151] Lisa Lerman, 'Fee-for-Service Clinical Teaching: Slipping Towards Commercialism' (1995) 1 (3) *Clinical Law Review* 685, 699.

[152] Guggenheim, above n 149, 682.

[153] Lerman, above n 151, 702 ('Fee generation obligations such as those imposed by contract on many clinical teachers at Chicago-Kent would tend to reinstitute and extend the status hierarchy that once was common between clinical and non-clinical teachers.') & 705 (One potentially harmful consequence of the fee-for-service structure … might be resentment from private practitioners who have to pay bills to support all the services that the law school clinicians receive without cost.').

Student Commitment

Student commitment to legal aid service delivery was important in the establishment of early Australian clinical programs. Students were involved in existing legal services provider(s) as volunteers. In 1976, the La Trobe Legal Service employed a lawyer with Students' Representative Council funds and by 1977 'it was clear that the time was ripe to begin training "para-legal" personnel for work in the service.'[154] This resulted in a clinic course being established.[155]

The Australian experience is similar to that of the US where many early clinical programs involved students who were committed to working in legal aid services but did so without receiving academic credit.[156] Holland notes that at Yale, such work began in the late 1920s. 'The academic faculty allowed the students to work in the legal aid offices but refused to award academic credit, considering the work to be outside the academic domain.'[157] In 1930, Bradway noted five law schools with student volunteer clinics and another seven involved in 'experimental efforts to use students in legal aid work'.[158] The strong service focus of these fledgling clinics motivated students and continued to be prominent in the more formal, for-academic credit clinical programs that emerged later, particularly in the late-1960s and 1970s. The early Yale clinicians 'quickly rooted themselves and their work in the institution because they proficiently and effectively met a serious student demand for clinical work.'[159]

The availability of academic credit and the development of greater diversity in clinical programs tend to generate greater student interest in clinics. Students see value in gaining practical experience as a means of distinguishing themselves in a very crowded job market. Dampening this increased student interest are the competing external commitments that leave some students without the time to participate in clinical courses.[160] The increasing prominence of organised *pro bono* activities in Australian

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[154] Ibid.

[155] Mary Anne Noone, 'Draft History of Clinical Legal Education in Legal Studies Department' (undated). The clinic was run by Adrian Evans, then a solicitor at the La Trobe SRC Legal Service.

[156] See Chapter 1, footnotes 64-69 and related text.

[157] Holland, above n 1, 509.

[158] John Bradway, 'The Nature of a Legal Aid Clinic' (1930) 3 *Southern California Law Review* 173, 174.

[159] Holland, above n 1, 526.

[160] Andrew Goldsmith & David Bamford, 'The Value of Practice in Legal Education' in Fiona Cownie (ed) *Stakeholders in the Law School* (2010) 157. They state: 'Compared with a generation ago, Australian law students are spending more time working and engaged in

law schools may see more students look to avenues for community involvement outside of clinics.[161]

Staff Commitment & Expertise

This section addresses the importance of recruiting and retaining staff with the commitment and expertise to plan the continued development of the clinic. This is linked to having realistic job roles for and expectations of clinicians. Without strong staff commitment, it is unlikely that a clinical program will become established. Wilson's account of Chilean clinics emphasises this factor:

> 'The success of clinical legal education in Chile is, in my view, not a function of its export from the United States but of the personal will and persuasion of its founders at each of the three law schools in question.'[162]

As noted in Chapter One, some clinics develop from volunteer arrangements that are not part of a formal academic program. While student commitment drives such initiatives, they also rely on voluntary contributions from academics. The volunteer program at South Africa's University of Natal operated for six years before students were granted credit for their work. Before that, David McQuoid-Mason[163] ran seminars without academic credit, either for students or himself. Each of South Africa's 21 law schools now operates a clinic.[164] Clinical programs are likely to face the difficulties inherent in developing any new or unfamiliar teaching method, including lack of teacher expertise. This is likely to be less of an issue where there is a substantial clinical movement as it is possible to recruit experienced clinicians from elsewhere or obtain input and advice from such people.

Sustainability is likely to be linked to developing and retaining staff expertise, enabling the program to respond to changing circumstances. Brayne wrote in 1996 that a key

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extracurricular activities. Financial pressures, as well as employer expectations are playing a major part in shaping the law student learning experience.'

[161] See Chapter 2, footnotes 49-51 and related text.

[162] Wilson, above n 8, 559.

[163] Mc-Quoid-Mason is described by Haupt as the father of the South African clinical movement. Haupt, above n 28, 6. Maisel describes McQuoid-Mason as 'the chief architect of the clinical legal education movement in South Africa during the 1970s and 1980s'. Maisel, above n 5, 381. Subsequently, McQuoid-Mason was able to persuade the Legal Aid Board of South Africa, of which he was a member, to work with and support clinical legal education. Maisel, above n 5, 408.

[164] Ibid 403-404.

ingredient in the survival and expansion of the clinic at Northumbria University School of Law had been its unusually high level of staff stability. He noted that clinics 'can depend, at least at first, on particular individuals rather than particular structures. If these individuals move on, the programmes may collapse.'[165] Australian clinics have often benefited from long-term involvement of key staff. For example, the La Trobe clinical program has benefited from the continuing involvement of Mary Anne Noone for 25 years. Strong advocates within the law school and the involvement of academics who do not teach in the clinic have also assisted the La Trobe clinical program.[166]

Clinical program sustainability is also likely to be assisted by law school recognition of the limited time available to full-time clinicians to engage in scholarly research. As was discussed in Chapter Two, clinics have the potential to provide opportunities for socio-legal and inter-disciplinary scholarship in particular as well as more doctrinal research. However, year-round casework responsibilities, heavy student supervision loads and the lack of other academic conditions for clinic teachers will continue to limit the research opportunities of many clinic teachers. In 1979, the University of Denver College of Law introduced a personnel rotation plan designed to facilitate integration of clinic into the general curriculum. 'Professors teaching traditional classes would be assigned as faculty advisors in the clinic for one quarter per year.'[167] This was one way of making the work of clinic-based academics more comparable to that of other academics.

Understanding of Clinical Models and Supervision

The development and sustainability of clinical programs will be supported by a deep understanding of clinical methods on the part of the law school. This is a key element of the 'clinic fluency' and pedagogical sustainability discussed in Chapters Two and Three. This understanding is important to managing the education-service tension in ways which recognise and utilise opportunities for collaborative advantage. Articulation

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[165] Hugh Brayne, 'Law Students as Practitioners: Developing an Undergraduate Clinical Programme at Northumbria University' in Julian Webb & Caroline Maughan (eds) *Teaching Lawyers' Skills* (1996) 167, 168.

[166] Interview with Mary Anne Noone (Melbourne, 11 June 2004). Various staff members who were part of the early years of the then Legal Studies Department in the 1970's and early 1980's were involved in some way in the West Heidelberg Community Legal Service and Community Health Centre. Various of those supporters then moved into positions of power in the department and this facilitated ongoing support within the department.

[167] Robert Hardaway, 'Problems in Clinical Integration: A Case Study of the Integrated Clinical Program of the University of Denver College of Law' (1982) 59 *Denver Law Journal* 459, 478-80.

of clear program purposes and the adoption of models suited to those purposes are likely to support sustainability. Similarly, the prospects for sustainability are likely to be improved by a commitment to reflective practices.

Chapter Three emphasised the benefits of using an integrative framework, understanding how clinical methods can be used in conjunction with other teaching methods. Gavigan describes a commitment to pedagogical pluralism as having facilitated initial introduction of clinical teaching to Osgoode Hall Law School. Interestingly, the program was 'abstracted and dispersed by the very commitment to pluralism that likely facilitated its initial introduction to Osgoode'.[168] Reference was made in Chapter Three to the experience of the Seattle University Law School provides an instructive example of efforts to develop a curriculum integrating a range of clinical methods and activities.[169]

A lack of understanding of clinical methods is likely to impede both the establishment and sustainability of programs. In the case of the efforts in the early 1990s to establish a joint clinical program in South East Queensland, the limited resources that law schools were prepared to commit demonstrated a lack of understanding of the work entailed in a clinical program.[170] The closure of the Unrepresented Criminal Appellant Scheme, operated by the University of Western Australia provides another example of a lack of law school understanding of the support required for clinical teaching methods to work.[171] The lack of 'clinic fluency' resulted in a very high student-supervisor ratio and no seminar component.[172] Unsustainable service expectations

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[168] Shelley Gavigan, 'Twenty-five Years of Dynamic Tension: The Parkdale Community Legal Services Experience' (1997) 35 (3) *Osgoode Hall Law Journal* 443, 452.

[169] John Mitchell et al, 'And Then Suddenly Seattle University Was On Its Way To A Parallel, Integrative Curriculum' (1995) 2 *Clinical Law Review* 1. See Chapter 3, footnote 27 and related text.

[170] While both QUT and University of Queensland were prepared to commit a half-time staff member, Bond University would provide $1,000 per participating student up to a limit of 3 students. Memorandum to Virginia Ryan from Catherine Kenny, Director of the Continuing Legal Education Department, Queensland Law Society, 7 August 1992.

[171] The two people most central to the development and operation of UCAS, Karen Farley and Paul Moyle both refer to a lack of understanding of and commitment to clinical education on the part of the law school and the university as having contributed to its closure. Interview with Karen Farley (Perth, 18 August 2003) & interview with Paul Moyle (Perth, 19 August 2003).

[172] Karen Farley was employed half-time yet supervised 20 students per semester with the program operating three semesters per year. She also did much of the appellate court advocacy required for the service while also taking students to interview prisoners. Interview with Karen Farley (Perth, 18 August 2003).

resulted in students facing workloads well beyond what would be expected for a classroom-based course.[173]

Chapter Two outlined the significance of close and effective supervision in enabling the benefits of clinical experience to be realised. Staff-student ratios which enable the provision of close feedback on student performance appear to be an important indicator of the sustainability of a clinical program. Such ratios need to be set at realistic levels and then not increased significantly over time. Holland's account of the Yale clinical program refers to 'the Spring from hell' in 1989 with too many students to be effectively supervised. This led to changes and the adoption in 1992 of an in-house student-clinic supervisor ratio of between 8:1 and 10:1.[174] Wilson refers to student–supervisor ratios at the Catholic University of Chile having started in 1970 at 8:1 but by 2000 having risen to 17:1 due to popularity of clinic and the lack of hiring of additional clinical faculty.[175] In 2008, du Plessis wrote of clinicians at the University of the Witwatersrand Law Clinic in Johannesburg, South Africa each supervising between 38 and 46 students as compared to the recommended ratio of 1:12.[176]

The Warwick clinical program shifted from real client to predominantly simulation-based, in part because of supervision concerns. 'Supervising the number of cases that became necessary to provide an adequate caseload for the increased number of students was not possible without a large increase in staff.'[177] Consistency of supervision was also an issue for the Warwick program, which had developed from a volunteer student service where each supervisor had a different approach to the work.[178]

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[173] Ibid. Farley considers that she was largely ignored by the Law School and that UCAS did not have the continuing support of the university in any proactive sense. In terms of assessment issues, she was obliged to make up her approach as she went, receiving no guidance at all. With the first group of students, Farley attended the fortnightly motions day (15-17 each day) and they observed judges dealing with unrepresented appellants. This evolved into providing initial advice to appellants and then to more substantial involvement in the motions days. Farley recalls 'That's when it got bigger than Ben Hur. We were there every 2 weeks and if there was any problem, the judges would rely on us to pick them up and at least give them some minor assistance.'

[174] Holland, above n 1, 531.

[175] Wilson, above n 8, 544.

[176] See M. A. du Plessis, 'University Law Clinics Meeting Particular Student and Community Needs: A South African Perspective' (2008) 17 (1) *Griffith Law Review* 121, 127, footnote 60.

[177] Sherr, above n 101, 110.

[178] Ibid 109.

A commitment to reflective practices will be important to the sustainability of clinical programs just as such a commitment supports other forms of teaching. Grossman outlines the experience of an in-house clinic at the University of Minnesota which began with small student loads of selected cases and close supervision tailored to modest educational goals. Upon becoming established, the focus broadened to promote the involvement of non-clinical faculty members contributing to supervision in their areas of interest and a teaching mission that covered questions of the administration of justice as well as legal skills and practice.[179] Wilson refers to Catholic University, Chile reviewing its operations in 1997 and Diego Portales, Chile conducting a review in 1996.[180]

In his analysis of a clinic at the University of Wisconsin, Redlich called for a greater focus on the evaluation of clinical programs. He referred to clinic evaluation as an untouched problem. Evaluation was seen as important given the 'need to determine how much, if any, of the resources available to legal education should be placed in a particular course' and that 'evidence indicating that clinical methodology does work will attract present and future faculty members to clinical oriented activities'.[181] Evaluation and other reflective processes should enable a clinical program to continue a process of refining the model(s) used to maximise the opportunities to meet the objectives set for the program.

In 2002, when continuing funding was being sought to enable UCAS to move beyond the pilot stage, the WA Attorney-General's Department expressed concern that detailed monitoring of the program should have been done. Paul Moyle explained that a formal evaluation had not been done as there had not been time. Moyle had been on study leave in the US at the time and he felt that 'without someone championing it in the law school, it wasn't going to go ahead. Someone needed to take personal ownership of it.'[182] Unfortunately, nobody did. Anecdotally, UCAS was considered to have been very successful but it was also very difficult to quantify the benefits of the program. 'If you speak to anyone in the court system: the judges, the court staff, the prison staff, they will say it saved a fortune but the problem was putting that in dollar terms.'[183]

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[179] Ibid.
[180] Wilson, above n 8, 547 & 554.
[181] Allen Redlich, 'Perceptions of a Clinical Program' (1970-71) 44 *Southern California Law Review* 574, 598.
[182] Interview with Paul Moyle (Perth, 19 August 2003).
[183] Interview with Karen Farley (Perth, 18 August 2003).

Evaluation is likely to be most productive when it is addressed with constructive intent. Keyes and Johnstone call for the use of student-focussed evaluation as part of a reflective strategy designed to improve the quality of teaching, resisting its use as a crude management tool.[184] This can best be expected where the parties take a collaborative approach to their relationship.

Balancing Multiple Objectives – Learning and Service

In Chapter Two, the continuing tension in clinical programs between service and learning was discussed in some detail.[185] There is, nonetheless, scope to structure programs to see learning and service objectives cross-fertilise and reinforce each other. One of the hallmarks of integrative approaches to relationships is that efforts are made to identify multiple means of advancing particular interests. While clinics are a relatively expensive form of legal education, they are a relatively inexpensive vehicle for legal aid service delivery and this often results in external pressure and expectations for clinics to have a strong service focus.

Kevin Bell, the solicitor responsible for the La Trobe clinical program from 1981 to 1985 and now a Justice of the Victorian Supreme Court, was driven by client service concerns in his leadership of that clinic.[186] Bell also noted the complexity for a clinic in balancing 'three competing policy priorities' – casework, community action and legal education. An externally-funded clinical program can easily find itself walking a tight rope between securing funding for legal service delivery and ensuring a continuing focus on student learning. Daryl Williams, the Australian Attorney-General responsible for providing funds to a small number of clinical programs considered the main purpose of clinical legal education to be community service, describing the added educational outcomes as 'the icing on the cake'.[187] Williams referred particularly to the similarities between clinical programs and community legal centres and the ability of clinics to deliver inexpensive legal services to community members on low incomes.

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[184] Keyes & Johnstone, above n 23, 563-564.
[185] See Chapter 2, footnotes 23-53 and related text.
[186] Interview with Kevin Bell, QC (Melbourne, 13 September 2002). Bell stated: 'The educational needs of the students did not figure highly in decisions made about whether a case was picked up or not. The focus was on the needs of the client, what we could do for them with the limited resources we had and whether or not a particular case was worthy of our follow up or personal attention because it had consequences beyond the immediate.'
[187] Telephone interview with the Honourable Daryl Williams, QC (28 June 2004).

Redlich's account of the early experience of Wisconsin Law School in developing a service-focussed clinic was referred to in Chapter Two. It provides a useful example of the need to set realistic objectives for clinics and not set unreasonable expectations. Student responses formed a major part of the evaluation material and on Redlich's analysis disclosed 'blunt criticism of every component, structural or human, involved in the program'.[188] Conflicts permeated the program, including that between achieving educational goals and serving the client. 'Unfortunately for the school, given the public service orientation of all who chose to work with Legal Services, including the student, education is the goal with the least priority.'[189]

Service objectives can be important in the development of a clinic but should not drive its design. The design of the joint program proposed for South East Queensland law schools referred to earlier focussed too heavily on community service.[190] The clinic was proposed to be established in the Logan City area 'in recognition of the high unmet need for community legal services in this area'.[191] The Committee noted the natural tension between student education and service delivery and that legal aid authorities would 'naturally only be prepared to fund a significant increase in the latter.' The rationale for the choice of location was the high levels of local unmet legal needs.[192]

The issue of educational focus also raises the balance between skills learning and the development of student understandings of ethics and legal institutions. The history of clinical legal education suggests that priorities have changed over time with clinical programs more likely to be sustainable if they have a broad educational focus, enabling a law school and its clinics to work collaboratively with government, the legal profession and others interested in advancing compatible goals.

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[188] Redlich, above n 181, 583.
[189] Ibid 588.
[190] Nine of the 11 proposed program objectives related to law in action or service. See Chay, above n 69, 50-52.
[191] Queensland University of Technology Faculty of Law, *Report of the Working Party on Clinical Legal Education* (June 1994) 2.
[192] The feasibility study for the clinical program was heavily focussed on measuring legal needs and contained little material or analysis regarding clinical models or methodology. Susan Ferguson, *Feasibility Study: Clinical Legal Education Centre, Logan City/Woodridge*, undated. Letter to Clinical Legal Education Committee, QAILS from Hon. Wayne Goss, Premier of Queensland, 31 August 1992. When then Queensland Premier, Wayne Goss, the Member of Parliament for Logan, wrote in August 1992 supporting establishment of a clinic in the Logan area, his focus was also on unmet legal need. Further, his proposal did not include any offers or suggestions in relation to State-level funding possibilities.

Becoming a Law School Battleground

There have been a series of instances where clinical programs have become the source of significant conflict within law schools. Realistic objectives on the part of all concerned are important in avoiding such conflicts. What clinicians see as a lack of recognition of their work may be viewed by others in law schools as safeguarding the academy from an increasingly profession-based view of law and legal education. Sylvester refers to many academics not accepting that clinical legal education has a valid role to play in undergraduate legal education.[193] A key reason for academic resistance to clinical programs is concern that clinics provide a vehicle for the practising profession to regain lost influence over legal education and to focus excessively on the teaching of skills important in the practise of law.

The clinical program established at Kent encountered significant resistance from within the faculty and the university. Concerns were expressed that the clinical work needed a more effective educational rationale. This concern appears to have related in large part to the efforts to incorporate clinical approaches across the law curriculum.[194] In an article highly critical of the 'clinicalising' of the Kent law curriculum, Spjut noted that the educational value of the clinic work done by students was limited by the chaotic nature of the legal work, with no prior selection of cases. 'If cases were selected, this would seriously diminish the number of students able to participate'.[195] The routine nature of the tasks and the limits on student legal work imposed by the Law Society were also criticised.[196] Sherr notes that the reasons for the closure of the Kent program 'were probably more closely related to the success of that enterprise, as intended, than its failure'.[197] The Kent experience was important to the development of the Warwick

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[193] Sylvester, above n 13, 32.

[194] R. J. Spjut, '"Praxis" and Prudence: Reforming Clinical Legal Education at the University of Kent' (1977) 11(2) *The Law Teacher* 89. Spjut is critical of the lack of training about what students were to observe and that it involved no direct experience of legal practice. The first year of the 3-year program saw students required to visit courts twice. The second year included a mooting program while the third year involved the major clinical component in the forms of placements and projects. Honours students were able to spend the vacation between second and third years doing a 4-6 week placement organised by the clinic then writing a report on this. Spjut rightly criticises the placements because the assessment task (a dissertation) did not assess the skills students were expected to develop in their placements. See at 94.

[195] Ibid 94.

[196] The clinic appears to have become caught up in Spjut's broader concern with the overly ambitious nature of the Kent law curriculum. He contended that endeavours to combine conflicting theories such as analytical jurisprudence and realism into all the courses were doomed to confuse students and suggested the approach of initiating specialised courses in clinical legal education would 'undoubtedly provide clear direction and potential for achieving the stated goals'. Ibid 98.

[197] Sherr, above n 101, 108.

program, perhaps resulting in it being 'less holistic and wide ranging, less public and openly principled', using less university resources through links to external community agencies to run the cases.[198]

In 2001, Hugh Brayne developed an externship arrangement for the Law Department of the Business School at the University of Sunderland, placing students in a range of community agencies. The program, *Law in the Community*, was well received by students and participating agencies.[199] Brayne had extensive experience in the development and operation of clinical programs and was a relatively senior member of the Business School, having been Director of the Business School before taking his position as Professor of Law. He had initially seen the externship program as a potential stepping stone to an in-house clinic but found 'the partnership work was so satisfying, to me and to the students, that I would have been very happy to continue the diverse placement model indefinitely.'[200]

Brayne found some law colleagues very resistant to the use of new teaching methods. Despite the Law Department being part of a business school focused on business education, there was a strong reliance on traditional black letter teaching approaches. Brayne was very critical of this as adding no critical or in-depth scholarship to the delivery of a standard program. Very divergent goals and methods and a lack of understanding of clinical methods meant that Brayne faced hostility to the clinic from some colleagues. Despite Business School support, efforts to develop community partnerships as a vehicle to seek external program funding were not successful. Without external funding and with Brayne's departure from the university in September 2002, the program was discontinued.[201]

Clinicians Don't Fit

Syverud categorises clinical faculty as one of the seven castes of US legal education.[202] Despite having driven many of the reforms to US law curricula since the 1970s, only a small minority of law schools have fully integrated their clinical faculty. The faculty at

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[198] Ibid 113.

[199] Richard Grimes, Notes on Visit to University of Sunderland, 10-11 March 2003, 1 & 9. Grimes was a Visiting Professor with responsibility for evaluating the program.

[200] Hugh Brayne <hugh.brayne@blueyonder.co.uk> email 28 September 2004.

[201] Ibid.

[202] Kent Syverud, 'The Caste System and Best Practices in Legal Education' (2002) 1 *Journal of the Association of Legal Writing Directors* 12. The other castes are tenured and tenure track faculty; deans; law library directors; legal writing directors and faculty; adjunct faculty and general staff.

most US law schools display a 'grudging toleration' for their clinic colleagues.[203] Wortham rightly observes that in the long term, 'devotion to clinical legal education may only be sustained if faculty receive adequate compensation for time spent in clinical education and feel personally rewarded'.[204] Chinese clinicians tend to be young and relatively junior. The time-consuming nature of clinic teaching and competing research priorities result in faculty having 'little incentive to participate in clinical programs'.[205]

In a 1990 article, Tomain and Solimine identify a number of failures of clinical legal education highlighted by the experience of the University of Cincinnati College of Law, which moved away from in-house clinics to externship arrangements.[206] They describe clinicians as often being treated as second-class citizens, not held to the same scholarship standards as non-clinical faculty in terms of appointment, performance and tenure. 'Second-class citizenship can be eliminated if skills educators are provided with an intellectual and scholarly agenda.'[207] A wide range of roles is noted as being expected of clinic teachers including administrator, clinician, substantive law teacher, scholar and supervisor. Undertaking this unrealistic job brief leads to clinicians going 'beyond burnout to self-sacrifice. The clinical educator is in a double, if not a triple, bind'. Devoting too much time to skills training results in the neglect of legal scholarship. 'If they spend too much time on scholarship, their supervisory duties may suffer, and, after all, it is close supervision that makes skills education successful.'[208]

Clinicians face challenges regarding the merit and scope of their scholarship.[209] Bergman describes clinicians as 'strangers in a strange land', arguing that clinical education is 'increasingly out of synch with the worldview of many US legal academics' who come to law school with little experience or interest in legal practice.[210] The 'odd

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[203] Ibid 14.
[204] Wortham, above n 93, 671.
[205] Setsuo Miyazawa, Kay-Wah Chan & Ilhyung Lee, 'The Reform of Legal Education in East Asia' (2008) 4 *Annual Review of Law & Social Science* 333, 338.
[206] Joseph Tomain & Robert Solimine, 'Skills Skepticism in the Postclinic World' (1990) 40 *Journal of Legal Education* 307, 312-3.
[207] Ibid 312.
[208] Ibid 312-3.
[209] Neil Gold & Philip Plowden, 'Clinical Scholarship and the Development of the Global Clinical Movement' in Frank Bloch (ed.) *The Global Clinical Movement: Educating Lawyers for Social Change* (2010) Chapter 21; Peter Joy, 'Clinical Scholarship: Improving the Practice of Law' (1996) 2 (2) *Clinical Law Review* 385 & Peter Toll Hoffman, 'Clinical Scholarship and Skills Training' (1994) 1 (1) *Clinical Law Review* 93.
[210] Paul Bergman, 'Reflections on US Clinical Education' (2003) 10(1) *International Journal of the Legal Profession* 109, 109-110.

one out' nature of clinical scholarship, 'writing outside mainstream legal disciplinary boundaries', makes it difficult to evaluate.[211] Clinicians also face unique challenges in relation to the 'tension between the individual lawyer-professor's academic freedom and professional responsibility to clients and the law school's decision-making authority'.[212]

Conclusion

This chapter has identified a number of factors as significant in either facilitating or impeding the establishment and sustainability of clinical programs. Program establishment appears to be aided by starting small and informal yet sustainability may be impeded by a lack of structure and insufficient recognition of the contributions clinics can make. There needs to be a strategy for moving from the informality that enables establishment in uncertain times to the more structured and integrated approach that is likely to foster longer-term sustainability. Potential opponents, especially within the law school, may have their concerns addressed in a range of ways. These include having strong support both from outside the law school (across the academy, profession and judiciary) and from law school leadership as well as appreciating that a program may develop organically once it has started.

Culturally specific factors limit the scope for developing a global guide to sustainability of clinical programs. Traditions, priorities and expectations will vary greatly, as will the availability of resources. Wilson raises the issue of whether learning styles are, at least in part, culturally specific[213] while Dowdle notes that donor countries with well-developed clinical movements may 'unintentionally impede the development of indigenous legal aid practices and institutions that might ultimately be better suited for the particular domestic environment'.[214] One factor that does appear to have global significance is the energy and commitment of those developing and then operating the clinic. Accounts of sustainable clinics from Australia to Chile to England, South Africa and the US refer to the importance of this factor.

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[211] Tomain & Solimine, above n 206, 313.
[212] Robert Kuehn & Peter Joy, 'Lawyering in the Academy: The Intersection of Academic Freedom and Professional Responsibility' (2009) 59 *Journal of Legal Education* 97, 99.
[213] Wilson, above n 8, 562, 569-571.
[214] Michael Dowdle, 'Preserving Indigenous Paradigms in an Age of Globalization: Pragmatic Strategies for the Development of Clinical Legal Aid in China' (2000-2001) 24 *Fordham International Law Journal* S56.

The relatively tenuous existence of clinical legal education programs means that factors such as favourable social and policy conditions will be important. Prosperity brings with it a greater interest in further possibilities. Powerful allies in the law school, the university, the legal profession, the judiciary and in civil society can all play roles in promoting and consolidating clinical programs. Clinics also rely heavily on the presence of enthusiastic students who wish to engage with the law in different and constructive ways.

'Big picture' social and public policy factors appear to be particularly significant in providing a suitable environment for efforts to establish programs. It is helpful if those proposing establishment of a program get the timing 'right'. The process whereby the Queensland Association of Independent Legal Services worked with the four law schools in South East Queensland to develop a clinical program did not lead to establishment of a joint program in the early 1990s. Griffith Law School went on to establish a series of clinics and QUT Law School established its own program with Legal Aid Queensland. A decade on and with the emergence of more formal vehicles for pro bono initiatives, other law schools in the region are now experimenting with real-client agency-based clinics.

Efforts to embed and sustain an established clinical program are likely to benefit from increased formality in the program structure, including a commitment to planning through review and reflection. The law school needs to take ownership of the clinic and recognise the contributions clinics can make. The ideas and principles developed through an innovative program can be utilised in other programs. For example, Anderson and Catz refer to the Antioch experience informing efforts to develop distinctive clinics at other US law schools.[215]

This chapter completes the analytical framework for this thesis, providing an account of the range of factors identified as relevant to the establishment and sustainability of clinical programs. It has been argued that what is required to make a clinical program sustainable is likely to differ to some extent from what is required to get one started. The next part of the thesis consists of four in-depth case studies which will enable testing of the factors outlined in this chapter. The case study programs are all major Australian programs which have been studied using documentary sources along with

[215] Anderson & Catz, above n 47, 727.

interviews of key participants. The final part of the thesis contains the analysis of the four case studies and considers the extent to which the histories of those programs corroborate the establishment and sustainability factors outlined in this chapter.

Chapter Five - The Monash Clinical Program

It's taken a long time, 25 years, to get to that model.[1]

Introduction

This chapter is the first of four case studies of Australian clinical programs designed to test the relevance to the establishment and sustainability of clinical programs of the range of factors identified in the previous chapter. It tells the story of the clinical program at the Monash Law Faculty which has operated across two sites[2]: the Springvale-Monash Legal Service (until 1999 known as the Springvale Legal Service and referred to in this chapter as SLS or SMLS as appropriate) and the Monash-Oakleigh Legal Service (MOLS).[3] Along with the three other case studies (UNSW, Murdoch and Newcastle), the Monash experience will be analysed in Chapter Nine using the establishment and sustainability factors identified in Chapter Four as a framework.

The Monash clinical program is the oldest and one of the most comprehensive in the country. The Monash model represents the start of the development of a distinctively Australian approach to clinic-based legal education, one that has maintained a strong community service focus while also developing significant aspects of clinical teaching, particularly in relation to professionalism and values. Other law schools have followed the Monash example of focussing on the live-client clinic in a community legal aid setting with a mixture of funding sources.

The Monash clinical program started small and grew after gaining a foothold in the law school. The program's reliance for more than ten years on a relatively informal structure highlights the importance of the contributions of a range of key individuals. The emphasis of the program was on students involving themselves in community service and it was not until the late-1980s that a stronger focus on both teaching issues and structured community development activities emerged.

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[1] Interview with Guy Powles (Clayton, 20 November 1996).
[2] From 1977 to 1980, a third clinic site was involved – at the Doveton Legal Service.
[3] This is not an entirely objective account. The clinical placement I completed at Springvale Legal Service in 1984 was the highlight of my legal education at Monash. I also served as a member of the SLS Board of Directors from 1984 to 1986 as well as volunteering at the service

The chapter outlines the clinical program's emergence from student-run volunteer services and documents the challenges faced in sustaining the newly-established clinic. The co-ordination issues raised by the use of a large group of part-time supervisors across multiple clinic sites are then considered, along with the balancing of educational and community service objectives. While the co-location of SLS with the Springvale Community Aid and Advice Bureau (SCAAB) generated significant service expectations, this link was also critical to the fund-raising required for construction of purpose-built premises in 1987. The chapter considers how the work of Monash clinical staff and students has changed over the life of the program, with an increased emphasis on community development initiatives and specialist clinical opportunities.[4] The chapter then addresses the sustainability dimensions of changes in the relationship between Monash Law School and SMLS in the context of a review of the clinical program conducted in 2006.

Origins – Students and Social Justice

Established in 1964, Monash Law Faculty was the second law school established in Melbourne and faced the need to fashion a distinctive role for itself.[5] Monash University had been established in 1961 and clinic-based learning was an early focus of its professional faculties.[6] Monash Law Faculty attracted younger 'babyboomer' academics with strong interests in developing new methods to invigorate law teaching.[7]

Professor Gerry Nash, the prime mover in the creation of the Monash clinical program, notes that its establishment was made easier by the practical experience of many of the academics, describing Monash at that time as 'better endowed with practical experience than, I think, any other law school in Australia.'[8] An example of the law

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[4] See the coverage of specialist courses in Chapter 3. See footnotes 121-125 and related text.
[5] Interview with Sue Campbell (Clayton, 20 November 1996).
[6] Graeme Davison <Graeme.Davison@monash.edu.au>, email (12 October 2010). Davison considers this emphasis began with Dean Rob Andrew's ideas for the Monash medical faculty, including the (never fully realised) plan for an on-campus university hospital.
[7] Interview with Simon Smith (Clayton, 20 November 1996). This clearly accords with the experience in the USA in the late-1960s and early-1970s. See also Chapter 4 of this thesis, footnotes 2-4 and related text.
[8] Gerry Nash, 'Clinical Education in Australia', XII (1) *Council on Legal Education for Professional Responsibility* (1979) 5. Nash refers to a survey (Peter Nygh, 'University Law School Recruitment and Staff Policy' *Legal Education in Australia: Proceedings of National Conference*, Sydney, August 15-20, 1976, 265) taken in 1976 which showed that across all Australian law schools approximately 65% of academics possessed professional qualifications and 35% had been engaged in full-time practice. Nash added that from his observation, only about 5% had been in

school's unusually strong professional links is provided by the election of Rowland Ball, a Monash Senior Lecturer, as President of the profession's peak body, the Law Institute of Victoria, in 1979. Establishment of the clinic was also assisted by the university's suburban location and the fact that the people who went to work at Monash were in the process of creating something, starting from scratch whereas staff in well-established law schools were involved in perpetuating lecture-based doctrinal teaching to large groups of students.[9]

Students played a key role in the establishment of the Monash clinical program in 1975. Simon Smith, the founding co-ordinator of Springvale Legal Service and Australia's first clinic-academic, traces the origins of the program to the establishment in 1971 of the Monash Student Legal Referral Service, a telephone referral service run by law student volunteers at the premises of the Melbourne Citizens Advice Bureau. Third, fourth and final year students were rostered to take telephone calls seeking legal assistance. Once the problem was identified a Monash academic with relevant knowledge would be contacted for legal advice and referral information which was then telephoned back to the original caller.[10] The Referral Service was not part of the Monash curriculum and was not faculty-approved.[11] Students were not formally prepared for their role and the academic advisors were neither paid nor supervised.[12]

Early in 1972, the referral service began running afternoon sessions at the Springvale Community Aid and Advice Bureau (SCAAB). Students interviewed clients face-to-face with support from SCAAB staff. A casework service developed at Springvale in February 1973 because of student frustration with the limited nature of referral work. The establishment of the Fitzroy Legal Service in December 1972 provided an example of how such a service might operate.[13] Students were the main contributors to what was, quite understandably, a very busy and fairly disorganised service. Peter Hanks, an academic who made a significant contribution in laying the groundwork for development of clinical legal education at Monash, recalls that the potential for SLS to

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full-time practice for more than 4 years. Nash described Monash as being in 'a somewhat better situation'. Of sixty-one full-time members of staff, fifty (82%) had been admitted to practice with thirteen (21%) having had four or more years in full-time practice and a further seven (11%) being engaged regularly in part-time practice since their appointment.

[9] Interview with Gerry Nash (Melbourne, 1 December 1997).

[10] Simon Smith, 'Clinical Legal Education: The Case of Springvale Legal Service' in David Neal (ed), *On Tap, Not on Top: Legal Centres in Australia 1972 - 1982* (1984) 49.

[11] Nash, above n 8, 6.

[12] Smith, above n 10, 49.

play a role in legal education was initially recognised by one of the students, probably Neil Rees.[14]

During 1973 and 1974, the prospect of a clinical program was discussed in forums including the Faculty Board. A Committee on Clinical Legal Education, chaired by Hanks, met after Faculty Board gave in principle approval to the establishment of a clinical program.[15] This committee emphasised the importance of the academic component of a clinical program. Nash developed a subject proposal which was approved by the Faculty Board early in 1974.[16] Professor Arthur Berney from Boston College Law School was visiting Monash at that time and provided advice on the subject proposal.[17]

Nash focussed strongly on the value that a clinical program would provide by the teaching of skills that would be useful to lawyers.[18] In 1979, he commented that 'In fact, and as I hoped, the subject did develop into a course of practical training in which students learned about people, facts and files. I believe, however, that if in 1974 I had not stressed the academic aspects of the course it is unlikely that it would have been approved by Faculty Board.'[19] Nash encountered some opposition to his proposal, based on the 'plumbing is dirty syndrome' as well as concerns about the high cost of the program.[20] Nash's involvement in the program arose from his concern that the students were being taught 'pure theory, some of it by people who had never been outside the four corners of a university, some of whom had never done articles.'[21]

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[13] Ibid.
[14] Interview with Peter Hanks (Melbourne, 13 September 2002).
[15] Peter Hanks, 'Clinical Legal Education', Paper to members of the Committee on Clinical Legal Education, 3 May, 1974.
[16] Nash, above n 8, 6. Nash's proposal outlined the object of the 'Professional Practice' subject as 'to familiarize the student with the way in which the law operates in practice, to enable him to see the reasons for this form of operation and to assist him to assess critically the way in which the law today serves the needs of the community. A student who has completed the course should have a considerable understanding of the practicalities of the day-to-day operation of the law; but it is not intended to be a course of practical training. It is intended as an academic analysis of the practical operation of the law.'
[17] Berney suggested that Monash set up a clinical program to which four or five full-time staff would be assigned with one member of staff for each three or four students. It was clear to Nash that his colleagues would not support such a resource-intensive arrangement such that he proposed a less resource-intensive program. Interview with Gerry Nash (Melbourne, 1 December 1997).
[18] Interview with Guy Powles (Clayton, 20 November 1996).
[19] Nash, above n 8, 7.
[20] Ibid 6.

Nash emphasised that teaching the theory of practice was the same as teaching the theory of substantive law. 'It's fine but it has no meaning unless you're actually doing it. …The crucial thing is responsibility. You have to learn to carry the can.'[22] By contrast with Gerry Nash, Peter Hanks had always intended that the clinical program would have a 'pretty heavy theoretical component, that it would be used as an opportunity for the exploration of theoretical issues relating to practice: dilemmas, ethical dilemmas and that sort.'[23] Hanks did not see the opportunity for people to get 'nuts and bolts hands-on experience' as sufficient justification for having such a program in a law faculty at a university. 'You had to use the experience in order to develop insights into legal rules and legal theory and theoretical insights into practical dilemmas.'[24]

Hanks also considered it was both very difficult and very important to limit the caseload taken on by the program. 'It's very difficult to maintain it unless the program is run by someone who is really strong, someone who can resist the pressure of the caseload, which is just voluminous. Once you set up an operation like that, you generate a massive amount of work and demand.'[25] The history of the Monash clinical program might well have been quite different had Hanks, rather than Nash, been responsible for teaching the initial offerings. Ironically, Hanks was instrumental in moving the Legal Referral Service to Springvale and its co-location with the Springvale Community Aid and Advice Bureau (SCAAB). The SCAAB co-location has contributed, perhaps more than anything else, to the development and maintenance of a very strong casework focus at SLS.

Co-location of the legal clinic with a major provider of social services is a distinctive aspect of the Monash program when compared with the three other case studies.[26] Guy Powles refers to the SCAAB being an important source of community input into the operations of SLS, with SLS and the SCAAB 'in a love-hate relationship in which

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[21] Interview with Gerry Nash (Melbourne, 1 December 1997).
[22] Interview with Gerry Nash (Melbourne, 1 December 1997).
[23] Interview with Peter Hanks (Melbourne, 13 September 2002).
[24] Interview with Peter Hanks (Melbourne, 13 September 2002).
[25] Interview with Peter Hanks (Melbourne, 13 September 2002).
[26] At the same time, co-location is a point of similarity with Victoria's other longstanding clinical program, at La Trobe, which has always been co-located with the local community health centre. See Mary Anne Noone, '"They All Come in the One Door" The Transformative Potential of an Integrated Service Model: A Study of the West Heidelberg Community Legal Service' in Pascoe Pleasence, Alexy Buck & Nigel Balmer (eds) *Transforming Lives: Law and Social Process* (2007) 93.

they monitored each other'.[27] As will be examined later in this chapter, one of the highpoints of this ongoing relationship was the raising of close to $1 million for the design and construction of new purpose-built premises in 1987. The presence and influence of the SCAAB was crucial to the success of the efforts of Simon Smith and others at SLS to raise those funds which placed the Monash clinical program on a much firmer footing than it had through its first decade.

1975 - Start of the Clinical Program

The elective subject 'Professional Practice' was offered on a pilot basis in second semester, 1975. Based at Springvale Legal Service, 15 students were supervised by Nash with assistance provided by three practitioners as part-time 'tutors' who were active SLS volunteers.[28] Each tutor attended one evening per week to provide direct supervision of student work while Nash's supervisory role was of a more general nature and represented half his teaching commitment for the semester.[29] He had agreed to run the subject in an effort to overcome cost concerns.

It had been intended that the subject would run in first semester, 1975 with the Australian Legal Aid Office (ALAO) playing 'a significant role'.[30] There were to be a total of 30 students, divided between SLS and the soon-to-be opened ALAO office in Springvale. The first semester offering was cancelled when the ALAO office did not open in time and further delays prevented ALAO involvement when the course ran in second semester.[31] Nash described the course as being somewhat poorer as a result of the ALAO's non-involvement.[32] Neither the ALAO nor the Legal Aid Commission of Victoria (which became Victoria's major statutory legal aid provider in 1981)[33] opened

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[27] Interview with Guy Powles (Clayton, 12 December 2000).
[28] Phil Slade, Peter Rose, Ian Mawson and Don Brookes were the paid part-time tutors.
[29] Nash, above n 8, 8.
[30] Gerry Nash, 'Professional Practice, Report to Executive Committee on the Initial 1975 Course' 13 November 1975, 1.
[31] In an undated letter to Nash, with the reference 74/5325, Australian Legal Aid Office Director, J. P. Harkins confirmed acceptance of Nash's proposal to involve the ALAO in the clinical program to be established in 1975. In a letter dated 19 December 1974, Doug Carty-Salmon, the Officer-in-Charge of the Melbourne Office of the ALAO, advised Nash that premises had not been secured for the new Springvale Office of the ALSO such that hopes for establishment of the clinical program 'in the 1975 academic year appear to be extinguished'.
[32] Ibid.
[33] Chris Field & Jeff Giddings, 'A History of Legal Aid in Victoria' in Jeff Giddings (ed) *Legal Aid in Victoria: at the Crossroads Again* (1998) 29-31.

an office in Springvale with the consequence that SLS became the key public legal service provider in that part of Melbourne.[34]

Nash offered the following reflection of his experience in teaching the course: 'The first semester was chaotic and difficult. Although there were only fifteen students involved the supervision of the follow up work on up to fifty files per week and the running of the weekly seminars was a fairly solid half load.'[35] The seminars provided an important academic grounding to the practical experiences of the students with a clear focus beyond the development of practice-related skills.[36]

The completion of the first offering of the program left the Law School with a dilemma. Having assisted SLS to enhance the services offered to clients, there were no students available to deal with client concerns over the summer months. In his Report on the initial offering, Nash recommended that 'if enrolments justify the step', the subject could run several times in 1976 to enable student involvement in the Springvale Service throughout the year. 'There would appear to be no reason in principle why this subject must be taken during formal term time.'[37]

This recommendation was accepted but could not be implemented immediately so that the 1975/76 summer saw SLS operate through the voluntary efforts of some students,

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[34] It had been anticipated that a large number of branch offices of the ALAO would be opened during 1975 but this did not eventuate due to resistance from the legal profession and the change of Commonwealth government in December, 1975. For an account of this curtailment of the ALAO, see Steven Tomsen, 'Professionalism and State Engagement: Lawyers and Legal Aid Policy in Australia in the 1970's and 1980's' (1992) 28 *Australian and New Zealand Journal of Sociology* 307. It was not until the mid-1990s that clinical programs based in legal aid commission offices were established, by the Queensland University of Technology Law School and Legal Aid Queensland and by La Trobe Law School and Victoria Legal Aid. See Mary Anne Noone & Judith Dickson, 'Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers' (2002) 4 (2) *Legal Ethics* 127.

[35] Nash, above n x, 9.

[36] The Law School's Committee on Clinical Legal Education referred to the purpose of the seminars as 'to investigate ... the functions of the lawyer: to seek an understanding of the relationship between lawyer and client, between lawyer and lawyer, and between social problems and the proffered legal solution.' Hanks, 'Professional Practice', Memorandum (undated) of the Committee on Clinical Legal Education presented to Law Faculty Board, Meeting No. 4/74, Agenda Item No. 3.3, ATTACHMENT C, 2. The seminars covered:

1. Institutional Aspects - Legal education, the legal profession, the courts, clients - 4 weeks,
2. Communication (People and Facts) - with clients, opponents and the courts - 3 weeks,
3. The Lawyer's Role in Society - the criminal justice system, bureaucracy, legislative process, present and future roles of lawyers - 5 weeks. (At 3).

[37] Nash, above n 30, 5. One of the reasons suggested to the Law Faculty Board for supporting a summer semester was that the limited space available at SLS prevented more than six students attending at any one time. See Nash, above n 8, 9.

the part-time tutors employed for the initial 'Professional Practice' subject and several academics.[38] The 'Professional Practice' program next ran in first semester, 1976, once again being taught by Nash, this time with further support from Harry Reicher, another full-time member of academic staff. They continued their involvement through further offerings of 'Professional Practice' in second semester and the following summer.[39]

It is clear that establishment of the Monash clinical program was aided by having started small. Gerry Nash expressed the view that:

> 'If you can get it off the ground and get it working, you can fiddle with the bits later. The initial creation was not a very highly-refined, well analysed proposal. It was basically "what have we got, what can we do?" I've had an enough experience of university budgets to know that once something is functioning, it's got to be funded. If you ask for the funding to get something functioning, that's a problem.'[40]

The lack of other clinical programs in Australia made the Monash program ground breaking and Nash considered this made it easier to deal with university bureaucrats. 'At the time, it was important to have faculties that were breaking new ground. It didn't matter which faculties so long as they were breaking new ground.'[41] Another person Nash found was enthused by the establishment of the clinical program was Haddon Storey, then Attorney-General in the Victorian Liberal Government. The *Legal Aid Act* passed by the Victorian Parliament in 1978 made specific reference to the education of law students as a purpose of the newly-established Legal Aid Commission of Victoria. Nash said that arose out of discussions he had with Storey.[42]

Nonetheless, the Law Faculty's enthusiasm for developing a clinical program was not shared by all in the University. Registrar Jim Butchart and the University solicitor were concerned at the possibility of poor legal advice being given by students. Dean David Allan and leading members of the profession strongly defended the clinic, explaining that the methods of the service made the risk of negligent advice minimal and

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[38] Nash, above n 8, 9.
[39] D. Allan, G. Nash & J. Neville Turner, 'Recommendation to Faculty Board for a third Course in Professional Practice', undated memorandum.
[40] Interview with Gerry Nash (Melbourne, 1 December 1997).
[41] Interview with Gerry Nash (Melbourne, 1 December 1997).
[42] Interview with Gerry Nash (Melbourne, 1 December 1997).

emphasising the value of the experience to the students makes it acceptable. They also noted that the University could insure against such risks.[43]

The early years of the Monash clinical program show there can be benefits to a program starting small and gaining momentum with substantial involvement from students. Gerry Nash took what might be viewed as a very pragmatic approach and this aided establishment of the program whilst setting up various challenges for its consolidation.

1977 - 1980 Expansion and Consolidation

The late-1970's saw the Monash clinical program grow considerably, generating both challenges and opportunities for those involved. The problems inherent in reliance on part-time supervisors came to the fore yet the fast pace of development enabled the program to gain more than a tentative foothold, becoming a more central part of the Law School's activities.

Expansion of the Monash program was facilitated by Gerry Nash becoming Dean of the Law Faculty in 1977. Clearly, Nash was committed to the program and was prepared to make additional staff resources available. Two further clinic sites were developed during this period; the Doveton Legal Service, which opened in mid-1977 and was part of the clinical program until 1980, and the Monash Legal Service (which became the Monash-Oakleigh Legal Service (MOLS)), which opened in 1978. For over 35 years, SMLS has remained more independent from Monash Law School than has MOLS. MOLS is an independent incorporated association but was created by and continues to be operated by the Law School. Nash also obtained university funding to employ a co-ordinator of the clinical program and Guy Powles was appointed to this position in 1978.[44]

An early commentary on the Monash clinical program in the *Law Institute Journal* described the Faculty's substantial involvement in the program which was 'demonstrated by the fact that senior members, including the Dean, are involved in its operation. The Faculty's commitment to Professional Practice is evident in the subject's exceptionally high staff-student ratio.'[45] Guy Powles described the Faculty's *modus*

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[43] Graeme Davison <Graeme.Davison@monash.edu.au>, email (12 October 2010).
[44] Nash, above n 8, 19 (CLEPR) & Interview with Gerry Nash (Melbourne, 1 December 1997).
[45] Victor New, 'Clinical Legal Education at Monash' (1977) 51 (8) *Law Institute Journal* 404, 405.

operandi for the clinical program as involving every member of academic staff with a practising certificate being 'dragooned' into supervising students who were 'thrown into the front line' of legal service delivery.[46] This was done to build up the profile of clinic-based studies in the Monash Law School 'so that one could say that anyone who studied law at Monash who wanted to take a clinic option could do so. We were demand driven to that extent.'[47]

The Doveton Legal Service developed after local community members and workers approached Nash in 1976 seeking to establish a free legal service. The Service opened in July 1977 as part of the clinical program with students supervised by Nash and his wife, Gail Owen, who in 1988 became the first female President of the Law Institute of Victoria. The service opened each Thursday evening and by mid-1978, Monday afternoon sessions were introduced as there was demand for family law advice 'from women who found it difficult to seek advice in the evening'[48]

The operation of the Monash Legal Service as a clinic site commenced in 1978. The Monash University Student Union had operated a legal advice service for students which was staffed on a part-time basis by Adrian Evans, who in 1988 would succeed Simon Smith as Director of SLS. In 1977, the Student Union proposed that this service be run from the Law School by 'Professional Practice' students.[49] It was agreed that in return for secretarial assistance, staff and students in the clinical program would operate this advice service. The operation of the Monash Legal Service was initially limited to the provision of preliminary advice due to space and staffing constraints. This changed when University-owned premises adjacent to the University became available such that at the start of 1979 a full legal service commenced operation, running four day-time sessions and one evening session per week.[50]

The development of three clinic sites – with two being some distance from the law school[51] - highlights the community service focus of the early Monash program. The

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[46] Interview with Guy Powles (Clayton, 20 November 1996).
[47] Interview with Guy Powles (Clayton, 12 December 2000).
[48] Nash, above n 8, 13.
[49] Nash, above n 8, 10. Nash refers to this approach having been received in 1977 however a file note prepared by him dated 1 December 1976 refers to a discussion with Peter Hanks and Doug Ellis, Acting Warden of the Student Union, in relation to a proposal that the Students Legal Service be run from the Law School by professional practice students.
[50] Nash, above n 8, 14.
[51] Springvale Legal Service is 6 kms from Monash while Doveton is 15.5kms from Monash.

clinics made a major service contribution as pioneers in the provision of services accessible at night. Nash stated that it was 'interesting that the official philosophy (so far as the university is concerned and so far as I am concerned) behind the University operation of these three legal services is identical but the nature of the operation tends to differ.'[52] While the 'great majority' of SLS clients were of non-English speaking origin, the corresponding figure for Doveton was 25 percent.[53] While arrangements were made at Doveton to limit to 20 the number of clients seen during any one session, the 'Springvale operation has always been premised on the assumption that all-comers should be served.'[54] It is not clear what efforts were made for students to consider the legal practice implications of the quite different client bases.

Nash also noted the emphasis at SLS on informality and client service. 'Because of the ethos of the establishment, the way in which it originally began, and the personality of those who work there, the educational element is perhaps subservient to the legal aid element.'[55] The person who was central to the development of the particular SLS focus was Simon Smith. Along with fellow students, Neil Rees and Phil Slade, Smith had been heavily involved in establishing the pre-clinic SLS. In January 1978, Nash employed Smith as an administrative assistant, although his work was focussed on the coordination of the SLS legal practice and supervising students. Smith's non-academic appointment as an administrative assistant highlights that the legitimacy of clinical legal education at Monash remained uncertain. Smith's position was not converted to a lectureship until 1982.

The importance of Smith's coordination role at SLS was increased because of the program's heavy reliance on part-time teachers. Smith later referred to the difficulties this caused for students in terms of access to tutors for follow-up supervision, a situation he described as unworkable.[56] As noted earlier, Guy Powles was appointed in 1978 as Co-ordinator of the Monash clinical program, the first clinical supervision position that involved a tenured appointment. Powles considers the Co-ordinator position to have been 'a significant foundation stone' in the Monash clinical edifice. 'It enabled the Faculty to identify which of its members would shoulder the CLE responsibility while securing for the teachers and legal services a voice at Faculty staff

[52] Nash, above n 8, 15.
[53] Ibid 13.
[54] Ibid 14.
[55] Ibid 12.

and Board meetings'. Powles recalls being 'totally absorbed by the position from 1978 to 1983 and that he had 'never again been quite so busy!'. Further, he noted that co-ordinating the three clinic sites 'often seemed like coaching three teams in the same sport, but teams of different sizes, leadership and self-image, operating with a diversity of local rules and idiosyncrasies, not least being case selection and student assessment'.[57]

Eleven part-time tutors were scheduled to participate in student supervision across the three clinic sites during the three semesters completed in the 1979-80 financial year.[58] Difficulties arose due to differing supervision styles and misunderstandings as to the extent of responsibility for follow-up work. Guy Powles stated: 'Above all else, the course requires continuity of supervision. What is needed is the part-time commitment of a full-time lecturer with good all round practical experience.'[59] This call for continuity highlighted the need for infrastructure to support the clinical program. Monash had developed an impressive program, working in conjunction with several legal centres, and needed systems designed to promote consistent quality of both client service and student experience.

Grappling with Assessment Issues

From 1975-78, clinical students had been assessed on a pass-fail basis and everybody passed.[60] There was only limited structuring of what students encountered. The introduction of grading in 1978 involved the development of a set of assessment criteria for clinic performance and the introduction of an optional research paper in order for a student to be eligible for a grade of Distinction or High Distinction. It was in 1979-80 that Powles, Smith and Monash Legal Service lawyer, David Sharrock, formulated a more detailed approach to assessment which itemised the various types

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[56] Smith, above n 10, 51.

[57] Guy Powles, written communication, December 2, 2008, on file with the author. The Co-ordinator's responsibilities included staffing arrangements, enrolment and allocation of students, organising the seminar program, approving research project subjects and moderating their assessment, operating the trust accounts for the clinic sites, representing the clinical program in meetings with internal and external groups and working with the clinic sites to obtain outside funding.

[58] Attachment to Memorandum from Guy Powles to Professor Nash Re: Professional Practice tutors dated 4 October 1979.

[59] Memorandum from Guy Powles to Professor Nash Re: Professional Practice tutors dated 4 October 1979.

[60] Interview with Simon Smith (Clayton, 20 November 1996).

of work and gave them assessment weightings. These criteria were then further developed and changed in 1983, this time with Sue Campbell playing a lead role.[61]

The requirement of completion of a research paper was prompted by what Guy Powles described as the need 'to demonstrate to academic colleagues that we had some handle on assessment'.[62] Having the research paper marked by a clinical staff member other than the student's supervisor also provided a check on the assessments made by each supervisor. Mid-semester feedback was introduced for the 1979-80 Summer Semester and has become an increasingly important aspect of the assessment process. Ross Hyams notes the problematic nature of assessment where it is 'handed down like a decision without any constructive comment. We use assessment as a vehicle of learning rather than just a handing down. The assessment assists students to do better.'[63]

In concluding this section of the chapter, it is important to recognise that the supervision and case management practices developed in the Monash clinical program in its early years generated serious sustainability challenges. Heavy caseloads, supervised by part-time practitioners, the lack of academic conditions for Simon Smith and the need to develop a deeper understanding of clinic-related assessment issues all highlighted the need for infrastructure to be developed to stabilise the program.

1980 - Key Decisions Set the Direction for the Clinical Program

In many ways, 1980 was a key year for the Monash clinical program. Directions were rethought and there were significant personnel changes. Gerry Nash departed from the Monash Law Faculty in late-1980 to be replaced as Dean by Professor Bob Baxt. Sue Campbell arrived at Monash in the middle of 1980 and became involved in the clinical program, taking supervisory responsibility for one evening session each week. She remained heavily involved in the program until 2005, spending more than two decades in the position of Coordinator of Clinical Legal Education. Campbell, Powles and Smith all agree as to the importance of the Coordinator position as somebody based in the faculty who could defend the clinical program, enlighten colleagues and respond to

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[61] This section on assessment practices incorporates comments made by Sue Campbell, Adrian Evans, Ross Hyams, Guy Powles and Simon Smith during a roundtable discussion, Clayton, 20 November 1996. See also Susan Campbell, 'Blueprint for a Clinical Program' (1991) 9 (2) *Journal of Professional Legal Education* 121, 127-128 & 134-135.

[62] Interview with Guy Powles (Clayton, 20 November 1996).

[63] Interview with Ross Hyams (Clayton, 20 November 1996).

criticism, much of which was, according to Campbell, 'based on the most sublime ignorance'.[64]

1980 saw a number of significant tensions related to the clinical program come to a head, particularly between the Law School and SLS. Smith had rightly identified how the use of the independent SLS as a clinic site provided 'potential for conflict between the centre and the faculty over objectives and control.'[65] Smith viewed such conflict as 'particularly pronounced if the legal service has too heavy a reliance upon the resources provided by the University. This was the position in which SLS found itself in 1980', with all nine client sessions supervised by University staff.[66]

In 1980, another conflict arose which was instrumental in seeing the removal of the part-time supervisors from the Monash clinical program. Simon Smith and the paid part-time supervisors were in disagreement regarding the part-time supervisors referring cases from the SLS evening advice sessions to the legal practices which they themselves ran during the day. There was also criticism by some involved at SLS of the lack of court appearance work being done by salaried SLS staff, in particular Smith. The following excerpts from a letter dated 13 March 1980 to Dean Nash from Guy Powles capture the nature of the conflict:

> 'Part of the present difficulty at Springvale arises from the different approaches of [Phil Slade and supporters] on the one hand and Smith [and supporters] on the other. They are each inclined to take extreme positions. The Smith philosophy is that the first duty is to keep the client out of court - and that it is almost a "failure" to allow one's client to be caught up in a court system which is expensive, causes delay and trauma, and is, above all, unpredictable.'

Powles noted that Smith was clear that he could serve more clients better by focussing on the running of the SLS office 'where 90% of the work is done' while Slade and Mawson[67] emphasised the value of Springvale in providing a complete service through

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[64] Interview with Sue Campbell (Clayton, 20 November 1996).
[65] Smith, above n 10, 50.
[66] Ibid.
[67] Ian Mawson had been Chair of the SLS Board and was one of the part-time supervisors.

the courts and that this would show the public that it could deliver the goods. Powles also stated:

> 'The strength of Springvale is that it provides both Smiths and Slades, both are essential. However, in my view, the capacity to deal with every person who presents at the Service is what the public wants, and the capacity to supervise every student properly is the Faculty's priority. The Service does not need more clients, attracted by Phil's "glory in court" thinking, but it does require improved capability to handle the existing flow, and to supervise the students.'[68]

Ultimately, the SLS Board (with significant leadership from two then-current students, Jon Faine and Bryce Menzies) chose to retain its focus on providing advice services to large numbers of clients rather than taking on additional advocacy work. The nature of SLS at that time was described as follows in a Course Evaluation Seminar held in October 1980: 'The pace is frantic at Springvale.' 'The phone is ringing all the time, you are dealing with crises over the phone, queuing up to get advice from Simon, fighting for a chair and a room.'[69]

The Smith approach saw solicitor-type services offered to a larger number of clients than would have been possible if the supervising staff had spent much of their time appearing in court. The heavy service focus provided greater scope for the involvement of clinic students and had long-lasting impacts on the approach to clinic at Monash.

1981–1984 Moving to a More Coherent Program

The start of 1981 saw the Law School adopt a policy in favour of full-time appointments replacing part-time clinical positions.[70] Attention was re-directed to ensuring that the University maintained funding to the clinical program. Monash Law School involvement at Doveton Legal Service halted completely. Law School involvement in the Doveton service had been criticised as a drain on resources and

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[68] Guy Powles, letter to Gerry Nash, dated 13 March 1980.
[69] Professional Practice Evaluation of the Course, Notes of evaluation Seminar for Second Semester 1980 held on 15 October 1980, 5.
[70] Minutes of meeting of the Professional Practice Standing Committee, 17 December 1980, 1.

was seen by some others 'as part of a clinical empire-building approach.'[71] The closer proximity of SLS and MOLS to the Law School prompted student reluctance to travel to Doveton. Guy Powles emphasised that the Law School did not 'cast off Doveton. We made sure there was a funded legal service to hand over to.'[72] 1981 also saw a heightened level of scrutiny of the clinical program from the central university. The budget of the Law Faculty for 1981/82 was cut by 3.1 percent and the University Administration highlighted the clinical program as an area in which cuts should be made.[73]

The reliance of the clinical program on funds from non-University sources began to increase from 1981 onwards. Late in 1981, the Board of SLS noted with concern the steady fall in the University contribution to the service's finances.[74] Writing in the *Law Institute Journal*, Carol Bartlett[75] noted 'generous stop-gap arrangements' made by the Victoria Law Foundation through 'advancing funds to meet the shortfall in teaching commitments for 1981 and the financing of further visiting Fellows from the practising profession.'[76]

The caseload at SLS was such that one full-time lawyer simply was not enough. The arrival of Maureen Tehan as a second full-time lawyer and the move away from the part-time tutor model saw a dramatic change in the experience of clinic students. From Smith's perspective, 'It was just like chalk and cheese. The continuity and the attention to detail.' Smith considers that the arrival of Tehan and Sue Campbell was a very significant change for the clinical program. 'All of a sudden, there were people in a full-

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[71] Interview with Guy Powles (Clayton, 12 December 2000).

[72] Powles notes that 'It was the recognition of Doveton as a legal aid-funded legal service that enabled us to say that we weren't deserting the community in that sense.' Powles, interview. In correspondence with the Legal Aid Commission of Victoria, the withdrawal of the Law School was explained as resulting from financial pressures. 'Most regrettably, the Law Faculty was obliged at the beginning of this year to withdraw staff and students from Doveton Legal Service. Due to financial restrictions, it seems unlikely that the Faculty will be able to re-establish its contribution to Doveton in the foreseeable future.' 'Clinical Legal Education at Monash', a paper prepared by teachers in the Clinical Legal Education program which accompanied a letter sent by Bob Baxt to the Chairman, Legal Aid Commission of Victoria, dated 2/11/81, 2.

[73] Letter from Simon Smith to Mr. R. Hatch, Acting Executive Director, Law Institute of Victoria, 20 October 1981. Ironically, at a time when the Monash Vice-Chancellor was establishing an Advisory Committee on Community Liaison, it was suggested that the clinical program be either funded from outside or eliminated. Local government funding was not available at that time for the Monash Service which assisted only students and staff of the university.

[74] Note from Guy Powles to Professor Baxt dated 20 October 1981.

[75] Carol Bartlett was a Senior Tutor in the Law School who taught in the clinical program and subsequently worked in research-related positions for the Law Institute of Victoria.

time capacity putting their heads down and thinking about it. Before that, it was all run as an extra.' [77]

Uncertainty around funding prompted considerable work to garner support from the legal profession. Judges and senior practitioners were invited to visit the clinical program and then encouraged to advocate on the program's behalf. Simon Smith perfected the 'diplomacy fruitcake' which came to be served to a wide range of visiting dignitaries.[78] Those involved consider the contact made with senior members of the University administration, including the Vice-Chancellor, by members of the judiciary and the Law Institute of Victoria to have been particularly valuable in promoting the value of the clinical program.[79] Sue Campbell later described emergency funding from the university which was made available in 1982 as having been provided 'only after considerable pressure had been exerted by judges, practitioners, Council members and politicians.'[80]

1982 also saw the conversion of the Administrative Assistant position held by Simon Smith to a lectureship. The position was advertised as Co-ordinator of Clinical Education at SLS and originally offered on a two-year fixed term basis. 'The Co-ordinator would be involved in teaching as well as administrative work and would be regarded as a full-time member of staff.'[81] In offering Smith the position, newly-appointed Dean of the Law School, Professor Bob Baxt expressed reservations regarding Smith's suitability which almost prompted Smith not to accept. 'But because it was an exciting job and a terrific opportunity, I swept that to one side.'[82]

Guy Powles considers that Simon Smith and others did not realise just how difficult the process leading to the position conversion had been.[83] Smith viewed the university link as worth fighting for to give the program legitimacy within the law school. If there was going to be continuity and the opportunity for the program to develop, there needed

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[76] Carol Bartlett, 'Towards Professional Competence – Clinical Legal Education' (1982) 56 (2) *Law Institute Journal* 121, 125.
[77] Interview with Simon Smith (Clayton, 20 November 1996).
[78] The recipe for Diplomacy Fruitcake is set out in Kerry Greenwood, *It Seemed Like a Good Idea at the Time*: *A History of the Springvale Legal Service 1973-1993* (1993), 143.
[79] Interview with Sue Campbell, Guy Powles and Simon Smith (Clayton, 20 November 1996.
[80] Sue Campbell, 'Clinical Legal Education Programme, paper prepared for the Faculty "Retreat" July 1986, 4.
[81] Memorandum from Professor Baxt to Professional Practice Standing Committee Re: Reclassification of Administrative Assistant (Springvale) dated 27 May, 1982.
[82] Interview with Simon Smith (Elwood, 14 September 2002).

to be a formal link. 'If it was forever going to be a Dean's Assistant, as the role was originally categorised, there would never be any continuity.'[84] Smith subsequently wrote that faculty acceptance of full academic status for clinic teachers 'must lead to a strengthening of the programme and in turn to the ability of SLS to attract talented lawyers.'[85] Unfortunately, attracting and retaining staff has been a recurring challenge.

Recognition of the clinical program required those involved to address related concerns around disparity in teaching loads. Academics who taught solely in the clinical program were teaching 11 months (three semesters) each year. In writing to the Dean on this issue in May 1983, Powles and Campbell suggested that it followed from the Faculty's decision to re-classify the Springvale Co-ordinator position 'that we as a Faculty must accord, again as far as practicable, "full-time" clinical teachers the same rights to regular periods of time free of teaching in which they may undertake research.'[86] Providing periods of teaching-free time would prove difficult, especially given the heavy casework and student supervision loads carried by the clinicians.

In 1983, the Monash Legal Service moved premises and became the Monash-Oakleigh Legal Service. The University provided substantial support to fit out a house backing onto the western edge of the Clayton campus. In the 1983-4 financial year, MOLS received $11,000 of legal aid funding to cover half of the cost of employing the Coordinating Solicitor.[87] This enabled 36 students to complete clinical placements and to be involved in the service assisting 1,721 clients. Law School academics including Greg Craven, now Vice-Chancellor of the Australian Catholic University, and Jude Wallace were acknowledged as generously contributing their time to MOLS. Guy Powles recalls organising the appointment of an experienced local practitioner, David Sharrock to a full-time position at MOLS. He refers to Monash bringing in practitioners 'at key times – to provide professional edge, and give the program an acceptance amongst lawyers generally in Victoria which academics alone could not have ensured. The marrying of "outsider" and "insider" was Monash's successful trick in the formative years.'[88]

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[83] Interview with Guy Powles (Clayton, 20 November 1996).
[84] Interview with Simon Smith (Elwood, 14 September 2002).
[85] Smith, above n 10, 51.
[86] Memorandum to Professor R. Baxt from Guy Powles & Sue Campbell regarding 'Leave for "full-time" teachers in Professional Practice' dated 30 May 1983.
[87] The local council contributed $2,000 while the Law School continued 'to meet most of the cost of running the Legal Service'. Monash-Oakleigh Legal Service, *Annual Report 1983-1984*, 3.
[88] Guy Powles, written communication, December 2, 2008, on file with the author.

The Monash clinic sites were developing a particular type of defensive legal aid practice with a strong focus on preparing students for a problem-solving approach to practice that quite rightly emphasised the limitations of resolving matters through the courts. The MOLS *Annual Report 1983-1984* referred to the service 'emphasizing negotiation and client self-help'.[89] Civil law matters were to maintain particular prominence in the work of both SLS and MOLS, in part due to the limited nature of mainstream legal aid services for civil matters.[90]

During 1983, Monash clinical staff commenced work on a major initiative related to developing a manual on legal practice.[91] The idea of the *Lawyers Practice Manual (Victoria)* was born and full-time Monash clinical staff were central to its development.[92] The example was set with the publication in October 1983 of the *Lawyers Practice Manual (New South Wales)* by the Kingsford Legal Centre, site of the recently established UNSW clinical program.

SLS Community Lawyer, Mary Anne Noone and clinic supervisor, Jon Faine were heavily involved in representing the Squatters Union of Victoria in litigation that made its way to the High Court of Australia in October 1983.[93] Apart from establishing a valuable precedent limiting the scope for representative orders to be made against occupiers of premises, the case also appears to have been valuable in bolstering the academic credibility of the program in the eyes of some academic colleagues. SLS staff presented a seminar to law school staff in mid-1984 regarding the litigation and its value.

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[89] Monash-Oakleigh Legal Service, *Annual Report 1983-1984*, 1.

[90] SLS also played a significant role in the development of related services, most notably the Noble Park Family Conciliation Centre. See Lynne Winzer & Linda Donnelly, 'The Family Mediation Centre: Cutting the Real Costs of Family Disputes Parts 1 & 2' (1988) 13 (2) & (3) *Legal Service Bulletin*, 73-75 & 125-127.

[91] The idea of producing such a manual had first been discussed at an Australian Legal Workers Group seminar for legal aid workers held in October 1980. Concern was expressed at the seminar that 'so much valuable practical knowledge was stored inaccessibly in the heads of those who have gained it by long experience' and that standard law textbooks did not deal with 'the actual day to day practice of the law and the questions which occupy so much of the time of inexperienced lawyers'. See Susan Campbell et al, Preface in *Lawyers Practice Manual (Victoria)* (1985).

[92] The founding editors of the Victorian manual were Sue Campbell, Guy Powles, Simon Smith and Maureen Tehan.

[93] The story of how the case found its way to the High Court is told in Mary Anne Noone et al, 'A Large and Attractive Property: Bona Vista' (1983) 8 (6) *Legal Service Bulletin* 252.

The early 1980's experience at Monash demonstrates the importance of clinical programs consolidating their position once they are established. Heavy reliance on external part-time supervisors created significant quality control issues in terms of both legal service provision and student supervision. Continuity within the program was shown to be very important as was the presence of academics based within the law school who sought to advance the interests of the clinical program. Issues around the recruiting and retaining of clinical academics were raised very squarely by the re-classification of Simon Smith's position from Administrative Assistant to Lecturer and would re-surface as SLS struggled through the mid-1980's to attract staff with the diverse range of skills and interests required of clinicians.

The mid-1980's – Close to Closing the Doors

1984 saw staffing difficulties come to the fore at SLS. Maureen Tehan had worked as a community lawyer/senior tutor since March 1981 and her departure in August 1984 resulted in a succession of short term appointments. Tehan was not replaced on a permanent basis for almost two years. During this time, Simon Smith shouldered much of the additional teaching and supervision burden.

Smith subsequently referred[94] to the following factors as explaining the difficulties encountered in attracting suitable academic staff to the clinical program:

- ◊ Salary - academic salaries were said to be falling drastically behind the levels paid by the Legal Aid Commission of Victoria;
- ◊ The Demands of the Job - 'Regrettably the "hard work" profile of legal centres seems to have a higher presence in potential applicants minds than does the positive aspect of a "hard satisfying challenge".';
- ◊ Demands of the Students - 'students can be insatiable with their "demand access" approach to their work';
- ◊ The Job Itself - 'It is an unusual job requiring a combination of Practitioner/Teacher/Scholar.'; and
- ◊ Fringe Benefits - Benefits such as access to University resources for research and private learning had not been 'readily available to full time teachers in the Clinical Programme in the same way that they are available to traditional academic staff.'

[94] Simon Smith, 'The Monash Clinical Programme' February 1987, 5-6.

The staffing difficulties at Springvale worsened during April 1985 with the departure of community lawyer, Mary Anne Noone to take up a clinical teaching position at La Trobe University where she continues to teach. April saw a public meeting of SLS supporters at which the staffing situation was outlined and the prospect of closure of the Service was seriously considered. Serious concerns were also expressed about the inadequacy of the Legal Service's premises.[95]

In the midst of these difficulties, the Monash clinical program celebrated 10 years of operation and organised for the Victorian Supreme Court Chief Justice, Sir John Young, to launch the *Lawyers Practice Manual (Victoria)*. The Manual originally contained in excess of 30 chapters (it now has more than 60) and has been updated at least four times each year since. Royalties from sales have been a valuable form of additional and independent funding for SLS. The value of the Manual in promoting the Monash clinical program was also clearly recognised with Sue Campbell describing it as the 'flagship' of the clinical program.[96]

The appointment in May 1986 of Tim McCoy to the supervisor/senior tutor position provided greater stability at Springvale. In July 1986, Sue Campbell, as Co-ordinator of Clinical Legal Education, was able to portray the program very favourably in a paper prepared for the Law Faculty Retreat. She noted that, since its review of the clinical program in 1980, the Faculty's financial contribution to the program had decreased by 33 percent, being replaced by funds from external sources.[97] Eight organisations, including the University, were listed as providing or having provided funds to the program.[98]

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[95] Greenwood, above n 78, 57-58.
[96] Sue Campbell, 'Clinical Legal Education Programme, paper prepared for the Faculty "Retreat" July 1986, 4.
[97] Ibid 1. See costings at 5 where the 1980 cost to the Faculty was stated to be $214,000 while the 1986 figure was $143,544.
[98] Ibid 2-3. The eight organisations listed were:
◊ Legal Aid Commission of Victoria - 3.5 salaries
◊ Monash University
◊ Springvale City Council
◊ Oakleigh City Council
◊ Law Institute of Victoria
◊ Victoria Law Foundation
◊ Monash University union
◊ Individual members of the legal profession

Powles described SLS as 'the conscience behind the program, coming up with innovations.'[99] Had the Monash clinical program been concentrated on the Springvale site, the staffing and accommodation difficulties may well have seen it fold at this time. The presence and sustained commitment of Powles and Campbell as senior academics, along with the determination of Smith, was no doubt significant in maintaining Law School commitment during this difficult period. Smith later recognised 'that you really needed a presence or an ambassador or someone in the faculty who gave you a presence because you couldn't rely on doing work at the grassroots and having the support of students as being your presence in the faculty.'[100] The simpler management and less demanding operation of MOLS would have helped to stabilise the program. MOLS was controlled by the Law School, located next to the University and was a smaller service with a caseload regulated through an appointment system.

Costing a Clinical Program

In her 1986 paper, Sue Campbell referred to the building of 'a small team of full-time clinical teachers committed to the clinical education method'.[101] With student demand and commitment as high as ever, there was a need for 'at least one additional Faculty member to teach in the programme regularly as part of the rotating team of Faculty-based teachers who teach the subject one semester per year'.[102]

Campbell's paper also involved the first detailed attempt to squarely address concerns raised about the financial cost of the clinical program. When Gerry Nash was Dean, 'nobody else apart from the Faculty Secretary knew how much it cost to run the clinical program.'[103] Nash's approach resonates with the approach taken by the founders of the Yale clinical program which kept the early staffing as informal as possible and sought to ensure that the clinic was not a separate item in the budget.[104]

Campbell suggested that while it might be tempting to endeavour to distinguish between the teaching aspect of the program and the operation of the legal services, this distinction was untenable because of the fundamental interdependence of the

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[99] Interview with Guy Powles (Clayton, 12 December 2000).
[100] Interview with Simon Smith (Elwood, 14 September 2002).
[101] Campbell, above n 96, 1.
[102] Ibid 3.
[103] Interview with Gerry Nash (Melbourne, 1 December 1997).
[104] Laura Holland, 'Invading the Ivory Tower: The History of Clinical Education at Yale Law School' (1999) 49 (4) *Journal of Legal Education* 504, 525. See the coverage in Chapter 4 at footnote 132 and related text.

clinical program and the legal services. 'Neither could exist without the other.'[105] Detailed costings were provided with a view to arguing that the University should increase its support for the program.[106]

The paper also identified a number of 'hidden economies' for the Faculty:

◊ While being employed at academic rates, the full-time clinical teachers were normally required to teach 48 weeks a year. Further, these teachers were all at the junior end of the academic scale;

◊ Academics involved on a part-time basis received a teaching allocation which treated one offering of the clinical program as 25 percent of their annual allocation. At the same time, the 'double points' nature of the subject[107] meant that it accounted for 33% of a full-time student workload;

◊ The substantial work done by the Co-ordinator of the program[108] was done without any reduction in workload being given to that person so that such duties were 'carried out at no cost to the Faculty'; and

◊ Pressure on Faculty teaching and office accommodation is reduced by the students and staff spending a large part of their time outside the Faculty. Reference was made to the three full-time clinicians sharing an office in the Faculty with visitors and a part-time consultant.

Whilst such hidden economies are important, it is interesting to note that each of the matters referred to also raised sustainability concerns.

Efforts had begun in 1986 to obtain funds for new premises for SLS and the SCAAB. The premises had drawn sustained criticism from all concerned. Those involved with the clinical program worked towards obtaining funds for a purpose-built building. The Springvale Council committed to supporting the project and ultimately provided $300,000 in addition to the site for the building. Grants of $150,000 were obtained

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[105] Campbell, above n 96, 5.

[106] Ibid Appendix B. Faculty expenditure amounted to 23% of total contributions to the 2 clinic sites with direct outside funding providing 19%. The remainder (58%) of the financial contributions identified were indirect or notional in nature. The most significant of these contributions were the work of the students (34% of the total) and the volunteer lawyers (16.3%).

[107] While other elective subjects carried 15 credit points (since 2000, 6 points), Professional Practice carried [except for the summer semester] 30 credit points (since 2000, 12 points) in recognition of the significant workload shouldered by participating students.

[108] The report refers to overall co-ordination, day-to-day administration, funding, representing the program to various outside bodies and liaison with management committees.

from each of the Legal Aid Commission of Victoria, the R. E. Ross Trust and the William Buckland Foundation. Monash University contributed $30,000 while the Victorian Ministry of Local Government provided $23,000.[109]

The development of the new building was an extraordinary achievement and all those involved in the clinical program give much of the credit for this outcome to Simon Smith. There can be no doubt that the very substantial community service focus of the Springvale Legal Service was a major factor in attracting such considerable funding. Smith referred to the importance of the ability of both Springvale and Monash-Oakleigh Legal Services to continue to 'put bums on seats' if external support for the program was to continue.[110]

The Late 1980's - Changes in Direction

The Monash clinical program changed tack significantly during the late 1980's. To a large extent, this was the result of personnel changes, especially at Springvale. The resolution of the Springvale accommodation difficulties with the move into the new building in December 1987 provided a springboard for reconsidering other aspects of the clinical program.

Early in 1987, Simon Smith had marked ten years teaching in the program with a comprehensive and thought-provoking paper assessing the program's state. Smith noted that student numbers in the program had settled at 108 per year (36 per semester) which provided over half the final year students with the opportunity to participate. The summer semester was inevitably the one most favoured by students as it was both shorter and ran when students had fewer competing study demands.[111] In painting a picture of the work of a clinical teacher, Smith stressed both positives (to combine working with people with research and to be involved in issues at both the grass roots and at the policy level) and negatives (the demanding nature of students and the fact that, three times a year, student changeover results in 'a major change of competent staff to a very inexperienced staff)'.[112]

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[109] Greenwood, above n 78, 125.
[110] Smith, above n 94, 1.
[111] Ibid 3.
[112] Ibid.

Smith's paper contained a very effective description of the clinical teacher's supervisory role, describing the relationship as being:

> 'as difficult as it is interesting. Whilst on the one hand the teacher is endeavouring to develop a diagnostic/problem solving ability it has to be tempered with a benevolent power of instant veto. The supervising responsibility is a subtle animal. Exercised too harshly it can crush the student. Exercised too loosely then the client can suffer. In no other law subject is this the case. In other subjects the equation is simpler - "the student stuffs up the student fails"!'[113]

Smith referred to the relationship between Monash University and SLS having become 'increasingly harmonious over the years and each passing year appears to show a new level of cooperation based on a mature understanding of the benefits of the partnership.'[114] Criticism of the program as too skills-orientated had also become less strident with 'recognition that black letter law case analysis is also a skill (even if called scholarship)' together with continuing support of the student body and the legal profession for the program.[115] Feedback received from the profession was to the effect that 'the Monash graduate is now preferred over the Melbourne graduate because of the more balanced course offered by Monash. Students with the clinical experience are regarded as 6 months ahead of their Melbourne University counterparts.'[116]

1987 had also marked the release of the Report of the Discipline Assessment of Australian Law Schools (The Pearce Report).[117] Members of the Pearce Committee had visited both SLS and MOLS and the Report contrasted the independent nature of SLS with the university control of MOLS, which the Committee found to be 'a much quieter and less stressed office than Springvale.'[118] In November 1987, SLS introduced the first ever change to its policy that anyone who attended an advice session would receive advice. A limit of 15 client interviews per session was introduced and remains in place

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[113] Ibid, 6.
[114] Ibid, 8.
[115] Ibid, 7-8.
[116] Ibid, 10.
[117] See Chapter 2, footnote 39 and related text. In 1990, Weisbrot described the Pearce Report as 'oddly ambivalent about clinical programs'. See David Weisbrot, *Australian Lawyers* (1990) 134.
[118] Ibid 125.

to the present day. Another change took place with the closure of the Wednesday morning clinical advice session.[119]

Simon Smith viewed the reduction in advice sessions and client numbers as 'a trade off between being accessible but also trying to keep it controllable', part of a move away from being a 'crisis legal practice' and 'moving on the educational front to be a much tighter ship'.[120] Smith also recalls that the number of students involved in each session had been an issue. He could recall semesters where he supervised five sessions, each with six students.[121] Clearly, such supervision loads were not sustainable.

Raising the Profile of Law Reform

With accommodation issues being addressed and case supervision loads reduced, SLS enjoyed a period of relative stability. This provided the opportunity for a greater focus on law reform activities. While much of the law reform work undertaken by Victorian community legal centres (CLCs) and legal aid agencies focussed on criminal justice and family law issues, law reform at SLS emphasised grassroots civil justice issues. Two such issues were the regulation of the billing practices of solicitors and the inadequacies of Victorian laws relating to motor vehicle accidents.

Together with Simon Bailey from Fitzroy Legal Service, Simon Smith was a driving force behind work done by several CLCs aimed at reforming laws concerning motor vehicle property damage.[122] A report, *Urgent Repairs Needed*, was published by the Federation of Community Legal Centres in October 1988[123] recommending the removal of such property damage claims from the jurisdiction of the Magistrates Court, to be replaced by an informal specialist tribunal limiting legal representation. This proposal

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[119] What had been nine clinic-based sessions per week (morning sessions each weekday and evening sessions Monday through to Thursday) in 1980 became eight sessions each week with three of these being conducted by volunteer lawyers (many of them former students) with no input from current clinical students. There were to be five clinic-based advice sessions each week with both of the full time student supervisors being responsible for two sessions. The fifth session was to be supervised by another member of Monash academic staff. The sixth session was subsequently restored.

[120] Interview with Simon Smith (Elwood, 14 September 2002).

[121] Interview with Simon Smith (Clayton, 20 November 1996).

[122] 'The weaknesses and defects of the law in this area were all the more evident to the legal centre workers involved in the group by reason of their casework experience.' See Jeff Giddings, 'Casework, Bloody Casework' (1992) 17 (6) *Alternative Law Journal* 261, 264-5.

[123] Simon Bailey, Suzanne Liden & Simon Smith, *Urgent Repairs Needed: Motor Vehicle Property Damage in Victoria* (1988) Federation of Community Legal Centes (Victoria).

was adopted in a draft bill by the Victorian Labor Government but intense lobbying from the private legal profession saw the proposal abandoned.[124]

Towards the end of his time at SLS, Smith encountered a series of instances of clients seeking advice regarding proceedings issued against them by a local solicitor, Peter C. Neil, seeking payment of legal fees for work done years earlier. The clients generally stated that they had previously paid the fees, often as long as five years ago. A press release generated a considerable local response.[125] Smith then sent clinic students to various Magistrates Courts to search for claims commenced by Neil and at least 500 such summonses were identified. SLS started to act for some of these clients in defending the claims.

Smith also acted for many of these clients in complaining to the Law Institute of Victoria in relation to Neil's actions, preparing a submission to both the Institute and the Victorian Attorney-General, calling for Neil to be disciplined and for reform of the *Legal Profession Practice Act*. Media work culminated in the *60 Minutes* television program broadcasting a report on Neil's actions which Smith credits with having forced the Law Institute into taking action. Amendments were subsequently made to the *Legal Profession Practice Act* introducing the notion of professional standards and including greater prescription of the standards expected of practitioners.[126]

Smith emphasises the importance of the role played by clinic students in this reform work:

> 'The students were the research facility and they were the enthusiasm and the energy. They had to be directed and given a role to do because you're talking about some pretty big forces at work if you step out of line here. You've got the media and lawyers hanging around, the Law Institute and the Attorney-General ... and you're making pretty serious allegations against someone.'[127]

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[124] The Report did, however, prompt important changes to the types of motor vehicle property damage policies offered by insurance companies. Giddings, above n 122.

[125] 'That got picked up by the local paper. It was in sort of vague terms about Springvale Legal Service experiencing a number of cases about a local practitioner suing customers for not paying their bills. Did that bring them in. It brought in about another 20 cases.' Interview with Simon Smith (Elwood, 14 September 2002).

[126] Interview with Simon Smith (Elwood, 14 September 2002).

[127] Interview with Simon Smith (Elwood, 14 September 2002).

With Smith's departure from SLS in March 1988, Adrian Evans took over as Director of the Service. The new building was officially opened on May 20, 1988 and this provided the opportunity to review dimensions of the service's operations. Evans sought to develop a more structured approach to establishing the priorities of both SLS as a service and the Monash clinical program more generally.[128] In doing so, he no doubt benefited from the institutional memory and continuity provided by Sue Campbell and Guy Powles. Evans continued work on the 50-odd SLS files relating to claims against Peter C. Neil. This work persuaded Evans that developing socially responsible lawyers required the community 'to deal with lawyers who are rogues'. He recognised the ineffectiveness of the Law Institute of Victoria in not enforcing the standards the public wanted enforced. 'We couldn't be coherent as a clinical program unless we were addressing both ends of the problem.'[129]

Promoting Social and Community Responsibility

The early 1990's saw the Monash clinical program develop an increasing emphasis on community development activities linked to the work of clinic students. While SLS had for much of the 1980's employed a full-time community lawyer,[130] their work had not been comprehensively integrated with the work of clinic students. While various extra-curricular opportunities existed, it was felt that this should be formalised through community development-focussed group work with clearly articulated objectives.[131] Adrian Evans wrote in 1990 about the development of socially responsible lawyers. 'Clinical legal education can only reach its full social and educative potential in a *community* environment.'(emphasis in the original)[132]

In structuring the community development dimensions of the clinic, Evans worked with then-SLS practice manager, Roy Reekie and Community Legal Education Worker, Phillip Summerbell. They 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.[133] This approach emphasised that

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[128] Interview with Adrian Evans (Clayton, 17 October 1997).
[129] Interview with Adrian Evans (Clayton, 17 October 1997).
[130] See Greenwood, above, note 78 for details of the people who held this post. Mary Anne Noone, Louise Kyle, Chris Slattery, Phillip Summerbell and Steve Wettenhall.
[131] Interview with Adrian Evans (Clayton, 20 November 1996).
[132] Adrian Evans, 'Developing Socially Responsible lawyers' (1990) 15 (5) *Legal Service Bulletin* 218, 219.
[133] Roy Reekie, 'Creating Painters: The Art of Being a Clinical Law Teacher (Part 1)' (1991) 9 (2) *Journal of Professional Legal Education* 137, 140 & Interview with Adrian Evans (Clayton, 17

student empowerment and client empowerment should ideally proceed together. In Evans' view, close facilitative supervision enables students to begin to appreciate the power of working together, firstly as students and in the future as lawyers. The student response to this is 'profound, once they realise the power dimension'.[134] Supervisors needed to be 'involved in each step with the student – at the point of action, at the point of reflection, at the point of observation and the testing stage'.[135]

In a 1991 paper, Reekie emphasised Summerbell's contribution, outlining work on a series of community development projects addressing issues of environmental law, planning law and youth advocacy, along with the legal professional regulation and motor vehicle accident law reform work referred to earlier in this chapter.[136] In turn, Evans emphasises the contribution made by Reekie, who left SLS in November, 1992. Reekie's attention to detail enabled Evans to implement ideas which he couldn't have done on his own.[137]

The community development component has now been a major aspect of the Monash clinical program for close to 2 decades. The range of projects has broadened and now includes a strong emphasis on corrections-related projects.[138] With the continuing efforts of Bronwyn Naylor, a Law Faculty academic interested in clinical education, the program has completed various projects in conjunction with the Port Phillip Prison, Victoria's main men's prison.[139] Naylor and Jacobson emphasise that the community development work 'clearly provides significant educational benefits for students in the clinical program. ... The values of community development underpin and reinforce the students' case work.'[140]

October 1997). Client action groups were developed for the purpose of empowering both clients and students. 'This involved students experiencing the ways in which the legal system impacts on the client group they are working with, and then being asked to reflect, at key points during the semester, on how the experiences of the client group were effecting the student group.'

[134] Interview with Adrian Evans (Clayton, 17 October 1997). 'The reason that is possible is because of the supervision methodology which operates within the community development work groups.'

[135] Reekie, above n 133, 147.

[136] Ibid 145-6.

[137] Interview with Adrian Evans (Clayton, 17 October 1997).

[138] Bronwyn Naylor & Sharon Jacobson, 'Putting the Boot on the Other Foot' in Bronwyn Naylor & Ross Hyams (eds), *Innovation in Clinical Legal Education: Educating Lawyers for the Future* (2007) 60.

[139] Ibid 61-62. With funding from the Victoria Law Foundation, a program was devised with substantial input from prisoners and prison staff to use dramatic methods to provide information to remand prisoners on 'what happens when they to court for their trial'.

'The Clinic Begets Other Initiatives' - Emphasising Civil and Family Justice

For the past three decades, the Monash clinic sites have provided very substantial volumes of legal services to their communities. SMLS, co-located with the SCAAB and with large pools of both clinic students and volunteer lawyers, conducts thousands of interviews each year.[141] In its 2004-5 Annual Report, SMLS identified more than 100 volunteers and 85 clinic students who contributed to legal advice sessions. Sustaining such substantial casework levels without compromising the student experience requires additional resources from other organisations. The Monash program has had considerable success in this regard. In 1989, SLS joined with the SCAAB to establish a federally-funded service to advise custodial parents on the new Child Support Scheme. A new staff member for each of the partners and a part-time administrative worker were employed to deal with this workload.[142]

In 1995, the federal Labor government led by Prime Minister Paul Keating released *The Justice Statement*, its response to the Access to Justice Advisory Committee Report.[143] *The Justice Statement* included various initiatives seeking to enhance the very limited availability of legal aid-type services for civil law matters. A strong civil law track record enabled SMLS to obtain *Justice Statement* funding for a civil litigation advocate. The funding application for this position emphasised the clinical program and the substantial SLS caseload generating a consistent level of casework readily accessible for such an advocate to work on with involvement of students. The Attorney-General's Department accepted that the SLS caseload, generated by the clinical program, made the position viable. 'The clinical begets a lot of other initiatives.'[144]

Monash clinicians, especially Adrian Evans, were closely involved in national efforts to raise the profile of clinical legal education with successive federal governments in the 1990's.[145] The 1998 Federal budget announced funding for the Attorney-General's

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[140] Ibid 62.

[141] In the 2008-2009 financial year, SMLS provided legal advice to 2,864 clients. See *Springvale Monash Legal Service Annual Report* 2008-9, 8. In 2004-2005, the corresponding figure was 2758. See *Springvale Monash Legal Service Annual Report* 2004-5, 51.

[142] Greenwood, above n 78, 89.

[143] Jeff Giddings & Mary Anne Noone, 'The 1990s, a Time of Change for Legal Aid in Victoria' in Jeff Giddings (ed), *Legal Aid in Victoria: At the Crossroads Again* (1998) 47-8. Legal aid funding from the Federal Government was to be increased by $68.7 million over 4 years. It should be noted that much of the additional funding was withdrawn the following year following the election of the Howard Liberal-National Coalition Government.

[144] Interview with Adrian Evans (Clayton, 17 October 1997).

[145] Monash in particular was recognised for its leadership role in Australian clinical legal education through the arrangements made for its clinicians to mentor the newly-established

Department to support university clinical legal education programs and early in 1999, Monash was one of the four law schools that secured funding to establish the Family Law Assistance Program (FLAP) supporting family law clients without legal representation.[146] The FLAP service was located at MOLS and initially relied heavily on the use of self-help workshops.[147] FLAP has been able to focus on providing advice to self-represented litigants involved in relatively complex family law work, utilising very experienced practitioners with support from students.[148] FLAP has also provided duty lawyer services at the Dandenong Registry of the Federal Magistrates Court.

These developments indicate the value to the Monash clinical program of having strong links to a range of services, enabling delivery of a sufficient level of services to attract and retain government and other support. In this regard, the clinical program provides an example of operating with an integrative framework.

Developing the Student Experience

This next section of the chapter examines ways in which the Monash clinical program has taken steps to continue to enhance the learning experiences of students. These developments can be viewed as key parts of the natural maturation of the program and were facilitated by the stability of the program through the 1990's and early years of the new century.[149]

Again, it is important to recognise the value of high quality premises. The new SLS building from 1988 and extensive renovations for MOLS in 1998 enabled the clinical academics to concentrate on the student experience. As Sue Campbell states, 'Adrian has always had a vision that the program should have professionalism at its centre.

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clinical program at Murdoch University, which had been funded on a pilot basis in 1996 by the Howard Liberal-National Coalition Government. See Chapter 8, footnotes 71-72 for further details.

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

[147] The workshop model was found not to cater for the diverse individual needs of service users such that it was replaced with individual client interviews. At a time of very significant reductions in federal legal aid spending, clinic-based services such as FLAP no doubt represented a relatively inexpensive form of service delivery, with the added benefit of broadening the legal education of participating students.

[148] Campbell & Ray, above n 146.

[149] In view of the earlier coverage of the lightening of supervision workloads in the late-1980's and the formalisation of community development work groups in the 1990's, those developments will not be further considered in this section.

Probably without the new building, Adrian's vision could never have been achieved.'[150] The MOLS premises were rebuilt in 1998 following successful efforts involving Ross Hyams and Sue Campbell to obtain University funding. The MOLS renovations also meant that if problems ever arose with the funding of SLS, the focus of the clinical program could be switched to MOLS with its increased capacity.[151]

Reducing Student Caseloads

In the early 1990s, each clinic student was expected to be working on between 20 and 30 client files per semester. In addition to supervision concerns, this was viewed as tending to promote 'a very superficial file handling culture' with limited attention to student reflection. 'That sort of reflective approach to file management is not encouraged by high numbers.'[152] In the mid-1990's, the load for each SMLS student was reduced to around 12 files at any one time along with contributing to a community development task group.[153] Along with reducing caseloads, opportunities have also been created for students to extend their learning in various ways.

Specialist Programs

The contribution of Monash to the development of specialist clinical programs in Australia was discussed in Chapter Three. In 1996, Adrian Evans wrote about the establishment of a multi-disciplinary clinic addressing the complex issues faced by victims of sexual assault.[154] Fay Gertner (MOLS Coordinator) and Carolyn Worth (Coordinator of the South East Centre Against Sexual Assault [SECASA]) have outlined the establishment and operation of this specialist clinic[155] Having observed similar clinics overseas, Evans had approached SECASA and a pilot program commenced in

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[150] Interview with Sue Campbell (Clayton, 17 October 1997).
[151] Interview with Sue Campbell (Clayton, 17 October 1997).
[152] Interview with Adrian Evans (Clayton, 17 October 1997).
[153] Interview with Adrian Evans (Clayton, 17 October 1997).
[154] Adrian Evans, 'Specialised Clinical Legal Education Begins in Australia' (1996) 21(2) *Alternative Law Journal* 79.
[155] Fay Gertner & Carolyn Worth, 'Compensating Sexual Assault Victims: The Development of a Specialist Legal Clinic' in Bronwyn Naylor & Ross Hyams (eds), *Innovation in Clinical Legal Education: Educating Lawyers for the Future* (2007) 53. See also Fay Gertner & Carolyn Worth, 'Sand, Sharks and Laboratory Rats – The Development of a Specialist Legal Clinic' (Paper presented at the 3rd International Journal of Clinical Legal Education Conference, Melbourne, July 2005).

1995.[156] It is now offered for academic credit and located at SMLS rather than SECASA to ensure effective access to legal supervision.[157]

Another specialist clinic, the Family Law Assistance Program (FLAP), was discussed earlier in this chapter.[158] This clinic 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'.[159] They consider FLAP to have been 'the most "successful" of the Monash specialist clinics in terms of continuity of client demand, student demand and funding.[160] FLAP has included student advocacy work which has also been developed in other aspects of the Monash clinical program.

Student appearances

The Monash clinical program has played an important role in promoting arrangements enabling suitable students to represent clients in court proceedings. As early as 1979, Gerry Nash had raised the prospect of such arrangements.[161] Through the 1980s, the development of a student appearance program was considered several times.[162] In 1992, the Monash clinicians again sought to establish such a program, this time with the Magistrates Court and supported by the Law Institute of Victoria[163] and the Legal Aid Commission of Victoria. The cases in which students were to appear were heavily

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[156] Evans anticipated benefits for both students and SECASA clients while the motivation of SECASA staff to participate came from their serious concerns with the poor quality of services provided to their clients by private legal practitioners. Gertner & Worth, above n 155, 54.

[157] Originally, only female students who had already demonstrated their suitability for such work through their completion of the Professional Practice course were able to participate in this advanced volunteer clinic. It also admits male students who have completed the Professional Practice course. Gertner & Worth, above n 155, 55.

[158] Campbell & Ray, above n 146. They also refer very briefly to the second specialist clinic established at Monash, the Forensic Psychology and Sentencing Clinic. This was operated jointly with students from the Monash Department of Forensic Psychology to provide psychological assessments and the preparation of detailed sentencing material for clients charged with relatively serious criminal offences. It suffered due to a lack of clients for the service due to overlap with services offered by Victoria Legal Aid. See Campbell & Ray, above n 146, 75

[159] Ibid.

[160] Ibid 76.

[161] Nash, above n 8, 16. While noting the lack of legislative provisions enabling such student appearances, Nash suggested he 'would be happy for many of the students who have reached the sixth or seventh week of their course to appear in simple debt or traffic cases.'

[162] There was a false start in 1988 when a proposal was forwarded to the Family Court. While Chief Justice Alistair Nicholson considered such a scheme to be a good idea, one of his fellow judges raised concerns regarding the need for a legislative change to enable its establishment. Interview with Sue Campbell (Clayton, 17 October 1997).

[163] Sue Campbell recalls having received unanimous support from the Council of the Law Institute of Victoria. Interview with Sue Campbell (Clayton, 17 October 1997).

circumscribed and guidelines made it clear that the scheme would not take work away from private practitioners.[164]

The student appearance program officially commenced at the beginning of 1993. Students appeared in a range of courts, primarily in Dandenong but also Melbourne and Frankston, supervised either by a clinic teacher or a private practitioner attending the court on other matters. In 1994, court advocacy became an optional assessment item for clinic students and this assessment arrangement still operates. Rather than prepare an assignment, students could do two court appearances and write a report on these experiences. Non-English Speaking Background people facing relatively minor matters have been a priority client group for student appearances as by the clinics.[165]

Student appearances continue to play an important part in the Monash clinical program, offering the 'potential to strengthen a core objective of legal education: skilled advocacy.' When a student represents a client in court, they are 'intensely engaged in the development of skills, in understanding how to behave ethically as an advocate and fundamentally in assisting not just the advancement of justice, but their own visceral recognition that they have an actual role to play in achieving that goal.'[166]

Different members of the Monash clinical team have made use of a range of approaches to refine the learning experiences of students and this process has been a key part of the continuing development of the program. The strong service focus of the Monash program appears to have laid the foundations for a clinical program that could attract external funding as well as support from the legal profession. This was in turn important in enabling further development of the learning opportunities provided to clinic students.

The impact of the educational experience for clinic students was acknowledged in a novel way in 2006 when a former MOLS student, Fiona Geminder, was instrumental in

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[164] The proposal then received support from the Chief Magistrate, Sally Brown and from most magistrates when it was raised at a Magistrates Conference. Student appearances were to be at the discretion of the presiding magistrate. The Family Court was then approached with Justice Frederico (Judge Administrator of the Southern Region) enthusiastically supporting the program and suggesting it might be run across the country. Interview with Sue Campbell (Clayton, 17 October 1997).

[165] Interview with Sue Campbell (Clayton, 17 October 1997).

the decision of her family's charitable foundation to support MOLS by way of a grant of $500,000, spread over five years.[167] This is the most substantial private grant made to any Australian clinical program.

Working with the Law School

The dynamics of the relationship between the clinics and the law school remain central to the development of the Monash clinical program. This section of the chapter identifies how these dynamics have shaped the program in a range of important respects.

Research Expectations

Research expectations have been significant in the development of the Monash clinical program. Academics actively involved in student supervision have faced the continuing challenge of developing strong research profiles. The relentless, time-consuming nature of student and client demands have required a commitment to casework that limits the opportunity to engage in scholarly research activities. This perennial issue has become more, rather than less, significant over time.

As early as 1984, the then Director of Research in the Monash Law Faculty, Professor Richard Fox, wrote to the Dean articulating a concern often expressed by clinical teachers that academics who devote their time whole-heartedly to the clinic may later find themselves at a disadvantage in securing promotion because of reduced research productivity. Contributions to teaching, community service and administration of the legal service 'are not seen by those who place prime value on research as compensating for an apparent weakness in their publication record.'[168]

Fox considered it undesirable for the Law Faculty to attempt to have some of its academics exempted from obligations to undertake research or to base promotions on considerations which took no account of research productivity. He rightly considered that acceptance of the clinical program and the work of its staff as part of mainstream academic life would benefit from a built-in research element. Fox suggested that one

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[166] Adrian Evans & Ross Hyams, 'Independent Evaluations of Clinical Legal Education Programs: Appropriate Objectives and Processes in an Australian Setting' (2008) 17(1) *Griffith Law Review* 52, 66.

[167] Fay Gertner <Fay.Gertner@monash.edu> email (26 August 2010).

[168] Memorandum to Professor R. Baxt from Professor R. Fox re. Research and the Clinical Legal Education Programme dated 30 July 1984.

way of making research an integral component was for clinicians to meet at the beginning of each year 'to agree upon a project for the balance of the year to be undertaken as a team enterprise.'[169] It is interesting to note the focus on clinical teachers undertaking greater research rather than mainstream academics harnessing the potential for applied research offered by clinics.[170]

During the early-1990's, the clinical program benefited from the involvement of Andrew Goldsmith, a research-focussed and relatively senior academic in the Law Faculty. Both Adrian Evans and Sue Campbell considered it important to encourage the involvement in the clinic of interested faculty colleagues. While Goldsmith did not have a background as an experiential teacher, he nevertheless was able to make a significant contribution over three years, supervising students over the summer semester. Goldsmith recognised that clinicians needed 'to start publishing, writing and talking about what we were doing and why' and encouraged both Roy Reekie and Evans to pursue their respective research agendas.[171] Goldsmith, who subsequently moved to Flinders University of South Australia, also published several journal articles and book chapters emphasising the importance of clinical teaching methods in enabling Australian law schools to overcome their shortcomings.[172]

The Monash clinical program hosted the 2005 *International Journal of Clinical Legal Education* Conference and showcased the program's work in a range of areas, including an ongoing research agenda related to the professional values of early career lawyers and the role of clinic experiences in the development of such values. A book drawing on papers presented at the conference was published in 2007 and included six contributions from people involved with the Monash clinical program.[173]

Adrian Evans emphasises both the challenges and the importance of clinic site academics seeing themselves as having dual roles, including some research responsibilities. The Law School has developed a clinical research cluster for staff with

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[169] Ibid 2.
[170] This alternative perspective was suggested to the author by Simon Smith.
[171] Interview with Adrian Evans (Clayton, 17 October 1997).
[172] Andrew Goldsmith, 'An Unruly Conjunction? Social Thought and Legal Action in Clinical Legal Education' (1993) 43 *Journal of Legal Education* 415, Andrew Goldsmith, 'Why Should Law Matter? Towards a Clinical Model of Legal Education' (2002) *UNSW Law Journal* 721 & Andrew Goldsmith & David Bamford, 'The Value of Practice in Legal Education' in F. Cownie (ed) *Stakeholders in the Law School* (2010) 157.

a connection to legal practice, in part so that the clinical program is also seen by the law school as developing sustainable research objectives. Members meet regularly, identifying opportunities for research and collaboration. There has also been a more systematic approach to developing the research methods of clinicians. Evans notes the time-consuming nature of this process and that its ongoing implementation can easily be overtaken by practice management issues.[174]

New Dean = New Times

Just as the establishment of the Monash clinical program was very heavily influenced by Gerry Nash, both as a teacher and as Dean, subsequent deans have brought with them particular approaches that have impacted on the clinical program. Professor Bob Baxt was to become a strong supporter of the program while his successor, Professor Bob Williams had delegated considerable responsibility for the program to Sue Campbell.[175] With the arrival of Professor Stephen Parker as Dean in 1998, the management of the clinical program changed. Parker took an active interest in the program and questioned the need for two clinic sites. Fortunately, Parker's early time as Dean coincided with the arrival of financial support for the clinic from the Federal Attorney-General. Subsequently, there was a process of formalising the relationship between the Law Faculty and SLS. This led to a name change for SLS, which in 1999 became known as the Springvale-Monash Legal Service (SMLS). This change was the subject of considerable debate by the SLS Board and can be seen as part of a significant change in the relationship between the legal service and the law school.[176]

Parker was also instrumental in the promotion of Sue Campbell from Associate Professor to Professorial Fellow in Legal Practice. This occurred in 2000 and was the first Australian example of a clinic academic being promoted to the rank of Professor,[177] marking a significant achievement on Campbell's part. The professorial appointment would require renewal after five years if Campbell was to retain the title of Professor. This was to become a significant issue with Parker's departure in 2004 and the appointment of Professor Arie Frieberg as Dean. Freiberg came to the view that the University guidelines on professorial appointments meant that with the

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[173] Bronwyn Naylor & Ross Hyams (eds), *Innovation in Clinical Legal Education: Educating Lawyers for the Future* (2007).
[174] Interview with Adrian Evans (Clayton, 11 June 2008).
[175] Interview with Simon Smith (Elwood, 14 September 2002).
[176] *Springvale-Monash Legal Service Annual Report* 1999-2000, 4.

completion of her fellowship, Campbell's position would revert to an Associate Professorship. This was significant in Sue Campbell's departure from the law school.[178] In 2007, Campbell was made a Member of the Order of Australia for 'service to the law, particularly through the development of clinical legal education in Australia and community services in Victoria'.[179]

Adrian Evans and Ross Hyams have also noted how the clinics can be influenced by other members of the law faculty senior executive: 'Marked changes of direction can occur internally also – for example, when new key associate deans are appointed or significant complaints seem to appear overnight.'[180] This is discussed further below in the context of the review of the clinical program conducted in 2006.

Clinical Integration Initiatives

Monash has been a national leader in developing a range of initiatives to integrate clinical insights and teaching into the broader teaching activities of the Law Faculty. Ross Hyams has played a lead role in these activities. In a 1997 article, Hyams identified various Monash integration initiatives and emphasised the roles clinic should play in the development of a comprehensive and coherent legal education. He argued that the integration of a range of teaching methods was 'quite easily attainable. It would simply require more effort and preparation than that required for the "lecture only" method.'[181]

Stephen Parker's deanship coincided with two key initiatives designed to integrate clinical teaching methods more broadly across the law school. These were a project to integrate ethics and skills materials across the LLB program and the development of a Practical Legal Training program to prepare law graduates for admission to practice.

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[177] Neil Rees had been appointed Foundation Dean of the Newcastle Law School at Professorial rank.

[178] Since then, Campbell has retained a strong link with the Monash clinical program, including as a member of the SMLS Management Committee. She was also appointed by the Victorian Attorney-General to undertake a review of postgraduate legal education. See *Review of Legal Education Report: Pre-admission and Continuing Education*, 2006, Department of Justice.

[179] www.itsanhonour.gov.au/honours/honour_roll/search.cfm?aus_award_id=1133734&search_type=simple&showInd=true (last accessed 31 October 2010).

[180] Evans & Hyams, above n 166, 58.

[181] Ross Hyams, 'The Teaching of Skills: Rebuilding – Not Just Tinkering Around the Edges' (1997) 13(1) *Journal of Professional Legal Education* 63.

Both projects relied heavily on the expertise of Sue Campbell and Guy Powles for their development and had the enthusiastic support of Parker.[182]

The project on the integration of skills and ethics, known as Skills, Ethics and Research (SER), was wound up in 2008, a major disappointment to all involved. The project was ambitious in seeking to integrate learning activities relating to skills and ethics into traditional substantive law courses including Torts, Contract and Administrative Law. The program met with student resistance as it attracted inadequate academic credit for the amount of work required. 'It was designed to be tough in order to give it credibility but students hated it because it was a great deal of work for little credit.'[183] Each of the four modules accounted for only half of a standard subject load (three points compared to the standard six points). The project was also under-resourced, involving only two teachers (Andrew Crockett and Damien Knowles) who were brought in to teach the program and whose responsibilities were not integrated across the faculty, leaving them relatively isolated.

Adrian Evans considers that the principal reason for the demise of the SER Program was that 'the cultural issues raised by attempts at clinical integration were not adequately addressed'.[184] The challenge to have academics in the relevant substantive courses accept the legitimacy of skills-related teaching was never achieved as the teachers were not convinced of the need to renovate their courses.

The other significant integration example was the development of the Postgraduate Diploma in Legal Practice (PDLP), a course of study for law graduates to qualify them for admission to legal practice. Having commenced operations in 1999, the program has now been discontinued by the Law Faculty. It appears that, more than anything else, this was caused by the university requirements for such postgraduate programs to generate substantial revenue streams not achievable by the PDLP. Rather than the closure being seen as the closure of a clinic, it was viewed as an activity that was not part of the core business of the Law Faculty which was not generating sufficient revenue to justify its retention.[185]

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[182] Interview with Adrian Evans & Ross Hyams (Clayton, 11 June 2008).
[183] Interview with Ross Hyams (Clayton, 11 June 2008).
[184] Interview with Adrian Evans (Clayton, 11 June 2008).
[185] Interview with Adrian Evans (Clayton, 11 June 2008).

A more modest integration project, the 'Clinical Buddy' process has recently been outlined by Ross Hyams. It involves linking clinic students, who are close to completing their law degree, with first-year law students.[186] This type of collaborative process, which was pioneered in Australia by the UNSW clinical program in 1998, can go 'some way to "humanise" the legal system for new students, facilitating interpersonal relations whilst building a bridge across the abyss that divides "law as taught in the lecture theatre" from "law as experienced in the profession"'.[187] Such humanisation is likely to be important in addressing the growing cynicism of law students as they progress through their studies.[188]

Reviews and External Scrutiny

The Monash clinical program had been operating for more than 30 years before it was the subject of a formal review. In the second-half of 2006, a comprehensive review was conducted and it is appropriate to complete this case study with an analysis of that review process, including preparation for the review and its aftermath. The confidential nature of the review process makes it difficult to comprehensively analyse what that process can reveal regarding the sustainability of the Monash clinical program. Whilst I was a member of the three-member panel which conducted the review, the details of the submissions to and deliberations of the panel cannot be disclosed.

The review process is representative of the challenges involved in an established Australian clinical program maintaining a prominent place within its law school and raises important sustainability issues. Adrian Evans had anticipated the conduct of such a review and had invited a leading English clinical academic, Hugh Brayne, to conduct an informal review when he visited Australia in 2003. While the recommendations from that review were kept in-house, Brayne and Evans wrote a useful account of how clinical programs might most productively engage with quality assurance practices, recognising the reality that 'clinics will be increasingly subject to scrutiny for quality assurance purposes and that the clinical movement should begin to debate how to

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[186] Ross Hyams, 'Clinical Buddies: Jumping the Fact-Law Chasm' in B. Naylor & R. Hyams (eds) *Innovation in Clinical Legal Education: Educating Lawyers for the Future* (2007) 42.
[187] Ibid.
[188] Ibid 45. Hyams also sees the buddy system having benefits in terms of early identification of students not suited to clinic-based learning, saving supervisors 'much angst, time and effort'.

respond to such demands.'[189] While the emphasis of Brayne's report was upon trusting assessment, not fault-finding, there were issues which needed to be addressed.[190]

One revealing and publicly accessible account of the dynamics surrounding the 2006 Review comes from SMLS President, John O'Sullivan in the Service's 2006-7 *Annual Report*. From the perspective of a clinic partner organisation, Sullivan described the Review as 'essentially a cost-cutting exercise' and noted with concern the nature of the series of questions the Law School had asked the Review Panel to consider.[191] Sullivan describes an uncertain and anxious atmosphere.

> 'Morale slumped and levels of workplace stress skyrocketed … and everybody felt disillusioned about the Faculty's apparent indifference to the direct connection between the funding of its clinical program and the quality of the service SMLS provides to the Springvale community.'[192]

O'Sullivan's comments indicate the strength of SMLS concerns regarding the Law School's lack of consultation regarding the conduct and outcomes of the Review. He identified, 'with the benefit of hindsight' that the historically close relationship between SMLS and the law school had changed significantly following the move of the law school in 1999 to enter a formal Memorandum of Understanding (MOU) with SMLS. The MOU was seen as representing a shift away from 'the previous longstanding sense of mutual commitment to a single shared common goal' to a 'formal recognition of competing interests: the Faculty's interest in educating students; and SMLS's interest in providing legal services and promoting social justice.'[193] In conclusion, O'Sullivan noted that SMLS should do everything it could to preserve it's relationship with Monash, a partnership that 'has been, and continues to be, an extremely valuable one' but then noted that 'SMLS is mature enough to go it alone, if it has to.'[194]

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[189] Hugh Brayne & Adrian Evans, 'Quality-Lite for Clinics: Appropriate Accountability Within "Live-Client" Clinical Legal Education' (2004) 6(1) *International Journal of Clinical Legal Education* 149, 150.
[190] Ibid 161.
[191] John O'Sullivan, 'Chair, SMLS Board: A Personal Reflection' *Springvale Monash Legal Service Annual Report 2006-7* 11.
[192] Ibid.
[193] Ibid 12.
[194] Ibid.

This makes it clear that review processes can generate substantial antagonism and need to be planned, conducted and implemented carefully. Since the Review, Adrian Evans and Ross Hyams have written an article drawing insights from the review process at Monash seeking to assist clinicians encountering similar reviews.[195] They highlight the importance of careful preparation if the review process is to be as constructive as possible. Such a review can present a 'strategic opportunity to expand clinical consciousness in a law school.'[196] Importantly for program sustainability, they note that, once a review cycle is put in place, subsequent reviews are likely to closely examine the implementation of earlier review recommendations.[197]

A range of issues can be considered in a clinical review, from pedagogical to budgetary and administrative. Evans and Hyams emphasise the significance of a clinical program effectively mobilising its stakeholder network. Clients, former students and prominent members of the legal profession and judiciary are seen as important potential allies. The aftermath of any review needs to be approached sensitively with respect shown to any negative feelings about the review.

> 'There will always be some of these because every review will to some extent be flawed in its execution, even if outcomes are reasonable. Where outcomes are negative despite the thoroughness of input from clinical staff, a debrief will be needed before disappointed staff can summon the energy to prepare for any future campaigns, remembering that review recommendations are no more than that.'[198]

Conclusion - Continuity amidst change

This chapter has documented the development of the Monash clinical program. From the informal student-driven, client service-dominated program of the 1970's has emerged a program of real significance at one of Australia's largest and most prominent law schools. Locations, names, priorities and personnel have all changed over that time and will no doubt continue to change. The Monash experience of clinical legal education will be analysed in Chapter Nine with the analysis framed by the

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[195] Evans & Hyams, above, n 166.
[196] Ibid 55.
[197] Ibid 81.
[198] Ibid 81.

factors identified in Chapter Four as relevant to the establishment and sustainability of clinical programs.

The Monash clinical program appears to have benefited greatly from the continuity provided by key program members, in particular Simon Smith, Sue Campbell, Guy Powles, Adrian Evans and Ross Hyams as well as the more recently-arrived directors of SMLS and MOLS, Helen Yandell and Fay Gertner. The maintenance of a critical mass of clinic staff has also been very important. In 1997, Sue Campbell noted one of the strengths of the Monash program as:

> 'the absolute contrast between Adrian at one end of the spectrum, who's always coming up with grand new ideas, and Ross, perhaps at the other end with a healthy skepticism about particularly high-flying ideas. I'm in the middle. I tend to say "Yes but how do you actually do it?". And Guy, who is more on the Adrian end of the spectrum. Between us all, we manage to use Adrian's good ideas and turn them into something that is practical.'[199]

Evans and Hyams, having moved (in 2000 and 2005 respectively) from SMLS to being based in the Law Faculty now tend to play the roles once filled by Powles and Campbell. An important sustainability issue relates to how future groups of clinic-based academics will be identified and encouraged.

[199] Interview with Sue Campbell (Clayton, 17 October 1997).

Chapter Six - The University of New South Wales Clinical Program

'Looking back, it was a truly extraordinary place'[1]

Introduction

The clinical legal education program operated by the law school at the University of New South Wales (UNSW) provides a revealing case study on several levels. It demonstrates the significance of high level support in the establishment of a clinical program as well as the influence of key personnel on the program's ongoing development.[2] The program's focus has shifted over time from high-profile litigation practice to teaching-focussed law laboratory to legal centre linked closely to its various communities. As with the Monash case study, the establishment of the program is closely examined in this chapter in order to seek to understand the legacy of the particular approach taken by the founders and subsequent key staff and supporters.

The UNSW clinical program is distinctive in Australia in a number of respects. Under the directorship of Neil Rees, the Kingsford Legal Centre (KLC) focussed on casework, including the conduct of a series of major anti-discrimination cases. UNSW also used KLC to forge novel links between the teaching of law and another discipline, namely social work. KLC utilised student supervision practices different to those employed by the Monash program. The UNSW program also illustrates the benefits of allowing clinicians the opportunity to periodically reduce student supervision and casework loads in order to review current practices and make plans for the future.

The UNSW program further illustrates the difficulties which can arise when clinic staff are distanced from their law school colleagues. The early support of a series of deans and other law school members for the operations of KLC was subsequently undermined by the casework demands on clinic staff and then by issues related to leave and research entitlements. KLC was threatened with closure in 1997 and relied heavily on support from students and the Sydney legal profession in its (ultimately successful) efforts to attract Commonwealth funding. The past decade has seen the clinical program enjoy a period of relative stability, with one major change. In 2006, KLC

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[1] Interview with Neil Rees (Newcastle, 4 September 1997).

[2] David Nichols used the eras of different Kingsford Legal Centre Directors as a convenient shorthand in his 2006 history of the Kingsford Legal Centre. See David Nichols, *From the Roundabout to the Roundtable* (2006) University of New South Wales Faculty of Law.

moved from the community-based premises it occupied for 25 years to the new UNSW Law Building.[3]

The chapter starts with an account of the development of the in-house clinic, with support from the university and in the face of opposition from the legal profession. It then addresses the challenges of clinic-based teaching and legal practice with particular reference to the limitations and complexity of impact litigation. The development of a strengthened educational focus is then examined with particular reference to the comprehensive review conducted in 1990 as well as cross-disciplinary links. The chapter then considers the significance of external support in fostering the sustainability of the program. This support, in terms of legal aid funding and various contributions from students and the legal profession, was central to maintaining KLC in the face of law school moves to reduce its financial commitment to the clinical program. The chapter also details the continuing emphasis of KLC on civil law matters and the international engagement of the clinical program. The impact of the move of KLC to the new UNSW law building is also considered, including the development of outreach services to reach particular client groups, including Indigenous communities.

Establishment – Friends in High Places

The UNSW clinical program demonstrates the value of having support from senior figures for the establishment of a new teaching approach. Successive Law School Deans supported the creation and development of the program, as did University senior managers. UNSW had been established in 1949, initially with a technical focus which broadened in the 1960's.[4] The UNSW Law School was established in 1971 and:

> 'was strongly influenced by the social activism of the period and imbued with a desire to experiment with alternatives in all aspects of the LLB program. It was the first Law School in New South Wales to move away from the traditional lecture/tutorial mode of tuition dominated by practitioners acting as part-time lecturers.'[5]

Marion Dixon's book, *Thirty Up*, demonstrates clearly the dynamic and groundbreaking nature of the early years of the UNSW Law School.[6] The high calibre of the academics

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[3] *Kingsford Legal Centre Annual Report 2006*, 5-6 & 27.
[4] Nichols, above n 2, 8.
[5] Jill Hunter, 'Teaching Plumbing With Periclean Ideals: Should it be Done? Can it be Done? Advocacy and Courtroom Scholarship' (1996) 30 (3) *Law Teacher* 330, 341.
[6] Marion Dixon, *Thirty Up: The Story of the UNSW Law School 1971-2001* (2001).

involved is demonstrated by the prestigious careers so many of them have subsequently had, in the academy, judiciary, government and the practising profession. Neil Rees, KLC's founding director, attributes the development of the UNSW clinical program to the desire of UNSW to challenge the pre-eminence of Sydney University. In the late-1970s, Sydney University Law School was considered to be fairly weak 'so they saw law as an area where they could overtake Sydney fairly quickly. … You need to see the establishment of Kingsford in the context of UNSW at that time. Looking back, it was a truly extraordinary place.'[7]

In October 1978, UNSW Law School sought university funds to employ a Director of Clinical Legal Education. Dean Garth Nettheim commented that 'The most important innovation in legal education in the English-speaking world during the post-war period has been the introduction of clinical legal education', linking the case in favour of clinical legal education to the recent abolition of the articles of clerkship system.[8] 'The feeling is strong amongst academics, students and practitioners that opportunity should be provided for students to gain practice experience during the course of their undergraduate studies.'[9]

Funds were provided by the University for the appointment of a clinic academic who was to 'prepare general proposals for the future of clinical legal education at this Law School including, if appropriate, proposals for the establishment and funding of a clinic or for the integration of the existing Redfern Legal Centre into the teaching program.'[10] By this time, the Dean of the Law School was Professor Ron Sackville, who had been responsible for the Law and Poverty reports produced as part of the Henderson Inquiry into Poverty in Australia conducted in the mid-1970s.[11]

Neil Rees considers the strong support of Sackville, Professor Don Harding (Sackville's successor as Dean) and the UNSW Vice-Chancellor, Sir Rupert Myers, as having been very important to the program's establishment. He recalled the speed with which Sackville moved 'when the Law School finally decided to run with Kingsford. It's a great

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[7] Interview with Neil Rees (Newcastle, 4 September 1997).
[8] Garth Nettheim, Letter to Professor Rupert Myers, Vice-Chancellor, 20 October 1978, 1. In relation to the abolition of articles of clearkship, see David Weisbrot, *Australian Lawyers* (1990) 148-151.
[9] Nettheim, above n 8, 2.
[10] Ibid.
[11] Ronald Sackville, *Law and Poverty in Australia: Commission of Inquiry Into Poverty* (1976). See also the biographical entry for Sackville in Dixon, above n 6, 144-146.

example of having a dynamic and well-connected person as Dean.'[12] Sackville was surrounded by enthusiastic young colleagues[13] who considered the development of a clinical program to be very valuable, especially for a new Law School trying to carve out a name for itself. Rees recalls that when he arrived at UNSW, there was no clear plan of how the clinical program should develop other than it needed to be more extensive than the existing limited offerings.[14]

Rees was appointed to a lecturer position at the end of 1979. He had seen the position advertised in the paper. 'It simply said "To start up a Clinical Program". No specific details.'[15] Rees was interviewed and appointed very quickly and then given responsibility for developing the program. Sackville was supportive but extremely busy such that his contribution to program planning was limited. Don Harding continued the decanal support for the clinical program when appointed to the post in mid-1981.[16]

What Rees Inherited

UNSW Law School had operated several clinic-style subjects prior to the development of KLC. The most significant of these was an externship, *Clinical Legal Experience* which operated from mid-1975.[17] A range of law offices and government agencies each supervised a student one day per week for a semester.[18] The subject did not involve graded assessment. 'Satisfactory completion' required weekly attendance at the placement site and at group meetings and preparing a paper on some aspect of the placement.[19]

While very popular with students and helpful to the law school building relationships,[20] Neil Rees and Robyn Lansdowne subsequently documented supervision and

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[12] Interview with Neil Rees (Newcastle, 4 September 1997).
[13] Neil Rees noted John Basten, Terry Buddin and George Zdenkowski in particular.
[14] Interview with Neil Rees (Newcastle, 4 September 1997).
[15] Interview with Neil Rees (Newcastle, 4 September 1997).
[16] According to Rees, clinical legal education was one of the things Harding embraced, in part because of his exposure to clinics while on sabbatical in the USA. It is interesting to note that Harding was a member of the Pearce Committee which published its discipline review of Australian law schools in 1987. See Chapter 2, footnotes 39-40 and related text.
[17] Simon Rice, *Review of the Clinical Legal Education Program in the Law Faculty at the University of New South Wales, Final Report* (June 1991) 7.
[18] Peter Hanks, 'Clinical Education for Lawyers' (Paper presented at the Australian Law Council Foundation Conference 1976, published in 1978) 642, 646.
[19] Anon, (undated) Clinical Legal Experience – First Session 1978, 4.
[20] Neil Rees, Clinical Legal Experience, (undated but believed to date from mid-1981) 21.

assessment concerns commonly associated with externship arrangements.[21] Rees wrote that the law school had little control over the work experience received by students. 'The experience gained may be of a highly specialised nature and there would appear to be quite serious limits in trying to piece together this experience in an academic format.'[22] Further, the accompanying seminar program lacked clear structure and objectives.[23]

In 1976, the *Civil Rights* subject had involved a placement program whereby students assisted practitioners with different civil liberties cases. The emphasis was on research assistance rather than on more active student involvement.[24] There was also *Trial Practice*, 'your classical simulation-style subject, running through a whole range of litigation with students playing all the major roles.'[25]

The Move to an In-house Clinical Program

This next section of the chapter outlines the process by which UNSW moved to developing an in-house clinical program, following a significant planning process and with very substantial support from the University. General Development Grants from the University came to $60,000 in 1982, $78,000 in 1983 and $85,000 in 1985. Similar grants continued through the rest of the 1980s with legal aid funding also being important to the operation of KLC.[26]

Neil Rees would subsequently identify that challenges arose from the fact that, while the Faculty strongly supported KLC's establishment, it did not contribute substantially to its funding. It relied on funds from beyond the Faculty, especially from the University in the early years. 'The only money the Faculty put into the program in the

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[21] Robyn Lansdowne & Neil Rees, 'Kingsford Legal Centre: A Clinical Experience' (Paper to the 1984 conference of the Australian Law Teachers Association) 2-3. They stated that: 'Some students received enthusiastic guidance whilst others filed documents, spent hours at the photocopier and made the tea. None of the students were supervised by professional teachers.'

[22] Interview with Neil Rees (Newcastle, 4 September 1997). Rees recalls a student coming in shortly after he arrived at UNSW seeking approval to complete a placement with relatives in a legal firm in New York. Further, many of the students were placed with family and relatives, a feature which understandably made Rees wonder whether the subject was being taken as a soft option. See Neil Rees, 'Professional Practice' (28/3/80), 3.

[23] Interview with Neil Rees (Newcastle, 4 September 1997).

[24] Anon, (undated) *Clinical Legal Experience – First Session* 1978, 2.

[25] Interview with Neil Rees (Newcastle, 4 September 1997). The subject had been developed by Bruce Collins and Terry Buddin and was subsequently renovated by Rees.

[26] Nichols, above, n 2, 36.

early days was my salary. It was always an add-on.'[27] The limited extent of the law school's own contribution meant it had not developed a strong commitment to integrating the operation of KLC with the funding of the rest of the Faculty. It had not had to 'sometimes make the hard decision that we'll employ another clinical person rather than another person to teach this particular obscure elective subject.'[28]

In early 1980, the Professional Practice Education Working Group of the Law School's Curriculum Review Committee recommended that 'The legal clinic will be a general practice clinic under the supervision of a full time legal director who will have the status at least of a lecturer in the Faculty and be assisted by a tutor.'[29] The Working Group canvassed options for clinics run with Redfern Legal Centre (either within or supported by the centre) or setting up its own clinic.[30] The supervision workload was noted as an area of concern.[31]

The Working Group also supported the possibility of integrating clinical material into other subjects where appropriate and desired by the relevant teacher. It identified the following different levels of clinical input:

a) Visits by students to various courts and other institutions;
b) The use of documents from practice;
c) The drafting of documents related to areas of law which are being studied;
d) Simulations; and
e) Real cases as basis for discussion.[32]

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[27] Interview with Neil Rees (Newcastle, 4 September 1997). From 1982-86, there were 2 members of academic staff based at KLC.
[28] Interview with Neil Rees (Newcastle, 4 September 1997).
[29] Curriculum Review Committee, Professional Practice Education Working Group, Interim Report, Summary of Recommendations, 5(b), 28 February 1980, 1. The report also demonstrated the uncertainty felt by members regarding the place of practice-based experiences within legal education: 'We approach with trepidation the definition of the School's proper role in professional practice education. We are mindful of Thorstein Veblen's 1918 assessment that, despite its ancient tradition, "in point of substantial merit the law school belongs in the modern university no more than a school of fencing or dancing", precisely because it is devoted to the training of practitioners in the "exigencies, expedients and strategy of successful practice" rather than to the study of "those quasi-scientific articles of metaphysics that lie at the root of the legal system.' (at 1).
[30] Curriculum Review Committee, Professional Practice Education Working Group, Interim Report, 19-20.
[31] Ibid 22. The report stated: 'Some problems may be that the director would have a greater workload than is normal for lecturers and senior lecturers at the Law Faculty – if only one person was appointed it would require attendance at the centre for some 18 hours per week plus being available for consultation with students at other times plus the organising of a 2 hour seminar per week.'
[32] Ibid 27-29.

Rees was clearly focussed on a community legal centre model of operation for the clinical program. In a March 1980 letter to Monash Law School Clinic Coordinator, Guy Powles, Rees noted the importance of the clinical program having a community base: 'With a university base I fear that there would be too much of a tendency to turn the centre purely into a clinic for the training of students and to overlook the needs of the clients of the service.'[33]

By the end of March 1980, he was proposing a program which would eventually require the involvement of two members of Law Faculty staff. 'One member would be occupied full-time at the centre working as a legal practitioner... Another member of staff would be responsible for the co-ordination of the entire course and would be required to organize the academic content of the course.'[34]

As indicated above, the law school initially planned to operate the clinical program from Redfern Legal Centre (RLC), established in the inner suburb of Sydney in 1977.[35] Several people central to the early operation of the centre were UNSW Law School academics. Rees described the people who ran RLC as 'UNSW Law School people...with different hats on'.[36] Rees convened a meeting early in 1980 with key Redfern people (his UNSW colleagues, John Basten, Terry Buddin, John Kirkwood and Robyn Lansdowne plus key RLC staff – Roger West and Clare Petre) but it quickly became clear that there was not support for RLC housing the clinical program.[37]

Other community legal centres were also considered as possible clinic partners. Macquarie and Marrickville Legal Centres were considered unsuitable because of their links with the law faculties at Macquarie University and Sydney University respectively.[38] A proposal that Inner City Legal Service host a clinical program did not eventuate because of centre concerns regarding retaining control over its affairs.

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[33] Letter dated 6 March, 1980 from Neil Rees to Guy Powles.
[34] Neil Rees, 'Professional Practice' (28 March 1980), 3.
[35] See Clare Petre, 'Specialisation: The Sydney Push - Legal Centres in New South Wales' in David Neal (ed) *On Tap, Not on Top: Legal Centres in Australia 1972-1982* (1984) 12-16.
[36] Interview with Neil Rees (Newcastle, 4 September 1997). See also Dixon, above, n 6, 60-62 for a UNSW Law School perspective on its role in the establishment and operation of Redfern Legal Centre.
[37] Interview with Neil Rees (Newcastle, 4 September 1997).
[38] Rees, above n 34, 4.

According to Neil Rees, these discussions remained 'incredibly amicable because all the key players were good friends.'[39]

During 1980, Rees' planning was based on someone else being employed to take day-to-day responsibility for the legal practice aspect of the clinical program. He was not attracted to returning to full-time practice legal until Sackville said that he expected Rees to be the principal solicitor. 'So, it was a Ron dictate and everyone accepted Ron's dictates.'[40] The Vice-Chancellor suggested to Sackville that the University was wanting to forge closer links with Randwick Council so it was decided that the clinic would be within that municipality if the Council could assist with providing premises. Both Sackville and Rees were involved in discussions with the Randwick Mayor and Town Clerk and looked at various premises before finding a suitable building in Rainbow Street, Kingsford which was not being used at that time.[41]

The planning for the clinical program clearly benefited from Neil Rees' experience at Monash with the development of Springvale Legal Service. He knew what to expect and understood what would promote the effective ongoing operation of the program. He appreciated the importance of the clinic coordinator/director being a full-time member of academic staff whose teaching load would be made up of their directorship responsibilities together with the classroom component of the subject.[42] Rees noted that 'We should learn from the Monash experience and discourage the use of academic teaching staff who are admitted to practise, but who may lack substantial experience in the necessary areas of law.'[43] He also acknowledged that 'Legal Clinics are not cheap. Because of the need for a low staff/student ratio to ensure adequate supervision, the costs of the clinic in terms of faculty salaries are higher than is the case in more traditional subjects.' He estimated the annual cost to the faculty [in 1981] at $90,000.[44]

Prior to the opening of KLC in mid-1981, Rees prepared a series of substantial papers for the law school detailing the planning for the clinic. The program aims identified by

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[39] Interview with Neil Rees (Newcastle, 4 September 1997)
[40] Interview with Neil Rees (Newcastle, 4 September 1997)
[41] Various names for the service were suggested: University of New South Wales Legal Service, Randwick Legal Service and Kensington Legal Service. Neil Rees, *Clinical Legal Education* (18 March 1981), 7.
[42] Neil Rees, 'Clinical Legal Education' (18 March 1981), 15.
[43] Ibid 15.
[44] Ibid 18.

Rees in early-1981 emphasised the need for students to understand the practice of law and its impacts on clients as well the development of client-focussed practice skills.[45] Casework selection arrangements for the clinic were also considered. Rees expressed concern at the prospect of asking the UNSW Students Union to partially fund the operation of the clinic as the union might have insisted on a service being provided for all students which 'would result in the teaching function taking second place to the task of adequately coping with the workload.'[46] A summer semester was to be offered as it was not reasonable to 'expect clients to tailor their legal problems to suit the University calendar…It is suggested that the subject be offered over three 18 week sessions.'[47] Rees also recommended a double weighting of six credit points for the elective because 'the demands made by such a course on students' time are considerable.'[48] It would take a decade and a review of the clinical program for this recommendation to be adopted.[49]

Opposition From the Legal Profession

Neil Rees describes the Law Society of New South Wales as presenting the biggest problem the Law School faced in establishing the clinic. 'They were absolute bastards.'[50] The links of UNSW Law School to Redfern Legal Centre, the Australian Legal Workers Group[51] and the NSW Aboriginal Legal Service no doubt contributed to the Law Society treating the KLC proposal with suspicion. The Law Society expressed concerns regarding the use of unqualified people and in relation to advertising of the service. Rees found himself 'at 30 years of age sitting down negotiating with the

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[45] Lansdowne & Rees, above n 21, 3. The program aims identified were:
(a) To promote greater understanding of the rules of procedural and substantive law through their practical application.
(b) To assist with de-compartmentalising the law by illustrating to students that a particular problem cannot always be classified as one of solely crime, tort or contract, or indeed as one of law alone.
(c) To introduce students to the skills of fact-gathering, evaluation, ordering and presentation and to demonstrate the changing nature of "facts".
(d) To allow the students to examine the lawyer-client relationship and to provide instruction in the interviewing, negotiation and counselling skills required of the lawyer.
(e) To enable the students to view the law as an instrument of social control and to assess its adequacy.
(f) To introduce students to the pressures and responsibilities of legal practice.

[46] Neil Rees, 'Clinical Legal Education' (18 March 1981), 10.
[47] Ibid 19.
[48] Ibid 5.
[49] Nichols, above n 2, 26.
[50] Interview with Neil Rees (Newcastle, 4 September 1997).
[51] An organisation Rees describes as having set itself up as 'the alternative law society for radical young lawyers'.

President and Secretary of the Law Society about the opening of Kingsford and what type of practising certificate they were prepared to give me.'[52]

One compromise proposed by John Hunt, then Secretary of the Law Society, would have involved a small group of senior practitioners calling out to check the files once a week. Rees made it clear that the Kingsford people were not prepared to be a party to that. 'The Law Society eventually backed off, I think because the President was a very young man, Michael Gill, who was a bit more inclined to be supportive than the old guard that really ran the Law Society. So, after a fairly difficult period of a couple of month's negotiation, they just backed off.'[53] This opposition could have derailed the fledgling clinic had Rees not had the strong support of the Law School. It is ironic that KLC has subsequently received very substantial support from the local legal profession, greater than that received by other Australian clinics.

Developing a Distinctive Clinical Program

As late as the end of March 1981, Neil Rees was writing that it would take a considerable period of time to establish the clinic. 'It may be possible, if finance were available, to open the clinic sometime in the second half of 1981. It might be more realistic to aim for a date early in 1982.'[54] In fact, the Kingsford Legal Centre was established on 27 July 1981. It was officially opened by Mr Frank Walker, the then Attorney-General of New South Wales on 9 September 1981.'[55] As well as Neil Rees as Director, the founding KLC staff were Pam Ditton, Solicitor and Dawn Rees, the Centre administrator.[56]

KLC quickly became the only site utilised for the *Clinical Legal Experience* elective subject.[57] The Law School committed the time of one lecturer and the General Development Grant from the University covered the salary of the second solicitor. The law school subsequently committed the time of a second lecturer, so that in 1984, three solicitors, two of whom were on faculty, worked at the Centre. Legal aid funding for Kingsford Legal Centre began in 1984 with a core grant of $25,884. Whilst

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[52] Interview with Neil Rees (Newcastle, 4 September 1997).
[53] Interview with Neil Rees (Newcastle, 4 September 1997).
[54] Neil Rees, 'Clinical Legal Education' (18 March 1981), 7.
[55] Neil Rees & Robyn Lansdowne, *Report to the School on Clinical Legal Education*, 6 October 1983, 3.
[56] See Nichols, above, n 2, 7 & 13.
[57] Anon, 'Discussion Paper for Clinical Teacher "Meet" Shop Melbourne, 20th–22nd February 1987' 1.

providing funding, the Legal Aid Commission of New South Wales emphasised to the law school that the:

> 'Commission considers that the University of N.S.W. should remain primarily responsible for funding Kingsford Legal Centre. This view is based on the relationship between the centre and the Faculty of Law and the role played by the centre in the conduct of courses on behalf of the Faculty of Law.'[58]

KLC quickly developed a substantial litigation practice, especially in the areas of anti-discrimination and domestic violence. The anti-discrimination cases which Neil Rees had been running as a volunteer at Redfern Legal Centre were transferred to KLC. Up to 75 anti-discrimination cases were conducted each year and on six occasions these cases were taken to the High Court of Australia.[59] Rees found the High Court and other major cases to be extremely exciting and KLC benefitted from the professional profile the cases generated. KLC benefitted from the presence of a strong academic team. Domestic violence issues were the key focus for Robyn Lansdowne, the casework lawyer and academic who replaced Pam Ditton in 1982. Lansdowne and Rees noted that it was crucial to the establishment of Kingsford's litigation practice that the centre was able to obtain disbursements-only grants of legal assistance from both the Legal Services Commission of NSW and the Australian Legal Aid Office.[60] There were, however, limits to using major cases for teaching purposes. Rees recalls that even the most capable students did not have the time or the experience to effectively contribute to the running of such cases.[61]

Rees identified a downside of running such a substantial legal practice as being the distance it created between the work of the program and that of the rest of the law school:

> 'The contact was sporadic and tended to be only at the level of the Dean or one's close colleagues. There wasn't enough time put into

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[58] Letter to Professor Don Harding, Dean, Faculty of Law dated 1 November 1983 from Mark Richardson for Deputy Chairman, Legal Services Commission of NSW.
[59] Jeff Giddings, 'Casework, Bloody Casework' (1992) 17 (6) *Alternative Law Journal* 261, 263.
[60] Lansdowne & Rees, above n 21, 24. They stated: 'This mechanism enables the Centre to handle cases in the higher courts and allows students to work in a broad range of subject areas and jurisdictions. For example, the Centre is currently [in 1984] involved in the High Court and we have handled a number of cases in the New South Wales Supreme Court. Without grants of legal aid from the governmental agencies it would not be possible, given our limited resources, to handle cases of such magnitude.'
[61] Interview with Neil Rees (Newcastle, 4 September 1997).

> going back to the Law School and selling the advantages of the clinical program, trying to get the sceptics to see the great value in it and I think that was one of the great losses.'[62]

Springvale Legal Service Co-ordinator, Simon Smith visited KLC in September 1983 and subsequently expressed concerns about the clinic staff in a memorandum to his Monash colleague, Guy Powles:

> 'Because they have now been off-campus 18 months, their profile is beginning to fade within the Faculty. This is exacerbated by recent staff turnover in supporters. The staff is still supportive but uninvolved…They are at risk of becoming an island. They, like us, need to ensure a support structure for clinical staff.'[63]

Despite being expected to teach three semesters each year, Rees considers he was well treated by both Ron Sackville and Don Harding. 'For me, it was a bit of a labour of love. I was caught up in the politics, the passion of the time. I didn't mind working the times that we did.' Harding was 'a very wise Dean' who supported and encouraged Rees to apply for promotion. However, Rees recalls not being particularly interested in promotion.[64] Rees took one sabbatical, in Semester 1 1983, and visited and worked in several North American clinical programs while Robyn Lansdowne acted as KLC Director. Rees recalls KLC benefitting from a 'wonderful collection of locums over a couple of years'.[65]

The clinic-based subject was assessed on a pass/fail basis. Rees notes that this was very much the ethos of UNSW, a law school which did not introduce honours degrees until 2006. Having grades beyond pass/fail was considered a retrograde step. While

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[62] Interview with Neil Rees (Newcastle, 4 September 1997).
[63] Simon Smith, Memorandum to Guy Powles, 5 October 1983.
[64] Interview with Neil Rees (Newcastle, 4 September 1997).
[65] Interview with Neil Rees (Newcastle, 4 September 1997). Locums included Debbie Whitmont (now a Walkley Award-winning reporter for the Australian Broadcasting Corporation), Mark Lynch (a senior member of the Sydney bar), Julian Disney (later President of the Australian Council of Social Services) and John Basten (now a NSW Supreme Court Justice). Peter Waters, now a senior partner at Gilbert & Tobin, also worked at KLC at this time. Admitted as a barrister and not as a solicitor, Waters was considered by Rees to be such a fine lawyer that KLC used a system of instructing Waters as counsel. Rees stated: 'I think Peter would say that, as a lawyer, his Kingsford years were the most formative of his career... He was a totally inspirational person for the students to work with.'

Rees was never a strong adherent to that grading was problematic, 'it was held so strongly by many that you just got swept along.'[66]

'Creating the Illusion of Responsibility' – Student Supervision Arrangements

The high profile case work undertaken by KLC needed to be blended with close supervision of student work. In a 1984 paper, Lansdowne and Rees noted that they faced the 'difficult task of leading students to believe that they must accept responsibility for the conduct of a particular case whilst at the same time ensuring that our clients are not disadvantaged in any way by student involvement. In part, we have to create an illusion of responsibility.'[67] They had earlier referred to their approach to supervision as being 'akin to placing students on a rope. The rope is gradually let out if a student is performing well. If a student fails to perform adequately we are forced to draw in the rope and explore every minor detail of a case with the student.'[68]

As discussed in Chapter Two of this thesis, the mechanism used to support this illusion remains a key difference between the UNSW clinic and programs in other states. A UNSW clinic student interviewing a client for the first time does not provide legal advice to the client at the initial interview. Rather, the advice is provided by their supervisor. While the same model has been adopted by the Newcastle clinic, other Australian clinics allow students to provide such advice without their supervisor being present.

Lansdowne and Rees emphasised the importance of the discussion between student and supervisor following the student's consultation with the client. While such discussions tended to be short, usually no longer than 10 minutes, they were very important to student learning, requiring the student to order an often confusing array of facts and to use their legal knowledge to identify the basis of any legal action which might be appropriate.[69] After this short discussion, the supervisor returns with the student to seek further instructions from the client and to give some initial advice. The student then observed their supervisor clarifying issues and providing legal advice.[70]

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[66] Interview with Neil Rees (Newcastle, 4 September 1997).
[67] Lansdowne & Rees, above n 21, 10.
[68] Neil Rees & Robyn Lansdowne, 'Report to the School on Clinical Legal Education', 6 October 1983, 35.
[69] Lansdowne & Rees, above n 21, 7-8.
[70] Ibid 8. They stated: 'At this stage the student is afforded the opportunity to observe an experienced practitioner explore factual matters which the student may have neglected to consider and the student is able to witness the solicitor giving some initial advice to a client.'

When asked to explain why the UNSW program adopted a different approach to that with which he was familiar from Monash, Rees noted that both he and Pam Ditton, the first two legal staff at KLC, had worked most recently for Aboriginal Legal Services where there were strong reservations regarding the scope for contributions from students and a focus on providing the best quality of service. In hindsight, he acknowledges that he contributed to KLC's strong emphasis on service delivery which may have come at some expense to student learning.[71]

Staffing Difficulties – The Special Nature of Clinical Teaching

1986 saw staffing issues at the Legal Centre come to a head.[72] Neil Rees and Robyn Lansdowne both sought six months study leave as well as six months out of the clinical program to rest from the pressures of their multiple roles. Lansdowne was going to write a book on domestic violence while Rees had been appointed by the Federal Attorney-General, Gareth Evans to a prestigious three-person taskforce on producing an Australian Bill of Rights.[73]

Neil Rees recalls the Dean, Ivan Shearer, being very supportive and asking for advice on who should run the clinic in their absence. Rees approached various staff members 'and that's when there was this huge blow-up'. The UNSW Law School included academics interested in the practice of law who, in Rees' view were incorrectly type-cast as likely to be interested in being involved in clinical programs.[74]

A Law School staff meeting considered whether Rees and Lansdowne should be allowed to return to teaching in the Law School or be directed to stay in the clinical program. 'My recollection is that there were people getting very upset.' The end result

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[71] Interview with Neil Rees (Clayton, 20 November 1996).

[72] A paper prepared in February 1986 by Robyn Lansdowne and Neil Rees explained the situation clearly. 'The Legal Centre has reached a turning point due to turnover of staff. Anthony Woods has accepted a job with another legal centre, the Public Interest Advocacy Centre; Neil is due for study leave in the second half of the year, and wishes to return to teaching in the Law School; Peter Waters is going to Harvard in the middle of the year to do a Masters, and Belinda Phillips has applied for three months leave without pay in the middle of the year. Robyn Lansdowne has already returned to full-time teaching on campus.' See Robyn Lansdowne & Neil Rees, *Kingsford Legal Centre – for Discussion February 1986* 1.

[73] Interview with Neil Rees (Newcastle, 4 September 1997).

[74] Interview with Neil Rees (Newcastle, 4 September 1997). Rees stated: 'This new school of legal scholars were great supporters of clinical in theory so long as two things happened. One, it didn't suck away what they thought was a disproportionate share of funds and two, that they weren't asked to go and work there. It was the start of this binary system that we've seen in America for years.'

was that it was permissible for Rees to return to the Law School as he had taught classroom-based subjects at UNSW prior to KLC's establishment. Lansdowne, on the other hand, would not be permitted to move to the Law School from the clinic-based position to which she was appointed.[75]

Around this time, Rees was offered a job in the Attorney-General's Department in Victoria. 'I don't think we would have gone had it not been for all of this blow-up. The other problem was that Kingsford had just been so large in terms of caseload.' [76]With the resignations of Rees and Lansdowne (both members of the faculty), the Law School thereafter allocated the time of only one lecturer to KLC, a lecturer who was 'employed specifically and only for the clinical subject.'[77]

Tony Woods came to the position of KLC Director with a strong understanding of the work of the centre. He had been a UNSW law student representative on the committee that worked with Neil Rees in developing the framework for the clinical program. Woods had also been a volunteer and management committee member at Redfern Legal Centre. Having been encouraged by Rees to apply for the Director position, he came to a centre that had 'a large focus on being a legal practice, with students and involving students learning through being part of that practice. … It was always fun and exciting. We did a lot of really interesting cases and challenged a lot of matters, both internally and externally.'[78]

While KLC staff had clearly faced difficulties in their dealings with the Law School during 1986, school meetings in 1987 expressed support for the clinical program. In April 1987, the Law School Committee considered a document setting out proposals for its 'Mission, Goals and Major Developments', referring supportively to the clinical program. In relation to scholarship, the mission statement stated 'Because law is a social science, involvement in the affairs of the community is a legitimate means of advancing scholarship.' The report stated one goal as being 'to maintain an undergraduate clinical program in order to emphasise the enduring link between legal

[75] Interview with Neil Rees (Newcastle, 4 September 1997).
[76] Interview with Neil Rees (Newcastle, 4 September 1997).
[77] Simon Rice, *Review of the Clinical Legal Education Program in the Law Faculty at the University of New South Wales* (June 1991) 14.
[78] Interview with Tony Woods (Sydney, 11 December 2002).

practice and legal study'.[79] Major developments planned for 1988-1993 included expansion of undergraduate teaching programs into clinical areas such as drafting and negotiations.[80]

During 1986, the KLC premises were refurbished, guided by a report paid for by the Law Foundation of New South Wales.[81] The renovations were officially opened by Lionel Bowen, the Federal Attorney-General and Deputy Prime Minister, in June 1987. Local media coverage of this event prompted concern from Ivan Shearer. A newspaper article had referred to the main responsibility of KLC being to represent people who cannot afford to pay for justice. In a letter to Tony Woods, Shearer emphasised:

> 'It is the business of universities to provide education, not social services to the general public. Therefore, the educational function of the Centre must always be placed first, with the public benefit effects shown as desirable but secondary.'

Shearer feared there was a 'great risk of losing funding for any activity that is not shown to provide for an essential purpose'.[82]

Woods recalls making efforts to provide clearer guidelines on case selection as well as working to enhance clinical integration across the work of the law school. A 1987 report set out the following criteria for selecting cases. The Centre would prioritise acting for clients where: legal aid was not generally available; the matter could be expected to progress reasonably quickly from the start to finish; issues of appropriate procedural and substantive law were likely to arise, along with questions of social policy and ethics.[83] The report went on to say:

> 'We have found that big cases, while providing great stimulation for the employed solicitors, only rarely provide any significant learning experience for the students. This is because the work often becomes too complicated both in procedural and substantive law for the students to come to grips with the file in their short stay at the Centre.'[84]

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[79] Anon, Faculty of Law, Mission, Goals and Major Developments, for School Meeting 15 April 1987, 1.
[80] Ibid 2.
[81] Nichols, above n 2, 19 & 21.
[82] Letter from Ivan Shearer to Tony Woods, 1 July 1987.
[83] Anon, 'Discussion Paper for Clinical Teachers "Meet" Shop, Melbourne, 20-22 February 1987', 3.
[84] Ibid.

It was during this period that student demand for places in the clinical program declined for the first time.[85] Woods recalls KLC having reduced its promotion of the course due to oversubscription but, by the late-1980's, students were wanting to orient their studies more towards areas of business law with the growing commercialisation of law and there was also feedback that students were less interested in participating in a program that was graded on a pass-fail basis.[86] Letters were sent by then-Dean Garth Nettheim to the Law Deans at Sydney, UTS and Macquarie advising of the possibility of 'a few places for interested students to do the clinical subject at Kingsford Legal Centre.'[87]

Tony Woods found that his efforts to foster greater involvement from law school academics in the casework at KLC found only limited success. He found the academics generally not interested in the conduct of cases. 'The clinical program is a very different thing and not why those academics want to be in the law school.' Woods could see that the clinicians could provide more of a contribution to the law school, in terms of teaching in other subjects, than the law school offered the clinical program 'because our mode of teaching was so different. … We had to drive the connection back to the law school as they couldn't so easily connect to us.'[88]

During 1989, Woods 'came to the realisation that I was burning out from having to teach new groups of students every semester. It was time to go.'[89] It was not that he was facing substantial research expectations but rather the fact that he was feeling frustrated with both students and clients. 'KLC was a candle always burning at two ends' with a new batch of students every 14 weeks who didn't know how to answer the phone or write a letter. 'I was starting to feel tired of having to teach the same thing over and over.'[90]

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[85] In a 1984 paper, Robyn Lansdowne and Neil Rees had written that 'At most times, demand for the course has exceeded the placements available. Student demand is particularly heavy over the summer vacation. For example, there are 50 students on a waiting list for enrolment in the course over the 1984-85 summer vacation.' Lansdowne & Rees, above n 23, 6.
[86] Interview with Tony Woods (Sydney, 11 December 2002).
[87] Letters sent on 20/1/88 to Mr David Flint (UTS), Denis Ong (Macquarie) & Colin Phegan (Sydney).
[88] Interview with Tony Woods (Sydney, 11 December 2002).
[89] Interview with Tony Woods (Sydney, 11 December 2002).
[90] Nichols, above n 2, 20.

Tony Woods' departure in 1989 prompted the Law School to reconsider the position of the Clinic director.[91] Options considered by the Law School included not offering a summer clinic session, appointing a Director who was not an academic member of staff and so could be expected to teach three semesters a year or appointing a Director as an academic but requiring them, unlike any of their colleagues, to teach three semesters each year. The advertisement for the Director position was ultimately framed flexibly so that any of the options could have been taken up depending on the successful applicant. The person appointed was Simon Rice, a former KLC clinic student whose six years as Director gave a stronger academic emphasis to the work of the centre.

A Sharpened Educational Focus

Following Simon Rice's appointment as Director in November 1989, KLC developed a greater focus on the theory of clinical legal education. In Semester 2 1990, KLC did not take on students and conducted a comprehensive review of its operations. UNSW Law School received support from the Law Foundation of NSW for the conduct of the review. Neil Rees considers Rice's time at UNSW as 'probably the best example we've got in our short history of clinical legal education of someone of enormous talent not being recognised.'[92]

Following an approach from Tony Woods, Rice had spent six months at KLC as a locum solicitor prior to his appointment as Director in November 1989. This had given him the chance to closely scrutinise the centre. He viewed KLC as 'operating a very busy litigation practice, a high profile litigation practice' which had developed with the involvement of 'high quality public interest litigators'.[93] While seeing the obvious community service benefits of the litigation, Rice also recognised the tensions between the three roles they played – administrator, teacher and lawyer. First and foremost, they were really good lawyers. 'They were teachers at worst by osmosis, at best by "look at what I do". The administration was all a bit ad hoc.'[94]

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[91] While obliged to teach only two semesters each year, Woods, like Neil Rees before him, had taught three semesters each year. Interview with Tony Woods (Sydney, 11 December 2002). By the time he left, Woods had accrued one year's leave from teaching responsibilities and this was taken into account in waiving notice requirements regarding his resignation. G. Rowe for Law School Planning Committee, (undated) *Discussion document prepared for Law School Meeting*, 22 May 1989.

[92] Interview with Neil Rees (Newcastle, 4 September 1997).

[93] Interview with Simon Rice (Sydney, 14 February 1997). These included Tony Woods, Peter Waters and Neil Rees.

[94] Interview with Simon Rice (Sydney, 14 February 1997).

Rice took the opportunity to set about developing a strong knowledge of clinical legal education. He was mindful of the need for his KLC colleagues to be teachers as well as practitioners. If the centre's ethos was going to change, he needed his colleagues to teach with him. 'I needed them to imbue all their litigation practice with the reflective teaching and analytical element.'[95]

A Clinic Without Students – The Semester 2 1990 Review

The review conducted at KLC represents the only instance of an Australian in-house clinical program having the opportunity not to take on any students for a semester. It highlights the value for a clinical program of staff having the opportunity to reflect on their purposes and practices as well as learning from the experiences of clinical legal education in law schools elsewhere. The Law School accepted a proposal for no students to be enrolled in the clinical subject from July to October 1990. Simon Rice explained that one of the KLC solicitors, Robyn Sexton 'had suggested, wistfully, that the Centre might go without students for a while. The realisation of that improbable idea was the beginning of the review.'[96]

The NSW Law Foundation funded the entire review, contributing $44,016.[97] Simon Rice was able to visit clinics in Canada, the USA and England.[98] KLC staff met regularly, discussing a wide range of matters including assessment, supervision, student responsibility, consultations with students, specialist programs and credit weighting. All KLC staff members visited the Monash clinic sites in September 1990. They 'gained a strong impression of self-reliance among the students ... Students told us that they would exhaust every avenue of inquiry before approaching a solicitor with a question of "how?" or "why?", because they knew the answer would be: "what do you think?".'[99]

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[95] Interview with Simon Rice (Sydney, 14 February 1997).
[96] Simon Rice, *Review of the Clinical Legal Education Program at the University of New South Wales, Final Report*, June 1991, 22.
[97] 'New Grants from the Law Foundation' in *In Your Interest (The Newsletter of the NSW Law Foundation*), September 1990.
[98] Simon Rice, *Review of the Clinical Legal Education Program at the University of New South Wales, Interim Report*, March 1991, 1-14.
[99] Robyn Sexton & Paul Batley, *KLC Staff Melbourne Excursion*, 2. (Appendix 13 to S. Rice, *Review of the Clinical Legal Education Program at the University of New South Wales, Final Report*, June 1991).

The feature of the Monash clinics which most surprised the KLC lawyers was the provision of advice at first interview by students. 'Students take instructions, consult with solicitors and return to the clients to give the solicitor's advice.' They were concerned about risks to clients arising from inadequate instructions or misinterpreted advice.'[100] In his report, Rice identified a range of important issues for clinical programs.[101] The key institutional issues related to the use of 'soft money' to support clinics, the tenure and employment conditions for clinicians, moves to graded assessment and the location of clinics.[102] Most clinics adhered to a general teaching philosophy involving students assuming as much responsibility as possible for managing clients' files. 'The remarkable point is how much responsibility *is* possible.'[103] In terms of teaching issues, the key matters identified by Rice related to the range of models available, links between the clinic and classroom-based teaching and the predominance of pass/fail assessment.

While identifying the merit of reducing the caseload and taking a more selective approach to cases, Rice also identified several factors constraining the centre's decisions as to caseload. Community profile was important in terms of attracting external funding and support but brought with it expectations of casework service delivery. Community expectations had developed over ten years of operations with recent experience at the Centre showing 'that it is hard to justify to clients the apparent inconsistencies which arise in taking on only those cases that will best suit the clinical program.'[104]

As part of the review, a Law Foundation-funded survey was conducted of students who had completed the *Clinical Legal Experience* subject between 1986 and 1990.[105] Seventy percent of respondents identified their reason for choosing to do the clinic subject as being 'to develop practical legal skills and experience' while 23 percent referred to 'wanting to work in a community legal centre'.[106] The most common

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[100] Sexton & Batley, 4-5. They referred to the Monash clinic solicitors believing that 'in each case a measure of judgement about a particular student's capacity to deal with the situation was required. Where necessary a student would be sent back to take further instructions.'
[101] Rice, above n 98, 21-33
[102] Ibid 26. In terms of casework issues, Rice identified that clinics were asserting far greater control over volume of cases taken on and that there were moves to greater specialisation.
[103] Ibid 26.
[104] Rice, above n 96, 57.
[105] MSJ Keys Young, *Clinical Legal Experience: Survey of Former Students*, January 1991.
[106] Ibid 5.

suggested improvement to the subject was the incorporation of more court experience and advocacy work.[107]

Many of the students (75 percent) who had gone on to complete a Practical Legal Training course 'contrasted the "reality" of CLE (real cases, personal contact with clients etc) with the "artificiality" of PLT (hypothetical problems, only paper work)'.[108] Substantial numbers of students identified the influence of the clinic subject on their later law studies, job choices, approaches to their work and the development of an interest in the work of community legal centres.'[109] The Review Report also referred to the program's accountability to its consumers: the students and the community. There had been no formal complaints from dissatisfied clients in ten years' operations.[110]

It is extremely doubtful that such a review arrangement, whereby a clinic operated without students for a semester and took the opportunity to reflect on its operations, could happen in the current climate. The Review was distinctive for its emphasis on the program's educational dimensions, the input from students via the survey and the visit to the Monash program. Simon Rice's study tour generated two publications, most notably *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum*, commissioned by the Federal Department of Employment, Education and Training.[111]

Rice recalls that following the Review, '1991 was the start of a new era at Kingsford.'[112] Significant aspects of KLC operations were altered or refined, in particular reducing and targeting the casework conducted, changing the approach taken to student supervision and devising more explicit assessment criteria. Rice saw the directive approach taken to student supervision as deriving 'from our own training, a professional concern for self and the client, and expediency.' He argued for a 'change in attitude at the Centre' indicating 'a shift to a self-learning model, with an ever present reserve on our part

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[107] Ibid 15.
[108] Ibid 10.
[109] Ibid 18-26.
[110] Rice, above n 96, 12. (*Final Report)*. It stated: 'This is noteworthy, but it must be remembered that, in general terms, the clients are often of a social or educational background that makes it unlikely that there will be a formal complaint about legal service provision.'
[111] Simon Rice & Graeme Coss, *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum* (January 1996). See also Simon Rice, 'Prospects for Clinical Legal Education in Australia' (1991) 9 (2) *Journal of Professional Legal Education* 155.
[112] Interview with Simon Rice (Sydney, 14 February 1997).

about the extent to which our sole control can give way to joint effort with the students.'[113]

Student meetings at the start of each clinic session were instituted, enabling students to identify tasks and raise issues of interest or difficulty on their files. The content of the weekly clinic seminars also changed, the previous focus on substantive legal areas giving way to a greater emphasis on the skills students would need while at the Centre. Further, the cooperation of the volunteer solicitors was sought 'in trying to extend the structured learning environment into the evening community advice sessions.'[114]

While seeking to strengthen the student learning focus of the clinic, KLC continued to pursue increased legal aid funding. As it had each year since 1986, KLC sought funding for two workers. The 1991 submission for legal aid funds emphasised the need for the Law School to see KLC attracting contributions from other sources in order to justify its continuing commitment to 'an expensive teaching establishment which is providing a community service in excess of the funding it receives for that purpose'.[115] Ultimately, a decade of such efforts saw legal aid funding for a second worker obtained in 1995.

October 1991 saw KLC celebrate its tenth anniversary by hosting a National Conference on Clinical Legal Education.[116] Twenty-five people attended the conference, all advocates for the development of clinic-based learning. Archie Zariski noted that participants included 'socially-conscious' revolutionaries along with a more 'pragmatic professional' group. While they differed in their respective justifications for clinic-based learning, there was no doubt as to 'who should be rolled out of bed: it was our old friend Socrates, together with his method and all proponents of "doctrine" as the essence of a decent legal education.'[117] Zariski called for clear objectives to be developed for the use of clinical method and recognised the importance of the legal profession playing a more active approach in the delivery of legal services 'to all

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[113] Rice, above n 98, 32.
[114] Ibid 32-33.
[115] Simon Rice, Letter to Mark Richardson, director, Legal Aid Commission of New South Wales, 7 February 1991, 10. The educational aspects of the service were said to arguably represent 'something less than the investment of the Law Faculty... On any comparison with Centres receiving a similar level of funding (23% of core), Kingsford Legal Centre provides a substantial, and disproportionately large, legal service.'
[116] Nichols, above n 2, 27.
[117] Archie Zariski, 'Roll Over Socrates: Reflection on the Conference on Clinical Legal Education' (1991) 9 *Journal of Professional Legal Education* 149.

sectors of the economy and all elements of society and it must not shirk from challenging vested interests where necessary'.[118]

Further changes arising from the review were made in 1992. The *Clinical Legal Education (Intensive)* was introduced enabling students to enrol in a double credit point subject involving working at the Centre for two days each week. Increased continuity of student involvement in clients' matters 'resulted in an exponential increase in the depth in which students consider, analyse and comprehend the legal and professional issues involved.'[119] The two-days per week option became increasingly popular. Frances Gibson subsequently noted that students who by reason of timetabling or work commitments are restricted to one day per week often expressed the view that they would have preferred to do two days per week. 'It's very hard to run a file if you're only here one day a week.'[120]

A Cross-Disciplinary Link

A link between KLC and the UNSW School of Social Work was first established in 1983 on the initiative of Robyn Lansdowne. The School of Social Work was looking for placement sites which would expose students to domestic violence issues. Neil Rees describes KLC as running 'a pretty heavy DV practice' at that time and recalls 'three occasions when people tried to burn down the building and DV cases where blokes were getting six or twelve months jail on associated assault charges'. Unfortunately, the link suffered from a lack of planning and the social worker involved lacked the necessary experience to deal with very difficult situations. 'It could have been brilliant but wasn't.'[121]

In 1987, the UNSW Schools of Law and Social Work developed a successful teaching connection. The Law Foundation of New South Wales funded the School of Social Work to report on the feasibility of a legal studies course in the social work degree. As a result of that report, the School obtained a development grant from the University to commence, in 1989, a social work placement at KLC.[122] The grant covered the cost of

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[118] Ibid 152.
[119] *Kingsford Legal Centre Annual Report 1992*, 13. See also Nichols, above n 2, 26.
[120] Interview with Frances Gibson (Sydney, 3 September 1998).
[121] Interview with Neil Rees (Newcastle, 4 September 1997).
[122] KLC was recognised by the School of Social Work as an approved site for the placements required of all social work students. When the Law/Social Work combined degree commenced, completion of a KLC placement was required of all students in that program.

a social work supervisor and relevant administrative expenses.[123] The grant was renewed in 1990 and 1991.

From 1991-1994, Mick Hillman was employed as a half-time lecturer by the School of Social Work with responsibility for the social work student placement unit at KLC.[124] The first UNSW Social Work/Law graduate, Pia Van de Vandt, had her degree conferred in October 1993.[125] Both Hillman and Christine Gibson, who replaced him in 1995, had previously worked at other community legal centres before starting at KLC.

Simon Rice referred to the involvement of the Social Work School in the work of KLC as 'adding a new dimension to the legal casework possibilities'. It invited students to take a close look at the way lawyers may be introduced to working with related professions. While requiring further time and resources, the project showed considerable promise.[126]

Secondments From Law Firms

KLC has had substantial success in attracting support from major legal firms in the form of staff secondments to the centre. In April 1992, Freehill Hollingdale and Page began a permanent secondment arrangement with the Centre.'[127] An extra solicitor in the office meant more clients could be assisted while allowing the teaching staff more time to focus on student supervision. 'The Centre's goal of spending more time on supervision of law students and on the law students' own development of community education has been met.'[128] The Kingsford approach to first interviews, with legal advice being provided by a lawyer in the presence of the student, arguably makes it more important to have volunteer lawyers involved so as to ensure adequate supervision.

In 1993, lawyers were seconded to the centre by Allens and the Director of Public Prosecutions (NSW) as well as Freehills.[129] In 1995, Minter Ellison and Phillips Fox also

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[123] Rice, above n 96, (Final Report) 15.
[124] See *Kingsford Legal Centre Annual Report 1992*, 11, *Kingsford Legal Centre Annual Report 1993*, 10 & *Kingsford Legal Centre Annual Report 1995*, 10.
[125] *Kingsford Legal Centre Annual Report 1993*, 21.
[126] Simon Rice, 'Some Observations on the Operation of a Clinical Program in New South Wales' undated, 12.
[127] *Kingsford Legal Centre Annual Report 1992*, 8. Nichols notes that Simon Rice's wife, Elizabeth Grinston, was a partner at Freehills. See Nichols, above n 2, 30.
[128] Ibid 10.
[129] *Kingsford Legal Centre Annual Report 1993*, 5, 7.

seconded solicitors to the centre.[130] This type of substantial support from the practising profession has not been replicated with other clinical programs. Frances Gibson describes Freehills in particular as having been very supportive. 'They are interested in the law school aspect but a major part of their reason for being involved is the community service side of it.'[131] The Freehills and Allens connections in particular remain strong with many secondees being former clinic students seeking to maintain a relationship with KLC. This ongoing professional engagement and support is no doubt valuable to KLC and the clinical program.

Simon Rice's Departure

In the second half of 1994, Simon Rice spent a sabbatical at Osgoode Hall Law School in Toronto, Canada and evidently relished this 'genuine academic, productive time' coming back at the end of 1994 'really excited by what I'd done'.[132] However, he then found himself 'getting tired of the tension, the battle to pursue academic interests while maintaining the practice in the absence of Faculty support.' Rice considered the UNSW Law School needed to have different people playing the roles of Director of Clinical Legal Education, Supervising Solicitor at KLC and Office Manager at KLC. He recalls North American clinicians emphasising that it was inappropriate to have the one person playing all three roles. Rice could see value in having a rotation system where two academics could alternate between work in the clinic and teaching responsibilities within the law school. He felt he needed the Law School to go further if he was to remain as KLC Director and couldn't see that happening. 'I had a taste of what a sabbatical could do for my academic potential. I came back to the clinical environment and realised the difficulty I was going to have maintaining that.'[133] Rice then left to take up the prestigious position of Director of the Law Foundation of New South Wales.[134]

More Like a Community Legal Centre

Frances Gibson started as KLC Director in August 1995. As with Tony Woods and Simon Rice before her, she was encouraged to apply for the position by the incumbent. Rice convinced Gibson that KLC 'was really quite different. I had no idea what it would

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[130] *Kingsford Legal Centre Annual Report 1995*, 7.
[131] Interview with Frances Gibson (Sydney, 3 September 1998).
[132] Nichols, above n 2, 24.
[133] Interview with Simon Rice (Sydney, 14 February 1997).
[134] Rice was Director of the Law Foundation of New South Wales from 1995 to 2000 and has subsequently taught in the law schools at Sydney University, Macquarie University and the Australian National University.

be like when I came here. I thought of it as another legal centre in a way but with students and perhaps more contact.' She found it 'really quite a shock' to realise how important the students and the clinic were to KLC's operations. 'I guess I knew it theoretically but didn't realise the reality of it. It's an inherent part of it. It's the reason for the existence of the legal centre. It's the core of it.[135] Gibson was greatly assisted by KLC having two experienced casework solicitors in John Godwin and Anna Cody, another former KLC student.[136] 'I had laid out for me when I arrived here what happened in every week of the year and some prepared classes. Without that, it would have been much more difficult.'[137]

Gibson had previously worked for Redfern Legal Centre and the NSW Aboriginal Legal Service and this influenced both her management style and her focus on the community service aspects of KLC. Gibson sought to have the centre operate 'more like a collective' with 'a collection of workers who are skilled in certain areas'.[138] She noted the compatibility of the service and education functions of the centre. 'Taking cases on the basis of community need is no disadvantage in terms of student interest and their learning capabilities. Really, those two things are completely complementary because everything is new for most of the students.'[139]

An article by UNSW Law School academic, Jill Hunter, which was published in the British journal, *The Law Teacher*, in 1996 is useful in demonstrating some of the challenges facing KLC staff in linking the clinic to the other activities of the law school.[140] In the article, Hunter addressed the appropriateness of skills-oriented clinical teaching and made a series of claims about clinical education which demonstrate a less than thorough understanding of the work of KLC and other Australian clinical programs. It is surprising that an article concerned with clinical law teaching at UNSW could focus so little on KLC, which is mentioned only three times in a 24-page article.[141] Hunter has subsequently become more involved in KLC, chairing its

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[135] Interview with Frances Gibson (Sydney, 3 September 1998).
[136] Cody would ultimately succeed Gibson as KLC Director in 2004.
[137] Interview with Frances Gibson (Sydney, 3 September 1998).
[138] Nichols, above n 2, 35-36. See in particular the comments of Vedna Jivan regarding Gibson's 'very consensual' management style.
[139] Interview with Frances Gibson (Sydney, 3 September 1998).
[140] Hunter, above, n 5.
[141] See footnotes 34 & 66 and the text reference on page 352.

management committee and working on an ongoing research collaboration with KLC staff and students, examining the impact of character evidence in criminal trials.[142]

The Spectre of Closure

Frances Gibson had been at KLC for 18 months when the centre faced the very real prospect of closure. Australian universities were facing funding challenges following the 1996 election of the Liberal-National Coalition Federal Government led by John Howard and federal legal aid funding arrangements had also been significantly reduced.[143] While KLC received legal aid funding for a community worker in 1996, this coincided with the closure of the Bondi Junction Legal Aid Office. KLC faced increased client service demands as the key free legal advice provider in Sydney's eastern suburbs.[144]

In August 1997, a UNSW Law School meeting voted 46 to 9 in favour of proposals designed to stem a $1.4 million funding deficit over two years. As well as staff taking increased teaching loads, the proposals called for the law school's contribution to KLC (about $250,000 annually) to be halved. 'However, the university would consider reviewing this situation if the centre were unable to find sufficient operating funds externally.'[145] In essence, KLC needed to find additional external funding of $125,000.

Frances Gibson was told by law school colleagues that the clinical program was simply too expensive for the number of students involved. Reference was made to $250,000 being spent on KLC which contributed to the legal education of only 75 students. The comparison was made that those students could be taught in lecture style for $18,000.[146] Law school staff suggested it would help to have KLC staff involved in the teaching of other law school subjects. Initially, this took the form of KLC staff running simulations or role plays as well as taking classes on interviewing and other legal practice skills. John Godwin recalls pressure from the Law School for KLC to justify its operations through greater teaching contributions.[147] As will be outlined in detail later in this chapter, a different approach was ultimately taken with a clinic component being integrated into a compulsory first-year subject.

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[142] See *Kingsford Legal Centre Annual Report 2004*, 28; *Kingsford Legal Centre Annual Report 2005*, 13-14; *Kingsford Legal Centre Annual Report 2006*, 12 & *Kingsford Legal Centre Annual Report 2007*, 14.
[143] Mary Anne Noone, 'The State of Australian Legal Aid' (2001) 29 *Federal Law Review* 37, 39.
[144] Nichols, above n 2, 35 & 37.
[145] M. Coorey, 'Law students wary as UNSW finds savings', *The Australian*, 20 August 1997, 37
[146] Interview with Frances Gibson (Sydney, 3 September 1998).
[147] Nichols, above n 2, 36.

The achievements of KLC and its strong links with various communities, in particular with present and former students and the practising legal profession, appear to have been invaluable in KLC continuing its operations. A 'Friends of KLC' group was established, spearheaded by volunteer solicitors, 'to assist KLC to lobby to retain and diversify its funding base so that it can continue to carry on its work'.[148] Tony Woods, with his strong KLC connection, persuaded his fellow partners in the firm Henry Davis York to second a solicitor to KLC for six months. In Frances Gibson's view, that 'was a really major asset to us because that person basically took over a lot of my casework and I was able to concentrate on lobbying and funding.'[149] Gibson also notes that Keith Steele and Don Robertson, two partners of the major firm, Freehills, were particularly supportive during the funding crisis.

Students also played a critical role in the response to the possible closure. John Godwin recalls being 'genuinely surprised at the level of support from students.'[150] Students from the UNSW Law Society organised a walkathon, with more than 200 students and staff participating in a walk from the University to Coogee Beach and back. The walkathon generated very substantial community publicity and raised $17,000 for KLC.[151]

Ultimately, other external funding sources were found and this saved KLC and the UNSW clinical program. The UNSW Vice-Chancellor committed $30,000 for each of 1999 and 2000 in recognition of the Centre's contribution to the community and 'its importance to the Faculty's teaching program and high standing'.[152] The Federal Attorney-General's Department provided a one-off amount of $65,000 with the prospect of further funding as part of the clinical legal education funding announced in the 1998 federal budget.[153] Ultimately, UNSW was one of the four Australian law schools that secured recurrent funding to support its clinical program and used those funds to develop an employment law clinic.[154]

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[148] Ibid 37.
[149] Interview with Frances Gibson (Sydney, 3 September 1998).
[150] Nichols, above n 2, 37.
[151] Ibid 37.
[152] Ibid 38.
[153] Ibid 38. For detail of the continuing commonwealth funding, see Jeff Giddings, 'The Commonwealth Discovers Clinical Legal Education' (1998) 23 (3) Alternative Law Journal 140.
[154] Jeff Giddings, 'Clinical Legal Education in Australia: A Historical Perspective' (2003) 3 *International Journal of Clinical Legal Education* 7, 19.

The clinical program was perhaps unique amongst law school activities in having the capacity to resist law school moves to reduce its financial support. Students, influential members of the Sydney legal profession and a wide range of local community agencies in Sydney's eastern suburbs all mobilised in support of KLC. The partnership nature of the funding of KLC, with contributions from the law school, the University as well as the Legal Aid Commission, was also important in that each funder could make their continuing support conditional upon the other supporters maintaining their contribution. This made it more difficult for any contributor to retreat from their mutual obligations.[155] It is also important not to underestimate the efforts of the staff and the leadership of Frances Gibson in particular. Having key staff who had worked in community legal centres and were experienced political activists appears to have been significant in the conduct and success of the Save Kingsford Legal Centre campaign.

The continuing efforts to attract and retain funds from beyond the law school were a serious drain on the time and energy of KLC staff. Frances Gibson referred to 'the stressfulness of the whole process – we all thought we were going to be made redundant. Staff morale went down – you felt that what you did had no value'.[156] Paradoxically, the very substantial effort involved in promoting KLC and the clinical program had significant profile-raising effects. Gibson described the funding difficulties having given KLC 'a good profile in the local community, the university, the Law School and in the profession.'[157]

A New Focus on Clinical Integration

One consequence of the funding difficulties had been that increased attention was given by UNSW Law School staff to identifying and articulating the benefits to the law school and its students from clinical experiences. Law school management were concerned to have staff from the clinical program more involved in law school teaching. Originally, such suggestions involved KLC staff teaching classes at the law school. For Gibson, the prospect of additional teaching beyond the clinical program 'all seemed to me to be too hard'. It was suggested it might be easier to fit further student contact around what KLC was already doing. 'We thought we'd trial this program, even

[155] Nichols, above n 2, 38.
[156] Ibid 27.
[157] Interview with Frances Gibson (Sydney, 3 September 1998).

though it seemed like an administrative nightmare, where the students actually had some exposure to clients.'[158]

This developed into arrangements whereby every student in the core first year ethics-related subject, *Law, Lawyers and Society*, had an introductory experience of KLC and the clinical program. Since 1998, around 400 first-year UNSW law students each year have spent between eight and ten hours at KLC. Each sits in on an evening client interview session, arriving around 4:00pm and leaving around 9:00pm. These sessions also involve *Clinical Legal Experience* students and volunteer lawyers. KLC staff also present a lecture on client interviewing as part of the *Law, Lawyers and Society* subject.[159] Until 2005, every first-year student attended at KLC but increasing student numbers (up from 400 to 570) have resulted in some students having to write a report based on their watching of a KLC-produced DVD on interviewing skills.[160]

This primer for the more substantial clinical program appears to have worked well for both the law school and the clinic. Frances Gibson found that KLC staff were all somewhat surprised that it worked reasonably well. 'It's not something I would ever have chosen to have done but the benefits [to the centre, the students and the legal profession] probably outweigh the detriment to the centre.' The experience made a real impact on the students, significantly changing some of their views. 'They end up with a much better picture of the whole legal process.'[161]

The then-recently introduced clinical elements of the *Law, Lawyers and Society* course were evaluated in June 1998 by the NSW Centre for Legal Education. A content analysis together with feedback from student focus groups indicated that the program offered a structured introduction to the work of lawyers, providing 'a useful antidote to a form of elitism and narrowness of vision which could easily pervade law programs in Australia.'[162] The program had been very well received by those students who participated in the focus groups[163] indicating the merit of the UNSW model which remains novel in Australia in providing a real-client clinical experience to almost every

[158] Interview with Frances Gibson (Sydney, 3 September 1998).
[159] Interview with Frances Gibson (Sydney, 3 September 1998) & *Kingsford Legal Centre Annual Report 2007*, 16. Until 2005, KLC staff also presented a class on public interest law. Increasing student numbers meant this could not be continued. Email from Anna Cody, 7 November 2008.
[160] Email from Anna Cody <A.Cody@unsw.edu.au>, November 7 2008.
[161] Interview with Frances Gibson (Sydney, 3 September 1998).
[162] Centre for Legal Education, *Evaluative Review of Some Aspects of the Subject "Law, Lawyers and Society"*, June 1998, 11.
[163] Ibid 5.

law student. The other distinctive aspect of the UNSW model is that it promotes 'two-way traffic' between the clinic and the law school, integrating law school classes within the clinical program's activities as well as having clinical activities informing law school-based activities.

Enhancing the Student Experience

KLC includes a statement of aims and objectives in its annual reports which lists student learning as its first objective. The statement, consistent since 2003, emphasises student learning through work with disadvantaged clients in a community legal centre context. It also addresses the integral role played by policy and community legal education. Limiting and targeting the amount of ongoing casework undertaken by the clinical program enabled closer attention to be paid to promoting a quality experience for students. The annual number of cases in which KLC provides ongoing services was 375 in 2000 and averaged 181 between 2005 and 2009. While the number of clients receiving advice remains substantial, it has also reduced significantly, from 4223 in 2000 to 1532 in 2009.[164]

The use of the Federal Attorney-General's Department funding in 1999 to develop an employment law clinic saw students working on cases that were generally resolved reasonably quickly, enabling students to see this process from start to finish. Employment was also an area of law that had undergone significant change and where many law firms would not act for employees.[165] KLC's first Employment Lawyer, Joanne Moffitt recalls being inundated with cases as well as being very impressed with the advocacy skills displayed by students representing clients in the Industrial Relations Commission.[166] In a 2005 conference paper, current KLC Employment Lawyer Linda Tucker raised significant issues regarding clinic students working in an area of strongly contested public policy debate. Tucker emphasised both the importance and the challenges of engendering 'an ethical engagement from our students'.[167] Employment law has become a key part of the casework conducted by KLC.

It is clear that KLC has played a national leadership role over the last decade in relation to making legal services accessible to indigenous communities. In 2001, KLC students

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[164] See *Kingsford Legal Centre Annual Report 2000* 24 (375 cases & 4223 advices); *Kingsford Legal Centre Annual Report 2001* 17 (291 cases & 2964 advices); *Kingsford Legal Centre Annual Report 2002* 12 (259 cases & 2639 advices); *Kingsford Legal Centre Annual Report 2003* 15 (193 cases & 1555 advices); *Kingsford Legal Centre Annual Report 2004* 17 (124 cases & 1469 advices); *Kingsford Legal Centre Annual Report 2005* 17 (173 cases & 1300 advices); *Kingsford Legal Centre Annual Report 2006* 16 (116 cases & 1368 advices); *Kingsford Legal Centre Annual Report 2007* 19 (146 cases & 1472 advices); *Kingsford Legal Centre Annual Report 2008* 22 (230 cases & 1575 advices) & *Kingsford Legal Centre Annual Report 2009* 14 (240 cases & 1532 advices).

[165] Nichols, above n 2, 42.

[166] Ibid.

[167] Linda Tucker, 'Engaging Students in the Political Process: A Clinical Response to Proposed Changes in the Unfair Dismissal Laws' (Paper presented at the 3rd International Journal of Clinical Legal Education Conference, Melbourne, July 2005) 1-2.

organised a forum on indigenous access to community legal centres and this resulted in, amongst other things, moves to 'provide indigenous students with an opportunity to gain experience of public interest and community lawyering'.[168] In 2003, KLC ran the first pre-law bridging course for indigenous students at UNSW[169] and in 2004 published a *Guide to Indigenous Legal Education in Australia* and ran a related seminar.[170] The pre-law program continues, along with visits to KLC each winter by indigenous high school students.[171] Since 2004, KLC has also provided a for-credit course for all first year Indigenous students which focuses on written and oral communication and interviewing and also provides an introduction to the legal aid system.

In 2002, a scheme was established enabling clinic students to appear in the Waverley Local Court on behalf of KLC clients pleading guilty to minor criminal charges.[172] Supervision arrangements involve a practitioner being present throughout the appearance and KLC Annual Reports indicate this program has been well received both by clients and students.[173]

The efforts of those involved in the UNSW Clinical Program have been acknowledged through a series of education awards, with the most significant being the 2001 National Award for University Teaching in Law and Legal Studies.[174] The national award had been preceded by a UNSW award for teaching excellence and an award to Frances Gibson from the NSW Minister for Education and Training and the Australian College of Education.[175] In 2007, KLC Director Anna Cody received an Achievement Award from the NSW Women Lawyers Association while KLC volunteer lawyer, Sue Mourdant was acknowledged in the NSW Law and Justice Foundation Awards.[176]

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[168] *Kingsford Legal Centre Annual Report 2001*, 25.
[169] *Kingsford Legal Centre Annual Report 2003*, 8.
[170] *Kingsford Legal Centre Annual Report 2004*, 11-12.
[171] *Kingsford Legal Centre Annual Report 2005*, 14-15, *Kingsford Legal Centre Annual Report 2006*, 12-14 & *Kingsford Legal Centre Annual Report 2007*, 14-16.
[172] Nichols, above n 2, 15, *Kingsford Legal Centre Annual Report 2001*, 17.
[173] See *Kingsford Legal Centre Annual Report 2002*, 8, *Kingsford Legal Centre Annual Report 2003*, 13, *Kingsford Legal Centre Annual Report 2004*, 10, *Kingsford Legal Centre Annual Report 2005*, 11-12, *Kingsford Legal Centre Annual Report 2006*, 10 & *Kingsford Legal Centre Annual Report 2007*, 12-13.
[174] Nichols, above n 2, 46, *Kingsford Legal Centre Annual Report 2001*, 5 & 14.
[175] *Kingsford Legal Centre Annual Report 2001*, 5 & 14.
[176] *Kingsford Legal Centre Annual Report 2007*, 7.

Civil Justice – A Continuing Focus

It is clear that KLC both limits the amount of casework taken on by staff as well as directing resources to a range of civil claims.[177] The *Annual Report 2005* stated that 80percent of cases taken on by the Centre related to civil matters.[178] Similar statistics are reported across much of the current decade.[179] The employment law clinic continues to generate significant casework, including in the anti-discrimination area. KLC also works closely with other local agencies as well as the NSW Combined Community Legal Centres Group, emphasising law reform and policy work in addition to casework.[180] This has seen students exposed to different types of work beyond criminal and family law. Prior to its relocation in 2006, KLC hosted outreach services provided by other agencies [181] and now has an increasing focus on delivery of outreach services to foster continued accessibility. These outreach services tend to focus on civil law areas.[182]

The strong early emphasis on domestic violence outlined earlier in this chapter has continued, with KLC working with other community legal centres to advocate for policy change in this area.[183] Consumer credit has been another area of continuing strategic focus[184] and there was long-running litigation pursued in relation to the rights of prisoners to access educational and health services.[185] The other major focus area has been in pursuing actions on behalf of members of the Stolen Generations of indigenous

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[177] Simon Rice, email, KLC also played a lead role in the establishment in 1994 of the Disability Discrimination Legal Centre in New South Wales. KLC tendered to auspice the new federally-funded centre on the basis of its experience in both CLCs and discrimination. The new centre did not involve any clinical work but KLC staff nurtured its management and practice, co-locating until separate premises were found and then continuing to provide administrative support. KLC encouraged clinical students to volunteer for the centre and its first employed lawyer was a former Freehills KLC secondee, Michelle Hannon.

[178] *Kingsford Legal Centre Annual Report 2005* 17.

[179] In 2007, civil law, discrimination and employment accounted for all but 8 of the 146 new cases opened by the centre (*Kingsford Legal Centre Annual Report 2007* 19). In 2006, those 3 categories covered 110 of the 116 new cases taken on (*Kingsford Legal Centre Annual Report 2006* 16) while in 2004, such matters made up 102 of the 124 new cases (*Kingsford Legal Centre Annual Report 2004* 17).

[180] *Kingsford Legal Centre Annual Report 2004* 26-7, *Kingsford Legal Centre Annual Report 2005*, 28-9.

[181] Notably the Eastern Area Tenants Service and a child support service provided by Legal Aid New South Wales. See *Kingsford Legal Centre Annual Report 2003*, 6, *Kingsford Legal Centre Annual Report 2004* 8.

[182] *Kingsford Legal Centre Annual Report 2007* 17-18.

[183] Nichols, above n 2, 34.

[184] See, for example, *Kingsford Legal Centre Annual Report 2002* 16 & *Kingsford Legal Centre Annual Report 2006* 18-19.

[185] *Kingsford Legal Centre Annual Report 2003* 16-17, *Kingsford Legal Centre Annual Report 2004* 18-19 & *Kingsford Legal Centre Annual Report 2005* 20-21.

Australians. KLC ran the first Stolen Generations test case in NSW but their client's claims to have been stolen and mistreated during her time in state institutions were not accepted by the Supreme Court. It appears that the loss of this case was felt very acutely by KLC staff.[186]

Significant International Engagement

A distinctive aspect of the work of the UNSW clinical program over the past decade has been the level of its international engagement, in particular with clinics in China, the Global Alliance for Justice Education (GAJE) and the United Nations Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Clearly these activities have enhanced the profile of KLC and the UNSW clinical program.

In May 2001, KLC staff visited various clinics and legal aid organisations in China and received a return delegation in August 2001. Facilitated by the Human Rights and Equal Opportunity Commission, this led to visits by Frances Gibson to Chinese clinical programs in 2002.[187] Other KLC staff spent time in 2002 with clinical programs in the USA, England and South East Asia.[188] KLC staff contributed some $10,000 from the funds received for the 2001 Australian Teaching Award towards the Regional GAJE conference held in Sydney in December 2002.[189]

KLC's work relating to CEDAW also illustrates the centre's collaborative approach to policy work, with KLC actively contributing to efforts to promote the Convention and to have the views of the Australian non-government sector considered by the CEDAW Committee.[190] In 2007, Anna Cody and Shirley Southgate ran a training program in Timor Leste for the United Nations Development Fund for Women and in 2008, Cody

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[186] Nichols, above n 2, 39, *Kingsford Legal Centre Annual Report 2000* 3, 15 & 17. Anna Cody commented that the loss made her 'really question the efficacy of casework in changing anything, and I think that has moved me more into policy and management as well'. Nichols, 50.

[187] *Kingsford Legal Centre Annual Report 2001* 5 & 29-30, *Kingsford Legal Centre Annual Report 2002*, 25. See also Frances Gibson, 'Chinese Clinical Legal Education in the Year of the Horse: A Visit to Tsinghua University' (2002) 6 (2) *Newcastle Law Review* 33.

[188] *Kingsford Legal Centre Annual Report 2002* 25-29.

[189] Through KLC, the UNSW Law School worked collaboratively with the Sydney University Law School to convene this highly successful conference. *Kingsford Legal Centre Annual Report 2002* 24-25.

[190] *Kingsford Legal Centre Annual Report 2004* 26 & *Kingsford Legal Centre Annual Report 2006* 23.

visited China to provide training on legal aid and community legal centres for the Beijing Legal Aid Organisation of Rural Migrants.[191]

These types of activities provide the opportunity for the clinical program to highlight to students the breadth of work in which lawyers can be engaged.

Engaging With the Profession – Secondees and Volunteer Lawyers

This chapter has already made reference to the significant contribution of the Sydney legal profession in KLC overcoming the threat of closure in the late 1990s. In particular, the contribution of Freehills, (through a secondment program initiated in 1992) Henry Davis York and Allens[192] were noted. Some secondees subsequently returned as salaried KLC staff.[193] Allens and Freehills both second a lawyer to KLC for six months each year. Other firms have also made important ongoing contributions to the casework of KLC, providing staff for regular advice sessions.[194]

The profession's other very significant contribution to KLC has been through volunteers. Since 2000, KLC has consistently maintained a volunteer cohort of more than 40 lawyers. This has assisted in managing the KLC caseload and provided ready access to the litigation expertise of major firms. It has also given students the opportunity to learn from and with a broader range of practitioners. In 2007, KLC surveyed its 50 volunteer solicitors with a view to assessing a range of matters including the impact of its relocation to the UNSW Law School building and the involvement of the volunteers with the *Law, Lawyers and Society* students. While the responses of volunteers warranted closer analysis, the report indicated that some volunteers considered that fewer clients were approaching KLC about poverty law issues with civil claims becoming more prominent. People who had been previously involved with KLC, as either a student or a secondee, were prominent amongst the respondents, as were people who had previously volunteered at other community legal centres. When asked about the skills the first year students most needed to develop,

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[191] Anna Cody <A.Cody@unsw.edu.au>, email (7 November 2008).
[192] *Kingsford Legal Centre Annual Report 2006* 21.
[193] For example, see *Kingsford Legal Centre Annual Report 2003* 21 (both 2003 secondees, Emily Sunman & Jinny Chaimungkalanont were previous KLC students) & *Kingsford Legal Centre Annual Report 2007* 26 (noting Sinead Eastman as both a former secondee and KLC staff member).
[194] *Kingsford Legal Centre Annual Report 2007* 28 & 35.

volunteers emphasised accurate, succinct and legible note-taking as well as more general communication skills.[195]

Images of Clinical Legal Education - Street Practice

Another novel and significant aspect of KLC's recent history was its involvement in *Reality Bites: Street Practice*, a 4-part television documentary series screened by the Australian Broadcasting Corporation in September 2004. While the series generated 'increased interest from volunteer lawyers and from students', the filming process generated 'the challenge of going about our business in front of documentary cameras'.[196]

Writing after filming had been completed but before the series was screened, Frances Gibson stated that 'though the results will no doubt be a long lasting memorial and insight into the valuable work of the Centre, the process and its effect on staff and students was not without its difficulties'.[197] Subsequently, Gibson expressed the view that the series did not accurately reflect KLC's activities. 'The cases were chosen on the basis of the client wanting to do it, the students being photogenic and interested in doing it.' Complex matters, including a successful Supreme Court case were too long and complex to suit the television format. The presence of cameras also made people act differently. 'Some students would just clam up and not speak at all and others just would not shut up. Some people dressed differently and became concerned about their appearance all the time.'[198]

The ways in which the series represented both KLC and clinical legal education generated strong concerns from one Australian legal academic. Kieran Tranter wrote in 2006 that the series 'showed the problematic nature of "ethical training through experience" by revealing its foundation in hierarchy, manipulation and egotism'.[199] Following a closely-referenced analysis, Tranter concluded that Australian clinical legal education 'has joined the conservative right in betrayal of its progressive origins'.[200] While Tranter raises important questions, his arguments would have been

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[195] Kingsford Legal Centre, *Volunteer Solicitors Report*, October 2007, 3, 7 & 11.
[196] *Kingsford Legal Centre Annual Report 2004* 5.
[197] *Kingsford Legal Centre Annual Report 2003* 3.
[198] Nichols, above n 2, 48.
[199] Kieran Tranter, 'The Different Side of Society: *Street Practice* and Australian Clinical Legal Education' (2006) 15 (1) *Griffith Law Review* 1.
[200] Ibid 21.

strengthened had he sought to corroborate his interpretation using other sources of information regarding KLC.

In essence, Tranter's criticisms relate most directly to the nature of media representations than about the operation of KLC and the nature of current Australian clinical legal education. They do, however, demonstrate the potential for clinical legal education to be misunderstood. The actions of the various participants would have benefitted from more comprehensive explanation than was possible in a television documentary context.

Frances Gibson's Departure

Frances Gibson was the longest-serving Director in the history of KLC when she left at the end of 2003 after 8 years in the post.[201] Anna Cody, who had been a KLC intensive clinic student and then worked at the centre for periods totalling six years between 1995 and 2003, became Director in March 2004.[202] Gibson had encouraged Cody to return to KLC in late-2002 to act as Director while she was on study leave.[203] Cody has described the Director's role as to champion KLC 'in the Law School and more broadly in the community and to keep it doing interesting innovative work.'[204]

Following her departure, Gibson noted that there had been continuing discussions about KLC being located in the new UNSW Law School building. She supported the move with her only concern being the issue of accessibility for clients. The move was seen as making it easier for students to be involved and for academics who 'are very supportive but don't really have a clue what goes on' to contribute. Being able to more easily obtain the perspectives of fellow academics would also be good for clients.'[205]

Location, Location, Location

In 2006, KLC moved from its premises in Rainbow Street, Kingsford to the ground floor of the new Law School building on the main UNSW campus. Anna Cody noted that despite 'some sadness in leaving our previous premises, the move has made us think

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[201] *Kingsford Legal Centre Annual Report 2003* 3.
[202] Nichols, above n 2, 50.
[203] She expressed thanks to the Law School, KLC staff and 'the students (well 99% of them anyway) and of course the clients for offering me the opportunity to work at Kingsford Legal Centre for eight years. I couldn't have asked for a better job and I am sure the Centre will go from strength to strength in the future.' Nichols, above n 2, 50.
[204] Nichols, above n 2, 50. Cody also referred to 'maintaining the quality of the teaching, being open to new ideas and trying new things, and providing support to staff as well, and managing.'
[205] Nichols, above n 2, 45.

more deeply about how we provide services to the community', leading to the development of several new outreach services.[206]

One of the few reservations expressed about the move related to client accessibility. Former KLC Coordinator, Michelle Burrell stated, 'We were next to the Fruit Barn, everyone knows where the Fruit Barn is; and the Centre's on a transport hub. The great thing is its location, and the University isn't as accessible.' Burrell went on to note that 'as long as your service is of a high standard, word of mouth in the community will do the rest'.[207] Anna Cody has not discerned any significant change in the issues facing KLC clients. 'Perhaps we get less drop-ins of people with mental illness but we still do get people dropping in who don't necessarily have legal problems but other issues.'

KLC staff have emphasised the vital importance of the centre maintaining its community presence. This has required a more conscious and planned approach. A major focus of these outreach services has been the development of a program to service the Indigenous community of La Perouse. This has included the employment in November 2008 of an Indigenous Access Worker with funding from a private donation, the federal government and the Eastern Suburbs Law Society.[208]

Anna Cody considers that the clinic's linkages to the broader activities of the law school are definitely helped by having both a physical presence as well as being able to attend staff seminars, committee meetings, morning teas and the like. KLC staff beyond the Director now have more of a relationship with other members of the Law School.[209] A management committee was also established in 2006, with membership drawn from Law School staff, the community sector and legal professionals. Cody considers the committee to have been useful to enhancing law school links and involving some important (and powerful) academics in the Centre.[210]

Scholarship Expectations

The place of clinic-based academics and student supervisors was a significant issue in the early years of the UNSW clinical program but appears to be less controversial now. This may relate to the fact that only one UNSW Law School academic, namely the KLC

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[206] *Kingsford Legal Centre Annual Report 2005* 5.
[207] Nichols, above n 2, 51.
[208] Interview with Shirley Southgate (Sydney, 15 November 2008).
[209] Anna Cody <A.Cody@unsw.edu.au>, email (7 November 2008).
[210] Anna Cody <A.Cody@unsw.edu.au>, email (7 November 2008).

Director, is based at KLC. Anna Cody, now a tenured Associate Professor, has had access to research leave during her time at KLC, as have previous directors. In 1998, Frances Gibson expressed the view that there was no possibility of the KLC Director being promoted. 'Either there needs to be different criteria or the job here needs to change considerably.'[211] Interestingly, Gibson was promoted to Senior Lecturer two years later. In comparison to some other programs, unrealistic scholarship expectations do not appear as significant an issue for staff in the UNSW clinical program.

Conclusion

KLC has been sustained through a range of challenges and now appears to be more effectively integrated within the UNSW Law School (with the *Law, Lawyers and Society* subject and the new location) and this augurs well for its long-term future. This clinical integration raises the related issue of planning for the effective sequencing of multiple clinical experiences, at least for those students who elect to complete a *Clinical Legal Experience* placement at KLC.

The Directors of KLC have been a set of astute, strong-willed individuals, each with a clear vision of the direction they wanted to take KLC. Each of them ensured a prominent place for KLC within a progressive law school that took innovation seriously in both scholarship and teaching. It is also noteworthy that each director has engaged in at least some degree of succession planning, having encouraged their successor to apply for the Director position. It is instructive to also note the long-term contributions of other legal and administrative staff enabling continuity when directors were on study leave or discharging other responsibilities. The contributions of Paul Batley, John Godwin, Anna Cody, Joanne Moffitt and Shirley Southgate during their employment as casework lawyers have been significant in this regard.

This case study suggests that explicit law school support is very important to the ongoing operation of a clinical program. It also highlights the value of gathering support from a range of sources. The presence of a range of supporters is important in promoting an integrative framework for the clinical program. KLC has received strong support from the University, the Law School, the Legal Aid Commission of New South Wales, a range of major legal firms as well as the Federal Attorney-General's

[211] Interview with Frances Gibson (Sydney, 3 September 1998).

Department. Attracting resources from a range of sources, with secondments as well as various in-kind, volunteer and student support meant that legal aid funders continue to have a real incentive to do whatever is possible to facilitate the program's sustainability.

The case study further demonstrates the importance of student support when the existence of KLC was threatened. The experience of students was such that they saw real value in KLC being maintained. Many 'clinic graduates' return to KLC, either as volunteers or on secondment or as a salaried staff member. This suggests a strong culture of support for the endeavours of the centre. The approach taken in the late-1990s to integrate the work of KLC into the broader teaching work of the law school appears to have worked well. This integration continues and has the potential to be made considerably easier with KLC's re-location to the new UNSW Law School building.

Chapter Seven – The Newcastle Clinical Program

Introduction

This chapter reviews the establishment and continuing development of the substantial clinical program at the University of Newcastle Law School. The Newcastle Legal Centre (NLC), subsequently renamed the University of Newcastle Legal Centre (UNLC), was the vehicle developed to operationalise the vision of a 'clinical law school'.[1] The Newcastle program was distinctive in terms of its breadth in integrating clinical method across the program as well as in preparing graduates for immediate admission to the practising profession.

In New South Wales (NSW), law graduates have been required since the 1970s to complete a Practical Legal Training (PLT) program in order to be eligible for professional admission.[2] Newcastle was the first Australian law school to develop a program combining completion of a law degree with this PLT requirement. Newcastle Law School developed its program so as to have clinical method at the centre of its curriculum, aiming to take the insights from live-client clinic work into the classroom as well as making more extensive use of simulation-based learning.[3] Newcastle University already had a well-regarded medicine degree with a strong Problem-Based Learning focus and was therefore a good fit for introducing similar approaches in law.

The Newcastle clinical program quickly developed a very strong focus on public interest litigation, particularly in the area of coronial processes and generated a very substantial media profile. This focus on public interest advocacy enhanced the contributions made by the clinic in various respects while also raising questions about how the clinic contributed to student learning and its accountability to the Law School and the University. This case study details the challenges involved in reconciling divergent expectations between clinic and law school, the challenges of fitting clinicians

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[1] The term, 'clinical law school' has been used by various people involved in the Newcastle program. See Neil Rees, 'A Clinical Law School', February 1996, 6 *University of Newcastle Centre for Advancement of Learning and Teaching Newsletter* 2; Ray Watterson, Robert Cavanagh & John Boersig, 'Law School Based Public Interest Advocacy: An Australian Story' (2002) 2 *International Journal of Clinical Legal Education* 1, 13 & John Boersig, 'Clinical Legal Education: The Newcastle University Model' paper presented at the Australasian Professional Legal Education Council International Conference, *Skills Development for Tomorrow's Lawyers: Needs and Strategies*, Sydney, September 1996, published in Conference Papers Volume 1, 465.

[2] Articles of clerkship were abolished as a pathway to admission to legal practice in New South Wales in the 1970s. See David Weisbrot, *Australian Lawyers* (1990) 148-151.

[3] Boersig, above n 1, 465-6; John Boersig, James Marshall & Georgia Seaton, 'Teaching Law and Legal Practice in a Live Client Clinic' (2002) 6 (2) *Newcastle Law Review* 51, 63.

within university structures as well as the impact of diminishing external financial support for the clinical program. It shows the opportunities and challenges involved in implementing an ambitious clinical integration plan and also demonstrates the impact of university inflexibility in requiring all academic staff to have research higher degrees prior to appointment.

The chapter first addresses issues related to establishment of the law school and the decision to pursue the development of a 'clinical law school'. It then considers the significance of securing support from the legal profession and the process of structuring the clinical program. Challenges are identified in relation to the clinic's place within both the law school and the university, particularly in a changing environment. Making the transition from external support for establishment towards sustained law school and university commitment is also addressed. The chapter then examines the sustainability issues generated by the program's strong focus on impact litigation and the importance of a shared sense of purpose between the clinic and its law school.

Early Moves Towards Establishing a Law School

The early efforts to establish the Newcastle Law School illustrate the influence of government higher education policy in stifling or facilitating such developments, and highlight the significance of university politics in the establishment of a new school.

Neil Rees, Foundation Dean of the Newcastle Law School, identifies two factors as central to the establishment of the school and its clinical program. The law program would not have been established if the early 1990s had not been a time of deregulation and expansion in Australian higher education.[4] The 'gratuitous existence of an external funder', in the form of the Solicitors Trust Accounts Fund administered by the Law Society of New South Wales, was also very important in enabling a clinical focus to be taken by the new school.[5] Rees recalls having strong support from law school colleagues and the local practising profession but support amongst the upper echelons of the university was limited to the Chancellor, Justice Elizabeth Evatt[6] and Vice-Chancellor, Professor Keith Morgan:

> 'Many of the old hands saw law coming and jumping on the back of medicine and trying to get the level of resources that medicine had

[4] See Chapter 4, footnotes 19-22 and related text.
[5] Interview with Neil Rees (Newcastle, 2 December 2004).
[6] Elizabeth Evatt was the first Chief Justice of the Family Court of Australia and served in that post from 1975 to 1988 and as Chair of the Australian Law Reform Commission from 1988 to 1993.

> received and therefore sucking even more money out of other parts of the university. I arrived to a pretty hostile reception with the only two supporters being really the Chancellor and the Vice-Chancellor. It was an incredibly political hot potato.'[7]

Following the establishment of a Department of Legal Studies in 1973[8], University of Newcastle efforts to establish a law school in the 1970s and 1980s were not supported by the Commonwealth Tertiary Education Commission (CTEC).[9] Concerns were expressed by CTEC regarding the presence of law programs elsewhere in NSW and the likelihood of limited student demand.[10] In a May 1986 memorandum to the Vice Chancellor, the Head of the Department of Law in the Faculty of Economics and Commerce David Mitchell suggested the need for distinctiveness could be addressed through giving the program a clinical focus:

> 'It should go without saying that any law school which planned and implemented viable programmes of a clinical kind would grow in reputation as it would not only be meeting manifested educational needs but be preparing practitioners for a higher standard of practice in the 21st Century.'[11]

The University's October 1986 submission to CTEC referred to the aim of developing 'a full and innovative Faculty of Law in the University, the distinctive feature of which

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[7] Interview with Neil Rees (Newcastle, 2 December 2004).

[8] The first suggestion that a law faculty be established in Newcastle appears to have come from then Chairman of the NSW Bar Association, Sir John Kerr in 1956 when Newcastle University was a college of the University of New South Wales. See Eric Aubert, 'Newcastle takes the clinical view of a legal education' *Newcastle University Bulletin*, 26 October 1992.

[9] The Commonwealth Tertiary Education Commission was the key Federal Government agency with responsibility for tertiary education planning from 1977 to 1987. See Judith Chapman & Jeffrey Dunstan (eds), *Democracy and Bureaucracy: Tensions in Public Schooling* (1990) 19-20. The history of Newcastle University proposals to establish a law school is usefully summarised in a September 1989 University submission. See *Preliminary Submission to the Department of Employment, Education & Training on the Establishment of a Faculty of Law in the University of Newcastle (N.S.W.)*, September 1989, esp. 7-8.

[10] See Australian Universities Commission, *Sixth Report of the Australian Universities Commission* (May 1975) 107, Australian Universities Commission, *Report for 1977-79 Triennium* (July 1976) 85 & J. Southward, 'University to ask for law faculty again' *Newcastle Herald*, 17 March 1986, 3.

[11] D. W. Mitchell, Memorandum to D. W. George, Vice Chancellor, University of Newcastle, on Proposal for a Law Degree in the University of Newcastle, 27 May 1986, 1-2. Influenced by a report written by Macquarie University legal academic, Jack Goldring entitled 'Law in Action', Mitchell suggested that previous University proposals 'could be seen as emanations from an institution which would adopt an uncreative and parochial educational perspective for the discipline of law'. See John Goldring, *Learning Law in Action: A report on a study tour of Canada to examine clinical and practical elements of legal education in Canadian law schools*, (March 1986).

would be a strong clinical, problem solving orientation'.[12] This submission met with strong criticism in the 1987 report of the Pearce Committee, established by CTEC in March 1985 to conduct a discipline assessment of Australian law schools.[13] The Pearce Committee concluded that there was no need for additional law places in New South Wales (NSW) and that a law school at Newcastle would not be able to attract a sufficient number of quality students to be viable.[14]

The Pearce Committee also commented negatively on the proposal that a Newcastle law degree be modelled on clinical legal education. Clinic methods were seen as 'closely allied with training persons to enter legal practice' and that 'too close a concentration on the clinical format may not provide the breadth of generalist teaching that we see as being necessary for law courses in the future'.[15] Such comments suggest that the Pearce Committee had a very limited view of clinical legal education, failing to appreciate its potential in promoting student learning beyond the development of practice-related skills.[16]

In earlier times, the Pearce Committee's emphatic view would have ended the prospects for a law school at Newcastle University. However, important changes in Federal Government higher education policy paved the way for the program's development. The Dawkins Reforms of the late 1980s dramatically changed the regulatory framework for Australian higher education.[17] The September 1989 proposal by Newcastle University to establish a law school did not require CTEC support and was submitted directly to the Department of Employment, Education and Training. The proposal emphasised the substantial legal activity generated by business and industry in the Hunter and Central Coast Regions of NSW, the concentration of NSW law schools in metropolitan Sydney and the existence of substantial law-related library

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[12] University of Newcastle, Submission to the Universities Council, Commonwealth Tertiary Education Commission for the 1988-1990 Triennium, 16.

[13] Dennis Pearce, Enid Campbell & Don Harding, *Australian Law Schools: A discipline assessment for the Commonwealth Tertiary Education* Commission, 1987, AGPS, Canberra. See also Chapter 1, footnote 43 and related text, Chapter 2, footnotes 39-40 and related text and Chapter 5, footnotes 117-118 and related text.

[14] Ibid 538.

[15] Ibid.

[16] In 1990, Weisbrot described the Pearce Report as 'oddly ambivalent about clinical programs'. Weisbrot, above n 2, 134.

[17] Simon Marginson & Mark Considine, *The Enterprise University: Power, Governance and Reinvention in Australia*, 2000, Cambridge University Press, 27-36. See also Chapter 4 of this thesis, footnotes 19-22 and related text.

holdings at Newcastle University.[18] Newcastle became one of the first amongst 17 new Australian law schools established between 1989 and 2003.[19]

Becoming a Clinical Law School

The May 1990 job advertisement for the Foundation Dean of Law at Newcastle did not refer specifically to the development of a clinical model. It stated that 'The University has no prior commitment to any particular structure, traditional or otherwise, provided only that the admission requirements are met.'[20] When Neil Rees was contacted about applying for the position, 'there were no pre-conceived ideas about what the law school should look like, certainly nothing about clinical was on the radar.'[21] Rees was justifiably regarded as a pioneer of clinical legal education in Australia. He made central contributions to the development of Springvale Legal Service, the first and key site of the Monash clinical program[22], along with establishing the University of New South Wales clinical program in 1980.[23]

In September 1991, Rees was reported as saying he would take a clinical approach. 'I like to teach by exposure to practical legal problems. This takes students out of the classroom and exposes them to the legal system in operation.'[24] Rees recalls the Australian Clinical Legal Education Conference hosted by Kingsford Legal Centre in October 1991 conveying the vibrancy of the clinical movement. 'The conference showed there was a substantial pool of people interested in clinical legal education' and indicated that you could establish a clinical law school.[25]

Rees floated the idea of a distinctively clinical law school at a meeting with University of Newcastle Legal Studies Department staff in late-1991.[26] The proposal was received with scepticism rather than opposition. Rees then convinced colleagues that a clinical focus was appropriate. Ray Watterson was the Foundation Deputy Dean and could see

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[18] Preliminary Submission to the Department of Employment, Education and Training on the Establishment of a Faculty of Law in the University of Newcastle (N.S.W.), September 1989, 6, 14-17.
[19] Richard Johnstone & Sumitra Vignaendra, Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee (2003) 3.
[20] *The Australian*, 23 May 1990.
[21] Interview with Neil Rees (Newcastle, 2 December 2004).
[22] See Chapter 5, footnote 14 and related text.
[23] See Chapter 6, footnotes 12-76 and related text.
[24] Jonathan Porter, 'Law Dean Aims to Set Practical Precedents', *Higher Education Supplement – The Australian*, 18 September 1991.
[25] Interview with Neil Rees (Newcastle, 2 December 2004).
[26] Interview with Neil Rees (Newcastle, 2 December 2004).

the potential of a clinical focus and the need for academics like himself to provide a bridge between the fledgling clinicians and the Law School.[27]

The law program took its first intake of 60 students, half of whom were non-school leavers, in 1993. This meant that Newcastle Law School had the smallest intake of the 16 institutions with courses accredited with the New South Wales Legal Practitioners Admission Board.[28] Subsequent intakes were 64 in 1994 and 1995 (there had been around 1000 applicants) and 79 in 1996.[29] The clinic first took students in 1994. The resource-intensive clinical teaching practices were designed for small intakes and came under pressure as numbers increased and it became challenging to provide every student with the range of learning opportunities and experiences specified for their degree program. Students were to complete one of two program options, with Option B known as the Professional Program and leading to the award of both an LLB and a Diploma of Legal Practice. Option A students would complete a traditional LLB but with clinical elements incorporated into compulsory subjects.[30]

For the first full year of the law program, the Vice-Chancellor provided an additional $150,000 as a discretionary grant for start-up purposes. This was a substantial amount of money, given that a professorial salary at that time was around $60,000. A substantial part of these start-up funds was used to engage consultants including senior Australian clinicians Sue Campbell[31] and Simon Rice[32] to advise and assist with development of the program. Rees considers that having enthusiastic people from large law schools coming in to talk about clinics helped reinforce to staff the value of a clinical approach. 'That was very powerful help, getting external support.'[33]

The Foundation Director of the Newcastle Legal Centre (NLC) was John Boersig, who came to the position with a strong legal practice background. He had worked for Aboriginal legal services across Northern and Central New South Wales for more than a

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[27] Interview with Ray Watterson (Newcastle, 3 December 2004). While he had not practised as a lawyer, Watterson had experience as an advocate and decision-maker. In his submission to the 2002 Review of the Newcastle Law School, Watterson noted that inclusion of practising lawyers 'as academic members of the law school, was an essential step in providing Newcastle's clinical program'. Ray Watterson, *A Clinical Law School at Newcastle: A Submission to the External Review of the School of Law 2002*, 8.

[28] University of Newcastle, Faculty of Law, Legal Profession Liaison Committee Meeting 1/93, 1.

[29] University of Newcastle, Faculty of Law, Legal Profession Liaison Committee Meeting 1/95, 1.

[30] This is examined in greater detail below in the section of this chapter on 'Structuring the Clinical Experience'.

[31] See Chapter 5, footnotes 64, 77, 100 & 178-179 and related text.

[32] See Chapter 6, footnotes 92-95 & 132-134 and related text.

[33] Interview with Neil Rees (Newcastle, 2 December 2004).

decade and was well known to practitioners in Newcastle and the Hunter Valley. Boersig emphasises that the guidance of Sue Campbell was crucial to development of the program. 'She gave the best educationalist understanding of the role.'[34] In effect, Campbell mentored both Boersig and his NLC colleague, Mark Whelan. Efforts were made to have her accept a professorial post but, while she spent the first half of 1995 at Newcastle as a Visiting Professor, she then returned to Monash.

The clinical focus was also central to efforts to give the law school a distinct identity. Neil Rees states that the law school 'needed a badge' and the clinic emphasis provided a way of distinguishing Newcastle as a law school. Law school promotional materials continue to prominently feature the clinic and the community links resulting from its work. Current Dean and Head of School, Ted Wright, has stated that if anything has given Newcastle University a national profile in legal education, it has been the clinic.[35]

One measurement of the success of the clinical 'brand' was the increase in demand for places in the Newcastle Law Program. By 1997, the Tertiary Education Ranking required for entry to Newcastle Law School was the fourth highest of the 12 law schools in NSW and the ACT, indicating the attractiveness to students of a clinical focus.[36] The Pearce Committee appears to have been wrong in its view that a law school in Newcastle would struggle to attract sufficient quality students.

Support From 'the Legal Profession'

Legal professional support and engagement was very important to development of the Newcastle clinical program. Financial support provided by the Law Society of New South Wales was particularly significant. The Law Society contributed close to $1 million from the Solicitors Trust Accounts Fund towards development of the law school.[37] Receipt of such a substantial grant from the 'legal profession' gave the law school greater credibility within the University.[38] Neil Rees considers that without these 'Westpac monies', the clinical program would not have been sustainable.

Obtaining this major grant was an instance of serendipity. The then President of the Law Society, John Marsden, was, according to Rees, the 'right person in the right place

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[34] Interview with John Boersig (Newcastle, 4 December 2004).
[35] Interview with Ted Wright (Newcastle, 2 December 2004).
[36] Neil Rees, The Professional Program: A Discussion Paper, 27 November 1997, 3.
[37] Taking into account interest generated over the 3 years of funding, the total contribution was $920,000.
[38] Interview with Neil Rees (Newcastle, 2 December 2004).

at the right time'.[39] There was some $60 million in the Solicitors Trust Accounts Fund and Marsden was looking for projects to support. At the time, there were calls for greater competition in the PLT market.[40] The law school argued successfully that with support being provided to the then monopoly PLT provider, the College of Law, the same funding source should support the development of alternative programs. Long waiting lists for places in the College of Law program reinforced this argument.[41]

Support was also required from the NSW judiciary in the form of accreditation of the Newcastle Professional Program as meeting the PLT requirements. Rees notes that the distinctiveness of the Newcastle approach involved seeking to have the Legal Practitioners Board accredit an unprecedented integration of two stages of legal education. While this was 'a big issue for a board then dominated by conservative judges', accreditation was obtained in late-1993.[42]

The legal profession of the Hunter Valley region made substantial financial contributions to establishment of the law school[43] and continues to be important to the clinic. Establishment of the clinic was supported by most local practitioners although some expressed concern about competition for clients. John Boersig considers the clinic in fact generated work for local firms, identifying those cases that had little prospect of success and referring out to the profession those cases 'that do have legs and that they can make some money out of.'[44]

The local legal profession also contributed to operationalising the vision of a clinical law school. John Boersig noted that when he started in late-1994, the Law School was engaged in a major effort to co-opt the profession into supporting the clinic. Unlike in the US, where student placements were seen as an integral part of professional practice, the Hunter Region had no tradition of training law students through placements. 'It was a very big thing to forge a relationship with practitioners and ask

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[39] Interview with Neil Rees (Newcastle, 2 December 2004).
[40] See *Bulletin*, 26 October 1992 and Interview with Neil Rees (2 December 2004).
[41] This was commented on in 1987 by the Pearce Committee, above n 13, 865. The Committee stated that New South Wales was the one area of major difficulty where the alternative of articles is not available. See also Weisbrot, above n 2, 72.
[42] Interview with Neil Rees (Newcastle, 2 December 2004).
[43] See University of Newcastle, Faculty of Law, *Faculty Self-Review*, May 1995, 5 for a list of financial contributions from Hunter Region law firms. One substantial contribution came from the firm, Harris Wheeler which funded development of a Mock Courtroom on campus for use in advocacy skills training. See *Newcastle University Bulletin*, 26 October 1992.
[44] Interview with John Boersig (Newcastle, 4 December 2004).

them to supervise students free of charge.'[45] Boersig's local knowledge, reputation and practice skills were valuable in gaining local professional support and obtaining placements for students.[46]

While the regional location of the university made it easier to link with the local profession, it was not possible to develop a comprehensive clinical partnership with the local Hunter Community Legal Centre.[47] The NLC was established after plans to have the Hunter Community Legal Centre host the clinical program did not eventuate.[48] John Boersig recalls that the Hunter Community Legal Centre had a very strong management committee and several of the lawyers involved were very suspicious about the role the university might play. Concerns were expressed that the university might take over the community legal sector, draining out money to deliver education programs. Issues were also raised in relation to service quality.[49] Ultimately, the two services did engage in some collaboration, coordinating their respective services. NLC staff contributed to the Hunter CLC Management Committee[50] and students were placed with the Hunter CLC and, after eight years of operations, UNLC joined the NSW Combined Community Legal Centre Group.

This section has shown that engagement with the practicing legal profession was central to the development of the Newcastle clinical program as a centre point of a practice-oriented law program. Support was provided in a range of ways with substantial start-up funding from the NSW Solicitors Trust Accounts Fund complementing the discretionary funding provided by the University Vice-Chancellor. The practice orientation of the Newcastle Law School was important in attracting professional interest and support. The clinical focus enabled the Law School to develop strong links and provided a valuable point of distinction. This appears to have contributed significantly to the strong demand for places in the Newcastle law program and generated considerable publicity in a crowded market.

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[45] Interview with John Boersig (Newcastle, 4 December 2004).

[46] The University of Newcastle, Faculty of Law, *The Professional Program, Legal Office Placements Manual*, February 1996, 7 & Boersig above n 1, 476.

[47] Note that this is considered in further detail in the section of this chapter on Integrating the Clinic.

[48] Rees, one of the founding directors of Hunter CLC, had had a similar experience when he was involved in discussions with Redfern Legal Centre about development of the UNSW clinical program. See Chapter 6, footnotes 35-37 and related text.

[49] Interview with John Boersig (Newcastle, 4 December 2004).

[50] Mark Whelan, Jenny Finlay-Jones and Georgia Seaton all spent time on the Hunter CLC Management Committee.

Structuring the Clinical Experience

This section of the chapter considers the structuring of the clinical components incorporated into the Law School teaching program. It sets out the program's ambitious nature, in terms of both the clinical approach and the integration of PLT, and addresses some of the pedagogical sustainability issues raised in Chapters Two and Three of this thesis. The Newcastle Law School described itself as devising a 'new approach to legal education which will produce law graduates of a quality not attained by other law schools.'[51] It sought to capitalise 'on the value of simulation activities whilst recognising the importance of actual legal experience'.[52] The comprehensive nature of the program raised significant sustainability issues. In educational terms, it required consideration of the suitability of clinical method early in a degree as well as the sequencing of and balance between different models.[53]

As noted above, Newcastle law students could choose to complete either a standard law degree or to enter the 'Professional Program' which enabled students to immediately obtain a restricted right of legal practise upon graduation.[54] Professional Program students were required to complete seven additional compulsory subjects[55] involving longer semesters (20 weeks each as compared to 13 weeks for other students) across the final two years of their degree. In effect, these students had to work longer and had less choice about the subjects done as part of their degree. Each such compulsory subject involved 80 hours of clinical legal education.[56]

In a 1995 paper, John Boersig emphasised the importance of the clinic in the 'legal practice acclimatisation'[57] of students and the convergence of client-centred and student-centred approaches. 'We seek to train students with a fundamental appreciation of their role, and of the client's role, within the context of legal practice.'[58] Exposure to the actual practice of law was important in highlighting 'the inherent

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[51] Faculty Self-Review, 1995, 3.
[52] Boersig, above n 1, 466.
[53] See Chapter 3, footnotes 14-27 and related text.
[54] Boersig, above n 1, 468.
[55] Family Law, Revenue Law, Wills and the Administration of Estates, Trial Process, Conveyancing, Advanced Commercial Law and Professional Practice. See Boersig, above n 1, 468-9.
[56] Boersig, above n 1, 469. By completing three clinical subjects per semester over the two years, students met the requirements for the PLT qualification, the Diploma of Legal Practice, including having undertaken 1,248 hours of clinic-related work. The coordination of such substantial amounts of clinical work required careful and detailed planning.
[57] Boersig, above n 1, 466.
[58] Ibid 467.

difficulties of dealing with people, courts, money and bureaucracy'.[59] Boersig argued that real-client work should be an important element of PLT and contrasted the Newcastle approach with the reliance on simulations in the transaction-oriented College of Law program. The Newcastle approach emphasised 'the teaching of generic skills essential to a broad range of legal activities'.[60]

In the early years of Law School operations, staff developed clinical components that were added to traditionally-taught subjects. For example, in the Torts subject, with support from the colleague teaching the subject, a clinic teacher took a class on Victims' Compensation using, with permission of the client, a current legal centre file. The preparation of the claim was explained, engaging students with relevant legislation and case law. Students were subsequently briefed on the case outcome which was discussed by the group.[61] Ray Watterson notes that it subsequently became difficult to sustain such teaching practices as student numbers increased. 'Remember, there were only small numbers of students in those days.'[62]

John Boersig considers that the teaching dimensions of the clinic were less well developed than the legal service aspects. He came to the position of NLC Director with an extensive legal practice background.[63] From mid-1995, he also became Director of the Professional Program and Assistant Dean (Clinical Legal Education) with responsibility for the development of the clinic as a site for student learning.[64] Rees considered the Assistant Dean position as very important, taking responsibility for integrating the clinical elements into the Professional Program. He also had intended that it should be separate from the NLC Director position.[65]

Boersig now considers the merging of those two important positions to have been a mistake. It took six years before those positions were once again separated. While Boersig emphasised the running of an effective legal practice, he recognised the need for someone with a stronger educational background, in legal education and educational theory:

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[59] Ibid 476.
[60] Ibid 466.
[61] Ibid 474.
[62] Interview with Ray Watterson (Newcastle, 3 December 2004).
[63] While he had not previously taught in universities, Boersig had taught Welfare Law at the Hunter Valley Technical and Further Education College and had been a volunteer at the Macquarie Legal Centre. He was also the volunteer supervisor of the solicitors at the Hunter Community Legal Centre.
[64] For details of the responsibilities of these positions, see Boersig, above n 1, 468.
[65] Interview with Neil Rees (Newcastle, 2 December 2004).

> 'No-one [in the program] had that background, in terms of articulating an educational framework. Neil [Rees] had a broad idea of what he wanted to do but there was no substance beyond the course outlines and so when they said 50% would be on placement and 50% would be on skills training, that was a guess. When they said there would be 1236 hours, that was because it was to be equivalent to the College of Law. There was no other worked-out, theoretical position.'[66]

Jenny Finlay-Jones, an academic from 1994 to 2007 who served as Acting Director of the Professional Program in 2001-2 and Director from 2004-5, notes the difficulties of getting the balance right between simulation and live-client experiences and between placement at the UNLC and external organisations. Student feedback indicated that students often found the UNLC placements most valuable but these were more resource-intensive for the Law School to operate. There were also difficulties in UNLC attracting sufficient caseload in certain areas of law, for example commercial transactions.[67] Neil Rees considers that the UNLC staff found themselves too heavily committed to public interest casework which resulted in students having insufficient involvement in other real client cases. In order to enable increasing numbers of students to complete the required PLT hours, the program was obliged to rely on simulation work. Rees had always seen the live client work as the centrepiece of the clinical training but the centrepiece had become simulation work, more in line with the College of Law.[68]

Originally, Professional Program semesters were 20 weeks and ran back-to-back. This was difficult for both clinic teachers and students, who found starting each semester early and finishing late to be exhausting. There was also a very heavy assessment load for both students and staff, particularly towards the end of semester. The late-1990s saw the College of Law reduce the length of its PLT program[69] due to funding difficulties. Newcastle made similar changes in 1999, reducing the required hours needed to satisfy PLT requirements from 1246 to 900. The Newcastle Professional

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[66] Interview with John Boersig (Newcastle, 4 December 2004).
[67] Interview with Jenny Finlay-Jones (Newcastle, 3 December 2004).
[68] Interview with Neil Rees (Newcastle, 2 December 2004).
[69] The program was reduced in length from 6 months to 15 weeks.

Program now involves 14-week semesters with a one-week Orientation and Professional Skills Week.[70]

The clinic staff opposed the reduced length of the Professional Program semesters and called for more comprehensive integration of the clinic across the law degree, including its earlier years[71], but Neil Rees responded that this was not feasible. This led to John Boersig taking two years leave with the understanding that if he returned, he would not hold the posts of either UNLC Director or Director of the Professional Program.[72] The task of developing a comprehensive clinical program as part of a law degree which also satisfied the requirements for PLT was always going to involve substantial planning. The efforts of the Newcastle Law School to articulate such a model were considerable and this may have resulted in less attention being paid to the integration and sequencing of different forms of clinical teaching across the program.

Perhaps what the Law School needed was to have the accreditation authorities recognise the greater value of in-house clinic placements as compared to external placements. Such recognition could have taken the form of fewer in-house hours being required to meet the professional placement requirements by comparison with an external placement. It would have been appropriate for the Law School to emphasise the greater level of responsibility given to students, the close nature of the supervision and its focus extending beyond case quality control to include the incremental development of student knowledge and skills and case selection.

Professional Partnerships

As noted earlier, the Newcastle program also involved the Hunter Region's practising legal profession in providing placement experiences for all Professional Program students. In 1996, the clinical program linked with the Legal Aid Commission of New South Wales (LACNSW) to have two LACNSW lawyers co-located with the NLC, playing an integral role in supervision of clinic students. In return, the University provided administrative support, legal resources and accommodation.[73] A similar arrangement was made in the same year with the Northern New South Wales Aboriginal Community Legal Centre (ACLC), locating lawyers and field officers from the Many Rivers Aboriginal Legal Service at University House, the building housing the clinic. Such

[70] Jenny Finlay-Jones, Submission to External Review of School of Law, August 2002, 6-7.
[71] Interview with John Boersig (Newcastle, 4 December 2004).
[72] Interview with John Boersig (Newcastle, 4 December 2004).
[73] Boersig, above n 1, 470-1.

arrangements exposed students to a broader range of legal practice, with the LACNSW practice focussing on civil law, including mental health, while the ACLC operated a mainly criminal law practice.[74]

The involvement of external agencies gave rise to variations in supervision practices. Some practitioners took what might be regarded as more of a private practice approach, delegating particular discrete tasks to students but keeping close control. Others gave students more global responsibility for a file, an approach that Jenny Finlay-Jones identified as more appropriate for clinic-based learning.[75] She noted that some LACNSW solicitors were not as focussed on student supervision as they might have been, viewing some students as more trouble than they were worth. This resulted in students not being allocated to them for supervision.[76] While these co-locations were useful in buttressing the UNLC as the main placement site for the clinical program, they required co-ordination and the development and monitoring of supervision practices.

Fitting Clinicians Within the Law School

This section of the chapter considers the integration of the clinical academics into the Law School. The locating of the clinic at a site accessible to the legal profession and broader community created a distance from the rest of the Law School and University. In order to implement the use of very different teaching methods and arrangements, the clinic needed cooperation from colleagues without experience of legal practice. Integration of the clinical academics was obviously important to the success of a clinical law school and was to become increasingly difficult once student numbers increased.

The location of the clinical program in the city centre of Newcastle, 20 minutes drive from the rest of the law school on the Callaghan campus, isolating the clinicians from their law school colleagues.[77] Neil Rees attempted to have all of the Law School located together in the city, occupying all of University House, a heritage-listed building purchased by the University. However, he was thwarted in this by the needs of the University's expanding graduate school.[78]

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[74] 'The Newcastle Legal Centre', The Faculty of Law Annual Report 1997, 12.
[75] Interview with Jenny Finlay-Jones (Newcastle, 3 December 2004).
[76] Interview with Jenny Finlay-Jones (Newcastle, 3 December 2004).
[77] Interview with Jenny Finlay-Jones (Newcastle, 3 December 2004).
[78] Interview with Neil Rees (Newcastle, 2 December 2004). The Newcastle Legal Centre opened in the Kayles Building in Newcastle West in late 1994 and was officially opened by Vice-

The separate location of the clinic made it challenging for the Law School leadership to foster working relationships between the clinic teachers and other law school academics. In addition to having to teach areas of law that were not their specialisation, these academics had to do so in an unfamiliar manner. John Boersig describes the serious concerns some colleagues had regarding the notion of a clinical law school. 'They feared what we were bringing in. It wasn't just the Plumber and Pericles. It was that the plumbers had an ability to use and apply the law that traditional academics found confronting.'[79] This highlights the challenges faced in introducing a teaching method that calls for additional practice-related knowledge and skills.

Boersig provides examples of academic colleagues who wanted the clinic not to cover particular areas of law that those academics had teaching responsibility for.[80] He also recalls concerns that the cost of the clinic would bring down the law school:

> 'I remember one memorable phrase from a senior academic from around that time, when he was concerned about the future of the law school, saying to me "It's all right for you. You can get a job somewhere else.".'[81]

The emphasis on being a clinical law school made effective integration both more important and more difficult. It raised issues of adequate resourcing and quality of student supervision, both at NLC and with the external placements. In the early years, these challenges were addressed through access to the funds from the Law Society but all involved knew this external support would not last.

Chancellor Raoul Mortley in February 1995. In February 1996, the Newcastle Professional Program, including the Legal Centre, moved to University House in central Newcastle with the premises being officially opened by the NSW Chief Justice, Murray Gleeson on March 14, 1996.

[79] Interview with John Boersig (Newcastle, 4 December 2004).

[80] Interview with John Boersig (Newcastle, 4 December 2004). Rather than identifying opportunities for integrating clinic-based learning into a classroom course, one colleague teaching succession law asked clinic staff not to have students work on wills as the teacher did not want students knowing too much about the area. Another suggested the clinic teachers not tell the students about the use of loose-leaf services which were helpful in giving teachers an important edge over the students in terms of knowledge.

[81] Interview with John Boersig (Newcastle, 4 December 2004).

A Changing University Environment

This section of the chapter outlines the ways in which changes in University senior management impacted on the clinical program. It emphasises the importance of senior management support for high quality teaching initiatives. The Newcastle clinical program benefited from the active support of Raoul Mortley during his time as Vice Chancellor, from 1994 to 1998. Mortley came from Bond University and had a strong commitment to undergraduate education, including legal education. According to Neil Rees, Mortley 'saw vibrancy and activity in this part of the University and wanted to encourage this'.[82]

In distributing funds within the University, Mortley was prepared to modify the application of the Federal Government's Relative Funding Model (RFM), which was discussed in Chapter Four.[83] From 1995, Newcastle Law School received what Rees described as a 'fabulous clinical loading' of approximately $250,000 per year from central university funds, about 50 percent more than what was due under the RFM.[84] Current Dean and Head of School, Ted Wright explains that this equated to the Law School being funded at a weighting of 1.6 rather than 1.0 standard for law.[85] One view of such a payment is that it demonstrates the difficulties faced by law schools seeking to maintain substantial clinical programs without supplementation of current government funding arrangements.[86]

The Law School was reviewed in July 1996 by Professor Bob Williams from Monash Law Faculty and Professor Helen Gamble from Wollongong Law Faculty. The reviewers advised against the goal of integrating the clinical program throughout the LLB. 'We did not accept the desirability of this aim, firstly because we did not think the University of Newcastle could sustain the funding for an expanded clinical program, and secondly because of the limited nature of the goal of providing lawyers for the local profession.'[87] This reference to 'providing lawyers for the local profession' was one of a range of phrases to which members of the Law School took strong objection. Deputy Dean Anne Finlay noted that there was 'no evidence that the Review panel

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[82] Interview with Neil Rees (Newcastle, 2 December 2004).
[83] Interview with Neil Rees (Newcastle, 2 December 2004).
[84] Interview with Neil Rees (Newcastle, 2 December 2004).
[85] See Chapter 4, footnotes 21-23 and related text.
[86] The implications of the Relative Funding Model for clinics are discussed in Andrew Goldsmith, 'Why Should Law Matter? Towards a Clinical Model of Legal Education' (2002) *UNSW Law Journal* 721, 730-732 & Jeff Giddings, 'A Circle Game: Issues in Australian Clinical Legal Education' (1999) 10 (1) *Legal Education Review* 33, 44-46.
[87] Robert Williams & Helen Gamble, *Review of the Faculty of Law*, July 1996, 15.

took account of the educational aims of the program and whether they were being achieved.'[88]

The Review noted that 'the LLB clinical program is expensive to run and is effectively subsidised from income from other teaching within the Faculty'. In response, Neil Rees noted that such a comparison was only correct if the comparator was 'classroom-only' law subjects rather than 'clinical programs in other disciplines such as medicine, nursing, architecture and engineering.'[89] Rees also noted that the Professional Program had not required subsidisation from the Law Faculty and had received substantial external support, including more than $1.5 million from Discretionary University Funds during the three years, 1995 to 1997.[90]

The momentum of the law school enabled it to maintain its direction in the face of the Review Committee's concerns, but more challenging times lay ahead. 1998 would turn out to be a pivotal year in the development of the Newcastle clinical program. From as early as April 1995, Neil Rees had been projecting a deficit of $484,000 for 1998 with the finish of development funding provided by the Solicitors Trust Account Fund.[91] John Boersig recalls being concerned for the future of the clinic because it was funded in part by 'soft money' and reliant on funds being raised to replace the support provided by the Solicitors Trust Account Fund.[92] Neil Rees notes that the Law School was careful to ensure that it did not commit itself to ongoing costs without certainty of funding. Fixed-term contracts were used for all soft money-reliant positions.[93]

In late 1997, Rees had applied to the Federal Attorney-General's Department for financial assistance for the Professional Program from the commencement of the 1998-99 financial year. 'The Attorney-General made it clear that he would not contemplate funding a clinical program, but that he would give serious consideration to providing financial support to the Newcastle Legal Centre as a legal aid service delivery agency'.[94] When the Federal Attorney-General's Department subsequently funded four clinical programs, Newcastle was not one of them. Rees notes that the Hunter Region

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[88] Anne Finlay, 'Providing Lawyers for the Local Profession', undated, 2.
[89] Neil Rees, 'Future Directions Group – Cost of the Professional Program' 6 June 1997, 1.
[90] Ibid. $443,000 in 1997 from the New Developments fund, $546,000 in 1996 and $556,000 in 1995 from the Vice-Chancellor's Discretionary Account.
[91] Neil Rees, Memorandum to All Members of Standing Committee and Executive Committee, 28 April 1995, 1.
[92] Interview with John Boersig (Newcastle, 4 December 2004).
[93] Telephone interview with Neil Rees (23 January 2009).
[94] Neil Rees, The Professional Program: A Discussion Paper, 27 November 1997, 6.

of New South Wales was not strategically significant in political terms.[95] Since 1901, the electorate of Newcastle has elected the Labor Party candidate at every federal election.[96]

Looming resource concerns were exacerbated by the arrival of a new Vice Chancellor, Roger Holmes late in 1997. According to Neil Rees: 'The wheels fell off when Roger Holmes arrived. Roger wanted to run a totally different university.'[97] Raoul Mortley had focussed on undergraduate education and saw that the university's reputation had been made in medical education whereas Holmes emphasised research. Even in medicine, the focus shifted from undergraduate education to grant-funded research. Holmes managed over time to effectively cut back the clinical loading by not indexing it to take account of increasing costs.[98] It is clear that continuation of the clinic was highly dependent on both maintaining support at University senior management level and having a Law Dean who was advocating strongly for its interests.

Following changes to university management structures in 1998, it was agreed the Centre needed to change its name.[99] The change to University of Newcastle Legal Centre (UNLC) was suggested by Law School staff in an effort to encourage the University to offer greater support to the clinical program.

Seceding or Succeeding?

This section of the chapter outlines the growing isolation of the clinical program as the clinic teachers became increasingly concerned at the lack of Law School support for their work. There was considerable staff turnover during this period which undermined the continuity which is so important to clinical programs.

In 1999, towards the end of his time as Dean, Neil Rees could see there was going to be a major battle between the law school and the clinical program:

> 'The clinical program had essentially seceded. They said that the law school didn't understand what the clinic did, built a moat around the program, filled it with crocodiles and said you have to get through

[95] Telephone interview with Neil Rees (23 January 2009).
[96] http://www.aec.gov.au/profiles/n/Newcastle.htm (last accessed 12 August 2010).
[97] Interview with Neil Rees (Newcastle, 2 December 2004).
[98] Interview with Neil Rees (Newcastle, 2 December 2004).
[99] John Boersig, Memorandum to Neil Rees, 12 March 1998.

> them to get to us. That's a short-term strategy to make you feel better but it's not a long-term approach.'[100]

There were significant differences between the clinic teachers and the rest of the law school in terms of teaching methods, expectations as to teaching hours, areas of research interest along with their skills and professional experience. Ray Watterson went so far as to say, 'It's not the students we're trying to convince, it's our colleagues.'[101] Tensions arose between clinic teachers and other law academics for the simple reason that the interests of the clinic and the law school were not always the same. Divisions caused by this lack of shared interests were compounded by competition for limited resources and the belief of clinicians that their program was under threat. Opposition from non-clinic teachers was generated by a perception that the clinic was too rapacious and not contributing enough.[102]

Once John Boersig commenced his absence from the clinical program in mid-1999, challenges arose with a lack of continuity for the position of Director of the Professional Program. There were several short-term directors - Carol Abela, Georgia Seton and James Marshall, each combining directorship of both the UNLC and the professional program. When Boersig returned as Director of UNLC in mid-2001, a position description was developed for that position which was designated as commencing at Lecturer (Level B) level. Jenny Finlay-Jones recalls 2001 as a very disruptive year from the perspective of students.[103]

Ted Wright noted that, having become Dean and Head of School in late-2001, it took him a long while to develop a relationship of trust and confidence with John Boersig as Director of the Clinical Program. 'John confessed to me that he had actively encouraged this separateness of the centre.'[104] Boersig comments that he felt the strong need to develop a team environment in order for the clinic to achieve what they wanted to achieve. 'The Law School was, like all law schools, fractured and unhappy. We were physically separate from them. To create that team environment, I had to create a real separation both physically and emotionally from the hill.'[105]

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[100] Interview with Neil Rees (Newcastle, 2 December 2004).
[101] Interview with Ray Watterson (Newcastle, 3 December 2004).
[102] Interview with Neil Rees (Newcastle, 2 December 2004).
[103] Interview with Jenny Finlay-Jones (Newcastle, 3 December 2004).
[104] Interview with Ted Wright (Newcastle, 2 December 2004).
[105] Interview with John Boersig (Newcastle, 4 December 2004).

Boersig considers his efforts achieved the teambuilding necessary to achieve the quality of legal practice he was seeking from the clinic. He was a zealous advocate for the value of clinic-based work on major cases. His focus was on the effectiveness of the clinic as an entity rather than on optimising the contribution of the clinic to the work of the law school. He considers the strategy was 'very successful for keeping the centre alive, keeping it powerful, keeping it vocal. It was an unsuccessful strategy for garnering ongoing support from a lot of the academics.'[106]

Effective integration of clinical insights across the curriculum requires close collaboration between clinic teachers and their non-clinic colleagues. Emphasising the student learning dimensions of the clinic requires clinicians to focus on responsibilities they share with their colleagues rather than on emphasising what differentiates them, namely their legal practice work. The clinic staff increasingly saw their program and themselves as under threat of closure and this made it all the more important to maintain UNLC's high public profile. John Boersig considers that the profile developed through major cases enabled the clinic to survive.

> 'The positive press that we generated kept us alive in an environment where we would have been crushed otherwise, by financial and academic concerns about the value of what we did.'[107]

Both Neil Rees and Ted Wright corroborate Boersig's view that the clinical program would have been closed but for its high profile. Rees described the ability of the clinical program to attract publicity as operating 'in effect as an insurance policy'[108] while Wright referred to it as a protective shield for the clinical program.[109] The university would understandably have been concerned with the program's ability to attract publicity if the university moved against it.

The clinical teachers took to bypassing the law school and directing their attention to the central university and external supporters in order to safeguard their position. Rees saw this approach as 'a real negative' that did not achieve the desired effect on people within the central university.[110] His perception was that the stocks of the clinical program had fallen so far that there was a real prospect of the program being closed down.

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[106] Interview with John Boersig (Newcastle, 4 December 2004).
[107] Interview with John Boersig (Newcastle, 4 December 2004).
[108] Interview with Neil Rees (Newcastle, 2 December 2004).
[109] Interview with Ted Wright (Newcastle, 2 December 2004).
[110] Interview with Neil Rees (Newcastle, 2 December 2004).

> 'For clinical programs to be sustainable, you need people on the ground running the programs who are in it for the long term, are good educators, good lawyers with high stamina levels and good politicians ... One of the difficulties here has been John isn't a good politician. He nearly killed the goose that laid the golden egg in that he just pushed too hard. A wiser head would have seen, certainly during my deanship, that the dean was supportive of the clinical program.'[111]

Serious sustainability issues were raised by the deterioration of the various relationships between the clinic staff and the Law School leadership team. Integration of clinical insights across a law program relies on constructive relations between the clinic teachers and other law school staff and this can be easily and quickly undermined. This indicates the importance of the people involved having a common purpose or at least common understandings. Common purpose is more important when the clinic is a central part of the law program. A clinic program operating on the periphery of its law school can 'secede' with less impact on the rest of the law school and survive with less support from the rest of the law school.

Impact Litigation

The Newcastle clinical program had developed a strong emphasis on public interest litigation. This work appears to have been the most significant positive aspect of the Newcastle Law School clinical program. While public interest litigation has been an enduring feature of some US clinical programs, such work has not been as prominent in Australia. For John Boersig, taking on public interest cases was a deliberate strategy.

> 'We needed to develop a reputation and we wanted to inspire students to say "there's something more that you can do with the law and justice." It was also part of our survival strategy.'[112]

The Newcastle program was particularly effective in pursuing issues regarding police accountability. It used a range of mechanisms, including strategic work with the media, submissions to government and acting at coronial and other inquiries. Investigative procedures for serious crimes in New South Wales were reformed following the work of

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[111] Interview with Neil Rees (Newcastle, 2 December 2004).
[112] Interview with John Boersig (Newcastle, 4 December 2004).

the clinic on behalf of the family of Leigh Leigh.[113] Work by the centre on behalf of the families of five young women who had gone missing in the late-1970's resulted in police establishing a major taskforce to re-investigate the disappearances.[114] There was also the work of the centre on litigation arising from several Aboriginal deaths in custody and the police shooting of Roni Levi.[115]

The Centre developed a very effective working relationship with the then New South Wales Minister for Police in relation to major casework. John Boersig considers the high profile of the work being done meant the government could not afford to ignore the Centre. 'Because we put the hours in and got the results, the Minister was very supportive.'[116] In a story on the *Australian Story* television program in 2000, Police Minister Paul Whelan stated: 'The University of Newcastle Legal Centre is the one that comes to me more often than any other organisation about anomalies in the law, about injustices.'[117]

Other public interest cases included the Eastman appeal to the High Court in relation to issues of fitness to plead in criminal trials[118], the successful defence of an Environmental Protection Agency prosecution[119], victims compensation claims, age and sex discrimination matters and property ejectment proceedings involving a residents group and a multinational corporation.[120]

The forensic evidence expertise of the Newcastle clinic academics was also put to international use as part of a project with the Catholic aid agency, Caritas. Following the withdrawal of Indonesian troops from East Timor in late-1999, Caritas and UNLC partnered to train East Timorese people in the effective collection and preservation of evidence of human rights abuses and crimes committed following the August 1999 independence referendum.[121] John Boersig recalls clinic students playing a role through their involvement in the writing of program materials.[122]

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[113] Watterson, Cavanagh & Boersig, above n 1, 19. See also Janet Fife-Yeomans, 'What Really Happened to Leigh Leigh?', *The Australian*, 30 September 1996, 10.
[114] Ibid. See also 'The Newcastle Legal Centre', *The Faculty of Law Annual Report 1997* 12.
[115] Watterson, Cavanagh & Boersig, above n 1, 7-37.
[116] Interview with John Boersig (Newcastle, 4 December 2004).
[117] http://www.abc.net.au/austory/AustoryArchives2000Idx_Thursday26October2000.htm (last accessed 3 December 2008).
[118] Eastman v The Queen [2000] HCA 29 (25 May 2000).
[119] EPA v X referred to in Dean's Report to Departmental Committee, 23 July 1997.
[120] Boersig, above n 1, 471.
[121] Dan McAloon, 'And Justice for All: John Boersig, Director, Newcastle Legal Centre' *The Catholic Weekly*, 28 January 2001. The program was delivered during 2000 in the East

A valuable client account of the Legal Centre's involvement in one high-profile public interest matter is provided by Christine Rau, the journalist and sister of Cornelia Rau, an Australian permanent resident who was unlawfully detained in an Australian Immigration Detention Centre.[123] Rau described Ray Watterson's offer of pro bono help as sounding 'too good to be true', noting the centre's experience in public interest law and mental health advocacy. The Centre's involvement enabled the Rau family to prepare a comprehensive submission to the Palmer Inquiry into the unlawful detention of Cornelia Rau. Christine Rau noted the involvement of a range of UNLC staff, all contributing different skills to the development of the submission.[124] She was 'convinced the Palmer Report would have been less detailed and less courageous if it weren't for the pressure we'd kept on with our own investigation'.[125]

Several issues arise from the high profile cases handled by UNLC. Students need to have their learning experiences clearly structured and this can be more difficult where very large and complex cases are involved.[126] This form of clinical method tends not to provide students with substantial casework responsibility, with their involvement focussing on case-related research. Such research has been described as enhancing not only the 'quality of the advocacy of an individual case but also the prospects of achieving more general reform outcomes'.[127] While important, such work might be best preceded by work which enables each student to develop the understandings, skills and confidence required to undertake more complex work.

Ray Watterson developed a course on Public Interest Advocacy in 1999, at the suggestion of Neil Rees.[128] The course ran once a year with around a dozen students, most of whom were not enrolled in the Professional Program. Students were originally required to complete 84 clinical work hours 'in the discharge of allocated tasks arising

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Timorese capital, Dili as well as in regional centres and involved voluntary contributions from Aboriginal Legal Service lawyers and a police officer.

[122] John Boersig, telephone interview, 22 December 2008

[123] See University of Newcastle Legal Centre, Submission of the Rau Family to the Inquiry into the Detention of Cornelia Rau, 30 May 2005.

[124] Christine Rau, *Third Queensland Public Interest Address*, hosted by the Queensland Public Interest Law Clearing House (18 October 2005) Brisbane, 14. In particular, Rau noted the involvement of Ray Watterson, Robert Cavanagh (writing the first draft of the submission), Jenny Finlay-Jones and James Marshall (coordination of the work of 25 students) and Shaun McCarthy (dealing with officialdom).

[125] Ibid 10.

[126] See Chapter 3, footnotes 102-108 and related text.

[127] Watterson, Cavanagh & Boersig, above n 1, 14.

[128] Interview with Ray Watterson (Newcastle, 3 December 2004).

from the conduct or carriage of public interest case(s) or project(s).'[129] This work accounted for only 10 percent of the assessment of the course. Delivery of a one-hour seminar and preparation of a research essay were the other assessment items. By 2004, the required clinic hours had been halved and the length of research essay increased.[130] Ted Wright considers that one of the good things of Watterson's work on these major cases was that it clearly gave students a very strong sense of 'being involved in something important. It gave them a blast.'[131] The fact that insights from the public interest litigation were not more comprehensively integrated with the clinical teaching of UNLC suggests that the links between these activities could have been more clearly articulated.

The conduct of impact litigation tends to require strategic knowledge which only develops through years of relevant legal practice experience. Supervising the involvement of students only adds to the complexity of such work. In conducting this work, UNLC relied heavily on the legal practice expertise of John Boersig, the media awareness of Ray Watterson and the advocacy experience of Robert Cavanagh. Watterson emphasised the importance of the clinical team working together, playing different but complementary roles in the conduct of public interest litigation.[132] This required the development of a very strong team ethic and may have seen the clinic team focus more on working as a unit than on engaging with the other members of the law school. Raising the profile of the clinic appears not to have strengthened its links to the law school. It may have highlighted the distance between the work of UNLC and the rest of the law school.

The 2002 Law School Review

In 2002, the Law School was the subject of an external review as part of the University's regular review cycle. The Review Panel[133] received 30 written submissions and conducted 29 interviews with a range of interested parties.[134]

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[129] New Subject Proposal, Public Interest Advocacy LLB635, 3.
[130] *Public Interest Advocacy*, Subject Outline, June 2004. When the subject was first proposed, the wordlength for the essay was 3,000-4,000 words. By 2004, it was 5,000-6,000 words.
[131] Interview with Ted Wright (Newcastle, 30 January 2009).
[132] Interview with Ray Watterson (Newcastle, 3 December 2004).
[133] The Review Committee was comprised of Professor John Dewar, Dean of Griffith Law School (Chair), Dr Phillippa Weeks (ANU Faculty of Law) and Bill Grant (Chief Executive, Legal Aid New South Wales).
[134] Review of the School of Law, The University of Newcastle, August 2002, 22-23.

In his submission to the Review, Ray Watterson expressed the view that, as the Law School had 15 full-time academic staff, it was inadequately funded and was spreading its limited teaching resources across too many areas.[135] He considered that these factors 'contributed to and exacerbated the School's failure to develop a harmonious, co-operative and mutually respectful working relationship between its traditional academic teachers and its clinical teachers'.[136] Watterson suggested that additional funds to support the clinic needed to be obtained from the University in recognition of both the teaching methods used and the community services being provided. He also called for the University to take a more active role in assisting the UNLC to obtain legal aid and other government funding to support its services.[137]

Arrangements related to the clinical program were the overwhelming focus of the review report, with recommendations for improved integration of the clinic across the law program, greater accountability of the clinic to the Law School as well as for the appointment of a Chair of Clinical Legal Education.[138] The Review Report also emphasised the importance of the University providing a realistic level of funding for the Law School, noting that a critical mass of 25 equivalent full time staff was necessary.[139]

The review report emphasised both the value and the shortcomings of the work of the clinical program, noting the practical emphasis of the degree and the strong legal professional and community links generated by UNLC. The clinic was 'still seen by many as emblematic of the School and as a continuing mark of its distinctiveness'.[140] Despite these strengths, concerns were expressed that the clinic vision had not been sustained across the whole teaching program with those students not undertaking the Professional Program being 'almost entirely untouched by the clinical experience'. Further, there had been 'little sustained attempt to integrate the staff of the Legal Centre into the mainstream teaching activities of the School'.[141] Other concerns related to the lack of both clinical research output and evidence to support the claims made regarding the high quality of the learning experience for students.[142]

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[135] Watterson, above n 27, 1.
[136] Ibid 11.
[137] Ibid 23-25.
[138] Review of the School of Law, The University of Newcastle (August 2002).
[139] Ibid 8.
[140] Ibid 5.
[141] Ibid 6.
[142] Ibid 6-7.

Ironically, the involvement of the clinic in cases concerned with accountability issues in the justice system led to concerns regarding the accountability of the clinical program to the Law School and University. The Legal Centre was described as 'not as accountable to the School or the University for its activities as it should be'. Further, Public Interest Advocacy activities needed to be more closely integrated with the operations of the Centre with all matters requiring the approval of the Centre Director based on guidelines to be developed by a Legal Centre Advisory Board involving senior University and Law School staff as well as members of the local legal profession.[143]

Seeking to Appoint a Clinical Professor

Perhaps the most important clinic-related recommendation from the Review concerned the appointment of a new Chair of Clinical Legal Education in order to capitalise on the Law School's 'strengths in clinical legal education and professional training'. There was a need to 'recruit an individual of the highest possible calibre from outside the School' who would have responsibilities in relation to leadership, strategic thinking and research.[144]

In the Law School's response to the Review, Ted Wright noted: 'The School's emphasis on its clinical orientation is, as the Review Panel observed, seen by the School as "emblematic". It is what distinguishes legal education in Newcastle from all other programs offered throughout Australia.'[145] The Law School response also expressed strong support for the recommendation to appoint a Chair in Clinical Legal Education.

Ultimately, efforts to recruit a Clinical Professor were unsuccessful. Ted Wright recalls there being a real shortage of suitable candidates for such a post, noting that it was 'a rather unusual profile that we were looking for.'[146] This lack of candidates may have been exacerbated by the regional location of the University along with the very substantial expectations of the University (in terms of the position requiring a person with a research track record, including a research higher degree), the Law School (seeking a track record in both leadership and research) and the clinic (particularly in terms of providing leadership).[147]

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[143] Ibid 7 & 14.
[144] Ibid 8.
[145] School of Law Response, August 2002.
[146] Interview with Ted Wright (Newcastle, 2 December 2004).
[147] Ray Watterson's submission to the Review referred to such a professor having 'special responsibility for the development of the School's clinical teaching programs, for overseeing and co-ordinating the teaching and community legal service activities of the Legal Centre, and for developing the School's clinical research profile' and would need to work collaboratively with a

Subsequently, the financial position of the University changed such that an external professorial appointment was no longer possible. In 2004, the University reported that it was facing serious financial difficulties with an operating deficit for the year of $26.9 million, up from $3.5 million in 2003.[148] Neil Rees agreed to take up the position of Director of the Clinical Program.

Shifting the Goalposts - Career Paths for Clinicians

The Newcastle clinical program clearly highlights the sustainability issues created by a lack of university recognition of the knowledge, skills and work of clinicians. Differential treatment is likely to undermine the common purpose critical to the development of a clinical law school with the clinicians having a greater presence than in other law schools. The good faith and effort of both the clinic staff and the Law School appear not to have been matched by a preparedness on the part of the University to be flexible.

Academics involved in the Newcastle clinical program encountered University inflexibility in application of policies designed to promote research activity. These difficulties intensified as the University increasingly emphasised research. This section includes some examples that have been de-identified as it is the actions of the University which are being analysed rather than those of the academics. The lack of a research higher degree prevented several clinic teachers from being considered for promotion and for the directorship of the clinical program. The salary loadings initially paid to various clinicians were withdrawn. A clinic-oriented sabbatical application to investigate international programs was rejected by the University as lacking merit.

There was also a move away from academic to general staff appointments for key clinic staff on the basis that the University would not permit the appointment of someone without a research higher degree to a Lecturer position, let alone to a Senior Lectureship. These are all examples of University policies and structures not fitting well with the realities of a clinical legal education program, a mismatch that was exacerbated by the gap between the salaries available to senior practising lawyers and those paid to senior practitioner-academics working in the clinic.

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range of stakeholders across the law school, University and practising profession. Watterson, above n 27, 17-18.

[148] New South Wales Auditor-General, *Report to Parliament 2005 Volume 2*, 19.

John Boersig and Robert Cavanagh were Newcastle's senior clinical appointments, both at Senior Lecturer level while not having substantial academic backgrounds. The University recognised their extensive legal practice backgrounds as equivalent to substantial research and teaching experience. Boersig also believed that there would be a clinical promotion track with specialist accreditation from the New South Wales Law Society being equivalent to a Masters degree.[149] While the University recognised their practice experience at the appointment stage, recognition was not subsequently given for promotional purposes. 'Within four years, the goal posts changed' with clinic teachers expected to satisfy standard university criteria.[150]

The message to clinic staff was that to advance as academics, they would have to complete research higher degrees. They would also need to meet research and publication expectations on top of their substantial teaching loads.[151] This was viewed by the staff as inappropriate given that they 'were working five or six days a week to deliver the program. It wasn't a segmented academic teaching work day.'[152] When one longstanding clinic teacher applied for a post they had previously filled for 12 months in an acting capacity they were not even short-listed.[153]

In a comprehensive paper prepared in December 1999, Ray Watterson had addressed what he considered to be the lack of University recognition of important legal research undertaken by clinic staff. The paper was prepared as a response to a report by Dean Rees on the tenure application of a senior clinical teacher. The Dean's report stated that published reports on cases and submissions to courts were not works of legal research for university purposes. Watterson referred to reports published in relation to major cases being conducted by the UNLC as well as documentary submissions to courts and government.[154] Watterson argued that various forms of media appearances, including the writing of newspaper articles, were activities which were more important in law than in other disciplines and noted that 'there is no discipline in which research

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[149] Both John Boersig and Mark Whelan had obtained specialist accreditation from the Law Society of New South Wales, Boersig in the area of criminal law and Whelan in personal injury law.
[150] Interview with John Boersig (Newcastle, 4 December 2004).
[151] Interview with John Boersig (Newcastle, 4 December 2004).
[152] Interview with John Boersig (Newcastle, 4 December 2004).
[153] Interview with John Boersig (Newcastle, 4 December 2004). There was no suggestion from the Law School that the applicant did not have the skills required to fulfil the role. Rather, the decision was based on the fact that the staff member had not completed a Research Higher Degree, which was the first of the 11 listed Essential Criteria. A Masters degree completed by coursework was not considered sufficient.
[154] R. Watterson, 'The Nature of Legal Research' (1999) 1.

and teaching is so closely related'.[155] Referring to a very wide range of sources, he directly challenged the traditional view of a divide between professional and academic research.

Watterson's proposals for recognition would have required active and united law school support to have had any prospect of success at the University level.[156] Subsequently, Ted Wright has noted that some lawyer-academics simply do not fit the academic model and considers that higher education policy makers should be referring to scholarly activity rather than research. He notes that practising lawyers are engaged in research much of the time.[157]

Ultimately, the increasing inflexibility of the University regarding all academic appointments having Research Higher Degrees led to a different approach being taken to the position of UNLC Director. In early 2004, when John Boersig knew he would be leaving UNLC and the University, he developed a proposal, after discussion with UNLC colleagues, that his replacement as UNLC Director be appointed to a non-academic position at a level that would be the financial equivalent of a Senior Lectureship.[158] Such an appointment would not be eligible for sabbatical or tenure and would not be expected to undertake research activities beyond those required for the cases being handled by the legal centre.

Boersig describes his suggestion of a non-academic appointment as having been made only 'after a lot of thought'.[159] His suggestion recognised that there was a scarcity of people possessing the combination of legal practice, teaching, research and administration skills being expected of the Clinic Director. Further, it recognised that, for the position of UNLC Director, legal practice management skills are the key skills required.

The inflexibility of the University regarding research higher degree requirements necessitated a flexible response on the part of the Law School and the clinic. Otherwise, it would have been difficult to hire someone even at Associate Lecturer level because they had to have or be in the process of completing a Research Higher

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[155] Ibid 5.
[156] Ibid 6.
[157] Interview with Ted Wright (Newcastle, 2 December 2004).
[158] John Boersig subsequently become an Assistant Secretary in the Federal Attorney-General's Department and has completed a PhD.
[159] Interview with John Boersig (Newcastle, 4 December 2004).

Degree. Boersig stated: 'You just don't get people with 10 years practice experience, which is what you need in order to lead a vibrant practice, paying a salary at Associate Lecturer level.'[160] Such an approach from the University showed a serious lack of understanding of the commercial value of experienced legal practitioners. Lawyers with an interest in the social justice-driven work associated with legal centres could find better-paid positions in legal aid offices without the expectation of completing a Research Higher Degree.[161]

Ted Wright agreed that it would not have been possible to secure University acceptance of such an approach in appointing Boersig's replacement. He saw no prospect of re-establishing the equivalences developed a decade earlier given the University's increasing focus on research.[162] Wright's agreement with the clinical teachers was that their teaching load would consist of direct supervision of 15 students for 90 hours each. Alternatively, they could be expected to directly supervise 10 students and indirectly supervise a further 10 students each placed with one of the agencies linked to the centre. Further, if staff appointed to non-academic positions were to take on law school teaching beyond their clinic work, they would be paid on a contract basis.[163]

Ray Watterson considers the key to sustainability of clinical programs to be a clear career path for academics. 'The clinicians need to be full academics with a career path going all the way to professor.' Otherwise, 'it necessarily follows that clinicians will take a lesser or subordinate place.'[164] Watterson considers that in the future, clinicians might be prepared to accept a slower career path but not a stultified path. This view fits with that of John Boersig whose decision to leave UNLC was influenced by the sense that there was no opportunity in the Newcastle Law School to become a clinical professor.[165] Boersig subsequently completed his PhD while in a senior management post in the Commonwealth Public Service.

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[160] Interview with John Boersig (Newcastle, 4 December 2004).
[161] John Boersig, Jenny Finlay-Jones and Ray Watterson all expressed concerns that the clinical program was losing valuable legal staff who just did not have the time or the inclination to do a Research Higher Degree. Interview with John Boersig (Newcastle, 4 December 2004), Jenny Finlay-Jones, personal interview, 3 December 2004, Ray Watterson, personal interview, 3 December 2004.
[162] Interview with Ted Wright (Newcastle, 2 December 2004).
[163] Interview with Ted Wright (Newcastle, 2 December 2004).
[164] Interview with Ray Watterson (Newcastle, 3 December 2004).
[165] Interview with John Boersig (Newcastle, 4 December 2004).

Change in the Midst of University Turmoil

As noted earlier in this chapter, Newcastle University faced a major financial shortfall in late-2004 with its operating deficit growing by $23.4 million to $26.9 million. The challenges generated by the budget shortfall were exacerbated by the departures of the Chancellor, Vice-Chancellor, Deputy Vice-Chancellor, Pro Vice-Chancellor and Dean of the Faculty of Business and Law. The University faced close scrutiny around this time due to a controversy over the handling of plagiarism complaints levelled at international students.[166]

In a climate of financial uncertainty and job cuts, it was probably inevitable that a resource-intensive activity like the clinic would face very close scrutiny. In August and September 2005, Ray Watterson was quoted in several major newspapers criticising the University's response to its financial problems and expressing serious doubts that the UNLC would survive into 2006 due to the departures of key clinic staff.[167] By this time, four clinical staff had received redundancy packages.

Watterson had linked the threat to the UNLC to its commitment to public interest litigation, in particular its advocacy for the family of Cornelia Rau. He was concerned with comments made on radio by the then-new University Vice-Chancellor, Nick Saunders in July 2005 that he believed the UNLC should focus on 'ordinary, run-of-the-mill law' and 'rebalance' its activities. Watterson expressed the view that 'the Rau case "hastened the end" of the kind of public advocacy work that has earned the centre an international reputation'.[168] The Vice-Chancellor subsequently denied that the Rau matter and other controversial cases were a difficulty or embarrassment for the University in its dealings with the Federal Government. He stated the University's very significant funding challenges could only be solved by a significant reduction in staff and the legal centre was no exception to that. 'What I've said is we need to rebalance the activities of the legal centre. The university is not funded to run a public legal practice.'[169]

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[166] Independent Commission Against Corruption, *Report on Investigation Into the University of Newcastle's Handling of Plagiarism Allegations* (June 2005). ICAC made findings of corrupt conduct against the former Head and Deputy Head of the Graduate School of Business and recommended disciplinary action against the Deputy Vice-Chancellor.

[167] Justin Norrie, 'Advocate of Last Resort Fears Rough Justice' *Sydney Morning-Herald*, 1 September, 2005, Matthew Kelly, 'Uni Head Exits on Sad Note' *The Newcastle Herald*, 27 August, 2005.

[168] Joanne McCarthy, 'Law and Orders' *The Newcastle Herald*, 5 November 2005, 5.

[169] Ibid.

Watterson's concerns for the continuation of the clinical program have not been realised. Continuity has been provided by Shaun McCarthy as UNLC Director and Colin James as a clinic-focussed academic who has developed a research agenda related to legal practice issues. James notes that UNLC has continued to do public interest work while taking on more of the sorts of cases that are in demand in a community legal practice. His observations, as someone not directly involved in the running of public interest cases, were that while some students put themselves forward and were very heavily involved, others had a more peripheral experience. There was a lack of consistency in student experiences of such cases.[170]

James had worked for almost four years in the Murdoch clinical program prior to joining Newcastle Law School in late-2004. His Murdoch experience had highlighted the value of frequent and early feedback to students on their clinic performance, something which was not part of the structure of the Newcastle program. He identifies assessment practices as an area of clinical practice warranting further development at Newcastle and sees UNLC as providing real potential for students to undergo the transformative experience arising from service-focussed work. 'It can come about by students discovering that they are not the centre of the universe in this educational experience.'[171] Getting students to concentrate on the client, by explaining that the clinic is oriented towards the client provides the opportunity for deeper, transformative learning by students about themselves and the work of lawyers.[172]

James has also been important in efforts to have the Newcastle clinical program contribute further to meeting the research objectives of the Law School. Together with Jenny Finlay-Jones, James developed research projects related to promoting the professional satisfaction of legal professionals.[173] An integrative approach is being taken with a view to incorporating insights from this research across the broader teaching of the law school.[174]

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[170] Interview with Colin James (Manila, 13 December 2008).
[171] Interview with Colin James (Manila, 13 December 2008).
[172] Interview with Colin James (Manila, 13 December 2008).
[173] See Colin James, 'Seeing Things as We Are: Emotional Intelligence and Clinical Legal Education' (2005) *International Journal of Clinical Legal Education* 123; Colin James & Jenny Finlay-Jones, 'I Will Survive: Strategies for Improving Lawyers' Workplace Satisfaction' (2007) 15 (1) *Legal Education Digest* 32; Julie Lewis, 'New Study Links High Turnover to Inadequate Support' (2007) 45 (11) *New South Wales Law Society Journal* 16 & Colin James, 'Lawyers' Wellbeing and Professional Legal Education' (2008) 42(1) *Law Teacher* 85.
[174] This type of research is clearly relevant to the work of Newcastle as a clinical law school and can be seen as linked to Neil Rees' early academic writing on the burn-out of legal aid lawyers. See Neil Rees, 'Legal Services: Coping with Burnout' (1980) 5 (2) *Legal Service Bulletin* 80.

Since 2004, the clinical program has offered a 'Law on the Beach' service each summer. This is a drop-in legal advice service at the Surf Life Saving Club at Newcastle Beach, designed particularly to connect with younger people.[175] In a 2005 conference paper, clinic staff wrote that this:

> 'delivers real client experiential learning to students and breaks down the preconceptions about what lawyering should be, while reinforcing the importance of maintaining a professional and ethical approach even in informal, relaxed surroundings.'[176]

Shaun McCarthy has now been the Director of UNLC since 2004 and has provided real stability in the centre's operations. He considers that if clinical programs are going to retain high-calibre staff, they need to be able to engage in challenging and interesting work, going beyond providing routine advice. 'One of the virtues of UNLC has been the way it has taken on major cases and allowed those involved – both staff and students – to address these more intellectually stimulating issues.'[177] McCarthy is concerned to match the centre's public interest casework to the interests of the practitioners and also to more clearly articulate the learning outcomes to be achieved. The emphasis on coronial work has not been maintained. Coronial matters involve an inquisitorial arena and McCarthy has been interested in providing students with greater exposure to processes involving adversarial contexts.[178]

Neil Rees and Jenny Finlay-Jones both departed the Newcastle Law School in mid-2007. Rees took up the position of Chairperson of the Victorian Law Reform Commission while Finlay-Jones returned to private legal practice. There were also developments with the re-location of the Northern New South Wales Aboriginal Legal Service and Legal Aid Commission of New South Wales. Both organisations resolved to move from the premises they had shared with the UNLC since 1996.

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[175] http://www.newcastle.edu.au/school/law/unlc/law-on-the-beach.html, accessed 3 December 2008. Shaun McCarthy, UNLC Director is noted as saying that young people often face difficulties in their schooling, housing and financial support, and unfortunately may not get advice until it's too late.

[176] Ray Watterson, Shaun McCarthy, Jenny Finlay-Jones & Robert Cavanagh, 'Integrated Clinical Legal Education: The Newcastle Experience' (Paper presented at the 3rd International Journal of Clinical Legal Education Conference, Melbourne, July 2005) 12.

[177] Interview with Shaun McCarthy (Newcastle, 30 January 2009).

[178] Interview with Shaun McCarthy (Newcastle, 30 January 2009).

Ted Wright views the current state of the Newcastle clinical program in very positive terms with the appointment of new clinicians, and with other Law School staff contributing to the work of the Centre at levels not seen previously. 'The fact is that the quality of teaching and learning in the Legal Centre, and the School generally, has never been better, and morale has never been higher.'[179] Efforts have been made to 'bring everybody around to the idea that the school is a coherent corporate organisation which is engaged in the business of producing what we call 'the consummate lawyer'.[180] Wright sees the Law School benefitting from an 'empathetic strategic environment' in which to make things happen. The current Vice-Chancellor has returned to the vision of the university as a place for the education of professionals and the Law School is receiving strong support from its Pro Vice-Chancellor.[181]

The continuity provided by Wright's long tenure as Dean and his greater understanding of the potential of clinical legal education has assisted the reintegration of the clinical program. Recent academic appointments have focussed on having a range of staff both interested in and capable of being involved in a range of activities, including clinic-based work. The Law School has taken a unified approach to a comprehensive curriculum review, including clinicians as part of the committee. Wright refers to the inclusion of 'clinical slices in the core curriculum' to provide all students with the benefits of the clinical program.[182] In 2009, Shaun McCarthy developed a simulation of a Mental Health Review Tribunal hearing as part of the Civil Litigation (Tribunals) Module.[183]

Wright also notes that a key part of 'the reaffirmation of ourselves as a clinical law school was that we stopped doing battle with ourselves over electives'.[184] The relatively small size of the law school and its emphasis on clinic-based learning led to a collective decision to limit the number of electives available to twelve which would be offered each year. If having access to a very extensive set of electives was important then the student might need to look elsewhere. The collaborative manner in which the

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[179] Ted Wright <T.Wright@newcastle.edu.au>, email (4 November 2008).
[180] Interview with Ted Wright (Newcastle, 30 January 2009).
[181] Interview with Ted Wright (Newcastle, 30 January 2009).
[182] Interview with Ted Wright (Newcastle, 30 January 2009).
[183] Shaun McCarthy, 'The Rise and Rise of Tribunals – Engaging Students in Tribunal Advocacy Through The Use of Expert Witnesses', (Draft Paper Presented at the 7th International Journal of Clinical Legal Education Conference, Perth, July 7-9, 2009).
[184] Interview with Ted Wright (Newcastle, 30 January 2009).

rationalisation was achieved provides evidence of the law school having 'become a much more collegial place.'[185]

The *Public Interest Advocacy* elective is one of the electives that is no longer offered but Shaun McCarthy emphasises that this had no connection to a change of direction in the work being undertaken by the legal centre.[186] With Ray Watterson's departure, there was nobody to teach it. The tradition of doing public interest cases has continued but the nature of those public interest cases has changed.

Colin James anticipates that the Newcastle clinical program may look to developing different types of experiences for future students. These include Street Law programs and a maritime law practice given the close proximity of an operating port. James also plans to further develop the student feedback and assessment arrangements used by the clinic and explore options for providing greater student responsibility for client work. This would most likely involve students providing advice direct to clients rather than advice being provided directly by supervisors. 'The experience is more likely to be transformative where the student is trusted and feels trusted in taking responsibility for the client. This is something students don't get in the Newcastle clinic.'[187]

The fact that the Newcastle Law School and its clinical program have overcome significant conflict and are again working collaboratively is a significant achievement. Other instances of significant conflict have seen the closure of the clinic.[188] It will take time for efforts aimed at fostering collaborative practices to result in clinical reintegration.

Conclusion – The Search for Common Ground

This chapter has reviewed a range of factors that have been important in the establishment and operation of the clinical program at Newcastle Law School. Shifts in government higher education policy were important to the establishment of the Law School, as was the support of University senior management. Development of the clinical program owed much to the need for the Newcastle law degree to be distinctive and to the preparedness of the organised legal profession to support the integration of PLT requirements within the Professional Program. The support of senior people in the

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[185] Interview with Ted Wright (Newcastle, 30 January 2009).
[186] Interview with Shaun McCarthy (Newcastle, 30 January 2009).
[187] Interview with Colin James (Manila, 13 December 2008).
[188] Antioch and Kent provide the clearest examples. See Chapter 4, footnotes 98-114 and related text.

Australian clinical legal education movement was also significant in encouraging Neil Rees to pursue the development of a clinical law school along with the presence of an external organisation prepared to provide very substantial funding.

The legal practice experience of key law school staff, especially Neil Rees and John Boersig, was important to the establishment of the clinic and the development of its public interest orientation. This distinguished the Newcastle program but appears to have limited the emphasis given to developing the clinic's teaching dimensions. A range of factors challenged program's development. The inflexible application of rules reflecting changed university priorities, the clinic's resource-intensive nature, potential conflict between the multiple objectives sought to be achieved, a lack of common purpose between the clinic teachers and the rest of the law school and the departure of key personnel have all been significant in charting the course of the Newcastle clinic. This case study highlights the challenges of maintaining support once the novelty of a new program wears off.

John Boersig considers that a secure funding base is central to the sustainability of a clinical program. The continuing spectre of review and closure, 'major opposition from internal academics and a constant battle with the university about why would you fund such a program' created serious challenges for the Newcastle vision of the clinical law school. Boersig found that the rancour and the continual worry about whether the clinic would exist next year was not conducive to working effectively.[189] The stability that has characterised the last five years of the operations of the Newcastle clinical program demonstrates the importance of continuity of key clinical program and law school staff.

The success of the clinic in generating interest from outside the university may have assisted the clinic to survive in hostile times but also made it difficult to develop a sufficient degree of common ground with the legal academics not involved in the clinical program. Neil Rees has highlighted the difficulties faced by clinical programs in sustaining commitment and support, from the clinic staff, other legal academics and the University. After the initial wave of enthusiasm and the availability of external funds, new ventures can become a hard grind.

> 'People lose the adrenalin rush that you get when setting the whole thing up. It just becomes this never ending waterfall... You had a VC

[189] Interview with John Boersig (Newcastle, 4 December 2004).

> saying that unless you had a PhD and a large number of refereed publications, don't even think about putting in application for promotion. You had people working hard, thinking they were unloved and unwanted.'[190]

This case study has not focussed substantially on students. Much of the focus of documents related to the development and early operation of the Newcastle clinical program was, quite understandably, on bodies outside the law school. It was more about persuading others as to the merits of the program rather than discussing clinical models with colleagues and, through that process, developing what it means to be a clinical law school.

[190] Interview with Neil Rees (Newcastle, 2 December 2004).

Chapter Eight – The Murdoch Clinical Program

Introduction

This chapter examines the development of the clinical program at Murdoch University. Murdoch's establishment of the Southern Communities Advocacy Legal Education Service (SCALES) in 1997 is significant in the history of Australian clinical legal education in several respects. While the community legal centres (CLCs) that house the Monash and University of New South Wales clinics first received legal aid funding in the 1980s, SCALES was the first clinic to receive direct Federal Government funding. SCALES was the first Australian clinic to be mentored by an existing program, in this case involving clinicians from Monash. Most Australian clinical programs have been established with the direct involvement of people who had experience working in similar programs elsewhere. Murdoch relied on Chris Shanahan, a jurisprudence lecturer with experience working in CLCs in New South Wales, to develop a proposal to establish a clinic and to pursue funding avenues.

SCALES provides a revealing case study of the processes involved in developing and obtaining broad-based support for the establishment of a clinical program. Support from the Federal Government, the university and local government were all critical to the program's establishment. The University's agenda in promoting the SCALES concept went beyond the Law School and directly focussed on the development of its new campus at Rockingham, in the rapidly developing region south of Perth with a view to institutionalising its community service to that region. As with the other case studies, the establishment of the program is closely examined in order to seek to understand the legacy of the particular approach taken by the founders and subsequent key staff and supporters.

The chapter provides an account of the lengthy process that resulted in the establishment of SCALES including the securing of support from a range of sources. In responding to a series of challenges related to resources, recognition and ongoing university commitment, the Murdoch clinical program and SCALES have developed a strong set of community links that have enabled them to operate in collaborative contexts. Challenges to the sustainability of SCALES arising from leadership changes within the Law School and University have been overcome in a manner that has strengthened the Murdoch clinical program.

Starting From Scratch - How the SCALES Proposal Developed

Murdoch Law School was established in 1989 and was one of the first of the 'third wave'[1] of Australian law schools to develop a reputation for the quality of both its research and teaching. Murdoch was the second university established in Western Australia (WA), having commenced offering classes in 1975. The success of the SCALES proposal demonstrates the importance attached by this relatively new university to community engagement and the potential for clinical legal education programs to foster such engagement. The Foundation Dean of Law at Murdoch, Ralph Simmonds suggested that new law schools are more likely to consider developing a clinic because they do not have 'a history of chalk and talk to live with'.[2] Further, new schools are likely to attract young staff interested in new teaching methods or at least not threatened by a clinic and less concerned 'that this will show them up to be the impractical theorisers that the profession keeps telling them they are'.[3]

The development of SCALES began in 1994 with the Murdoch proposal to establish a new campus at Rockingham in the southern corridor of the Perth metropolitan area. Ralph Simmonds recalls the new campus being proposed by Roger Lethbridge, a science academic who had recently become a Pro-Vice Chancellor. Lethbridge's idea was to take advantage of tertiary education growth places that the Federal Government had allocated to WA and Queensland.[4] In keeping with the Murdoch tradition, Lethbridge sought at an early stage to involve as many people from the university as possible. A memorandum went out seeking ideas on initiatives that could be developed in the southern region.

Simmonds was approached by Archie Zariski, a Murdoch law academic since 1991, who suggested that the law school talk to the university about establishing a clinic. Zariski had practised law in Canada prior to coming to Perth and, when he started teaching, came to the view 'that introducing practical experience and real life, so to speak, into the academic curriculum was the way to go.'[5] Zariski had attended the 1991 Sydney

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[1] 'Third wave' law schools are those which emerged following reforms to the higher education system in 1989. See Richard Johnstone & Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law*, Australian University Teaching Committee (2003) 3. See also the discussion in Chapters 4 and 7 of this thesis in relation to the impact of changes in higher education policy on the scope for establishment of clinical programs.
[2] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[3] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[4] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[5] Interview with Archie Zariski (Perth, 14 May 1999).

clinical conference convened by Kingsford Legal Centre.[6] In 1994, he spent a sabbatical at the University of New South Wales, undertaking a Graduate Diploma in Teaching in Higher Education. This included, with encouragement from Simon Rice, some research into supervision practices at Kingsford Legal Centre.[7]

Zariski's suggestion of a clinical program excited considerable interest from Roger Lethbridge who, according to Ralph Simmonds, saw immediately the contribution a clinic could make to engagement with the Rockingham region. This was 'a wonderful way in which the university could make its practical utility to the community obvious.'[8] Simmonds recalled that Lethbridge was also very important in overcoming serious scepticism on the part of the University's Deputy Vice-Chancellor regarding the SCALES proposal.[9]

Pursuing Multiple Objectives

Chris Shanahan was given the task of developing a clinical model suitable for Murdoch. He was concerned to articulate a model which would convince potential funders of the law school's understanding and commitment to the project.[10] In February 1995, Shanahan visited the clinical programs at Newcastle, UNSW and Monash and spoke to various people involved in New South Wales CLCs.[11] He concluded that the elective subject model used by UNSW and Monash would suit Murdoch's purposes better than Newcastle's approach of clinical integration across the curriculum. Shanahan also identified the importance of determining whether Murdoch should establish a University-funded and administered CLC and whether the program should include a community development focus as he had seen at Monash. Shanahan considered that there was something very good to be had here for Murdoch students and the community.

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[6] Archie Zariski, 'Roll Over Socrates: Reflection on the Conference on Clinical Legal Education' (1991) 9 *Journal of Professional Legal Education* 149. See also Chapter 6, footnotes xx and text.

[7] Interview with Archie Zariski (Perth, 14 May 1999). 'I brought all that back with me to Murdoch. It was about that time that Murdoch was considering the expansion to the Rockingham area, to the southern communities and it seemed to me to be a kind of a good fit that, if we were to have a clinic that would be the place for it.'

[8] Interview with Ralph Simmonds, (Perth, 14 May 1999).

[9] Interview with Ralph Simmonds, (Perth, 14 May 1999).

[10] Chris Shanahan, *Clinical Legal Education: An Opportunity*, undated, 1.

[11] Ibid.

Shanahan's visit to Kingsford Legal Centre reinforced his appreciation of the importance of setting clear goals for the program. Basing the clinical program in a CLC meant:

> 'that students encounter "real" problems, "real" clients and close contact with the litigation process. It can be used to explore the dynamics of the legal system, teach professional ethics, substantive law, explore policy and law reform and provide a free (or near free) legal service to a host community.'[12]

Ralph Simmonds noted that the key interests of the University in developing SCALES, community profile and service, were reinforced in meetings he and Shanahan had with senior university management in May 1995.[13] Simmonds described the clinic as 'offering a unique and compelling combination of virtues so far as the University is concerned'.[14] The virtues listed were advantages to the University in its southern expansion, a tangible initial commitment to supporting the communities of the southern region, advantages to the University's own enrolment position, links with the profession, quality assurance for graduates, prospects for involvement of students and staff from other disciplines as well as 'a unique opportunity for the University to make a commitment to institutional Community Service'.[15]

By July 1995, Shanahan had prepared his Report to Dean Simmonds in which he set out in some detail his purposes in developing the SCALES acronym. *SCALES* referred to both the scales of justice and to scaling barriers, whether as students, faculty, lawyers or clients. It also directly addressed the Southern Communities, Advocacy in a range of contexts, Law, Education and Service.[16] This clearly emphasises the service ethos that

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[12] Chris Shanahan, *Clinical Legal Education, School Board Briefing Paper*, undated, 1.
[13] Interview with Chris Shanahan (Perth, 14 May 1999).
[14] Ralph Simmonds, Memorandum to Chris Shanahan, entitled 'Statement of value of the Community Legal Centre (SCALES) to the University', 26 April 1995, 1.
[15] Ibid.
[16] Chris Shanahan, 'Report to the Dean - Clinical Legal Education Programme – The School of Law at Murdoch University', 25 July 1995, 8-9:
Southern Communities highlights 'the role of the host community and the community service and access to justice elements in the proposal.' It also emphasises the notion that the clinic is not owned by one particular community. This view of SCALES as a regional development was to prove important.
Advocacy refers to 'all forms of dispute resolution and that the solution to some problems will not involve courts but may merely require information or a "cool head".' Shanahan further referred to students assisting community members to advocate their own interest. 'Turning students into "teachers" is often an important educative tool.'

underpinned the program's development and which continues to be a hallmark of the Murdoch clinical program. The ideas first identified in that early report by Shanahan have endured and remain incorporated in the ethos and work of the Murdoch clinical program. This emphasis created caseload challenges for SCALES but also enabled the service to attract support from a range of sources including the practising legal profession to various government departments.

Distinguishing Murdoch From UWA?

Another possible motivation for Murdoch developing a clinical program was to differentiate the new law school from the well-established law school at the University of Western Australia (UWA). Members of the Murdoch Senior Executive Group had referred to this prospect in discussions with Ralph Simmonds in late-April 1995. It was suggested that the clinic 'would offer us a ready form of differentiation from UWA. The UNSW/Sydney experience was of particular interest to that group.'[17] Archie Zariski notes that Murdoch was a new law school at the time of developing the proposal and everyone was looking 'for ways to make Murdoch stand out as a new law school and I thought that a clinical approach might well be one of them.'

While distinguishing Murdoch may have been a factor, Simmonds is clear that what drove the clinic proposal at the university level was the new Rockingham campus. While it 'would have been a wonderfully far-sighted decision', the university's marketing team would not have recognised the clinic as a 'terrific way of showing how different the law school was in ways that would attract students.'[18] Murdoch has subsequently taken a cooperative approach to promoting clinical legal education in WA.[19] SCALES staff also worked closely with staff at Notre Dame School of Law[20] and

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Law refers to the 'practice, conception, effects and dynamics' of law and emphasises the value of taking a multi-disciplinary approach to problem solving.
Education outlines the use of clinical teaching 'to expose students to the dynamics of law, to assist clients, to ask students to make the necessary adjustments to provide advice and representation under supervision in an ethically charged environment'.
Service emphasises the primary aim of the clinic as being 'to serve the needs of the community, students, staff and the profession as a medium in which all "stake holders" might learn'.

[17] Memorandum from Ralph Simmonds to Chris Shanahan, 2 May 1995 regarding Meeting with SEG of the University. See also Chapter 6, footnote 7 and related text.

[18] Interview with Ralph Simmonds, (Perth, 14 May 1999).

[19] In May 1997, Chris Shanahan wrote to the Dean of the UWA Law School, Ian Campbell, regarding the scope for the use of clinical teaching methods in the Practical Legal Training area. Shanahan suggested that the development of clinical legal education in Western Australia 'should be a collegiate and carefully deliberative process.' Letter to Professor Ian Campbell, Dean, School of Law, University of Western Australia from Chris Shanahan, 21 May 1997.

[20] Law Clinic (SCALES) Report, *Murdoch Law School Newsletter September-December 1998*.

UWA regarding the establishment of clinical programs and welcomed students from other WA law schools interested in participating in the clinical program.

Gaining University Commitment

The success of Murdoch in obtaining direct funding from the Federal Government for the establishment of their clinic has clearly had a significant effect on the development of clinical legal education in Australia. To some extent, this is a story of 'being in the right place at the right time' but it is more an example of developing a persuasive case for support. With university support, Murdoch Law School worked methodically to gather information about clinical practice and then worked with interested parties to advance the SCALES proposal.

Ralph Simmonds had written to the then Federal Attorney-General, Michael Lavarch in November, 1994 seeking funding for a community legal service at Murdoch University. The following month, the Attorney-General's Department advised that the Government was developing its response to the Access to Justice Advisory Committee's report *Access to Justice – An Action Plan*. Initiatives were to be announced by the Prime Minister in a Justice Statement in the near future.'[21] The *Justice Statement* was duly launched in May 1995.

On May 2 1995, Ralph Simmonds and Chris Shanahan attended a university meeting in relation to the clinic: how it could be funded and what it could do. At Simmonds' instigation, there was discussion about funding strategies and how Murdoch might obtain a federal commitment. It was felt that if the law school could gain a sizeable promise of funds from the university conditional on obtaining federal funding then this might encourage the government to commit to the project. Shanahan learnt a basic lesson from Simmonds that if you secured Federal money, the rest of the money would come. The university money was a lever for the Commonwealth money.[22] Ultimately, the University agreed to provide $207,500 towards the first three years of the clinic's operation. It was specified that the University would only provide these monies if the School of Law was able to acquire a similar amount from other funding sources, such as the Federal Government. Ralph Simmonds wonders whether his senior university

[21] Letter to Ralph Simmonds from Lester Watson, Director, Ministerial and Parliamentary Section, Attorney-General's Department, 7 December 1994.
[22] Interview with Ralph Simmonds, (Perth, 14 May 1999).

colleagues viewed this as a 'cost-free promise' to the law school, believing there was no way that the Law School would be able to secure the Federal funding.[23]

Working With the local Community

The University's strong focus on the community service aspects of the clinical proposal is evidenced by the law school's concern to work closely with existing agencies. Archie Zariski stated: 'We worked very closely with the pre-existing organisations representing the community and I think that was very important.' The experiences of Newcastle Law School with Hunter Community Legal Centre[24] as well as the Monash and UNSW clinics indicated to Chris Shanahan the importance of collaborating with existing CLCs in developing the clinic proposal. Articulating the extent of community involvement raised issues of control and the identity of any clinic as well as membership of the WA Federation of CLCs.[25]

By the time the *Justice Statement* was released, Chris Shanahan was meeting with people from the Kwinana-Rockingham Community Legal Centre (KRCLC) and had written a report setting out some of the issues the law school would face in establishing a clinical program. He described the KRCLC as 'very much a product of the local community. It was 'a very small occasional service', run by volunteers.[26] The KRCLC people were initially very hesitant to have the university involved in any way in their CLC. KRCLC had been unable to attract funding from the relatively limited CLC Funding Program administered on behalf of the federal and state governments by the Legal Aid Commission of WA.[27] Shanahan concluded that the prospect of new State monies for CLCs was remote.[28]

An agreement was drafted between Murdoch, KRCLC and the Western Australian Federation of CLCs (the Federation) in relation to the structure of SCALES.[29] The

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[23] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[24] See Chapter 7, footnotes 47-49 and related text.
[25] Chris Shanahan, *Clinical Legal Education: An Opportunity*, 2.
[26] KRCLC operated from the offices of the local Labor Party Member of State Parliament, Mr Norm Marlborough.' Interview with Chris Shanahan (Perth, 14 May 1999).
[27] In 1995, the State Government was providing only $31,000 in recurrent funding to CLCs 'which is non-negotiable and not open to new funding applications'. Note the Victorian and NSW figures and the amounts provided to Springvale, Monash-Oakleigh and Kingsford.
[28] Chris Shanahan, *Report to the Dean – Clinical Legal Education Program – The School of Law at Murdoch University*, 25 July 1995, 14.
[29] Chris Shanahan refers to Trish Blake, the Coordinator of the WA Federation of CLCs as having facilitated the development of the collaboration between Murdoch, KRCLC and the Federation and deserving of 'a significant bouquet' for her efforts. Shanahan, above n 28, 12.

agreement stated that SCALES would 'operate to meet the needs of the Kwinana-Rockingham community' but was intended, eventually, to cover any of Perth's southern communities experiencing unmet legal need. 'The need of the host community will be the initial priority.' The Law School Dean was authorised to submit funding applications made in accordance with the Federation's constitution.[30] Key undertakings given by the law school were that they would always provide at least as much in the way of legal services to the Kwinana area as the KRCLC would have and the school would always acknowledge KRCLC as a partner in the clinical project. While this 'created all sorts of difficulties and twists as we went through it', it was a 'fundamental premise that we began from.'[31]

By late-September 1995, the KRCLC Management Committee had provided in-principle support for the clinical program, with Tom Joyce, a key committee member stating that he saw no point in duplicating the service. If SCALES was funded he considered that KRCLC should close.[32] At the same meeting, Chris Shanahan suggested that the funding application be a joint venture involving KRCLC. This was a very significant gesture by the university given that it was pledging substantial funds to an entity it would not necessarily be able to control.

Having clear support from local community agencies would ultimately prove important in enabling the Law School to overcome government concerns that the SCALES proposal was not sufficiently community-based. The direct involvement of KRCLC also appears to have been important in obtaining the active support for the SCALES proposal of Kim Beazley, the local federal parliamentarian and Deputy Prime Minister. The briefing paper prepared for a January 1996 meeting with Beazley referred to KRCLC and Murdoch University as '*partners* proposing the establishment of a community law clinic in Kwinana-Rockingham.'[33]

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[30] The structure of the SCALES Management Committee was also specified and it was noted that the Committee would be bound by the Federation's constitution.
[31] Interview with Chris Shanahan (Perth, 14 May 1999).
[32] File Note of Murdoch Law Clinic Meeting Held on Wednesday 27 September 1995, 2.
[33] 'Briefing Paper – Meeting with the Hon Mr K Beazley, Deputy Prime Minister 17 January 1996'.

Friends in High Places - Obtaining Federal Support

As would be expected, the serious lack of accessible legal services in the southern communities region clearly enhanced the prospects of the SCALES proposal gaining support. Existing agencies recognised the need for additional services. The CLC Funding Committee of Legal Aid Western Australia strongly supported the SCALES proposal for *Justice Statement* funding.[34] It was fortuitous for the SCALES proposal to have the support of such a senior politician as Kim Beazley. Beazley had been involved in the establishment of Murdoch University and had taught in the Political Science Department. He was very interested in regional development and was seeking to move from the electorate of Swan to the electorate of Brand, which included the southern communities.

By June 1995, Chris Shanahan was liaising extensively with Michael Megaw and other staff from Kim Beazley's office regarding how to advance the SCALES proposal. At Megaw's suggestion, Shanahan wrote to then Attorney-General, Michael Lavarch in early-July with details of the SCALES proposal and requested an opportunity to discuss the proposal further.[35] Megaw advised Shanahan of the need for a two-pronged approach, involving the public process as well as privately lobbying ministers.[36] In August 1995, *Justice Statement* funding for various new community legal services was advertised and paperwork for these grants became available.[37] Applications were invited for the establishment of a regional Community Legal Centre to serve Northern Perth. Existing CLCs were also advised of the availability of *Justice Statement* funds for three specialist litigation positions designed to supplement existing CLCs.

These funding categories created difficulties for Murdoch. Shanahan expressed to the new Dean of the Law School, Michael Blakeney,[38] his concern at the tied nature of the *Justice Statement* money and questioned whether it would be possible for the SCALES proposal to obtain such funding.[39] Murdoch decided to apply for funds both to establish

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[34] The Committee commented on the lack of community legal services in the Kwinana/Rockingham area. 'There is a Legal Advice Bureau run jointly by Legal Aid and the Citizens Advice Bureau Rockingham, however it is recognised that these services are very limited and that there is a need for increased services.' Letter from Carol Bahemia, Director, Legal Aid Western Australia to Helen Eastburn, Director, Community Legal Services Section, Legal Aid and Family Services, Attorney-General's Department, 24 November 1995, 4.
[35] Letter from Chris Shanahan to Michael Lavarch, 5 July 1995.
[36] Chris Shanahan, notes of telephone attendance on Mike Megaw, 17 July 1995.
[37] See advertisement in *The West Australian*, August 12 1995, 47.
[38] Dean Simmonds was on 12 months sabbatical from the end of July 1995.
[39] Chris Shanahan, Memo to Michael Blakeney, 28 August 1995.

a generalist CLC which would operate as a clinic as well as for KRCLC to employ a specialist litigator. Shanahan states 'We wanted a generalist centre. There's no doubt about that. We decided to apply for both on the basis that if we got the specialist money, we might be able to use the university's promise to aggregate the amounts in a way which would at least enable us to make a start on the clinical program.'[40]

The difficulties relating to the *Justice Statement* categories were reinforced in October 1995 when Peter Duncan, Parliamentary Secretary to the Attorney-General, wrote to Shanahan advising that he could not agree to funding the SCALES proposal under the Community Legal Centre Funding Program. Duncan stated that the proposal was 'not sufficiently community based and does not have sufficient independence from government, academic or professional bodies' to meet the funding criteria.[41] Both KRCLC and the Federation of CLCs wrote to Duncan disputing this view.

If the SCALES proposal was to be derailed, it was most likely to happen at this stage. In late-October, Shanahan advised the Chief Executive Officer of the City of Rockingham that the project would 'collapse if there is no positive funding decision in the very near future'.[42] Further and more active support and involvement was sought from Beazley's office. Shanahan wrote to Michael Megaw noting, amongst other things, that despite rejecting the SCALES proposal for CLC funding due to its lack of a community base, Peter Duncan, the member for the seat of Makin in the north-eastern suburbs of Adelaide, was actively promoting Adelaide University as the site for the National Human Rights and Discrimination Law Centre to be funded under the *Justice Statement*.[43]

Shanahan considers that Beazley could see the potential benefits and viewed the project as a development in a regional corridor:

> 'It was the southern communities portion of it that really sold Kim Beazley on it and that's when he said that he would look into it. We found out a bit later that he was going to give a commitment and he wrote to us giving us a commitment to fund it.'[44]

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[40] Interview with Chris Shanahan (Perth, 14 May 1999).
[41] Letter from Peter Duncan to Chris Shanahan, 17 October 1995.
[42] C. Shanahan, *Briefing Paper – 30 October 1995 – Mr Gary Holland, Chief Executive Officer, City of Rockingham*, 3.
[43] Letter to Michael Megaw from Chris Shanahan, 21 November 1995.
[44] Interview with Chris Shanahan (Perth, 14 May 1999).

In a letter to the Vice Chancellor of Murdoch University dated 7 February 1996, the Legal Aid Branch of the Attorney-General's Department advised that Peter Duncan had approved an approach being made to Murdoch University to develop the SCALES proposal 'as a joint venture' between the Federal Government and University'.[45] The Government proposed to contribute $200,000 over two and a half years[46] to the SCALES pilot project with the expectation that the University would:

- ensure that it draws in substantial local community support and involvement in the service;
- develop a mentor-type relationship with Springvale Legal Service and Monash University;
- agree to work closely with the department in the development of an evaluation strategy and to contribute to a related research project;
- provide litigation support for other Western Australian CLCs, with the aim of developing the skills base of these services; and
- guarantee that it will provide at least $70,000 per annum ($35,000 pro-rata in 1995-96) for the three year pilot project.

Support was also obtained from the City of Rockingham which offered to provide rent-free premises for SCALES. The first year was rent-free followed by a review of the operations 'in line with the service offered and considering any funds generated through the Centre'. SCALES was responsible for funding the fitting out of the premises.[47]

Having received these commitments, further difficulties then arose with the change of government resulting from the federal election in March 1996. According to Shanahan, the election of the Liberal-National Coalition Government led by John Howard resulted in the SCALES proposal going 'into hibernation. We weren't getting any information from anywhere.'[48] There was serious concern that the undertaking to fund SCALES would no longer be honoured as the new government considered the former

[45] Letter to the Vice Chancellor, Murdoch University from S. Burke, Acting Secretary Legal Aid Branch, Attorney-General's Department, 7 February 1996.
[46] The letter refers to Commonwealth funding of $80,000 per annum ($40,000 pro-rata in 1995-96).
[47] Letter from G. G. Holland, Chief Executive Officer, City of Rockingham to C. Shanahan, 2 April 1996.
[48] Interview with Chris Shanahan (Perth, 14 May 1999).

government did not have the power to give the funding undertaking as it was in caretaker mode at the time.

A Pilot Program

The new Attorney-General in the Howard Government was Daryl Williams, QC, MHR for Tangney, the electorate covering the main Murdoch campus. Williams quite understandably had no background in clinical legal education which added to the need for further lobbying to ensure the new government honoured the commitment to fund SCALES. The university engaged in various lobbying activities with input from the new Vice-Chancellor, Stephen Schwartz, who had quickly embraced the SCALES proposal. Roger Lethbridge also continued to advocate for the program. Ralph Simmonds recalls that the university 'invested some of its own quality time with Daryl Williams' demonstrating the value to all concerned, including Williams, of the University having this high profile, Rockingham-enhancing activity.[49]

Chris Shanahan recalls Williams being the focus of intense lobbying at the opening of the Rockingham campus, an event held in a large marquee.

> 'My recollection was that we were all chasing Daryl Williams from one end of the tent to the other. He was finally sand-bagged by the V-C, Michael Blakeney and Roger Lethbridge in a corner with me hanging off their coat-tails and there was a bit of sharp negotiation about what we were going to get. There were no promises made but subsequent to that, we got the $190,000.'[50]

The proposed Federal support was not part of any established funding program. It was a 'one-off' allocation and characterised as a pilot program. This ultimately proved critical in enabling the SCALES project to survive the change of government. When the Howard Government was elected, its Expenditure Review Committee (ERC) was charged with the task of reducing the budget deficit inherited from the previous government. Attorney-General Williams was advised by the ERC that any initiatives which had been promised funding under the Justice Statement but which had not yet commenced operations would not receive the funding whereas programs which had already commenced operations would not have funds withdrawn. SCALES, as a pilot project, fell between these two ERC principles and it was on this basis that the funds

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[49] Interview with Ralph Simmonds, (Perth, 14 May 1999).

were provided. Williams recalls SCALES as the only item from his portfolio that was characterised in this way and that the Department managed to find funds in order to fulfil the funding promise, 'albeit at a lower rate than Murdoch had hoped'.[51]

In his speech at the SCALES opening, Williams expressed the hope that SCALES graduates would 'be more community minded and more "hands on" and competent lawyers' and noted renewed interest from law schools in developing clinical programs. He also noted another important aspect of 'the Murdoch project' was its role in data collection.[52] Both Williams and Kim Beazley accepted invitations to be inaugural patrons of SCALES.[53] The coincidence of having two local federal members of parliament who were both influential in their respective political parties was critically important to enabling Murdoch to ultimately secure funding for SCALES despite the change of government.

Being the first clinical program in Western Australia is likely to have assisted the process of obtaining funds. Chris Shanahan described the SCALES proposal as a 'greenfields development' in a corridor with very limited state and federal infrastructure. 'There weren't legal aid offices, there weren't universities, there weren't even a lot of lawyers.' The SCALES proposal 'came at a time when there was municipal money about, there was Commonwealth money about, there were some questions about state money and there was the university's desire to go south'. SCALES 'was a strong idea which came along at a time when there was enough flexibility to support it.'[54]

1997 – Making it Happen

Once federal funding was secured, Murdoch moved to appoint staff to operate SCALES. Michael Hovane commenced work as SCALES Director in early February 1997 and was joined in April by Mary Anne Kenny, as Deputy Director, and Gai Walker (known at that

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[50] Interview with Chris Shanahan (Perth, 14 May 1999).
[51] Telephone interview with Daryl Williams (28 June 2004).
[52] Williams stated: 'It will be a valuable litmus test on the performance and role of CLE in shaping the legal profession and provide a wealth of valuable research data. While some anecdotal research has been undertaken in relation to the long term effect of CLE, a longitudinal study on its impact has never taken place in Australia.' See Daryl Williams, Launch of the Southern Communities Advocacy Legal and Education Service, 21 April 1997.
[53] Williams advised that he was delighted to accept the invitation 'as a way of demonstrating my continuing support for the early development of student legal skills and for the provision of valuable legal assistance to the people in the Rockingham-Kwinana areas.' Letter from Daryl Williams to Michael Hovane, 7 May 1998.

time as Gai Messer) as the service administrator. These positions had first been advertised in the first half of 1996 but uncertainty regarding the Federal funding commitment resulted in no action being taken for more than six months.[55] Neither Hovane nor Kenny had worked as legal academics before. They came to SCALES after working in CLCs and legal aid offices. Walker was a Rockingham local and had worked in the electorate office of the federal parliamentarian Kim Beazley had replaced, Wendy Fatin. Her wide circle of community contacts benefitted SCALES. Walker notes that the experience of both Hovane and Kenny as legal aid duty lawyers enabled them to effectively address client concerns whilst working closely with students.

Hovane was appointed as a Senior Lecturer and Kenny as a Lecturer, both on three-year contracts. Hovane was attracted to the SCALES position for several reasons. He was interested in the establishment of a new CLC and was tired of the perpetual funding uncertainty facing the Consumer Credit Legal Service where he had been working for two and a half years.[56] He had an interest in the teaching and development of law students stemming from his own negative experiences of a law school which focussed too heavily on 'black letter' law.[57]

Mary Anne Kenny had been working at the Youth Legal Service after completing a Masters in Law at Iowa University in the United States. Before that, she had worked for Legal Aid Western Australia. She had a strong interest in human rights and international law and saw SCALES as 'a chance to do a broader range of work and get into an academic institution where I could use some of what I'd learnt and put it into practice.'[58]

When Michael Hovane was interviewed for the Directorship, Chris Shanahan had expressed some reservations because he wanted 'someone with a very strong academic background or at least an academic exposure so that the pedagogical elements of what I saw as the importance of the clinic wouldn't be lost.' In 1999, Shanahan described Hovane's appointment as 'the best decision we made…I believe it's absolutely critical that you get the right person as the establishment director of

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[54] Interview with Chris Shanahan (Perth, 14 May 1999).
[55] Interview with Michael Hovane & Mary Anne Kenny (Perth, 14 May 1999).
[56] Interview with Michael Hovane (Perth, 14 May 1999).
[57] Michael Hovane <mhovane@legalaid.wa.gov.au> email to Jeff Giddings, 6 November 2008.
[58] Interview with Mary Anne Kenny (Perth, 14 May 1999).

something like that. Either it goes or it doesn't go and whatever the strength of the ideas behind it, you need the right person in the right place.'[59]

Following Hovane's appointment, the university sought to lower his salary rate and reduce the length of his appointment, having realised that it could be left without sufficient funds to cover the operations of SCALES. Law School Dean, Michael Blakeney wrote to Hovane advising that they had reconsidered the matter and did not believe it to be in the university's interests to provide a three-year contract in case the funding for the clinic failed. The university wanted to offer Hovane a contract which was conditional upon there being adequate funding. Hovane was not prepared to agree to any contract variation.[60] The university did not propose a conditional contract to Mary Anne Kenny. 'They did try to offer me different sums of money but I think I took the first offer I'd been given, which was the largest. ... Michael fought the good fight before I came. He made me aware of things before I started.'[61]

Once appointed, Hovane negotiated with Murdoch Law School that he would be employed through Murdoch but seconded to SCALES. Murdoch were unaware that CLCs could apply for Public Benevolent Institution status to obtain fringe benefits tax exemptions. This enabled SCALES staff to take advantage of salary packaging benefits unavailable to university staff. They were on 'special contracts designed to net them more financially than their academic ranks might otherwise produce in recognition of the professional load they carry'.[62] The development of different arrangements for the SCALES-linked academics may have had the effect of reinforcing their separateness from the Law School.

The law school budget for SCALES focussed principally on the costs involved in employing two lawyers and had not adequately allowed for other expenses, particularly in relation to administration of the service. Michael Hovane describes walking into a 'funding nightmare. There was probably a $130,000 deficit just to keep the clinic alive for the period of the pilot program. . . . Even starting late, there was this funding gap.' Initially, there was a heavy reliance on volunteers, including volunteer receptionists. Gai Walker's time was spent in establishing the office procedures, the accounts and other matters. Hovane recalls 'there was a pretty heavy emphasis from the moment we

[59] Interview with Chris Shanahan (Perth, 14 May 1999).
[60] Interview with Michael Hovane (Perth, 14 May 1999).
[61] Interview with Mary Anne Kenny (Perth, 14 May 1999).

hit the ground to get funding or die.'[63] The SCALES Annual Report 1996-1997 refers to a funding deficit in spite of the existing funding of $133,000 per year.[64]

Apart from funding concerns, Hovane's initial focus was on making arrangements for the premises which the City of Rockingham was providing for SCALES. While the Lotteries Commission of Western Australia had agreed to provide up to $78047[65], the centre had not yet been set up. 'There was only a concrete shell. There wasn't even a design. Fitout hadn't been organised. I took that on board and had to complete that fairly quickly as the course was supposed to start that semester.'[66]

Hovane spent two weeks at Springvale Legal Service (SLS), one of the clinic sites operated by Monash University, in late-February and early-March 1997.[67] At that time, he was concerned at the lack of detail in the organisation of the course he was about to commence teaching. Chris Shanahan described preparing the first timetable for SCALES as 'an appalling exercise because I didn't really know so many things about what it was going to be.'[68] SLS staff were clearly very generous with their time and resources, providing Hovane with all of their program materials and instruction sheets as well as seminar materials. He also watched the interactions between supervisors and students to gain insights into the principles underpinning clinic-based learning.[69]

SLS co-ordinator, Adrian Evans and Monash clinic co-ordinator, Sue Campbell impressed upon Hovane the importance of achieving equal treatment with other academics in terms of the position of the clinic within the faculty and the status of clinicians. On returning to Murdoch, Hovane raised these issues like entitlements to research leave with Michael Blakeney 'and had a fairly torrid argument of it. I then went to the union to seek their advice'. The advice was that regardless of what the Dean said, it was a three-year contract and Hovane was entitled to study leave. This

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[62] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[63] Interview with Michael Hovane (Perth, 14 May 1999).
[64] The Report stated: 'There is an existing deficit of approximately $80,000 over the initial funding period. The Service is therefore actively seeking funds to fill this deficit and provide other necessary additional staff and workers.' *SCALES Annual Report 1996/1997*, 8.
[65] Letter from Jan Stewart, Chief Executive Officer, Lotteries Commission to Chris Shanahan, undated but faxed to Shanahan on 3 March 1997.
[66] Interview with Michael Hovane (Perth, 14 May 1999).
[67] Hovane was supposed to spend 4 weeks at Springvale but time pressures prevented this.
[68] Interview with Chris Shanahan (Perth, 14 May 1999).
[69] Interview with Michael Hovane (Perth, 14 May 1999).

satisfied Hovane who did not take the matter further.[70] The mentoring arrangement with Monash University made an important contribution to the initial operation of SCALES.[71] The new clinicians clearly benefitted from having access to advice on the operational details of clinical programs. Campbell and Evans spent two weeks at SCALES when the service opened. Mary Anne Kenny recalls 'they were really great in giving a very quick overview.'[72]

Given the size of the task of operationalising the SCALES proposal and establishing the clinic and teaching program, the following comment from Chris Shanahan sums up the views of those involved: 'The fact that we got open at any time in the first half of 1997 was legendary. We did so much in such a short space of time.'[73] The clinic quickly generated student interest with around 15 students participating in the program in each subsequent semester.[74]

The strong community service focus at SCALES appears to have ensured that the clinic would operate three semesters per year with the clinic staff teaching each semester. For Shanahan, the need to show SCALES to be a professional operation was at the heart of the decision to be open all year round. 'What we were after was a high quality, very professional legal service, not something half-baked. Not something that is not recognisably high quality.'[75] Ralph Simmonds recalls that this allowed the law school to show 'the university that we were interested in year-round teaching. We could also make it plain to Rockingham City that this was a professional operation.'[76] Hovane subsequently observed that this meant that there was no break from the clinic. 'The clinic never sleeps ... It was felt, both by the law school and by us to a certain extent, that for the monetary outlay we would need to run three semesters a year to beef up the numbers, to make it cost-effective.'[77]

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[70] Interview with Michael Hovane (Perth, 14 May 1999).
[71] *SCALES Annual Report 1996/97*, 8.
[72] Interview with Mary Anne Kenny (Perth, 14 May 1999).
[73] Interview with Chris Shanahan (Perth, 14 May 1999).
[74] In its first student semester (Semester 1, 1996), SCALES hosted 13 students. Subsequently, the student numbers were 15 (Semester 2, 1996), 16 (Summer 1996-7), 15 (Semester 1, 1997), 16 (Semester 2, 1997) & 13 (Summer 1997-8).
[75] Interview with Chris Shanahan (Perth, 14 May 1999).
[76] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[77] Interview with Michael Hovane (Perth, 14 May 1999).

Hovane considers that the commencement of the clinic would have been greatly assisted if the political imperative to deliver services as soon as possible could have been resisted.

> 'It would have been far better to wait for the next year or so and start the course over summer. But that's just the way it happened. When we started, we weren't on top of enough of the issues to stand up and say "No, there has to be more time". So we basically just took it all on board and ran.'[78]

The SCALES experience demonstrates that setting up a substantial clinical program from scratch is a serious challenge, particularly in terms of getting the budget and logistics right. The inexperience of the Federal Attorney-General's Department as a funder of clinical programs reinforced this challenge. It would have been beneficial for the mentoring arrangements to commence earlier with a view to having input into the planning process. This may have enabled the funding issues caused by the omission of various expenses from the planning budget to have been avoided. It appears that the community legal centre background of Hovane and Kenny along with the community organising experience of Walker were very valuable in enabling SCALES to quickly develop into an effective operation.

Development of Teaching Arrangements

The SCALES experience provides a useful example of the importance of clinical teachers being reflective practitioners themselves as well as encouraging their students to reflect and critique. Neither Michael Hovane nor Mary Anne Kenny had previous experience as law teachers and their teaching and supervision practices developed quickly as they became familiar with this new role.

The *Clinical Legal Education 1* Curriculum Proposal developed by Chris Shanahan through 1996 had proposed that the initial offering focus on five primary teaching objectives, namely professional ethics, personal student educational development and motivation, legal practice skills, contextual and multi-disciplinary learning.[79] Once SCALES was established, the clinicians had considerable freedom in developing the

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[78] Interview with Michael Hovane (Perth, 14 May 1999).

[79] C. Shanahan, *Clinical Legal Education 1* Curriculum Proposal, June 1996, 2 & C. Shanahan, *Discussion Paper for SCALES Planning Committee*, November 8 1996, 6. The paper referred to appreciation of the dynamics of law as a social practice, location of other learning about law and appreciation of how law interrelates with other disciplines.

program. Hovane stated that the law school left the clinicians alone to develop the program themselves. They had great latitude to make changes they thought would be beneficial.'[80]

The clinical teaching practices at SCALES have changed significantly over time, with feedback from student evaluations regularly used to inform changes to the seminar program, the number of students and the supervisory relationship.[81] In 1999, Ralph Simmonds described the *Clinical Legal Education* teaching evaluations as 'amongst the best teaching evaluations in the university'.[82] The course rated very highly with students, especially in terms of overall satisfaction and case supervision. The ratings for course workload, while positive, were not as strong as for other matters.[83]

Initially, SCALES tried to assist too many clients. Having worked in the legal aid sector, both Hovane and Kenny were very conscious of service delivery. They were seeing eight or ten clients each student intake session and found themselves 'rushing so much to get through the clients that we weren't spending quality time with the students and making them go through the process of doing the work themselves.'[84] Changes were made in relation to the number of client sessions each week, increasing from three to four, and halving the number of clients seen at each session. The number of students involved in each session was reduced from five to four. These changes also allowed for supervision responsibilities to be shared more evenly with each supervisor having two groups of four students.

SCALES had commenced operations with a morning, an afternoon and an evening session each week. Designed to enhance accessibility for clients, the evening session created difficulties for staff and some students. Sessions did not finish until close to midnight and staff and students then needed to drive home. 'We thought that was a real occupational health and safety issue. The students were tired, we were exhausted. Mary Anne bore the brunt of that, running the evening session.'[85] Older students who were in paid employment appreciated the availability of the evening session and suggested that if it were withdrawn, the clinic would not attract a range of students

[80] Interview with Michael Hovane (Perth, 14 May 1999).
[81] Interview with Michael Hovane (Perth, 14 May 1999).
[82] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[83] Murdoch University Academic Services Unit, *Student Survey Results Unit L3907 Semester 1, 1997*.
[84] Interview with Michael Hovane (Perth, 14 May 1999).

but the clinic staff felt the closure of the evening session was a change they had to make.[86]

Initially, family law accounted for 70 percent of the SCALES caseload but this was subsequently reduced and focussed on domestic violence and matters involving children.[87] The clinicians came to see significant educational and service benefits in having students work on a broad range of legal matters for vulnerable client groups. Contested cases were only handled for vulnerable client groups and SCALES attracted more Aboriginal clients, clients with mental health problems and children. The presence of a large Indigenous community and many people from Non English Speaking Backgrounds resulted in SCALES prioritising welfare rights and tenancy cases providing 'a better challenge and experience for the students in dealing with those sorts of clients.' [88]

The diversity of files tended to make the supervision task more complex, requiring supervisors to stay on top of a breadth of matters which often involved unfamiliar legal issues.[89] Hovane noted that student supervision became less directive over time.

> 'Initially, we had a lot more clients to deal with and were far more directive. We knew we had to be more effective in getting the student to engage in the responsibility of dealing with the file, working through the process. We self-consciously tried very hard to change our styles in how we interacted with the students.'[90]

Changes were made to provide a greater structure to the file review process. Students were required to maintain more detailed plans for each file and explain what action they proposed should be taken on behalf of the client.[91]

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[85] Interview with Michael Hovane (Perth, 14 May 1999).
[86] Interview with Mary Anne Kenny (Perth, 14 May 1999).
[87] In each of 1997/98, 44% of SCALES clients obtained advice in relation to family law matters. See SCALES *Annual Report 1997/1998*, 23 & SCALES *Annual Report 1998/1999*, 23. Subsequent annual reports did not provide corresponding data.
[88] Interview with Michael Hovane (Perth, 14 May 1999).
[89] Mary Anne Kenny noted that the supervisors both 'have such a diversity of files that it's hard for us to stay on top of the breadth of matters that I have to deal with. In a lot of cases, I'm learning something new for the first time. That makes it hard to say to the student, "It's up to you to have a plan for this file, know where it's going and plan out your work." if I don't have a clear plan for where it's going.' Interview with Mary Anne Kenny (Perth, 14 May 1999).
[90] Interview with Michael Hovane (Perth, 14 May 1999).
[91] Interview with Mary Anne Kenny (Perth, 14 May 1999).

Assessment matters raised important issues for the supervisors. The original Pass/Fail arrangement was replaced by the conventional graded system. This accorded similar status to other subjects. The Dean had indicated that he would not support a doubling of the credit students received for their clinic involvement (eight points rather than four points) unless the subject was fully graded. The workload was seen as clearly warranting such a change.[92] The clinicians also increased their emphasis on providing regular feedback to students. Hovane concluded that the key was to provide detailed feedback much earlier in the process. 'It's too late once you get to assessment.'[93]

Development of the teaching arrangements at SCALES no doubt benefited from moderation of the law school's expectations regarding the research productivity of the SCALES-based academics. Ralph Simmonds considered the casework of the clinic to be their research product and that it made sense to allow the clinicians to build their pioneering program. 'The expectation of them is that they are educators so we'll hold them to all the educational standards.'[94] Evaluations of the teaching at SCALES were the most positive of all for the Law School and amongst the best for the university. Simmonds stated that 'If there is any question about whether they are or are not good contributors to the university, I simply deploy the numbers and that stops the trouble. They are being held to high academic standards but they're being held to high academic standards which make sense for them.'[95]

Making SCALES a Permanent Operation

Having worked very hard to obtain federal and university support for the SCALES pilot program, the Law School then moved to explore options for placing SCALES on a more permanent footing. Continuing support was required from both sources. Understandably, Ralph Simmonds saw obtaining an ongoing federal commitment as 'one of our top priorities for the investment of law school energy.'[96] SCALES staff considered it likely that federal funding would continue. The service was a success both in educational terms and in servicing the southern communities region. 'Having committed to the area, it would have been very difficult for them politically to withdraw.'[97]

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[92] Interview with Michael Hovane (Perth, 14 May 1999).
[93] Interview with Michael Hovane (Perth, 14 May 1999).
[94] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[95] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[96] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[97] Interview with Michael Hovane (Perth, 14 May 1999).

An Oversight Committee established pursuant to the SCALES constitution included a representative from the Federal Attorney-General's Department who was important in advising the law school. The Department representative 'simply plugged us into the same network which is taken for granted east of the psychic barrier the Nullarbor Plain represents.'[98] The 1998/1999 Federal Budget, delivered in May 1998, announced federal funding for four clinical programs. Murdoch submitted an Expression of Interest to receive continuing support for the running of SCALES in October 1998. This document emphasised the track record of SCALES in terms of the educational model used, the community service provided in a region of great need and the substantial financial support provided by a range of other sources.[99]

Murdoch was then invited to submit a tender and did so in mid-December 1998. The tender provided an Indicative Budget for 1999/2000 outlining costs of $280,789.42 with income from other sources very neatly totalling $180,789.42. Most of the non-federal income was to come from the University and was conditional on continued federal support. The tender also emphasised Murdoch's preparedness to work with other WA law schools and to explore the application of clinical methods across the law curriculum and in relation to Practical Legal Training.[100]

Ultimately, Murdoch was announced in February 1999 as one of the four programs to be funded. Unlike the three other successful programs,[101] it was not proposed that SCALES would use the federal funding to deliver a new service. Rather, it would enable SCALES to continue to operate. For the pilot phase of SCALES, Murdoch had committed only 'soft money', from non-recurrent quality assurance funds. When the Law School was providing proposals to the University as to how to put SCALES on a permanent footing, Ralph Simmonds suggested that additional university funding was warranted by the clinical nature of the teaching. 'My father was a medical academic so I was used to the idea of working with clinical loadings. I'd had in the back of my head that if this

[98] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[99] Murdoch University/SCALES, *Expression of Interest in Establishment of Clinical Legal Education program*, 1 October 1998.
[100] Murdoch University/SCALES, *Tender to Commonwealth for Clinical Legal Education Program*, 13 December 1998.
[101] Griffith, Monash and UNSW.

thing went permanent, we should put it on a clinical loading. So I went to the university and said "Give us a clinical loading as if it was a teaching hospital".'[102]

The University initially baulked at Simmonds' suggestion but ultimately agreed to funding at Level 3, two levels higher than other EFTSU funding for law.[103] Murdoch has a veterinary clinic with a clinical loading at Level 3. 'Initially, the Deputy Vice-Chancellor was very sceptical, asking how he could persuade other people in the university, at a time when they were talking about contracting zero-sum games, to put SCALES on a permanent footing.' Both Simmonds and Roger Lethbridge indicated that without direct ongoing support from the University, SCALES would not continue. Lethbridge managed to persuade the Deputy Vice-Chancellor 'who came around so quickly that he actually fed it into our budget [for 1999] without telling us'.[104]

In 1999, Simmonds referred to the clearly stratified funding provided for SCALES with the Federal Government providing $100,000, $80,000 from the Law School representing enhanced student funding quarantined from their budget, $47,000 from the Division of Business, Information Technology and Law, $33,000 from the University's Rockingham budget as well as in-kind support from each of the cities of Kwinana and Rockingham.[105] This was rightly considered to represent a package expressing all of the values that had been described in the planning for SCALES.[106] SCALES had further enhanced its ongoing viability by successfully attracting funding for a range of discrete projects, often in partnership with other community agencies.[107]

The operations of SCALES clearly enhanced the community service profile of the university. Michael Hovane considered the clinic to have been a significant success for the university, generating considerable kudos and profile. 'It's been the most high profile aspect of the university without doubt, in terms of media coverage and that sort

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[102] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[103] See Chapter 4, footnotes 23-24 and related text.
[104] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[105] *Dean's Report for Bachelor of Laws Program Committee Meeting,* 8 April 1999.
[106] Interview with Ralph Simmonds, (Perth, 14 May 1999).
[107] Early SCALES community partnerships included:
an educational project funded in 1997 to develop an interactive CD-Rom for high school students on consumer credit. This was done jointly with Consumer Credit Legal Service, (see 'Law Clinic (SCALES) Report', *Murdoch School of Law, Newsletter September-December 1997)*; a Domestic Violence Support Program, known as FAAST (the Family Abuse, Advocacy and Support Team) launched in June 1998. This project was originally funded for 3 years (Law Clinic (SCALES) Report', *Murdoch School of Law, Newsletter May-August 1998*) and a tender with 2

of thing. That's seen by the university hierarchy as a huge positive.'[108] Strong support continued to be provided by Ralph Simmonds, and, until his untimely death in 2001, Roger Lethbridge. Chris Shanahan referred to involvement of this kind as particularly important.[109]

Enhancing the Experiences of Students and Clients

In 1999, Archie Zariski noted that the way forward for clinical legal education at Murdoch was 'for it to be more integrated into our regular curriculum... I'd like to see clinical approaches used in more subjects and we're looking for ways to integrate that.'[110] Murdoch now has a suite of clinic courses, including some based on campus at Murdoch Law School. This has provided a clinical presence both beyond SCALES and within the Law School building as well as assisting in better meeting the interests and constraints of students.

Immigration and human rights work has become increasingly significant to the clinic profile at Murdoch with clinical staff developing a persuasive rationale for emphasising such work.[111] An advanced clinical placement was made available in 2001 to students who had completed the general clinic. This arose from Mary Anne Kenny's interest in immigration cases and the increasing prominence of this work in the SCALES caseload. Kenny could see the need for a way to control that caseload and ensure the general clinic was not swamped.[112] The students involved knew what to expect and were more effective in addressing the needs of clients in these relatively complex cases with less direct supervision. Students and staff involved in the advanced immigration clinic combine work on individual cases with broader activities including preparation of submissions to public inquiries[113] and assisting with the organisation of public education events.[114]

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other organisations to provide immigration-related advice, with a focus on asylum seekers ('Law Clinic (SCALES) Report', *Murdoch School of Law, Newsletter May-August 1999*).

[108] Interview with Michael Hovane (Perth, 14 May 1999).

[109] Interview with Chris Shanahan (Perth, 14 May 1999).

[110] Interview with Archie Zariski (Perth, 14 May 1999).

[111] Alison Vivian & Anna Copeland, 'Human Rights as the Ordinary Work of Clinics' in Bronwyn Naylor & Ross Hyams (eds), *Innovation in Clinical Legal Education: Educating Lawyers for the Future* (2007) 34.

[112] Interview with Mary Anne Kenny (Perth, 14 May 1999).

[113] For example, students prepared a submission to the Human rights and Equal Opportunity Commission National Inquiry into Children in Immigration Detention. The submission attracted considerable media interest. See SCALES *Annual Report 2001/2002*, 16.

[114] For example, students assisted with the organisation of the 'Turning Them Away' forum held in June 2006 which discussed issues related to Australia's treatment of asylum seekers. See SCALES *Annual Report 2005/2006*, 18-19.

The advanced clinic was structured with sufficient flexibility to enable coverage of areas beyond immigration law, depending on the semester and staffing. It also facilitated the development of an advocacy focus, building on court appearance work completed by students in the early years of SCALES.[115] The advanced clinic provided the vehicle to develop a focus on young people, an area of research interest of Anna Copeland who joined Murdoch and SCALES in September 1999, and domestic violence, a research focus for Colin James who joined SCALES in January 2001, as well as tenancy law. These developments provided greater flexibility to the clinic.

Tenancy law has now become a major focus of the student appearance work with substantial involvement from SCALES solicitor, Amanda McGow. Since 2006, SCALES has been funded to provide a Tenants Advice and Court Service. With support from the Tenants Advice Service of Western Australia, students have been closely supervised in working on issues around evictions and bond disputes.[116] Anna Copeland has described tenancy as 'absolutely perfect as an area of law for clinic students to work in – based on contract law, which they have all done. It is a quite straightforward piece of legislation in a contained area.'[117] She also noted that students are introduced to tenancy law during the general clinic before enrolling in the advanced clinic.

Alison Vivian and Anna Copeland have written about the importance of encouraging clinic students to view their work in the clinic as related to human rights issues. They emphasise the value of clinic teachers highlighting to students the potential human rights dimensions of clinical casework, stating 'We propose that a starting point for our emerging conceptualisation of human rights might be that the practice of human rights can be defined as the *ordinary work of clinics*.' (emphasis in the original)[118]

A Human Rights Clinic now operates twice per year, each time over two weeks as an intensive program. Rather than focussing on casework, this clinic has a dual focus,

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[115] The presiding magistrate at Rockingham took a progressive approach to the clinic, coming to SCALES and contributing to student discussions and permitting students to conduct appearances in the local Court of Petty Sessions. SCALES staff identified the Children's Court as a forum where students could productively appear on behalf of clients. The Children's Court Chief Magistrate was approached and was extremely supportive. Mary Anne Kenny considered this work to have been well received by students. Mary Anne Kenny, personal interview, 14 May 1999.

[116] SCALES *Annual Report 2006/2007*, 12-13.

[117] Interview with Anna Copeland (Rockingham, September 9 2008).

[118] Vivian & Copeland, above n 111, 37.

involving students in research on major human rights issues as identified by Murdoch and SCALES staff. While such clinics are part of the US clinical landscape, they have been less prominent in Australia.[119]

SCALES staff have been acknowledged on several occasions for the quality of their teaching. The supervising staff at SCALES were nominated for a Team Teaching Award as part of the 2001 Australian Awards for University Teaching.[120] In 2007, the SCALES clinic team received a Vice-Chancellor's Citation for Excellence in Enhancing Learning[121] as well as a Citation from the Carrick Institute for Learning and Teaching. This national citation was awarded for 'sustained excellence in providing an experiential learning environment which engages students in a lifelong commitment to social justice'.[122]

The development of advanced clinic options enabling more specialised student experiences dovetailed with the availability of government and other funding to enhance the range of services delivered to SCALES clients. This has in turn shaped the development of SCALES as a community agency extending beyond its original mission and status as a university-based clinical program.

SCALES Becomes More Than a Clinical Program

SCALES continues to attract support from a diverse range of agencies and supporters. The community sector experience of SCALES staff members no doubt fosters these links.[123] Staffing levels at SCALES indicate the development of an organisation providing a broad range of services extending beyond clinical legal education. From three staff in 1996/97, SCALES steadily expanded to 12 staff in 2003/04 and has since maintained this level.[124]

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[119] See Chapter 3 of this thesis, footnotes 98-99 and related text.
[120] SCALES *Annual Report 2001/2002*, 8.
[121] SCALES *Annual Report 2006/2007*, 8.
[122] 2007 Carrick Citations for Outstanding Contributions to Student Learning, 6. See http://www.altc.edu.au/carrick/webdav/site/carricksite/users/siteadmin/public/awards_citations_recipientsbyuni_aug07.pdf.
[123] Gai Walker was able to call upon her local community knowledge while Michael Hovane, Mary Anne Kenny, Anna Copeland, Colin James and Amanda McGow all came to SCALES with experience in community legal centres, Aboriginal legal services and legal aid.The *SCALES Annual Report 1996/1997* illustrates the range of service collaborations developed by Hovane, Kenny and Walker in the first year of operations. Details are set out on page 13 of the Report.
[124] The numbers of staff members listed in the annual reports of SCALES since its establishment are as follows: 3 in 1996/97 (*Annual Report*, 4), 5 in 1997/98 (*Annual Report*, 2), 6 in 1998/99 (*Annual Report*, 1), 7 in 1999/2000 (*Annual Report*, 3), 7 in 2000/01 (*Annual Report*, 2), 10 in 2001/02 (*Annual Report*, 6) and 12 in each of 2002/03 (*Annual Report*, 8-9), 2004/05 (*Annual Report*, 5-7), 2005/2006 (*Annual Report*, 3-5) and 2006/2007 (*Annual Report*, 3-5).

The opportunities for SCALES to grow as an organisation were enhanced by the significant need for a wide range of human services generated by the very substantial population growth in the Kwinana-Rockingham corridor. Service opportunities have been matched by the availability of project funding. 'Soft money' has been more readily available in WA due to revenues generated by the resources boom of the past decade. One limitation arising from the location of SCALES in an outer-urban growth corridor (50 kilometres from the Perth CBD) was that it was always going to be difficult to develop a large group of volunteer lawyers. This may have encouraged the diversification of both the SCALES funding base and its operations.

Local government also supported SCALES with the City of Rockingham providing rent-free accommodation from 1997 to 2007[125] while the town of Kwinana provided free accommodation for the satellite office that operated from 1999 to late-2002. There was also a vehicle provided by a local car dealer for the use of SCALES staff during the first year of operations.[126]

In 1997, SCALES partnered with the local women's health service in obtaining state government funding for the Family Abuse Advocacy Support Team (FAAST) service, a collaborative model of service delivery to victims of domestic violence involving a counsellor and a solicitor working closely together with clients.[127] Every year since 1997, the Public Purposes Trust of the Western Australian Law Society has provided a grant to SCALES. After a grant of general funds to assist establishment of the service in 1996/1997, support has been provided each year.[128] Funds have also been received

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[125] Noted by Gai Walker as equivalent to a donation of $40,000 per year. Written advice received from Gai Walker, 13 October 2008.

[126] The vehicle was supplied by Esprit Autos in Victoria Park. See SCALES, *Annual Report 1996/1997*, 8.

[127] *SCALES Annual Report 1997/1998*, 5 & 15. FAAST continues to receive this funding on a triennial basis and is also supported by funds provided by the WA Community Legal Services Program to a domestic violence legal workers network. Written advice received from Gai Walker, 13 October 2008.

[128] This support has generally been directed to a Youth Legal Project, enabling services to be provided to local young people and their support circles, while on one occasion it was directed to employment of a domestic violence solicitor. In 2008/2009, a further amount was approved to employ a community legal education worker 2 days per week to provide services to the Youth Legal Project, bringing the annual contribution of the Public Purposes Trust to $103,610. The annual amounts contributed to SCALES from the Public Purposes Trust have been $12,500 (1998/99), $36,000 (1999/2000), $65,000 (2000/01), $55,000 (2001/02), $65,000 (2002/03), $63,867 (2003/04), $69,607 (2004/05), $64,035 (2005/06), $76,740 (2006/07), $80,000 (2007/08) & $103,610 (2008/09).

from Lotterywest, the official state lottery for WA, for a range of projects including the fit out of each of the three premises SCALES has occupied in the past 11 years.[129]

Legal offices have also been prominent in supporting SCALES. Michael Hovane recalls that local law firms quickly came to support SCALES, including supervising students when SCALES supervisors were on leave.[130] SCALES also developed a novel alliance with a major national law firm, Mallesons Stephens Jacques (MSJ) whereby SCALES staff supervise MSJ solicitors involved in one of the firm's pro bono activities, a legal advice service at the Salvation Army Homeless Centre (Genesis) in Northbridge.[131]

Since 1998/99, SCALES has also received federal funding pursuant to the Immigration Advice Application Assistance Scheme to provide services to asylum seekers and refugees in the community and in detention. The WA Department of Consumer and Employment Protection provides funds to SCALES and the Fremantle Community Legal Centre for tenancy services to the South Metro area since 1999. In 2008, this service was re-funded for a further five years.[132]

The value of the services provided by SCALES and the Immigration and Tenancy Advanced Clinics is demonstrated by the range of awards received by SCALES, its staff and volunteers. In 1998, Murdoch was the first Australian university to receive an award for Services to Students and the Community. The nomination of Murdoch for the award relied heavily on SCALES and the Family Abuse and Advocacy Support Team.[133] In 2001, three long-term SCALES volunteers were acknowledged in the Brand Community Service Awards presented by Kim Beazley.[134]

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[129] Other projects supported by Lotterywest have included an organisational review of SCALES governance, a project on young people and public space and a two-year research project on why women granted interim restraining orders seemed not to be continuing the application through to a final order hearing. Written advice from Gai Walker, 13 October 2008.

[130] Brian Kearney of local firm, Rattigan, Kearney and Bochat was particularly supportive. Michael Hovane <mhovane@legalaid.wa.gov.au> email to Jeff Giddings, 6 November 2008. Donations were also received in the early years from major firms including Blake Dawson Waldron; Clayton Utz; Deacons Graham and James; Corrs Chambers Westgarth; Jackson McDonald; Minter Ellison; Phillips Fox and Peter A Brindal and Co. Significant assistance was provided by both Freehills and Legal Aid Western Australia during 2004 and 2005 to address staffing shortages arising from study leave and maternity leave taken by clinic supervisors.

[131] In return for this supervision, Mallesons Stephen Jacques makes a sizable donation to SCALES. Written advice from Gai Walker, 13 October 2008

[132] Written advice from Gai Walker, 13 October, 2008.

[133] '$50,000 Award for Community Service' *Sunday Telegraph*, 2 December 1998, 5.

In 2002, SCALES received the prestigious Law Award in the National Human Rights Awards presented by the Human Rights and Equal Opportunity Commission. One of the judges for the award, Nicholas Cowdery QC, stated:

> 'We were impressed by the strong human rights culture the centre engendered and reinforced. SCALES' work in training and educating law students in human rights law and practice enabled the legal service to be of broader benefit to the community as well as the individual clients.'[135]

In 2008, SCALES was again recognised, this time at the Western Australian Consumer Protection Awards, receiving the Organisational Award for its Tenancy and Court Support Service.

The strength of the service focus since the early days of SCALES was no doubt instrumental in securing contributions from such a broad range of supporters. This now means that the service understands that it has a future even if the clinical aspects of its operations were to be scaled back or discontinued. This realisation has also impacted on how both the law school and the university view SCALES. No longer is SCALES viewed as a university-controlled operation. It is an independent agency and it took the University, the Law School and SCALES some time to adjust to the new dynamics of their relationship.

Challenging Negotiations

As SCALES developed, it became clear to those involved that there was a need to revise the SCALES constitution and reconsider the funding agreement between the law school and SCALES. Negotiations during 2006 related to this funding agreement demonstrate the challenges which can arise when experienced people either move on or take on other responsibilities.

Following Ralph Simmonds' departure from Murdoch Law School in 2004, there were several short-term law deans until Gabriël Moens was appointed Dean in September 2005. In her report in the SCALES 2004/5 Annual Report, Acting Director Jo Scott referred to 'major changes of staff roles and personnel, Deans, funding and management committee members' and that the 'relationship between SCALES and

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[134] *SCALES Annual Report 2001/2002*, 5. The award recipients were Margaret Flower, Ron Hassall and Rhonda Zelina.
[135] http://www.hreoc.gov.au/about/hr_awards/2002.html.

Murdoch can only strengthen from the stability which accompanies the appointment of Professor Moens.'[136] Twelve months later, Scott wrote: 'That statement has been tested over the last year.'[137]

Early in 2006, it was decided that the Murdoch-SCALES agreement signed in 1998 would 'be re-evaluated and hence renegotiated'. Jo Scott noted that 'It is more likely than not that an outcome will affect the structure of SCALES.'[138] Mary Anne Kenny's resignation as SCALES Director in February, 2006 was the catalyst for a series of difficult discussions between the clinic partners. Gabriël Moens sought to appoint a relatively junior law school academic to the SCALES Director position, generating objections from the SCALES management committee due to the extensive practice and supervision experience required for the role. Further, there were concerns about the process followed and the limited consultation with SCALES.[139]

The University subsequently advertised to fill the Director position. The Selection Panel included Moens, the Executive Dean (Division of Arts), Professor Arnold Depickere, the SCALES Chairperson, Michael Perrella and SCALES Acting Director Jo Scott. Each of these key participants were relatively new to their posts. The panel found itself unable to agree on a preferred applicant, leading to no appointment being made. This process heightened awareness of the need to re-define the relationship between SCALES and the law school. 'With fresh faces at the negotiating table on behalf of Murdoch University unaware of past practices, initial discussions proved very difficult from SCALES' perspective.'[140]

In late-August 2006, Jo Scott was also leaving SCALES and wrote that Gai Walker and Anna Copeland had agreed to jointly act in the Director position until an appointment was made, accepting 'the challenge and the extra work it will entail to ensure that the clinical experience will not be denied to those enrolled in second semester'.[141] Ultimately, an understanding was reached whereby the Law School would continue to fund two positions at SCALES with one of those being an academic position, along with Murdoch providing information technology and other support to SCALES. SCALES

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[136] *SCALES Annual Report 2004/2005*, 12.
[137] *SCALES Annual Report 2005/2006*, 8.
[138] Ibid.
[139] Interview with Anna Copeland & Gai Walker (Rockingham, September 9 2008).
[140] *SCALES Annual Report 2006/2007*, 6.
[141] *SCALES Annual Report 2005/2006*, 8.

agreed to provide a set number of placements for Murdoch students each year, at a level in keeping with past practice. To date, that understanding continues to operate despite not having been made the subject of a formal written agreement.[142]

Celebrating 10 Years of SCALES

The relationship between the Law School and SCALES was subsequently strengthened by the function held in September, 2007 to celebrate the tenth birthday of SCALES. The front cover of the SCALES Annual Report 2006-2007 features a photograph of SCALES alumni, students and staff together with law school colleagues and members of the practising profession on the staircase in the Murdoch Law School foyer enjoying what was from all accounts a very successful event.

Some 120 people attended the function which Anna Copeland credits with having facilitated a shift in 'law school understanding of what SCALES does, what it means to the students, to the profession those students then enter and the client community'.[143] Copeland noted the large number of people who attended and shared their positive experiences at SCALES with the Dean and others from the University. Some of these graduates who attended had subsequently become partners and senior associates in major firms while others had been involved in important international human rights-related legal work, including addressing legal issues in East Timor, the Sudan and working for the War Crimes Tribunal for the former Yugoslavia.[144] This demonstrated the breadth of the work and influence of SCALES, making clear that SCALES was no longer a 'sub-set of the law school.' SCALES was recognised as its own entity which engages with but is not controlled by the law school.[145]

Managing the Maturation Process

The recognition that SCALES has become a broader organisation has involved changes in its management structure. A structure is now being trialled which involves two Directors [Director of the Centre and Director (Clinical Program)] as well as a Principal Solicitor. Gai Walker is now Director of the Centre with responsibility for human resources, funding and the administrative functions of SCALES. Anna Copeland is the Director (Clinical Program) and the Murdoch University-appointed academic based at SCALES with responsibility for liaison with the University and administration of all

[142] Interview with Anna Copeland & Gai Walker (Rockingham, September 9 2008).
[143] Interview with Anna Copeland (Rockingham, September 9 2008).
[144] Interview with Anna Copeland (Rockingham, September 9 2008).

course requirements. Amanda McGow is the Principal Solicitor and has responsibility for the legal practice.

These structural changes recognise the value of sharing the responsibilities involved in the running of an increasingly complex organisation. Anna Copeland considers they also recognise reality in that much of the management work under the previous SCALES structure was being undertaken by Gai Walker who would then seek the endorsement of the Director.[146] This reality can be traced back to when Michael Hovane was the SCALES Director. In his contribution to the SCALES Annual Report 1999/2000, Hovane noted that Mary Anne Kenny and Gai Walker 'have been personally responsible for initiating and developing many of the innovations of the Clinic and have been co-Directors with me in all but name (and salary) over the past three and a half years.'[147]

The Murdoch experience demonstrates the importance of continuity to the effective operation of a clinical program. Gai Walker has been a key to the ongoing operation of SCALES and has the knowledge and community contacts that can assist in gaining resources to enhance the work of the service. Walker has provided continuity at those times when Mary Anne Kenny and Anna Copeland have spent periods away from SCALES as part of their academic duties. This has seen SCALES continue through the departures of Michael Hovane, Colin James, Jo Scott and Alison Vivian as well as Mary Anne Kenny's move to the Law School. Glynes Rynn has also provided important continuity for the Family Abuse Advocacy Support Team at SCALES, having been the solicitor for that project since its establishment in 1998.

Following her move to the Law School, Mary Anne Kenny has continued to play a pivotal role in the Murdoch clinical program, both in terms of developing clinic units based in the Law School, securing additional space for the Law School-based clinics and in working with SCALES-based staff. Anna Copeland has stated:

> 'We're lucky to have her there, able to slot in at a moments notice if need be. If she wasn't here, I'm not sure it would be sustainable. There's no-one here who can take up the course coordination and find their way through the bureaucracy of the University ... Then

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[145] Interview with Anna Copeland (Rockingham, September 9 2008).
[146] Interview with Anna Copeland (Rockingham, September 9 2008).
[147] *SCALES Annual Report 1999/2000*, 10.

there's the scholarship, the development of research ideas. That's very difficult to do on your own.'[148]

Conclusion

The establishment of SCALES represents a significant step in the development of clinical legal education in Australia. That success can be attributed, in part, to the fact that it has been able to achieve multiple goals: the traditionally under-serviced communities of Rockingham and Kwinana have had improved access to free legal services; Murdoch University has been able to enhance its contributions to the southern communities and its students have been able to access a refreshingly different teaching method. For the Australian clinical movement, the success of SCALES was important in terms of persuading the federal government to extend its support for clinical programs.

Murdoch Law School had to overcome a range of challenges during the development of the SCALES proposal and during its implementation. It was necessary to obtain Commonwealth support for the project and then to have a new government honour a funding commitment made by its predecessor. In dealing with these matters, the determination of Chris Shanahan and others was obviously crucial. There were then issues related to the limitations of the budget developed for the purposes of seeking funding. It would have been useful to have the mentoring arrangement with Monash in place earlier with a view to having greater input from experienced clinicians at the planning stage.

The community service focus of SCALES has facilitated access to financial support from a range of government and other 'soft money' sources which allowed the service to grow significantly. While this could have undermined the student learning dimensions of the SCALES experience, it is interesting to note Anna Copeland's view that this has in fact enhanced the student experience. Expanding SCALES has meant that not every case needs to be handled by the clinic students and supervisors. No longer do they have to worry about the student experience on every file. 'We've got a broad base of files. We cherry-pick what is going to work best for the students. There are SCALES

[148] Interview with Anna Copeland (Rockingham, September 9 2008).

salaried staff in key areas like domestic violence and immigration and they take on much of the casework.'[149]

SCALES is no longer dependent on either Murdoch University or Murdoch Law School for its existence. The case study demonstrates the importance in negotiation of having alternative options that can be pursued if necessary. If it found it had no other choice, SCALES could operate as a community legal centre without being involved in a clinical program although all involved at SCALES remain committed to and can see the real benefits for all concerned from involvement in the clinical program.

[149] Interview with Anna Copeland (Rockingham, September 9 2008).

Chapter Nine – Analysis and Conclusion

Introduction

This thesis has argued that clinical programs often face a tenuous existence unless they are recognised as an integral part of the legal education project. A series of factors need to operate together in order for a clinical program to be established and then sustained. In the absence of institutional arrangements requiring the use of clinical methods, law schools will be slow to utilise relatively expensive teaching methods unless they are persuaded to do so. This chapter considers how individuals and groups interested in clinical legal education can work to constructively integrate clinical methods and insights with the other aspects of legal education.

Chapter Two emphasised that clinics can benefit from clearly understanding the objectives they are seeking to meet – for their students, their law school, their university, their profession and other communities. Chapter Three examined the ways in which particular clinical models can best be utilised in the pursuit of those objectives and again emphasised the benefits and challenges likely to be generated by efforts to integrate clinical models and insights across the law curriculum.

Chapter Four reviewed the range of factors that appear to have a significant influence on where and why clinics will be established. Government policy, economic prosperity and social circumstances appear to be significant 'macro factors'. University priorities also play an important part in clinics taking hold in otherwise unlikely places. The extent to which a law school understands and productively engages with its clinical program is central to the clinic's continuing development. The range of influential factors indicates the importance of clinics taking an integrative approach in their endeavours, collaborating where advantageous with a range of potential supporters.

This chapter analyses the four case study programs considered in Chapters Five to Eight in terms of the various establishment and sustainability factors proposed in Chapter Four. In doing so, it answers the most important research sub-question posed in Chapter One: 'What factors are influential in the establishment and sustainability of clinical legal education programs?' It also identifies additional influential factors demonstrated by the case studies which were either absent or not prominent in the literature. The four case studies corroborate the experiences outlined in the literature regarding external factors promoting the establishment of clinical programs. While

general social circumstances were important in shaping the prospects for early clinical programs, government policies on higher education and legal aid have also been major influences.

It appears that the age of a law school is important to the prospects of it establishing a clinic, with newer schools more likely to develop a clinical program. The interests of law schools and universities in developing a distinctive profile can foster program establishment. All four case study programs benefited from a fairly substantial planning process prior to establishment. Advice and support from experienced members of the 'clinical movement' was also important to program development. Each of the programs has received substantial financial support from sources beyond the law school and the case studies demonstrate how university and law school support can be leveraged to attract and retain external support.

Each of the case study programs has faced challenges to its sustainability. A key influence on sustainability relates to how programs respond to such difficulties. Such challenges have involved either opposition or indifference from within its law school and from outside, often relating to competing claims for scarce resources. The analysis further identifies the critical importance of key staff – within the clinic as well as senior law school and university leadership. Clinic leaders in particular need to foster opportunities for effective collaboration both within and beyond their law school.

The case studies also indicate that the structure utilised for establishment will have an enduring influence on the ethos and operations of a clinic. Once a clinic is established, it has the potential to become part of the accepted framework of the law school. However, if a clinic is established on an unsustainable basis (in terms of resourcing and workload), it is likely to be difficult to achieve changes designed to remedy structural flaws. Strategic planning is needed to transition from the practices that facilitate program establishment to structures and practices likely to foster program sustainability.

The case studies highlight the potential to foster sustainability through the effective integration of the clinical program and clinicians with the broader mission and activities of the law school. Challenges involved in clinical integration are also identified. The viability of clinical programs will be enhanced by the various participants taking a

collaborative and unselfish approach to their efforts. A commitment to community and professional service can foster a range of collaborative relationships.

This chapter uses the same structure as Chapter Four in addressing the three sets of influential factors. It begins with the broad contextual factors argued to be important to program establishment. University factors are then addressed in terms of enabling the establishment of clinics and either supporting or undermining their ongoing operation. The chapter then examines law school factors that are critical in driving sustainable practices. The chapter also considers a set of sustainability factors which, while not prominent in the clinical legal education literature, are identified as important by the case study analysis. The thesis concludes with consideration of the need for the leaders of clinical programs to remain prepared for the inevitability of change.

External Factors

This section of the chapter outlines the influence of broad social and professional factors on the development, operation and sustainability of the case study programs. Each clinic faced particular issues as they sought to be innovative in the experiences offered to students and the services provided to clients. Changes in government policy were particularly significant in the establishment of the Newcastle and Murdoch programs, both involving law schools established after higher education reforms in the late-1980s.

Economic and Social Context

In Chapter Four, examples from the USA, England, Chile and Australia were used to show that both prosperous economic times and progressive politics have been important to the establishment and development of clinical programs. Philanthropic support is likely to be more accessible during strong economic times while government support, often focussed on legal service delivery, tends to be more easily gained during periods of economic prosperity.[1]

Of the four case studies, the Monash program most clearly demonstrates the influence of progressive political times. In the early 1970s, staff and students of Monash Law

[1] While it might be expected that economic downturns adversely influence the operations of clinical programs, this is not clear from the case studies. The Australian 'recession that we had to have' of the late-1980s generated very high interest rates which bolstered the interest generated by statutory sources used to support legal aid and related purposes.

School took the opportunity to engage with the access to justice agendas of that era.[2] Like Monash, the UNSW Law School was linked to the emergence of the community legal centre movement and relatively radical organisations like the Australian Legal Workers Group.[3]

Economic factors impacted on each of the case study programs in similar ways. There is some evidence of regional variation, principally in relation to the resources boom in Western Australia having enhanced the ability of SCALES to access public funding sources.[4] The Newcastle clinical program was established whilst the Hunter Valley region was suffering from the decline of its steel industry but coincided with the emergence of the University of Newcastle as a major employer and source of economic activity within the region.

Higher Education Policy

Chapter Four identified that the prospects for clinical programs can be significantly influenced by higher education policy. Moves to foster mass participation in higher education have seen significant increases in the numbers of both Australian law schools and law students.

The case studies each involve a clinic established at a relatively new law school. Monash and UNSW led the 'second wave' of Australian law schools while Newcastle and Murdoch were early members of the 'third wave'.[5] In each case study, the clinic was established or planned either at the same time as the law school (Newcastle) or within a decade of the law school's establishment.[6]

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[2] From the telephone advice service established in 1971 emerged a more substantial operation in the form of Springvale Legal Service, which then became the Monash clinic site in 1975. The emergence of Australian community legal centres coincided with the election of a progressive Federal Labor Government after 23 years of conservative government. Simon Smith, 'Clinical Legal Education: The Case of Springvale Legal Service' in David Neal (ed), *On Tap, Not on Top: Legal Centres in Australia 1972 - 1982* (1984) 49. See Chapter 5, footnotes 10-14 and related text.

[3] The UNSW program developed during the second term of the conservative Liberal-National Coalition Government led by Malcolm Fraser. The Australian Legal Workers Group was established in New South Wales in 1979 and then in Victoria in 1980. See Stan Ross, *Politics of Law Reform* (1982) Chapter 4.

[4] Chapter 8, footnotes 125-131 and related text.

[5] Richard Johnstone & Sumitra Vignaendra (2003) *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee*, 3. The 'second wave' law school' are those established between 1960 and 1987 while the 'third wave' are those established after 1987.

[6] Monash Law School was established in 1964 with the clinic opening in 1975 following a lengthy planning process which commenced in 1973. UNSW Law School opened in 1971 with

The Newcastle and Murdoch case studies demonstrate the importance of the Dawkins higher education reforms of the late-1980s in the development of clinical legal education in Australia. Developing a clinical focus was one of the more obvious opportunities available to new law schools to distinguish themselves and forge links with the practising legal profession. The Newcastle law program quickly attracted strong application numbers, indicating student interest in a clinic-based legal education. [7]

The case studies also suggest that the geographical location of law schools may influence the prospects for developing a clinical program. The development of universities including Monash, Murdoch and Newcastle reflect the suburbanisation and regionalisation of Australian higher education from the 1960s to the present day. Regional campuses in corridors of population growth were likely to present opportunities for the development of service-oriented clinical programs.[8]

De-regulation promoted establishment of new law schools but did so in a manner that generated market pressures to increase students numbers. The place of law in the lowest cluster of the Federal Government's Relative Funding Model[9] meant that increased numbers reinforced the reliance on lecture-based formats and this has limited the development of clinical programs. Both Murdoch and Newcastle law schools

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the Kingsford Legal Centre opening in 1981. Murdoch Law School was established in 1989 with SCALES opening in 1997. Australia's other substantial clinical programs, at La Trobe and Griffith similarly commenced operation in the early years of operation of the La Trobe Legal Studies Department and the Griffith Law School.

[7] The Commonwealth Tertiary Education Commission (CTEC) did not support Newcastle University efforts to establish a law school in the 1970s and 1980s due to concerns regarding the presence of law programs elsewhere in NSW and the likelihood of limited student demand.[7] History now records that within two years of its establishment in 1993, the law school had more than 1,000 applicants for 64 student places. Further, by 1997, the Tertiary Education Ranking required for entry to Newcastle Law School was the fourth highest of the 12 law schools in NSW and the Australian Capital Territory. See Chapter 7, footnote 36 and related text.

[8] The location of Newcastle in a region with a substantial population and a sizable local legal profession in need of graduates may have aided development of the clinic but this model has not been replicated by other regional law schools. Other Australian regional universities which have law schools are situated in regions with smaller populations: James Cook University (Townsville and Cairns regions have a combined population of 310,000), University of Wollongong (Illawarra region has a population of around 300,000), Deakin University (Barwon region has a population of 285,000), University of Southern Queensland (Darling Downs region has a population of 280,000, Southern Cross University (Northern Rivers region has a population of 280,000), University of New England (New England region has a population of 150,000).

[9] Chapter 4, footnotes 23-24 and related text.

relied on substantial clinical loadings from their universities to enable the development of their clinical programs.[10]

Changes in higher education policy are likely to continue to influence the prospects of clinical programs. While clinics are not prominent enough to be a focus of policy changes within the sector, they will undoubtedly be affected by broader developments. Increasing interest in fostering the employability of university graduates is likely to promote clinic-type programs provided resourcing issues can be effectively addressed.[11]

Legal Services Policy

The potential for law clinics to contribute to legal service delivery has been important to the establishment and operation of clinical programs. The material in Chapter Four demonstrated that a range of developed and developing nations have utilised clinical programs as providers of legal aid services. England, which has had relatively generous legal aid arrangements, has been distinctive in not placing substantial legal service expectations on clinical programs.[12]

The emergence of the Murdoch program in particular was linked to developments in legal aid policy. The Keating Labor Government's 1995 *Justice Statement* was the first external funding source Murdoch Law School sought to utilise for its clinic.[13] The newly-elected Howard Government ultimately funded SCALES on a pilot basis with funds from elsewhere in the Attorney-General's Department at a time when it was making substantial cuts to federal legal aid funding.

Of the four case study programs, three attracted federal clinic funding in 1999.[14] The Federal Attorney-General responsible for introducing this clinic funding, Daryl Williams, considered community service to be the main purpose of clinical legal education, describing the added educational outcomes as 'the icing on the cake'.[15] The availability

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[10] Chapter 7, footnotes 83-86 & 98 and Chapter 8, footnotes 102-104 and related text.
[11] Chapter 4, footnotes 25-27 and related text.
[12] Establishment of the earlier programs (Monash and UNSW) pre-dated substantial legal aid arrangements and this in part explains the assumption of a strong service focus by the Monash program in particular. Subsequently, the availability of disbursements-only legal aid grants would also have fostered the Kingsford Legal Centre focus on test case litigation. See Chapter 6, footnote 60 and related text.
[13] Chapter 8, footnotes 21-46 and related text.
[14] The other clinical program to receive funding was at Griffith Law School.
[15] Telephone interview with Daryl Williams (28 June 2004).

of service-linked funding can be seen to open doors for clinics but also to shape what lies behind those doors.

The case study programs have each been influenced by close connections to other service delivery agencies with three of them co-locating with other services. While not co-located, Kingsford Legal Centre has played a leading role in the work of the New South Wales Combined Community Legal Centre Group. The strong service focus reinforces the justice mission of clinics and promotes collaborative frameworks while making it more challenging to focus on educational objectives.

Momentum as a Movement

The establishment and sustainability of clinical programs will be fostered by exemplars of effective practice, both local and international. Strong and supportive networks of clinical programs and scholars are also important. The case studies reinforce the importance of such unselfish collegiality and the momentum which can be generated by a vibrant clinical movement.

As the first clinical program in the country, the Monash experience was driven by distinctive factors including the involvement of students focussed on social justice concerns. Chapter Four outlined similar experiences in other countries, including the USA and South Africa.[16] Monash went on to generate considerable interest from other law schools considering the establishment of clinical programs[17] and influenced the views of government and legal professional bodies as to the merits of clinical programs.[18]

Each program has benefitted from the input of the access to justice movement in Australia[19] and there continues to be a symbiotic relationship between clinics and legal aid, in particular community legal centres – both 'movements' have contributed to the

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[16] Chapter 1, footnotes 23-24 and related text.

[17] Examples include Murdoch (see Chapter 8, footnotes 11-12 & 67-72 and related text), QUT and Griffith.

[18] Refer to Monash chapter Just as Monash provided the impetus for other clinical programs, the other case study programs blazed their own trails, in relation to the conduct of test case litigation (UNSW), integrating Practical Legal Training into a clinic-focussed LLB program (Newcastle) and in securing federal government support for a new clinic (Murdoch).

[19] John Chesterman's history of the Fitzroy Legal Service provides a valuable account of the developing access to justice movement that developed in Australia during the late-1960s and early-1970s. See John Chesterman, *Poverty Law and Social Change: The Story of the Fitzroy Legal Service* (1996) Chapters 1-3.

momentum of the other. Without exception, the key drivers of the case study programs have had a deep commitment to access to justice, having been involved in legal aid and community legal centres.[20] Neil Rees' experience at Springvale Legal Service and the Victorian Aboriginal Legal Service shaped the early operations of Kingsford Legal Centre which in turn influenced the development of the Newcastle program. The fledgling Newcastle program benefited from the involvement of leading clinic teachers from elsewhere, namely Sue Campbell and Simon Rice. Campbell and Adrian Evans were also involved in mentoring staff in the Murdoch program. Monash demonstrated a highly collegial approach in providing the Murdoch clinicians with open access to their teaching and practice materials.[21]

Exemplars have proved important in efforts to overcome continued law school reliance on lecturing as the dominant and default method of teaching in Australia. Ralph Simmonds noted that other Western Australian universities expressed interest in the development of clinical programs once the Murdoch experience with SCALES had demonstrated the value of such approaches.[22] Both the UNSW and Newcastle programs have also sought to make significant international contributions.[23] All of the case study programs have also benefitted from seeing how clinics operate in other countries.[24]

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[20] Neil Rees and Simon Smith were both involved as students in creating the Springvale Legal Service. Rees subsequently worked at the Victorian Aboriginal Legal Service before establishing the UNSW clinical program. Adrian Evans had worked at the La Trobe SRC Legal Service for a decade prior to moving to the Monash clinical program. Peter Hanks and Guy Powles were leading researchers on legal aid issues. Tony Woods, Simon Rice and Fran Gibson had all worked at Redfern Legal Centre prior to taking up the Director position at Kingsford Legal Centre. Anna Cody had worked for a domestic violence service in Central Australia before joining Kingsford Legal Centre. John Boersig had extensive experience working for Aboriginal legal services in Central and Northern New South Wales. Shaun McCarthy had worked at Legal Aid New South Wales, supervising UNLC students. Chris Shanahan, Michael Hovane, Mary Anne Kenny and Anna Copeland had all worked in community legal centres prior to talking up positions at Murdoch Law School while Colin James had worked at Legal Aid Western Australia.

[21] Archie Zariski's visit to Kingsford Legal Centre prompted his subsequent suggestion that Murdoch develop a clinic. Chris Shanahan visited both Kingsford and Newcastle whilst developing the Murdoch clinic proposal, while Michael Hovane and Mary Anne Kenny visited the Monash clinical program after being appointed to positions at SCALES.

[22] Simmonds stated that University of Western Australia, Notre Dame and Edith Cowan University had all expressed interest in clinics following the Murdoch experience. Interview with Ralph Simmonds (Perth, 14 May 1999).

[23] Chapter 6, footnotes 187-191 and related text & Chapter 7, footnotes 121-122 and related text.

[24] Insights gleaned from the international study tours of Guy Powles and Adrian Evans were integrated into the operations of the Monash clinical program. Neil Rees had observed clinical programs whilst completing his LLM in the USA. Simon Rice's extensive study tour in North America and England was influential in shaping the UNSW clinic following the 1990 Review. Other examples include the sabbatical Mary Anne Kenny spent in the US focussing on refugee

Response of Legal Professional Bodies

Chapter Four included examples of legal professional bodies being highly influential in either promoting or impeding the development of clinical programs. In several instances, initial resistance from the practising profession towards establishment of clinical programs ultimately transformed into support. The significant opposition Kingsford Legal Centre encountered as part of broader tensions between UNSW Law School and the legal establishment was short-lived.[25] The Newcastle and Murdoch clinics did not face significant initial opposition and have received substantial support from their respective local practising professions.

The substantial ongoing support Kingsford Legal Centre has received since 1992 through secondments from private firms and government legal offices is distinctive amongst Australian clinical programs. One explanation for this may be the relative proximity of the clinic to the city centre in comparison with the Monash and Murdoch clinic sites. Former Kingsford students were important in supporting the program when it encountered funding difficulties. While the Murdoch clinical program was established in a region which did not have an extensive practising legal profession, SCALES still benefited from contributions from a range of law offices[26] as well as its alumni.[27]

In its early years of operation, Monash Law School sought to align itself with the profession, making extensive use of contacts with the judiciary in particular.[28] While there have been issues-based tensions with the Law Institute of Victoria, particularly in relation to disciplinary processes and the Solicitors Guarantee Fund[29], the relationship between the profession and the Monash clinical program has remained a constructive one. Professional support was very important to the development of the Newcastle program, both through the input of local practitioners and the contribution of close to $1 Million from the Law Society of New South Wales through its Solicitors Trust

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law and clinic issues and Jenny Finlay-Jones' tour of English clinical programs highlighted to her a range of supervision practices which could usefully be incorporated into the Newcastle program. Interview with Jenny Findlay-Jones (Newcastle, 3 December 2004).

[25] Chapter 6, footnotes 50-53 and related text. Within a decade of KLC's establishment, substantial support was provided by the Law Foundation of NSW for the Review of the UNSW clinical program, including Simon Rice's study tour.

[26] Chapter 8, footnote 130 and related text.

[27] Chapter 8, footnote 143-145 and related text.

[28] Chapter 5, footnote 78-80 and related text.

[29] Chapter 5, footnotes 125-128 and related text.

Accounts Fund.[30] Professional support was also critical in terms of obtaining accreditation of the Newcastle Professional Program, enabling students to combine their LLB and Practical Legal Training studies.

Australian clinical programs may in future seek to build closer links with the practising profession, with a view to emulating the substantial institutional support provided by the profession in the USA. The presence of post-graduation Practical Legal Training requirements may have limited the profession's expectations of Australian law students developing practice-related skills through clinic experiences. Further, the large numbers of graduates from an expanding group of law schools has enabled law firms to be highly selective in the graduates they employ.

Partnership Programs – Opportunities for Collaboration

Chapter Four documented an Australian example of successful efforts to develop a clinic within a broader health-focussed community centre and a less successful example of a group of South East Queensland law schools seeking to collaborate in the establishment of a clinical program.

Each of the case study programs developed highly collaborative relationships with other agencies. The co-location of Springvale Legal Service (SLS) with the Springvale Community Aid and Advice Bureau (SCAAB) has been a continuing influence on the Monash clinical program.[31] The development of their new premises in 1988 is the clearest example of collaboration on a substantial scale. SCALES has become increasingly integrated with a range of other community agencies in the Rockingham region, co-locating with several such organisations and attracting public sector and philanthropic support from a range of agencies.[32]

Both UNSW and Newcastle developed their own clinic sites when efforts to build on existing connections with CLCs did not result in an existing CLC hosting the clinical program.[33] KLC also developed links with the UNSW Social Work School and

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[30] Chapter 7, footnotes 37-42 and related text.

[31] Guy Powles described Springvale Legal Service and Springvale Community Aid and Advice Bureau as being 'in a love-hate relationship in which they monitored each other.' Interview with Guy Powles (Clayton, 12 December 2000).

[32] Chapter 8, footnotes 125-129 and related text.

[33] The links between Kingsford Legal Centre and Redfern Legal Centre (RLC) remained strong with several KLC Directors (Tony Woods, Simon Rice and Fran Gibson) having previously worked at RLC.

community agencies. The Newcastle clinic subsequently developed close links with local legal aid organisations, co-locating with several legal aid agencies from 1996 to 2007.[34]

Opposition From Outside

Opposition from beyond the law school and university has clear potential to undermine both the establishment and sustainability of clinical programs. The experiences of a series of US clinics were used in Chapter Four as examples of powerful government and business interests seeking to interfere with the case selection decisions of clinical programs. This has not been as significant an issue for the case study programs. Apart from the initial Law Society opposition to the UNSW program outlined earlier, Australian clinics have not faced the same opposition nor attracted the same support from the profession as have US clinical programs.[35]

In conclusion, the case studies corroborate the views expressed in the literature that external factors can be influential in the emergence and operation of clinical programs. The growth of clinical programs in progressive social times is reflected in the establishment of the Monash and UNSW programs. More than a decade later, government higher education and legal aid policy was influential in setting the scene for the establishment of both the Newcastle and Murdoch programs. Beyond government, legal professional bodies contributed to shaping the development of the case study programs. The practising profession has provided significant support to each of the case study programs, although the UNSW clinic faced initial opposition. External opposition can undermine an established program and is likely to significantly test university commitment to clinical legal education.

University Commitment to Clinical Method

This section of the chapter analyses the influence of factors related to the particular university involved in each case study. Such factors appear to impact most particularly on program establishment with clinics becoming a vehicle for pursuit of university objectives. Difficulties can arise for clinics through inflexible university structures and

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[34] Chapter 7, footnotes 73-76 and related text.

[35] The other example of opposition from outside relates to hostility from the NSW police force encountered by the Newcastle program in relation to their criminal justice work. While the New South Wales Police Minister was strongly supportive of the work of the Newcastle Legal Centre, John Boersig noted the strenuous opposition of local police to testcase work related to accountability issues in the criminal justice system. See Chapter 7, footnotes 116-117 and related text.

systems not recognising the particular nature of the responsibilities, skills and experience required of clinical legal scholars.

Becoming a University Priority

Reference has already been made, both in this chapter and in Chapter Four, to the rapid increase in the number of Australian law schools over the past 20 years. Once development of a law school no longer required regulatory approval, newer universities developed law-related offerings with a view to attracting high calibre students who often enrol in combined degrees. Law continues to be considered a prestigious discipline and, if delivered in lecture-mode, is relatively inexpensive to teach. Clinics can also facilitate professional and community engagement, activities of particular importance to new law schools, suggesting that becoming a university priority is an important factor in the establishment of clinical programs.

In different ways, each of the case study clinics became a university priority. Monash University emphasised clinic-based learning for its professional faculties.[36] UNSW prioritised law as a discipline and the clinical program became part of becoming a leading law school.[37] Law became a priority at Newcastle University and clinical teaching became the signature approach chosen by the founders of the law school.[38] Murdoch University's interest in regional engagement, particularly around its new Rockingham campus, was the principal prompt for the development of a clinic in that region.[39] Becoming a priority brought with it substantial university financial support.[40]

The case study programs demonstrate the benefits of obtaining support from senior university leaders. Neil Rees noted that at UNSW, Vice-Chancellor Sir Rupert Myers was a strong supporter of both the new law school and plans for its clinic.[41] At Murdoch, Vice-Chancellor Steven Schwartz and Pro-Vice Chancellor Roger Lethbridge were

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[36] Chapter 5, footnote 6 and related text.
[37] Chapter 6, footnote 7 and related text.
[38] Chapter 7, footnotes 20-27 and related text.
[39] Chapter 8, footnotes 8 & 13-15 and related text.
[40] Monash provided support for the employment of Guy Powles as Clinical Program Co-ordinator. See Chapter 5, footnote 44 and related text. UNSW provided General Development Grants for the running of the clinical program through much of the 1980s. See Chapter 6, footnote 26 and related text. The Newcastle program benefited from the substantial start-up grant provided by the Vice-Chancellor in 1993. See Chapter 7, footnotes 31-33 and related text. Murdoch University committed to providing substantial funding if its Law School's efforts to obtain support from the Federal Attorney-General's Department were successful. See Chapter 8, footnotes 22-23 and related text.
[41] Chapter 6, footnotes 12 and related text.

viewed as champions for the SCALES project.[42] At Newcastle, development of the law school was strongly supported by successive Vice-Chancellors Keith Morgan and Raoul Mortley.[43] This can be contrasted with the emphasis on scientific research of Mortley's successor, Roger Holmes, which to some extent challenged the sustainability of the Newcastle clinic. The benefits of senior management support were perhaps intensified by developments in Australian university governance in the 1990s which saw greater authority given to those in senior positions. Senior supporters could more easily nullify opposition and promote new and different approaches.

Becoming a University Battleground

Chapter Four included US and English examples of instances where the political nature of the work undertaken in clinics created significant tensions with their respective universities. Both saw the clinic close for several years following serious conflict with its university.

None of the case study programs demonstrate the high level of conflict referred to above. The Newcastle case study refers to tensions between the clinic and the law school which obviously impacted on the University. As their relationship with the law school deteriorated, some clinic staff sought to bypass the law school and influence decisions at the university level while enhancing the profile of UNLC through the media.[44]

Rather than encountering substantial opposition from their universities, the case study programs have each faced challenges in *maintaining* the support which their universities provided for the establishment of their clinics. Any loss of ongoing university support reinforces the challenges clinics face in making the transition to sustainable funding arrangements. It is clear from the case studies that the transition from the establishment phase to a set of sustainable arrangements is a key source of challenges for clinical programs.

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[42] Chapter 8, footnotes 4-9 and related text.
[43] Chapter 7, footnote 82 and related text.
[44] This culminated with disagreement between Ray Watterson and Vice-Chancellor Nick Saunders over whether the public interest advocacy of UNLC had threatened its continuing operation. See Chapter 7, footnotes 167-169 and related text.

Lack of Academic Conditions – Squaring the Circle

Chapter Four documented examples of the difficulties faced by clinicians who have not been accorded the same status as other academics. Australian law schools have tended not to recognise legal practice experience as important for academic work, paying clinicians less than the salaries available to experienced practitioners in other legal practice contexts. Some clinicians have also been treated differently with expectations that they teach three semesters per year and carry substantial caseloads requiring continuing attention while also being expected to meet university-driven research expectations.

The case study programs indicate workloads are a major issue. All four programs have encountered continuing issues related to tenure for clinicians, teaching workloads, casework responsibilities, research expectations and entitlements to research leave. Such factors are particularly significant in relation to program sustainability. Rigid university employment structures present a major impediment to the sustainability of clinical programs. Unlike the recognition provided in the health, social work and education disciplines, law has tended not to value practice-related teaching and research.

The Monash case study highlights the challenges faced by clinical academics in achieving recognition. Simon Smith was initially appointed as a Dean's Assistant and his subsequent appointment to a lecturer position was described by Guy Powles as having involved a very difficult process.[45] Smith and his clinic-based colleagues taught three semesters per year until 1987. Related issues were still arising in 2005 when Dean Freiberg's conclusion that university policy would not permit a renewal of Sue Campbell's five-year Professorial Fellowship contributed to Campbell's departure from the Monash Law School and clinical program after 25 years.[46]

Ongoing casework responsibilities have generated dilemmas for clinical academics in each of the case study programs. From its earliest days, the Monash program recognised the need to continue to service clients outside the normal semesters. Reliance on legal aid funding has meant that the Monash, UNSW and Murdoch programs have also needed to balance continuing service obligations with their

[45] Chapter 5, footnotes 83-85 and related text.
[46] Chapter 5, footnotes 177-179 and related text.

educational missions. Delivering such services was seen as important in establishing the professional credibility of the Newcastle and Murdoch programs.[47]

Clients still require attention when the relevant academics are unavailable to teach and this has generated challenges around clinic-based academics accessing research leave. The case study programs indicate that the relentless nature of casework and student supervision make dedicated research leave especially important in enabling clinical academics to meet university research expectations while at the same time making such leave more difficult to obtain.

The case studies indicate that university hiring requirements for clinicians set unrealistic benchmarks in terms of practice experience combined with research expertise and track record.[48] Appointment levels have created salary disparities with clinicians needing to accept salaries below those available in both private and public sector legal practice. Most clinicians appointed to the case study programs commenced as Lecturers, the second tier of the five-tier scale used for academic staff in Australian universities, a level that might be considered inappropriate given their legal practice experience.[49] In recent times, both Murdoch and UNSW have reduced the number of academic posts linked to their clinical programs reduced from two to one. This trend is set to present a key challenge for Australian clinical programs in the longer term.

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[47] Chapter 7, footnotes 112 and related text & Chapter 8, footnotes 75 and related text.

[48] At Monash, the post-graduate qualification of another candidate was almost sufficient to see Simon Smith not appointed to the Lecturer position which replaced his Dean's Assistant appointment. See Chapter 5, footnote 83-85 and related text. At UNSW, the Law Faculty gave itself the option of moving away from an academic appointment for the Kingsford Legal Centre Director following the departure of Tony Woods. See Chapter 6, footnote 91 and related text. At Newcastle, the appointment of Shaun McCarthy to a non-academic position was driven by the mismatch between the salary needed to attract a practitioner with the experience and skill to run a substantial legal practice and the much-lower salary the University would offer to a new staff member without a research and publications track record. See Chapter 7, footnotes 158-163 and related text. Tensions between SCALES and Murdoch Law School in 2007 were generated by different views as to the appointability as SCALES Director of a candidate whose credentials focussed more on research than legal practice. See Chapter 8, footnotes 139-140 and related text.

[49] As already noted, Simon Smith was originally appointed at Monash Law School to an administrative position of Dean's Assistant before being appointed as a lecturer and remained at that level until his departure in 1988. Guy Powles and Sue Campbell were both appointed as Senior Lecturers. Adrian Evans, Ross Hyams, Faye Gertner and Helen Yandell were all appointed at Lecturer level. At Kingsford, each director was appointed at Lecturer level with Frances Gibson being the first to be promoted to Senior Lecturer. At Newcastle, there has been a mixture of Senior Lecturer and Lecturer appointments as well as Shaun McCarthy's appointment to a non-academic position as Director of the University of Newcastle Legal Centre. At Murdoch, the SCALES Director has been a Senior Lecturer position while other SCALES-based academics were Lecturer level appointments.

Shortly after his appointment at Murdoch, Michael Hovane faced university attempts to renegotiate his position, designed to make his employment conditional upon continuing federal funding for SCALES. Subsequently, the research leave entitlements of other Murdoch clinicians were linked to SCALES securing funding to pay for a locum student supervisor for the period of their leave, certainly not an expectation faced by other academics.[50]

Given the prominence of the clinic within its law program, Newcastle provided greater recognition of the particular nature of clinical teaching by taking account of professional practice experience in appointing senior clinicians and in the payment of clinical loadings. However, as John Boersig noted, the goalposts shifted in the course of five years, prompting him to suggest that, with his departure, the UNLC Director position be converted to a non-academic position. The removal of academic research expectations was seen as the best way to secure a Director with sufficient experience to manage the legal practice dimensions of the clinic to the high standard required.

The Newcastle case study raises issues related to promotion opportunities as well as the payment of loadings[51] to clinicians and rights of private practice, devices used to remunerate clinicians in health disciplines. Similarly, special employment contracts also differentiated the SCALES-based Murdoch clinicians.[52] Differential treatment favouring clinicians can create challenges of their own. Rights of private practice might foster the retention of certain clinicians when academic advancement becomes more difficult but also appear likely to create concerns about differential treatment.

These issues about clinicians not fitting in arise because of the distinctive nature of this type of education. This distinctiveness is important in securing support for clinics but also in creating challenges for sustainability when the corollaries of that distinctive nature are not recognised. Law school leaders appear to be particularly important in fostering environments which see the contributions of clinicians recognised within the broader work of the law school and in applying university policies as constructively as possible.

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[50] Chapter 8, footnote 130 and related text.
[51] See Andrew Goldsmith, 'Why Should Law Matter? Towards a Clinical Model of Legal Education' (2002) 25 (3) *UNSW Law Journal* 721 and discussion in Chapter 4, footnotes 22-24 and related text.
[52] Chapter 8, footnote 62 and related text.

Law School Commitment to Clinical Method

This section of the chapter addresses factors related to the commitment and capacity of a law school to make effective use of clinical methods. The material in Chapter Four emphasised the centrality of law school commitment to the sustainability of clinical programs, becoming increasingly important as the clinical program develops and gains prominence within the law school.

The four case study programs highlight different approaches to developing and fostering a clinical program. The commitment of the law school (especially its dean and other leaders), the clinical staff and students all play critical roles. An overarching theme here relates to integration, in terms of both its importance and the challenges it generates. The sustainability of clinical programs requires law schools to accept, at least to some extent, the distinctive nature of the clinic and to recognise the value of utilising appropriate clinical dimensions across the broader teaching and research activities of the law school. However, it has been argued throughout this thesis that effective integration is particularly challenging to achieve. To be constructive, integration needs to be effectively planned and implemented.

Nature of the Law School – Status, Direction, Location

Chapter Four outlined examples from England and the USA indicative of relatively new law schools being more likely to establish clinical programs. As has been noted earlier in this chapter, the Australian experience has been similar. Clinics need to remain aligned with the broader objectives of their law school and this may generate challenges when a law school seeks to shift focus. The case studies corroborate the observations contained in the literature regarding second and third wave law schools being attracted to clinical approaches in order to broaden legal education and engage with geographic and professional communities.[53]

The case study programs demonstrate the politics involved in locating a clinic – whether it should be housed within the law school or located in an area of significant community need for legal services. Locating the clinic off-campus can create a divide between the clinic and the rest of the law school. This appears to have been a

[53] Gerry Nash considered that the suburban location of Monash made establishment of a clinical program easier than if the law school had been situated in a city centre. Interview with Gerry Nash (Melbourne, 1 December 1997).

particular issue for the Newcastle and Murdoch programs.[54] Reference has already been made to clinics being used by some law schools to differentiate themselves.[55] Neil Rees observed that: 'In an even more consumer-driven market, the desire to distinguish oneself is even stronger. A well-run clinic can give you that edge.'[56]

Securing and Maintaining Law School Commitment

Law school commitment appears to be of particular significance to the sustainability of a clinical program. Chapter Four included examples from the USA and Australia of different approaches taken to developing a new clinical program, not all of which were successful. Without the commitment of resources to operate a new clinic, a comprehensive planning process may lead to a *cul de sac*. Keeping arrangements informal was seen as one means of enabling the clinic to at least be established so that it could then develop momentum of its own. Law school commitment can be driven or influenced by issues related to accreditation, as is demonstrated by the US experience.[57] While the distinctive nature of clinic can be a drawcard, issues arise in terms of maintaining commitment to a teaching method which is both relatively expensive and unfamiliar to many legal academics.

Three of the four case study programs involved developing substantial programs from scratch, with the law school creating a legal practice as the vehicle for the clinic. This approach appears to have been prompted by the availability of funds from beyond the law school, with the university and others having facilitated program establishment. Only the Monash program was set up without substantial non-law school money. The emergence of the Monash program relied on Gerry Nash's pragmatic sense that, once it was up and running, the clinic would be accepted by the law school.[58]

Establishment of each of the case study clinics involved a comprehensive planning process.[59] Murdoch was ambitious in seeking to develop a substantial program from scratch without either a local exemplar to follow or a staff member with clinical

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[54] Chapter 7, footnote 77 and related text and Chapter 8, footnote 85 and related text.
[55] The leading second wave law schools (Monash, UNSW) both used their clinical programs as a point of differentiating themselves from their sandstone competitors. Murdoch and Newcastle are both relatively prominent third wave law schools and their clinics have been part of their efforts to distinguish themselves.
[56] Interview with Neil Rees (Newcastle, 2 December 2004).
[57] Chapter 4, footnote 128 and related text.
[58] Chapter 5, footnote 40 and related text.
[59] UNSW's process was resourced by the University so that a more comprehensive approach, drawing on the Monash experience, was possible.

teaching experience. The prospect of external funds, matched by university resources, was absolutely crucial. Both the University and the Federal Attorney-General's Department made their respective contributions conditional upon the other party's continuing their commitment to the project. Each organisation demonstrated the importance of reciprocity, using its own commitment to foster and consolidate the commitment of others.[60]

Any proposal to establish a substantial program rather than 'starting small' will benefit greatly from securing an external non-law school source of funding early in the planning process. This accords with the account in Chapter Four of the difficulties faced in the Melbourne University-Fitzroy Legal Service experience where Melbourne Law School did not commit to contributing funds.[61] Unless the law school or university is committed, it may be best to start with a small pilot program with a view to developing from there.

Maintaining law school commitment can be seen to be difficult where there is not strong law school interest in the work of the clinic beyond its promotional value. Simon Rice referred to the benign indifference of his UNSW colleagues while Sue Campbell made reference to criticisms of the clinical program by Monash colleagues being 'based on the most sublime ignorance'.[62] Ray Watterson's quote regarding the challenge of convincing his academic colleagues regarding the merits of the Newcastle clinic is another example of this ongoing task.[63]

The case study programs suggest that, while clinicians express concerns regarding this lack of interest on the part of their colleagues, they accept it and focus on making the best of their circumstances. The coverage of this issue provides a further demonstration of the value of pursuing the integration of clinical insights and activities across the work of the law school.

Resources

Adequate resourcing appears to be a perennial and pervasive challenge for clinical programs, just as it is for law schools more broadly. Examples were provided in Chapter Four of efforts by Australian law schools to create clinical programs which

[60] Robert Cialdini, *Influence: Science and Practice* (5th ed, 2009), Chapter 2.
[61] Chapter 4, footnote 143-145 and related text.
[62] Chapter 5, footnote 64 and related text.
[63] Chapter 7, footnote 101 and related text.

failed to secure the necessary resources to commence operations. Reference was also made to modification of ambitious programs over time due to resource constraints. Chapter Four also contained analysis of particular issues raised by some US clinics addressing resource issues through charging clients fees for services.[64]

The resourcing issues faced by clinics may simply be part and parcel of their being relatively small entities. While it has been argued that it is important to seek to integrate clinical insights across the work of the law school, the relatively expensive nature of clinics can make them vulnerable to funding cuts. While a clinical program may benefit from avoiding becoming a line item in the law school budget[65], this needs to be balanced against the concerns that a lack of transparency may generate in the longer term.

Both the Newcastle and Murdoch programs benefited from their law schools obtaining university recognition of the resource implications of clinical teaching. Substantial loadings were paid, providing the law school with greater capacity to provide the support required for quality clinical teaching.[66] Continued support of this kind is likely to be important to the sustainability of clinical programs. Neil Rees had expressed concerns that the UNSW Law School had not committed its own funds to its clinical program in the 1980s, relying instead on university funds.[67]

Reference has already been made to the value of external support in generating and maintaining law school support. By 1986, the Monash clinical program was supported by contributions from eight external organisations.[68] The design and construction of the building which now houses Springvale Monash Legal Service and the Springvale Community Aid and Advice Bureau was very generously supported by a range of charitable and government organisations as well as by Monash University.[69] SCALES has been able to obtain and retain support from a range of charitable and government sources with the benefit of its status as a Public Benevolent Institution.[70]

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[64] Chapter 4, footnote 146-153 and related text.
[65] Laura Holland, 'Invading the Ivory Tower: The History of Clinical Education at Yale Law School' (1999) 49 (4) *Journal of Legal Education* 504, 525.
[66] Chapter 7, footnote 84-86 and related text & Chapter 8, footnotes 102-104 and related text.
[67] Chapter 6, footnotes 27-28 and related text.
[68] Chapter 5, footnote 98 and related text.
[69] Chapter 5, footnote 109-110 and related text.
[70] Chapter 8, footnotes 127-132 and related text.

External support was obviously central to Kingsford Legal Centre overcoming the prospect of closure in 1997 although the effort required to secure such funding was substantial.[71] The reciprocity principle was once again important with the Law School needed to commit resources in order to encourage others to commence and, most importantly, maintain their contributions. The establishment of the Newcastle clinic was obviously greatly assisted by the substantial financial support of the Law Society of New South Wales but the one-off nature of this support prompted difficulties once those funds had been spent.[72]

It will also be important for law schools to pursue financial support from new sources. For the first time, the Federal Department of Education, Employment and Workplace Relations (DEEWR) has provided financial support for an Australian clinical program.[73] DEEWR could also support clinical methodologies in law by including a clinical loading in the government funding provided to law schools.

Student Commitment

Student commitment is important to both the establishment and sustainability of clinical programs. Reference was made in Chapter Four to examples from Chile, the USA and Australia of volunteer student programs leading to the development of more substantial clinical programs. Student activism was central to the establishment of such clinics.

The student commitment that was central to the Monash program's establishment was less significant for the other case study programs.[74] When surveyed in 1990, graduates who had participated in the UNSW clinical program and then completed the Practical Legal Training (PLT) program run by the New South Wales College of Law contrasted the real client work of their Kingsford Legal Centre experience with the artificial nature of the PLT program with its over-reliance on simulations.[75] The added benefits of

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[71] Chapter 6, footnotes 143-157 and related text.
[72] Chapter 7, footnotes 91-93 and related text.
[73] The University of Western Sydney now collaborates with the Macquarie Legal Centre to deliver the Parramatta Community Justice Clinic.
See http://www.uws.edu.au/law/sol/parramatta_community_justice_clinic at 26 August 2010.
[74] Had Redfern Legal Centre not already been well-established, UNSW students would probably have been more actively involved in promoting the development of the Kingsford program.
[75] Chapter 6, footnote 108 and related text.

supervised work with real clients were prominent in the thinking of the founders of the Newcastle clinic.[76]

Monash, UNSW and Murdoch developed arrangements enabling students to complete a more substantial clinical experience, generally requiring attendance two days each week during semester and attracting double academic credit. Such arrangements make clinical offerings more financially viable for law schools as well as providing greater incentives for students to engage more thoroughly in their clinic-based work. The experiences of the case study programs indicate that in-house clinics are particularly engaging for students. The in-house experiences at UNLC were strongly preferred by students in the Newcastle program.[77]

The support of students, both present and former, was clearly very important in enabling Kingsford Legal Centre to overcome the spectre of closure in 1997 with the Law Students Society organising fundraising activities and publicising the work of the program.[78] The experience of the 2006 Review of the Monash clinical program prompted Adrian Evans and Ross Hyams to write of the importance of activating 'high profile' alumni as a group whose opinion would be taken seriously by anyone charged with evaluating a clinical program.[79] The capacity of SCALES to attract the support of former students has also been important in highlighting the significance of the clinic to the standing of Murdoch Law School.[80]

Staff Commitment and Expertise

Chapter Four included material demonstrating the importance of staff commitment to the establishment of clinical programs – in South Africa, Argentina, Australia and England. Both commitment and continuity of staff were seen to have been critical in promoting the sustainability of clinics.[81]

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[76] Chapter 7, footnote 52 and related text.
[77] Chapter 7, footnotes 67 and related text.
[78] Chapter 6, footnotes 150-151 and related text.
[79] Adrian Evans & Ross Hyams, 'Independent Evaluations of Clinical Legal Education Programs: Appropriate Objectives and Processes in an Australian Setting' (2008) 17(1) *Griffith Law Review*, 52, 79. See also Chapter 5, footnote 195 and related text.
[80] See Chapter 8, footnotes 143-145 and related text.
[81] Nonetheless, the UCAS experience at University of Western Australia referred to in Chapter Four demonstrated that the presence of very capable key staff cannot on its own ensure the sustainability of a program. The impressive work of Karen Farley required further support from the law school.

The case study programs indicate that staff commitment is perhaps the most important factor in clinical programs maintaining their strength and momentum. In establishing a program, it appears to be valuable to bring in people with clinical experience. Neil Rees contributed this expertise firstly at UNSW and then at Newcastle. Chris Shanahan recognised the importance to the Murdoch program of Michael Hovane's appointment as the founding Director of SCALES. 'Whatever the strength of the ideas behind it, you need the right person in the right place.'[82] As was noted earlier in this chapter, clinicians involved in the case study programs have also shared their expertise with other programs.[83]

The nature of clinical programs as relatively small organisations strengthens the influence that key individuals, especially those with day-to-day responsibility for a clinic, will have over its direction and prospects. There will inevitably be significant change as program objectives are re-shaped when key people move on. Continuity appears to be a key here and the case study programs have benefitted from high levels of staff stability. The Monash, UNSW and Murdoch programs have all benefited from the long-term involvement of key staff.[84] The Newcastle program is now consolidating with continuity provided by Shaun McCarthy and Colin James.

Gai Walker's contribution at SCALES provides an example of the value of administrative continuity to a clinical program, especially where the academics have had to combine other work with their clinic responsibilities.[85] Administrative continuity is important given the dislocation arising from academics taking research leave and serving in management positions, indicating the importance of clinics involving a critical mass of interested people who can, in combination, provide a continuing presence. A potential dilemma here relates to the lack of university recognition of the contributions made by administrative staff.

The UNSW and Newcastle case studies indicate that perceptions of uncertainty regarding the continuity of a law school's commitment to its clinical program can undermine staff commitment. Frances Gibson recalled the detrimental impact of the

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[82] Interview with Chris Shanahan (Perth, 14 May 1999).
[83] Sue Campbell and Simon Rice were also important to development of the Newcastle program whilst Monash clinicians were critical in enhancing the clinical understanding of SCALES staff.
[84] Chapter 5, footnotes 199 and related text, Chapter 6, footnote 2 and related text & *Conclusion* and Chapter 8, footnotes 147-148 and related text.
[85] Chapter 8, footnotes 147 and related text.

Kingsford Legal Centre funding crisis,[86] while John Boersig recalled that 'continual worry about whether you were going to exist next year is not conducive to working effectively'.[87] The Newcastle case study demonstrates the need for clinic staff to balance their commitment to the clinic with supporting the overall mission of the law school. John Boersig and Ray Watterson can be accurately described as zealous advocates for the interests of their clinic and this at times clashed with the objectives of law school management.[88] Attempts at comprehensive clinical integration such as that at Newcastle depend on a continuing sense of common purpose on the part of the clinic and the law school.

The case studies offer insights regarding the significance for the long term sustainability of the program of the range of responsibilities given to clinic staff. Interesting and challenging casework is likely to contribute to staff retention but the case study programs suggest that such work may be less beneficial for student involvement. This important issue has not been comprehensively addressed in the literature.[89] Clinic teachers who have worked for long periods in the case study programs have generally been able to achieve a balance of teaching responsibilities, involving both clinic and non-clinic activities. The longevity of academics including Sue Campbell, Adrian Evans, and now Mary Anne Kenny and Ross Hyams demonstrate the value of such variety.[90] This also resonates with Simon Rice's support for a rotation system, where he and a colleague would alternate in stints based in the clinic and then in the law school.[91] Such an arrangement might have addressed the need identified by John Boersig for the Newcastle clinical program to have someone with a strong

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[86] Chapter 6, footnote 156 and related text.
[87] Interview with John Boersig (Newcastle, 4 December 2004).
[88] Chapter 7, footnotes 105-106 and related text.
[89] See Paul Reingold, 'Why Hard Cases Make Good (Clinical) Law' (1996) 2 (2) *Clinical Law Review* 545 and Nancy Maurer, 'Handling Big Cases in Law School Clinics, or Lessons From My Clinic Sabbatical' (2003) 9 (2) *Clinical Law Review* 879. See also the discussion in Chapter 3, footnotes 102-108 and related text.
[90] Beyond the case study programs, other examples of Australian clinicians who have undertaken a broad range of responsibilities include Mary Anne Noone and Frances Gibson at La Trobe.
[91] Chapter 6, footnote 133 and related text. Chapter Four included reference to Hardaway's suggestion of the use of a rotation system in relation to the clinical program at the University of Denver. See also Chapter 4, footnote 167 and related text. The objectives of using a rotation system can also be supported by separating responsibility for the academic and legal practice dimensions of the clinic. This was done at Kingsford Legal Centre during Fran Gibson's time as Director with the establishment of a Coordinator role with substantial responsibilities. Murdoch have now taken this approach with a Practice Director being appointed by SCALES and a Clinic Director appointed by Murdoch Law School.

background, in legal education and educational theory to work with the UNLC Director.[92]

Staff retention difficulties can arise if clinicians are expected to wear too many hats. Ray Watterson emphasised the benefit to the Newcastle clinic of having a group of people working together, playing different roles and working from different standpoints.[93] The Monash case study made reference to the benefits of having a group of clinicians who could bring a range of insights to their collective endeavours.[94] The presence of multiple sites and the long tenure of senior clinicians and supporters reduced the number of roles expected of each, fostering more manageable expectations and a collaborative approach.

Clinical programs are unlikely to find and retain individuals who, on their own, possess the range of skills and the inclination to effectively advance the multiple facets of their program. Efforts to appoint a Professor of Clinical Legal Education at Newcastle faced the challenge of very high expectations in relation to scholarship, leadership and strategic thinking with Ted Wright noting the 'rather unusual profile' they were looking for.[95] This suggests the importance of developing programs of sufficient size to enable responsibilities to be shared and which are effectively integrated within the law school to enable a group of academics to collectively take responsibility and provide leadership for the clinical program.

Understanding of Clinical Models and Supervision

Chapter Four demonstrated the benefits which can be derived from clinicians and their law school leadership having a sophisticated understanding of the suitability of different clinical models. Examples were provided from Canada, Chile, the USA and Australia of the benefits of what Gavigan describes as pedagogical pluralism[96] and the importance of maintaining realistic staff-student ratios. Chapters Two and Three also addressed the value of integrating clinical programs with the broader activities of the law school. Together, this section and the material in Chapter Two answer the research sub-question posed in Chapter One: 'What are the purposes of legal

[92] Chapter 7, footnote 66 and related text.
[93] Chapter 7, footnote 132 and related text.
[94] Chapter 5, footnote 199 and related text
[95] Chapter 7, footnotes 144-147 and related text.
[96] Shelley Gavigan, 'Twenty-five Years of Dynamic Tension: The Parkdale Community Legal Services Experience' (1997) 35 (3) *Osgoode Hall Law Journal* 443, 452. See Chapter 4, footnote 168 and related text.

education to which clinical methods can most constructively contribute?' Chapter Three in turn answers research sub-question: 'How can each of the various clinical models – namely simulations, externships, real-client clinics and community legal education clinics – best contribute to advancing the identified purposes?'

The case study programs indicate that while a strong understanding of how to use different models is valuable in establishing a clinical program, such understanding tends to develop once the program is up-and-running. Educators tend not to become lawyers so that they can teach in clinical programs. Rather, lawyers develop as law teachers in a clinic environment, drawing in part on supervision practices used elsewhere in legal practice.[97]

The efforts of staff in each of the case study programs demonstrate their appreciation of pursuing effective integration of their clinics with the other work of their law school. Sequencing a range of experiences, from integration with traditionally-taught courses to simulation to real client work of various kinds and at various clinic sites, was identified as an important objective in promoting the effective use of clinical methods. For clinical integration to be effective, the law school needs to be sufficiently large to avoid academics having to extend their teaching beyond their areas of interest and expertise. However, clinics can accommodate only relatively small numbers of students.

The case studies contain comments from several clinicians to the effect that they started their work without a strong understanding of the particular issues generated by clinical supervision.[98] It is significant to note that each of the clinicians interviewed stated that they had become less directive in their supervision as they became

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[97] The Murdoch and Newcastle case studies contain references to professionalism which emphasise legal service delivery rather than teaching. Both Chris Shanahan and Michael Hovane made references to proving SCALES to be a professional outfit. Chapter 8, footnote 75 and related text. Similar comments were made by John Boersig regarding the Newcastle program. Chapter 7, footnote 112 and related text.

[98] The different supervision styles of a multitude of part-time supervisors generated difficulties for the Monash program in the late-1970s. See Chapter 5, footnotes 56-59 and related text. Simon Smith referred to the supervision relationship as being 'as difficult as it is interesting'. See Chapter 5, footnote 113 and related text. The review of the UNSW clinical program conducted in 1990 resulted in changes to the supervision practices used at Kingsford Legal Centre. See Chapter 6, footnotes 112-113 and related text. Colin James referred to developing options that will enable Newcastle clinic students to assume greater personal responsibility for advising clients. See Chapter 7, footnote 187 and related text. The supervision practices of Michael Hovane and Mary Anne Kenny changed significantly as they gained familiarity with the clinical educator role. See Chapter 8, footnotes 81-84 & 89-90 and related text.

accustomed to the supervision role.[99] This indicates the importance of training to effectively prepare new clinicians for their responsibilities. The planning semester that the UNSW clinic spent without students in 1990 provided Kingsford Legal Centre staff with the opportunity to seriously consider issues related to enhancing the operations of the clinic.[100]

The case studies also show increasing awareness of the range of ways in which clinical methods can be utilised. The UNSW program in particular has seen increasing involvement of clinic staff with indigenous law students.[101] The Murdoch and Newcastle programs have also emphasised service delivery to Indigenous clients. The Monash program has emphasised structured community development work as part of its clinics, adding a different dimension to Australian clinical legal education.[102] The case studies also indicate a greater appreciation of the benefits of enabling students to work on simulations and less complex cases in order to incrementally develop their knowledge and understanding, issues raised in Chapter Three of this thesis.

The prospects for sustainable clinical programs would also be enhanced by professional recognition of the additional benefits provided by student-focussed in-house supervision as compared to external placement arrangements. As discussed in the context of the Newcastle clinical program, such recognition could take the form of fewer in-house hours being needed to meet the professional placement requirements for PLT students.[103] The greater level of responsibility given to in-house students, student-focussed case selection and developmental supervision practices would all be relevant to seeking such recognition.

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[99] Michael Hovane referred to 'working very hard to change our styles in how we interacted with the students'. See Chapter 8, footnote 90 and related text.

[100] Chapter 6, footnotes 96-114 and related text. Simon Rice's visits to clinics in the UK and USA during this time also assisted him in developing a sophisticated understanding of how to plan and implement clinical experiences for students. His subsequent sabbatical in 1994 demonstrated to him the limitations of models requiring clinicians to take on multiple roles – academic, supervising solicitor and law office manager – and this contributed to his departure by the middle of the following year. Chapter 6, footnotes 132-133 and related text.

[101] Anna Cody in particular has steered Kingsford Legal Centre towards greater engagement with indigenous communities with the UNSW program also developing an Indigenous Outreach Service which regularly visits the La Perouse community. See Chapter 6, footnotes 168-170 & 208 and related text.

[102] Chapter 5, footnotes 130-140 and related text.

[103] Chapter 7, footnote 72 and related text.

Balancing Multiple Objectives – Education and Service

In Chapter Two, the continuing tension in clinical programs between service and learning was discussed in some detail.[104] Excessive caseloads for both students and supervisors diminish some aspects of the clinic student experience. Chapter Four provided examples from the USA, England, Chile and Australia of service-oriented clinics which, to quote Grossman, suffered from 'educational anaemia'.[105] Dissenting views, arguing that clinicians have overstated the importance of close supervision by practitioner-academics to the student clinical experience, were canvassed in Chapters Two and Three and also addressed in Chapter Four.

The 'struggle with the juggle' between education and service objectives has been very significant for each of the case study programs, albeit in different ways. The service responsibilities that enabled Australian clinics to develop continue to frame their operations. In the absence of substantial support from philanthropic and higher education sources, legal aid funding has been critical to the development and continuity of clinics.[106] Monash, UNSW and Murdoch have been particularly successful in attracting and retaining support from a range of sources to provide an array of services and now involve sites that could continue in a modified form as independent agencies if they ceased to operate as a clinic.

Finding ways to contain casework demands and expectations was particularly an issue for the earlier programs, in part because this tension was less clearly articulated. Having to operate three semesters each year has been a key challenge for the case study programs and their staff. This is something that is not required for agency clinics. The Monash program led the way here in terms of being heavily service-focussed to begin with and then, after a dozen years, moving to reduce caseloads. The first decade of the Monash program also highlighted multiple challenges related to supervision ratios and styles.[107] Simon Smith's role at Springvale Legal Service provided much needed stability but one supervision problem replaced another with Smith

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[104] Chapter 2, footnotes 23-53 and related text.

[105] George Grossman, 'Clinical Legal Education: History and Diagnosis' (1974) 26 *Journal of Legal Education* 162, 176.

[106] Reference was made earlier in this chapter to the inexpensive nature of clinic-based service delivery as driving the provision of federal funding to clinical programs.

[107] 1979 saw the escalation of difficulties related to use of eleven part-time supervisors which led to significant changes from 1980. See Chapter 5, footnotes 58-59 and related text.

carrying excessive supervision loads.[108] The SLS relationship with the Springvale Community Aid and Advice Bureau illustrates that co-location of clinics with organisations which exist specifically to serve community needs reinforces service expectations.

The case study programs have each provided students with opportunities to begin to understand the work of other professionals, in part by their co-location with other services. Kingsford Legal Centre developed an additional dimension by linking with the UNSW Social Work School to have social work students placed at the centre.[109] The Monash sexual assault clinic emphasises the need for students to work with a range of professionals.[110]

The Newcastle case study demonstrates the challenge of balancing the various aspects of a clinical caseload. Impact litigation generated valuable outcomes for clients, systemic changes to criminal justice processes as well as considerable profile for the clinic. This very time-consuming work also prompted concerns that the clinical program was not connecting with all Newcastle law students. The clinic casework mix subsequently changed, providing students with access to a more balanced profile between real cases and simulations and with increased opportunities to learn from assuming greater responsibility in the conduct of relatively routine cases.[111]

Shirley Southgate from Kingsford Legal Centre states that 'the client is the complexity'[112], suggesting that cases which may involve relatively straightforward legal issues can still be very productive clinic cases. Students can learn a great deal from working on understanding the interests and concerns of their clients and to reflect on the ways in which the legal system impacts on those clients as well as on lawyers. Making the most of this client-related complexity depends on students systematically exploring such issues with their supervisors.

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[108] It was not until 1987 that limits were put in place to have full-time supervisors responsible for two student sessions each semester. Simon Smith's preventative 'out-of-court' focus enabled the service to operate more effectively and can also be seen as countering the adversarial mindset promoted by other law studies. It would never have been possible for anyone to effectively supervise large numbers of students if they were also expected to emphasise advocacy.

[109] Chapter 6, footnotes 121-126 and related text.

[110] Chapter 5, footnotes 154-157 and related text.

[111] Chapter 7, footnotes 169-170 and related text.

[112] Interview with Shirley Southgate (Sydney, 15 November 2008).

Becoming a Law School Battleground

Chapter Four provided an English example of the serious difficulties which can arise when a clinic becomes a site of conflict within its law school. The resistance of non-clinic academics was recognised as a major challenge to the continuing development of clinical programs.

The case studies suggest that clinical programs will face critical moments where a challenge or crisis of some kind necessitates the development of greater clinic awareness on the part of the law school. Where such challenges are resolved in a way that sees the clinic continue, this can lead to a greater acceptance of its legitimacy. Examples include UNSW overcoming the Kingsford Legal Centre funding crisis in 1997 as well Monash facing the prospect of the closure of Springvale Legal Service in 1986 and then navigating changes in the relationship with SMLS following the 2006 review. SCALES is now on firmer foundations following challenging negotiations with the new Dean and Pro-Vice Chancellor in 2006. At Newcastle, the departure of key clinic staff in 2004 and 2005 provided an opportunity to re-fashion the relationship between the clinic and the law school, leading to a significant period of stability.

Australian clinical programs have tended to be neither sufficiently large nor prominent enough to generate sufficient concerns to become a battleground. The Newcastle experience, with its vision of being a 'Clinical Law School', indicates the importance of the people involved having a common purpose or at least common understandings. Common purpose appears more important when the clinic is a central part of the law program. A clinic program on the margins can 'secede' with less impact on the rest of the law school and survive with less law school support. The tensions generated by differential treatment of clinicians are likely to be more substantial in larger clinics with greater potential for clinicians and doctrinal scholars to divide into camps and for the clinic to isolate itself.

It may be that clinicians ask too much in expecting law schools to move beyond acknowledging that clinic is different to embracing the potential benefits of the distinctiveness of clinical method. At the same time, law schools may be expecting too much by requiring clinics to attract and maintain external support while requiring clinicians to meet substantial academic research obligations. The various participants appear unrealistic in their expectations of each other. Just as law schools and universities can be seen to emphasise their clinics when it suits them, clinics and

clinicians can be seen to assert their different nature when it suits them whilst also seeking similar recognition to that provided to other academics. The reasons for academic colleagues supporting a clinical program may vary considerably between law schools.[113]

Clinicians Don't Fit

The multiple roles expected of some clinicians – teacher, researcher, practitioner, administrator and manager – can compromise their efforts in each of these endeavours. In Chapter Four, reference was made to the University of Cincinnati College of Law re-focussing its clinical program in the mid-1980's. One factor which contributed to a shift from in-house clinics to externships was the difficulties faced by clinicians seeking to simultaneously fulfil the roles of administrator, clinician, substantive law teacher, scholar and supervisor.[114] While university-wide policies are likely to be the principal source of difficulties related to unrealistic expectations being placed on clinicians, these can be either reinforced or ameliorated by how law schools implement such policies.

Concerns have been raised in relation to the marginalisation of clinical academics wherever clinics have been established. The focus on obtaining and maintaining tenure and conditions appears to have been stronger in the US than elsewhere, perhaps because of the broader acceptance of clinical teaching. The more you have, the more you have to lose.

The case study programs have faced particular challenges due to their ongoing service delivery commitments which cannot be referred to other service providers. Given that other academics do not face similar expectations, this can quickly generate tensions. Such concerns are linked to the lack of academic conditions for clinicians arising in part from the tradition of Australian law schools paying limited attention to preparation for professional practice.

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[113] At Monash, the academics with an interest in practice were former practitioners. This meant they were less resistant to being, as Guy Powles put it, 'dragooned' into supervising in the clinical program. By contrast, those UNSW academics interested in the clinic were more interested in law in context studies than in practising law. Neil Rees attributed part of the resistance to proposed sabbaticals of himself and Robyn Lansdowne to the concern on the part of his UNSW Law School colleagues that they might be required to take on clinical supervision responsibilities. Chapter 6, footnotes 72-77 and related text.

[114] Joseph Tomain & Robert Solimine, 'Skills Skepticism in the Postclinic World' (1990) 40 *Journal of Legal Education* 307, 312-313. See Chapter 4, footnotes 211-213 and related text.

Each of the case study programs has moved away, at least to some extent, from having students supervised by staff on academic appointments. Positions like the Springvale Monash Legal Service practice manager appear to be more a stepping stone to other practice opportunities than to the academy. The Newcastle case study also raised the move in 2004 to appoint Shaun McCarthy to a non-academic position as Director of the University of Newcastle Legal Centre.

Both Murdoch and UNSW have reduced the number of academic appointments for their clinical programs. Both now involve one academic appointment. Some clinic students are supervised by experienced practitioners who are not appointed as academics. This emphasises the importance of clinical academics and others providing continuity and reinforces the importance of collegial and collaborative approaches from clinicians across law schools. How such limits on academic status will impact on the long-term sustainability of programs remains to be seen.

Fostering an Integrative Framework for Clinical Legal Education

The principal research question that has driven this thesis has been: 'How can clinical methodologies be most constructively utilised in legal education?' It has been argued that clinical methodologies can most constructively be utilised where interested parties share a strong understanding of the particular contributions best suited to clinical methodologies. This includes recognition of the benefits of utilising clinical methods as part of an integrated and effectively sequenced program rather than on a stand-alone basis.

The analysis in this chapter indicates that in many respects, the case study programs have been shaped by the same establishment and sustainability factors considered in Chapter Four of this thesis. The case studies also highlight several further factors that are relevant to the sustainability of clinical programs yet are either not clearly articulated or have received insufficient attention in the literature. The additional factors include:

- planning for the transition from establishment to sustainability;
- utilising collaborative frameworks;
- constructive engagement with law school leaders, particularly deans;
- continuity and succession planning within clinics;
- attracting and retaining support from a range of sources;

- appreciating the benefits likely to be generated by effective integration and sequencing of clinical experiences; and
- promoting clinical education through accreditation arrangements.

These factors share a focus on constructive engagement by clinicians with key individuals and groups, designed to foster collaborative frameworks and promote the 'clinic fluency' discussed in Chapter One.

Making the Transition From Establishment to Sustainability

One of the research sub-questions posed in Chapter One was: 'How can those responsible for a new clinical program facilitate its transition to sustainable arrangements?' The case studies indicate that new clinical programs should plan for how they intend to progress towards sustainability. The relative informality that can facilitate the establishment of a small clinical program is likely to generate challenges for sustainability. By the same token, seeking to start with a comprehensive clinical program from Day One will be unrealistic unless substantial resources are available and the leaders of both the law school and the clinic share a clear vision of what they are seeking to achieve and a detailed understanding of what clinical models are best suited to their endeavours.

The service-focussed approach of the Monash clinical program during its establishment across multiple sites in the second half of the 1970s needed to be tempered by closer attention to coherent supervision practices if the program was to continue into the 1980s.[115] The development of purpose-built premises for both Springvale Legal Service and Monash-Oakleigh Legal Service were the next crucial steps towards placing the program on a sustainable footing.[116] The substantial university resources contributed to the other case study programs were very important to getting those programs started but in each case tensions arose over how such commitments could be maintained in the longer term.[117]

It is important that those involved understand the interplay between these stages of program development and make specific plans to foster the transition to a program

[115] See Chapter 5, footnotes 55-59 and related text.
[116] See Chapter 5, footnotes 109-110 & 150-151 and related text.
[117] See Chapter 6, footnotes 27-28, Chapter 7, footnotes 91-93, Chapter 8, footnotes 136-142 and related text.

accepted as contributing to the range of activities undertaken by the law school. This includes the clinic being appropriately resourced and acknowledged by the law school.

The Importance of Collaborative Frameworks

The case studies confirm both the benefits and challenges involved in fostering collaborative frameworks for clinical programs, providing answers to the following research sub-question: 'How can collaborative arrangements facilitate the effectiveness of clinical programs?' Clinics are likely to benefit from ongoing planning around how to appropriately collaborate with the range of communities identified in Chapter Two of this thesis. These communities include academic colleagues, both within and beyond the law school, the legal profession, government and philanthropic funders as well as between clinical programs.

Each of the case study programs has worked collaboratively with community legal centres and a range of other agencies. The early development of the proposal to establish the Murdoch clinical program demonstrates a collaborative approach very clearly. Rather than seek to develop the program alone, Murdoch Law School worked closely with existing agencies, including the Federation of Community Legal Centres.[118] Kingsford Legal Centre has also played a lead role in ongoing community sector collaborations.[119] The case studies also demonstrate collaborations with non-clinic academics[120] and other disciplines.[121]

The principles that inform integrative frameworks, including reciprocity, are important in this regard. The powerful nature of contributions designed to foster professional ideals in enhancing the education of tomorrow's lawyers and contribute to meeting access to justice objectives is also important. Understanding and setting clear objectives assists the process of developing collaborative advantage rather than collaborative inertia. Recognising the need to provide participants with the skills to collaborate and fortify those collaborations with effective structures is likely to foster sustainable arrangements.

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[118] Chapter 8, footnotes 59-31 and related text.
[119] Chapter 6, footnote 180-182 and related text.
[120] One of the more prominent of these was the work done by Monash clinicians with Andrew Goldsmith. See Chapter 5, footnote 171-172 and related text.
[121] The Kingsford Legal Centre links to the UNSW Social Work School are the clearest example of cross-disciplinary collaboration. See Chapter 6, footnotes 121-126.

Constructive Engagement with Law School Leadership - The Importance of Deans

The case studies make it clear that the continued support of the dean is critical to the sustainability of clinics. References to leadership in the clinical literature tend to focus on the contributions of senior clinicians. Deans and senior law school management are instrumental in shaping the relationship of the clinic to the broader activities of the law school and university. Continuing decanal support may be something which has been taken for granted by people writing about the clinical programs they work in. Alternatively, clinicians may have been concerned not to tempt fate by mentioning the importance of the dean's support.

The Monash case study emphasises the significance of decanal continuity.[122] Having been the first teacher in the Monash clinical program, Gerry Nash fostered the program during his deanship. He was obviously 'clinic fluent' and drove the program's development.[123] Bob Baxt became a strong supporter while the support of subsequent deans has either been less prominent or more conditional on other developments. Evans and Hyams have also noted the influence of deputy deans or their equivalents. 'Marked changes of direction can occur internally also – for example, when new key associate deans are appointed or significant complaints seem to appear overnight.'[124]

The establishment and early operation of the Newcastle clinical program was shaped by the support and stewardship it received from Neil Rees as Foundation Dean. The case study outlines the tension between Dean Rees and the senior clinician, John Boersig, who believed that greater support was required if the program was to achieve the demanding goals set for a clinical law school. The Newcastle program is now benefitting from the continuity provided by Ted Wright as Dean, Shaun McCarthy as UNLC Director and Colin James as a senior clinic-focussed academic.

The Murdoch case study highlights challenges faced when a series of short-term deans followed Ralph Simmonds. These challenges appear to have been compounded by changes in University management structures. New deans and other managers need time to familiarise themselves with the ways in which clinics differ from other law school activities. The importance of deans to the prospects of clinical programs raises the issue of responding effectively when a dean moves on. The departure of a very

[122] Chapter 5, footnotes 175-180 and related text.
[123] Guy Powles, written communication, December 2, 2008, on file with the author.
[124] Evans & Hyams, above n 75, 58.

supportive dean may see the new dean focus on other priorities, perhaps seeking to dismantle or put their own stamp on the clinical program. At such times, clinicians need to prioritise constructive engagement with new law school leaders.

Leadership Within Clinics - Continuity and Succession Planning

The commitment of clinic staff has been referred to earlier in this chapter as making a critical contribution to program sustainability. The case studies also demonstrate the importance of leadership within clinical programs and the challenges faced by clinicians who prioritise their teaching and casework rather than academic research. Continuity of leadership can be seen to be important and succession planning is shown by the case studies to be a very important aspect of such leadership.

The significance of long-term contributions from key staff members is best illustrated by the two longest standing case study programs – Monash and UNSW. Each director of Kingsford Legal Centre introduced new approaches and took the centre in new directions, from impact litigation to a stronger education focus and then to an emphasis on collaborative frameworks. Each director was also instrumental in identifying and recruiting their successor. The Monash clinical program has likewise benefited from the continuity provided by a team of leaders, based both in the clinic and in the law school.[125] The Newcastle clinic has benefitted from a period of stability since 2005.[126] Constructive engagement with the range of communities served by clinics will be enhanced by leadership continuity on the part of both the clinic and the law school.

Integration and Sequencing of Clinical Offerings

Considerable attention was paid in Chapter Three to the importance of integration of clinical programs with the broader work of law schools. While the literature on models makes reference to integration and sequencing, this is not articulated in terms of its contribution to program sustainability. The case studies demonstrate the importance, complexity and challenges of effective integration and sequencing. Effective integration of clinical elements into a range of courses is likely to be a strong indicator of program sustainability. It demonstrates appreciation of the value of clinic insights and methodologies amongst a range of teaching approaches and also indicates the presence of common understandings and purposes.

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[125] Chapter 5, footnote 199 and related text.
[126] Chapter 7, footnotes 182 & 185 and related text.

The case studies confirm both the value and the difficulties involved in efforts aimed at clinical integration. The Newcastle program illustrates the challenges faced by efforts to engage with a diverse group of legal academics and have them incorporate clinical methods into their teaching. This ambitious program broke new ground in Australian clinical legal education with its operation as a clinical law school, integrating various forms of clinical experience. Over time, resource limitations and increasing student numbers placed pressure on the arrangements and indicated the need to improve the sequencing of the experiences. The Skills, Ethics and Research (SER) program was the most comprehensive integration initiative attempted by the Monash clinical program. Inadequate academic credit generated student resistance and the staff responsible for the program were not integrated into the broader work of the law school.[127]

UNSW provides an example of productive integration with the involvement of clinicians in the first year of the law program, both through initial student visits to KLC and clinic staff taking classes in the *Law, Lawyers and Society* course. While the Monash SER initiative was more ambitious in its scope, the UNSW approach focussed on introducing students to the clinical program and the work of a community-focussed legal services provider. These more manageable goals and the link to a compulsory first year course have been met by a program which has benefited both the law school and the clinic. The further integration of contributions from volunteer lawyers has also assisted the UNSW clinic.[128]

The experiences of the case study programs suggest that the most substantial obstacles to effective integration of clinical models and insights from clinical practice relate to resourcing and the lack of credit given to clinical teaching methods in a lecture-dominated discipline. Clinics and clinicians do not necessarily fit with standard university expectations regarding teaching allocations, scholarship, research outputs and research leave. There is also a lack of understanding of the potential for a broader role of clinical legal education, extending well beyond legal skills development.

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[127] Chapter 5, footnotes 183-184 and related text. The SER program would in 2007 was a major disappointment to all involved. Monash had also integrated its clinical program into the Postgraduate Diploma in Legal Practice but this program also closed in 2007. This decision was a result of university expectations regarding the profit-making nature of postgraduate coursework programs. See Chapter 5, footnote 185.

[128] Chapter 6, footnote 195 and related text.

Accreditation Requirements – Engaging With the Legal Profession

If clinic-based experiences were required as part of the undergraduate education of applicants seeking admission to legal practice, this would obviously enhance the prospects for program sustainability. At the same time, it would probably shift the focus of those clinics towards skills development and away from social justice, ethical awareness and the other potential objectives identified in Chapter Two as suited to clinic-based learning.

Accreditation issues were central to the development of the Newcastle Law School and its clinical program. It was the distinctive way in which Newcastle sought to meet accreditation requirements that led to the Law Society of New South Wales providing substantial financial support for the program's establishment. The tension between the impact litigation undertaken by the legal centre and the continuing need to provide students with a specified number of hours of clinic-related work shaped the engagement of students with real clients through the clinic and their involvement in simulations throughout the law program.

In accrediting law degrees, the focus of Australian regulatory authorities has been on ensuring coverage of particular areas of substantive law rather than on the approaches used to foster student learning.[129] Regulators have relied on practical legal training programs to prepare law graduates for practice. Requirements for students to learn in clinical settings would reinforce law school arguments regarding the inadequacy of the resources committed to legal education by both universities and governments. However, in the face of limited resources such requirements are unlikely to be voluntarily developed by law schools themselves. Rather, they will need to be introduced by regulators.[130]

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[129] Chapter 4, footnote 63 and related text.

[130] The Council of Australian Law Deans (CALD) has developed standards for Australian Law Schools which refer to the contributions clinics can make to law school engagement with the wider community. The standards are disappointing in referring to clinics only in aspirational terms, as an example of pro bono community service. See Council of Australian Law Deans, *The CALD Standards for Australian Law Schools*, as adopted 17 November 2009, Standard 9.6.2. This lukewarm endorsement of clinics should be contrasted with the references to clinical legal education in the arguments made by the CALD in efforts to reverse the history of underfunding of law schools. In its submission the Review of the Impact of the *Higher Education Support Act* 2003: Funding Cluster Mechanism, CALD stated, 'It is now widely accepted that legal education should have a clinical or industry placement component, with students having hands-on experience with real clients; yet clinical programs are so expensive that only a handful of law schools have been able to fund them adequately, usually with substantial external support, to which many law schools do not have easy access.' See Council of Australian Law Deans,

If accreditation requirements are to be effective in promoting the broader use of clinical methods, it would be valuable for such arrangements to recognise the additional benefits for students derived from effectively structured and supervised clinical experiences as compared to other less coherent forms of exposure to legal practice. If accreditation arrangements moved beyond requiring the completion by students of a prescribed number of hours of activities and focussed instead on key experiences which students must successfully undertake in collaboration with a skilled supervisor, this would enable recognition of the added value of clinic-based learning.

The Newcastle case study outlines the benefits to the Law School and its students of developing a comprehensive role for clinical method. It also demonstrates issues that can arise when the clinical program is characterised as the centrepiece of the law school. The expectations placed on the clinic will be considerably greater than those on a smaller clinic. Substantial challenges can arise when an array of expectations pull the clinic in different directions. Tensions over the direction, resourcing and role of the clinical program – in terms of increased student numbers, the clinic's emphasis on impact litigation and the reluctance of other academic staff to develop clinical approaches – undermined the sense of common purpose critical to the continuing effectiveness of such endeavours.

Broadening the Base - Leveraging Support from a Range of Sources

This section addresses the following sub-question: 'How can clinical programs make the most constructive use of available resources, providing valuable learning experiences to as many students as possible?' The case studies indicate that programs can benefit from broadening their support base provided they are able to manage the service expectations often linked to such support.[131] This is most clearly demonstrated by the Murdoch case study in terms of SCALES developing as an organisation which could operate independently of Murdoch Law School if necessary. The literature on negotiation emphasises the power and leverage a party can generate through having alternatives which they can pursue if need be.[132]

Submission the Review of the Impact of the *Higher Education Support Act* 2003: Funding Cluster Mechanism, 26 February 2007, 2.

[131] Chapter 5, footnotes 141-148 and related text, Chapter 6, footnote 152-154 and related text & Chapter 8, footnotes 127-132.

[132] See, for example, Roy Lewicki, Bruce Barry & David Saunders, *Negotiation*, (6th ed, 2009) Chapter 7, Carrie Menkel-Meadow, Andrea Schneider & Lela Love, *Negotiation: Processes and*

The funding arrangements for both SCALES and Kingsford Legal Centre involve government support which is contingent upon the university maintaining its commitment.[133] Relationships of this nature, where each party relies on the other and would not be able to maintain its operations without the other, may be useful in promoting sustainable arrangements. Each party has strong reasons for continuing to collaborate. While questions may arise regarding the enforceability of such commitments, their presence would discourage a university or law school from turning its attention to other, new initiatives at the expense of its clinical program.

The Monash case study also provides an example of the use of multiple clinic sites, including the independent Springvale Legal Service. Monash-Oakleigh Legal Service, with very close ties to the Law School, provided a back-up for the clinical program if the collaboration with SLS were to falter. MOLS was also an effective foil for the more frenetic SLS. The continuing involvement of these two sites appears to have become an issue only with the moves instigated by Dean Stephen Parker to place the Monash-SLS relationship on a more formal footing in 1999.[134] More than a decade later, both sites remain central to the clinical program.

Adrian Evans noted that clinical legal education and its intense involvement of students has the potential to attract support from a range of sources. 'The clinical begets a lot of other initiatives.'[135] Monash was successful in securing federal government *Justice Statement* funds in 1995 principally because the sizable civil law caseload at Springvale, generated in large part by the clinical program, made it more viable to develop related programs. Like Monash, the UNSW clinic has emphasised civil law casework.[136] A clinical program that attracts support from a range of sources is able to involve students in a broader range of experiences. The continuing challenge is to ensure that resources do not come with conditions that diminish the focus on the experiences of students.

Problem Solving (2006) Chapter 6, and G. Richard Shell, *Bargaining for Advantage*, (2nd ed, 2006) Chapter 6.

[133] Chapter 8, footnotes 45-46 and related text. Chapter 6, footnotes 152-155 and related text.

[134] Chapter 5, footnote 176 and related text.

[135] Chapter 5, footnotes 141-148 and related text.

[136] Chapter 6, footnotes 177-186 and related text.

Balancing Independence and Integration

While benefits can be generated through integrating clinical activities with the broader work of the law school, tensions will exist regarding the extent to which the clinic should seek to retain its independence. Efforts aimed at integration will be advanced by closer alignment between the law school and its clinic. However, like other collaborative frameworks, integrative approaches will require ongoing attention. In the absence of continuing advocacy by committed clinicians and supporters, a clinical program might end up being sidelined by its law school over time.

The importance of independence for their clinic was influential in the efforts of Newcastle clinical teachers to establish a high profile legal practice. The University of Newcastle Legal Centre's focus on impact litigation generated tensions in the face of increasing student numbers and greater reliance on university funding.[137] The Murdoch experience illustrates another side of this independence-integration tension. Recognition of SCALES as an agency capable of operating independently of the law school has had the effect of encouraging the law school to recognise what it gains from its clinical program.[138]

Conclusion - Preparing for the Inevitability of Change

Clinical legal education programs often face a tenuous existence unless they are recognised as an integral part of the legal education project. The relatively expensive nature of clinic-based work and the absence of requirements for students to undertake clinic-based learning to be eligible for admission to legal practice limit the interest of some law schools in fostering clinics. Despite challenging circumstances, the longevity of each of the case study programs and many others demonstrates that clinical method has much to contribute to legal education.

While a range of factors can contribute to the establishment of a clinic, the continuing commitment of clinic staff and support of senior law school staff are understandably central to program sustainability. This reinforces the importance of collaborative approaches being taken by the main participants in order to promote the development and sustainability of collaborative endeavours.

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[137] Chapter 7, footnotes 67-68 & 169 and related text.
[138] Chapter 8, footnotes 123-135 and related text.

The significant influence of higher education policy on the establishment and sustainability of the case study programs indicates that the prospects of clinics will depend on sector developments. The focus of universities on research concentrations highlights the somewhat anomalous place of law schools in the modern university. While community and professional engagement is articulated as important to the mission of universities and occupies much of the time of most academics, it is research performance that is prioritised in the allocation of resources and recognition. The increasing emphasis on research in how universities structure academic work is also likely to impact on those clinical programs that continue to focus their efforts on service and teaching.

A major influence on program sustainability is the capacity of those involved in a clinic to respond to the inevitable challenges that will arise. This needs to be viewed in terms of staff having the requisite skills and understandings as well as the program having effective structures in place. Location change, issues with senior law school and university management as well as the fatigue that needs to be anticipated in long-term relationships are all issues which the case study programs have faced once the initial enthusiasm moderates and start-up funds have been spent. The retention of long-term clinic-fluent staff within law schools can provide a platform for focussing on inclusive approaches and identifying and supporting future clinicians.

It could be said that, for clinical programs, size does matter in the sense that a program that is large enough to provide specialist opportunities for both students and staff is likely to have the capacity to develop a sequenced approach – from threshold simulations through scaffolded activities (enabling students to benefit from iteration) to opportunities to engage directly with clients and practising lawyers, culminating in specialised experiences that enable students to undertake more in-depth work.

Advances in technology will no doubt be very significant in shaping clinic and legal education more generally. Technology is likely to develop in ways capable of enhancing the effectiveness of simulation-based learning[139] as well as making it easier for clinicians to communicate with law school colleagues and access law school resources. Further, technology has fostered the broader clinical movement, enabling clinicians

[139] Chapter 3, 53-54. Paul Maharg makes a persuasive case for the potential for MUVES to be used increasingly in legal education. Paul Maharg, *Transforming Legal Education: Learning and Teaching the Law in the Early Twenty-first Century* (2007) Chapter 6.

across the globe to communicate and collaborate more effectively through networks like the Global Alliance for Justice Education.

An increasing focus on public interest and human rights work is likely to provide opportunities for international clinical collaborations. The increasing number of clinics linked to public interest and pro bono legal organisations in Australia may foster collaborations, enabling clinics to engage with global issues. Such work emphasises the roles of the judicial system and legal profession in strengthening democratic institutions and promoting accountability of executive government. If the dominant images of lawyers are of clever opportunists protecting and advancing powerful interests, law schools are unlikely to gain support for improved resourcing of legal education. Social justice and service are central to real-client clinic work and can be important in legitimating legal education.

Clinical programs will face challenges in competing for attention and resources within legal education structures that focus heavily on substantive content delivered in lecture mode. Our students also live increasingly busy lives and clinics may need to consider ways in which to engage constructively with students who have less time to immerse themselves in a clinical experience.[140] Integration may be important in enabling clinics to work effectively with these 'time-jealous' students.[141]

A range of benefits can be derived through integrating clinical experiences and insights across the law curriculum. Recognition of these benefits will enhance the legitimacy of clinics, thereby promoting their sustainability. Clinical insights can be utilised in supporting other dimensions of the work of law schools, including community engagement and scholarly research. Effective integration is likely to be a good indicator of the general well-being of a clinical program (and perhaps of its law school). Such efforts involve collaboration, planning and attention to learning objectives, all of which are likely to be indicative of other good practices. Models of effective clinical integration will also be important in moving clinical education towards a more prominent role in legal education.

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[140] Jeff Giddings, 'A 2020 Vision of Australian Clinical Legal Education' in B. Naylor & R. Hyams (eds) (2007) *Innovation in Clinical Legal Education: Educating Lawyers for the Future*, Legal Service Bulletin Cooperative, 86, 87.
[141] Stephen Billett, 'From Time Poor to Time Jealous' *Campus Review*, 5 July 2010.

In order to effectively integrate their work with the other dimensions of their law school, clinics need to collaborate. An uncertain environment is likely to emphasise the value of collaborating and integrating with a view to embedding clinical activities. Identifying and integrating the range of benefits they can generate will assist clinical programs to avoid being seen as a relatively expensive add-on. However, effective integration remains difficult to achieve and maintain. Clinical programs may usefully look to extend their integrative approaches to engage with other disciplines.

The key may be to aim to be a 'clinic-fluent law school' rather than a 'clinical law school'. Promoting clinic fluency could also be characterised as mainstreaming clinical legal education – suggesting that the way forward for sustainability is to have clearly articulated roles of clinical methodology accepted as central to the mission of law schools. Of course, there are issues here about the educational focus potentially de-politicising clinical education and diminishing its service focus.[142] It is important to recognise and understand the range of tensions that underpin clinical legal education – around learning and service, collaboration and control as well as teaching and research. Where possible, those tensions should be addressed using collaborative frameworks. Where incompatibility means the tensions need to be managed rather than resolved, objectives need to be prioritised.

Clinical method should not be seen as the 'be all and end all' of legal education but recognised for the contributions it can make to various agendas. This thesis has emphasised the potential of clinical methods to make multiple contributions to legal education and access to justice. Learning and service should be characterised as the two sides of the 'clinical coin'. This vision is optimistic about the potential for integrative and collaborative approaches to be used in advancing the contributions of clinics while also recognising that collaborative frameworks should only be used when they are advantageous for those concerned. This sort of constructive scepticism, remaining open to the merits of new possibilities, is a feature of integrative approaches.

[142] Tomain & Solimine, above n 114 & Marc Feldman, 'On the Margins of Legal Education' (1985) 13 *Review of Law and Social Change* 607, 617.

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