

## Advancing Law Student Pro Bono Activity via Extra-Clinical Private Pro Bono Projects

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I'd like to thank John Corker for providing me with the opportunity to participate in the National Pro Bono Conference this year. I am sorry I cannot attend the pre-conference session in person today and participate in the important discussions you will be having but I hope you will accept this brief paper in lieu of my attendance and I look forward to receiving news of the outcomes of your deliberations.

This paper is not yet complete and I'd welcome your input. If any of you have any comments on this paper I would be very grateful if you could send them to me by e-mail at [pkeyzer@bond.edu.au](mailto:pkeyzer@bond.edu.au)

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*"Wouldn't it be great to get law students involved in work to benefit underserved communities? The communities would benefit, students would learn beyond the classroom, and the habit of participating in pro bono initiatives would be developed while students earn their law degrees".<sup>1</sup>*

This quote, drawn from an account of the Legal Assistance Project in Western New York, captures in a few sentences many of the exciting, multilayered and positive objectives of law school pro bono projects. Few if any would disagree with the observation implied in the rhetorical question at the start: inequalities in the distribution of legal services represent a serious and intractable problem.<sup>2</sup> The sources of this problem are various, and vary from jurisdiction to jurisdiction. For example, Australian lawyers who take on pro bono work in the public law area have good reason to contrast their position with lawyers in New York: in that jurisdiction costs don't follow the event.<sup>3</sup> As Justice Toohey observed in extra-curial remarks:<sup>4</sup>

*There is little point in opening the doors to the courts if litigants cannot afford to come in. The general rule that 'costs follow the event' is not in point. The fear, if unsuccessful, of having to pay the costs of the other side (often a government*

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<sup>1</sup> Jones, N.A., "Law Students in Aation Project in Upstate NY Matches Student Volunteers To Clients", *The Daily Record*, 14 June 2005.

<sup>2</sup> I have borrowed this language from Cramton, R.C., 'Mandatory Pro Bono', (1991) 19 *Hofstra Law Review* 1113-1139, 1116.

<sup>3</sup> For further discussion of the contrasting approaches see Vargo, J.F., 'The American Rule On Attorney Fee Allocation: The Injured Persons' Access To Justice', (1993) 42 *American University Law Review* 1567-1636, 1571; and Tollefson, C., 'When The 'Public Interest' Loses: The Liability of Public Interest Litigants for Adverse Costs Awards', (1995) 29 *University of British Columbia Law Review* 303-339, 304.

<sup>4</sup> An unpublished address to the National Environmental Law Association in 1989 cited by Justice Stein in *Oshlack v Richmond River Council* (1994) 82 LGERA 236, 238.

*instrumentality or wealthy corporation), with devastating consequences to the individual or ... group bringing the action, must inhibit the taking of cases to court. In any event it will be a factor that looms large in any consideration to initiate litigation.*

But leaving the details of access to justice to one side, there is no doubt that there is a need for more lawyers doing good work in places of need.<sup>5</sup>

And few would question the desirability of enhancing the skills of our law students. Law students want to be – and law firms want to hire – sharp, canny, flexible, knowledgeable, lifelong learners and leaders. The debate about whether law schools should be teaching skills is over; professional organizations around the world have urged law schools to teach skills.<sup>6</sup> And most students come to law school to learn how to be lawyers and they want to learn these skills.<sup>7</sup>

In Australia, clinical legal education programs, operating in conjunction with the community legal services sector, have provided students with excellent opportunities to gain exposure to legal work that connects them with underserved communities, providing great learning opportunities in the process.<sup>8</sup> Programs like Springvale, Kingsford and Northern Rivers remain the gold standard.<sup>9</sup>

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<sup>5</sup> And the needs are complex, as the recent Access to Justice and Legal Needs report *Taking Justice Into Custody* produced by the Law Foundation of New South Wales illustrates.

<sup>6</sup> See the reports discussed in *Legal Problem Solving: A Guide For Law Students*, Second Edition, 2003, 4, 10-11.

<sup>7</sup> I haven't overlooked the fact that many scholars criticise contemporary legal education for what they regard as overemphasis on the expectations of law firms, professional organizations and (instrumentalist) government-funded "skills reviews". I just don't agree with those critiques and think law schools should teach law students how to think critically and how to engage with their communities as people and as professionals *and* teach them professional skills. For a useful discussion of these issues see Hunter-Taylor, S., 'Professional Legal Education: Pedagogical and Strategic Issues', in Keyzer, P., et al., ed., *Legal Education in Australia*, Volume Three of the *UTS Law Review*.

<sup>8</sup> See Boersig, J., et al., 'Teaching Law and Legal Practice in a Live Client Clinic', (2002) 6 *Newcastle Law Review* 51-68; Spencer, R., 'The Adelaide Magistrates Court Legal Advice Clinic', (2002) 6 *Newcastle Law Review* 15-31. For a discussion of how demonstrated deficits in student approaches to legal problem solving led a team of clinicians to revisit their curriculum and engineer significant reforms to their teaching practices see Sylvester, C., et al., 'Problem-based learning and clinical legal education: what can clinical legal educators learn from PBL?' (2004) 6 *International Journal of Clinical Legal Education* 39-63.

<sup>9</sup> Goldsmith, A., 'Why Should Law Matter? Towards A Clinical Model of Legal Education', (2002) 25 *University of New South Wales Law Journal* 721-747. I acknowledge that clinics are not a panacea; and may not be able to achieve their self-identified goals (see ie., the articles summarised in Ogloff, J., et al., 'More Than 'Learning to Think Like a Lawyer'': The Empirical Research on Legal Education', (2001) 34 *Creighton Law Review* 73-243, 184; and Mike Robertson's doubts about whether resource-starved clinics can provide students with best quality opportunities to learn legal ethics – Robertson, M., 'Challenges in the Design of Legal Ethics Learning Systems: An Educational Perspective' (2005) *Legal Ethics* 222, 233, discussed in Kerrigan, K., 'How do you feel about this client? A commentary on the clinical legal model as a vehicle for teaching ethics to law students', (2007) 9 *International Journal of Clinical Legal Education* 7-26, 8. However they do achieve amazing things for clients, students and teachers.

However clinics can be resource intensive and require sustained commitment from co-ordinating staff. Some university-based pro bono projects have withered and even folded for lack of champions. And few law schools, especially the law schools in the “third wave”, enjoy the extra resources needed to build clinical programs of the gold standard. The pressure on these new law schools to earn fees is significant. The upshot is that if law schools want to advance opportunities to students to be involved in community engagement activities, they need to consider other options.

My focus here is on a different option for law schools that does not necessarily involve clinics or community legal centres (though it could well involve Pro Bono Students Australia and its chapters in local law school communities). Pro bono work is carried on quite extensively in private practice, as the National Pro Bono Resource Centre recently reported. And this can provide opportunities for students that should be explored further.

Two good examples of private pro bono projects that can yield great opportunities for law student learning, skill development and growth are the Disability Estate Planning Pilot Project (NSW) and the Queensland Impaired Competence Planning Pilot Project. These two pro bono projects are run by Blake Dawson Waldron as part of that firm’s very strong commitment to the provision of pro bono legal services to people with mental health issues.

Participants in these two projects assist parents and carers, particularly ageing parents and carers, with planning for the future of their children with cognitive disability.<sup>10</sup> Effective advice in this area requires knowledge of federal and State law across wills and estates, trusts, family provision, taxation, superannuation and guardianship. The work involves communicating with clients from diverse groups with diverse needs. The work requires expertise in solving problems, first class “black letter” legal knowledge, sophisticated analytical skills, deep and sensitive understanding of client needs, knowledge of a wide range of dispute resolution techniques available in a variety of contexts, knowledge of available (and unavailable) public and private services, creativity, and effective practice management skills.

Obviously all of these skills are important to all parts of legal practice.

The work in these projects is demanding but very rewarding. For law student participants, these projects provide valuable experiential learning opportunities in a sophisticated, high quality legal services environment with excellent work product monitoring and review by experienced senior lawyers who can teach students much.

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<sup>10</sup> See “Private Trusts and Succession Planning For The Severely Disabled or Cognitively Impaired in Australia”, (2007) 19.2 *Bond Law Review* 1-25 (with T Carney) and “Planning for the future: Arrangements for the assistance of people planning for the future of people with impaired capacity”, (2007) 7(2) *Queensland University of Technology Law and Justice Journal* 255-278 (again, with T Carney).

Incidentally, these projects also provide excellent opportunities for grant-funded academic research that can assist government in developing best solutions to social problems, leading to new insights into best approaches to legal service provision.

Young lawyers often face a steep learning curve as they make the transition from law school to practice. Technical competency and lawyerly skills are expected by law firms but are not necessarily part of the staple diet in every law school. This is where participation in private pro bono projects during law school represents a great additional opportunity for students to learn valuable skills. Exposure to pro bono service opportunities in private law firms assists future graduates in learning the basic terminology and habits of successful practice.

Research demonstrates that graduates who have not experienced the rigors of private practice struggle with time management skills and priorities (“at first, the workload is a real shock”), the fundamentals of legal business (“it took a while for me to work out what it is we actually do”), technical skills (“we need nuts and bolts training about how to go about things”), and office management (“timesheets are a real pain – I wish that somebody had just sat me down at the start and gave me some tips on how to make it easier”). Exposure to private practice via pro bono projects can alleviate the transitional issues that arise here.

There is now a very considerable body of domestic literature on pro bono and clinical legal education. Efforts should be made now to build common curriculum approaches in co-operation with the private legal sector to address community needs and achieve common educational and professional goals for our students. Clinical practice leaders in the law schools should now come together with the law firms with a demonstrated commitment to pro bono to advance this project, which could see substantially more law students involved in pro bono activity.

We should open up more lines of dialogue with private law firms that do or might engage in pro bono activity, and build projects with them that complement the work of the clinics and community legal sector. We should aim to dissolve the barriers between law schools and the community, including private law firms, and develop opportunities for the credit of work-based learning on pro bono projects. And we should give credit where credit is due: the experiences that law students have in private pro bono projects can and should count as course credit in the law degree and form part of their graduate portfolio. This was one of the great ideas that came from the 2020 Summit and one that we should advance with energy.