

LEGAL EDUCATION



Specialised clinical legal education begins in Australia

As the variety of clinical approaches to legal education widens in Australia, Monash University/Springvale Legal Service has begun a pilot specialised clinic in conjunction with a regional sexual assault centre.

Two decades of Monash clinical legal education

It is 20 years¹ since Monash began its clinical program in a joint venture with Springvale Legal Service (SLS). In that time, the Monash program has matured from a mixture of hope and enthusiasm on the part of students and 'tutors' (as they then were) to a systematic integration of educational priorities, service delivery and social justice issues. While Monash University's Law Faculty aims to integrate the teaching of skills and ethics into its undergraduate 'core' subjects (for the first three years of a law degree), the clinical program (in the fourth and fifth years of the LLB) has been developing 'depth' in three distinct areas:

1. A student advocacy program² for students enrolled at both SLS and Monash-Oakleigh Legal Service (MOLS) has operated since 1993. Student advocacy is well established overseas, particularly in the United States and the opportunity to represent clients as advocates in the Family Court and Magistrates Court is grasped by most (but not all) students. This program was the first of its kind in Australia.

2. Computerised case management was introduced at SLS in 1990. Data management at SLS was always a problem because of its huge client base.³ Conversion to computerised statistics began in 1988, retrospective to 1985. It incorporates electronic file creation, conflict searches and negligence awareness prompts. These features tie directly into responsible legal professionalism and have become increasingly attractive to students as their consciousness of the cultural excesses of the 1980s has been raised and their electronic literacy has improved. This software is now being rewritten and again the opportunity to introduce expanded 'professional' features is being taken.⁴

3. Similarly, SLS has taken advantage of its large casework window to identify specific, recurring themes which signify reduced access to justice. Each student joins a preferred task group of four students that works towards educating the client group about the particular theme.⁵ Over a three to five-year period, this leads to socio-legal campaigns by the client group⁶ and to direct law reform lobbying by the student task group.⁷ At all stages, the clinical supervisor has the responsibility to encourage students' involvement in these processes and to place on the agenda for task group discussion the links between direct service and non-casework activity, between 'theory' and practice, and between social policy and the demands of conventional legal practice. These connections are usually made with clarity by students because the context is real (as opposed to simulated) and they know that they have a direct (though limited) responsibility for the decisions that arise from the discussion.

Specialised experience

Clinical legal education at fourth and fifth year level has used the transition from the simulations of earlier years to the 'real client' environments of SLS/MOLS, to re-emphasise professional responsibility as the key component in linking 'skills' and 'ethics'. We are now adding another ingredient — specialisation.

In conjunction with the South Eastern Centre Against Sexual Assault (SECASA) and Monash Medical Centre (MMC), SLS has commenced a pilot joint clinical legal service to assist victims of sexual assault. This is the first of a number of specialised options to be made progressively available to law students over the next few years. A steering committee of SLS and SECASA selects as possible 'staff', students who have performed competently and demonstrated a developed feminist analysis during their placement at SLS/MOLS. Those selected have been invited to volunteer for the pilot clinic and all have done so.

The pilot process is limited to three or four students, each with a maximum of three clients referred from SECASA. Initial interviews will be conducted jointly with the referring SECASA counsellor. Clinical services will concentrate on crimes compensation applications, civil actions for damages (if appropriate), emergency housing relocation and police-victim liaison (in the event of criminal proceedings commencing).

Evaluation of the joint service will proceed over 12 months to measure its effectiveness from a client point of view, the particular problems of specialised supervision, SECASA and MMC concerns (if any) and the best methods of assessment of student performance.

As the students are volunteers, there can be no formal assessment of their work or accreditation within the LLB framework. However, these issues will be reviewed and various assessment methods will be used in anticipation of accreditation. The intention is to 'hasten slowly'. Professional and educational acceptance of this innovation depends on demonstrating that the low file load and high supervision ratio (four students supervised by two volunteer, experienced community lawyers) can ensure both quality clinical education and — because the students will work in conjunction with SECASA counsellors and have more time available per file than private practitioners — far better than average professional services.

Specialised clinical experience of this sort is designed to consolidate and deepen a student's perception of a range of professional issues, including drafting, advocacy, multi-disciplinary approaches and 'client care'. Sexual assault is only one example of this potential. Monash/SLS is continuing to explore suitable specialised options with the intention of further development of clinical education where defined areas of client need can be identified.

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When there's a market lull, the pressure falls and people are more frivolous.' (Girlie thinks Mr Farrow may want to check the dictionary before he refers to 'frivolity' again in the context of serious sexual harassment allegations.) And even more helpful: 'The dealing room is male dominated, with a style and function not suited to the female personality'. Other commentators have pointed to the 'hideous atmosphere' of the trading room and the enormous pressure on traders to make money.

In response to Ms Ashton's allegations, BT did not attempt to dispel the lewd image of human exchange on the trading floor. Rather, the *Age* reports, BT's counsel argued that 'Ms Ashton took part in the boys-will-be-boys fun and games on the trading floor and had no basis for complaint, being treated no differently from the men'.

The case is part heard and will conclude in April 1996. Girlie is waiting to learn whether the Equal Opportunity Tribunal was as unimpressed by this argument as she was.

Death row

The *Australian* (17 January 1996) reported that Guin Garcia, on death row in Illinois, USA, had 'a sense of peace' about her impending execution by lethal injection. She maintained that she 'deserved to die', having suffocated her 11-month old baby and subsequently killed the husband she married while serving a 10-year sentence for the child's murder. Death penalty opponents were reported to be less than calm about the decision, working furiously to have her sentence stayed, despite her plea for them to 'stay out of [her] life'.

Guin's position has also been confronting for feminist lawyers and activists engaged in the debate about legal defences for battered and abused women who kill. Guin was orphaned and sexually abused by her uncle before she was six. According to her lawyers, she made her decision to kill her child when she learned welfare authorities were planning to foster her daughter with her grandmother, in the house where her uncle still lived. She shot her husband after he had physically, sexually and psychologically abused her.

Last year Guin decided to drop all appeals — the forum in which argument in her defence may have been heard about her having battered woman's syndrome, post traumatic stress disorder, or that she responded 'normally' to the abuse (provocation) she had suffered.

The Cook County Jail chaplain said Guin's decision not to go ahead with appeals had brought her 'more tranquillity than she had ever had in her troubled life'. Not so for those outside concerned about Guin and what her case represents. Should Guin's choice be respected (she can make her own choices, that's what feminism is about), or questioned (she can't make a valid decision about her future in her powerless position)? And the multi-layered debate will no doubt continue — with Guin as an unwilling participant, as Illinois Governor, Jim Edgar, has stayed her execution with a last-minute clemency decision.

Misplaced gallantry

Girlie recently heard a story about a female member of the bar who did her best to defend her client at an appearance before a magistrate in country Victoria. She did not count on being hampered by a force beyond her control — old fashioned gallantry.

Her client had been charged with using indecent language, but had been very drunk at the time and couldn't recall the exact words he had used. He did assure her though, that they couldn't have been indecent (he wasn't that kind of guy). The magistrate heard the prosecution's case without the actual words the accused was alleged to have used being mentioned. They were written down and handed to the magistrate. The defence barrister was forced to ask the magistrate to reveal the relevant utterance. He refused, saying they were not fit for a lady's ears. Our heroine argued that she would be making a submission that the words were not, in fact, indecent. The magistrate told her he would entertain no such submission, and, gallant to a fault, said (words to the effect of), 'You may take your seat, Miss X. I can assure you of the indecency of your client's language and, I'm afraid, that I am compelled to find him guilty.' The exact nature of her client's conduct seems destined to remain one of the mysteries of her legal career.

Sporting nightlife

In early February, Melbourne newspapers were full of headlines about Wayne Carey. For those unfamiliar with the reason for Wayne's newsworthiness, he is, according to the *Sunday Age* the 'most valuable player and most inspirational captain' of the North Melbourne Australian Rules footy team. Unfortunately, during the 1995 Grand Final Wayne had a bad day and only scored

one goal, and he and his team mates ultimately lost. Like real men they went out to drown their sorrows in the night-clubs along King Street. By nine o'clock the next morning, Wayne and his mates had had a few. He approached a young woman on the street, grabbed her left breast and said 'why don't you get a bigger set of tits?'. For this 'indiscretion' Wayne was charged and ultimately pleaded guilty to indecent assault. The magistrate gave him a good behaviour bond and released him without conviction or fine, saying Wayne had done a 'bucketful of work for the community'. (Girlie is offering a prize for those who can guess this magistrate's favourite sport.) Outside the court Wayne said he was sorry if his actions had offended anybody and that he just wanted to get on with the footy now. (Another prize for anyone who can work out who Wayne might have offended.) Wayne's sponsor, Nike, issued a statement to the media that they intended to continue to support Wayne despite his brush with the law. Well done Nike — *just blew it!!*

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References from *Legal Education* p.79.

References

1. Smith, S., 'The Case of Springvale Legal Service', in D. Neal (ed.), *On Tap, not on Top: Legal Centres in Australia 1972-1982*, Legal Service Bulletin Co-op Ltd, 1984.
2. Campbell, S., 'My Learning Friend: Students in Court' (1993) 67 *LJ* 914.
3. Approx. 75,000 separate client records have been created over the last 22 years and 35,000 of these are now indexed using Paradox software.
4. See also Note 3. The Office of Legal and Family Services (LAFS) administers legal aid for the Commonwealth. Since 1990, LAFS has sought to require community legal centres around Australia (now numbering over 100) to standardise and computerise their data. The stated intention is to permit more precise targeting of legal aid, based on demographic trends made clearly accessible for the first time by this material. Building on an earlier program developed for Victorian legal centres by La Trobe University, the new National Information System (NIS) will eventually produce useful material but it is a passive program with no 'pro-active' case management features. The SLS version provides this capacity.
5. Current access 'themes' at SLS are police assaults on ethnic youth, legal professional complaints processes, family violence advocacy and environmental/planning law changes in Victoria.
6. For example, a resident campaign against PCB pollution in a declared toxic industry zone near SLS.
7. For example, a long series of submissions to government in order to remove control of lawyer complaints processes from the Law Institute of Victoria.