THE GATEKEEPERS OF THE LAW: REVISITING THE ROLES OF ACADEMICS, STUDENTS AND THE PROFESSION

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ABSTRACT

Clinical legal practice (CLP) provides opportunity for teaching that addresses gaps in core teaching programs. It can also provide a window of hope for communities at the periphery of the law. This paper describes two innovative projects that sought to address such gaps using alternative methods. It analyses their strengths, weaknesses, opportunities and threats, drawing conclusions for future directions.

Before the law, there stands a guard.
A man comes from the country, begging admittance to the law.

– Kafka[1]

I. INTRODUCTION

Law schools at present attract the best and brightest young Australians. Entrusted with educating future leaders, law schools face heavy responsibility in preparing these brilliant people for the enormous environmental, social and political challenges they will face. At the same time, employment-wise, it has been said to be the worst time in living history to be a law graduate.[2] Care is needed to ensure that the best marks are not confused with the best potential lawyer, and that student emphasis does not shift away from client-based practical excellence.
Even so, law students have a powerful and unique opportunity to re-imagine legal knowledge and lead creative new approaches to law, while gaining demonstrable practical experience and meeting community need.

The purpose of this paper is to examine two innovative law teaching concepts. The first was an advocacy program, led by students, aimed to encourage outlier students in public speaking and case preparation. The second was an 'on country' Indigenous Clinical Legal Practice (CLP) program. Each concept is separately described, analysing its strengths, weaknesses, opportunities and threats.[3] From this, the paper includes a combined analysis with insights

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1 Franz, Kafka, *Der Prozess* (Max Brod (ed), Verlag Die Schmiede, 1925), but the quotation is taken directly from *The Trial: A film by Orson Welles*, screenplay and direction by Orson Welles, Paris-Europa Productions, 1962.

2 Leanne Mezrani, 'It is the worst time in living history to be a law graduate' *Lawyers Weekly* (online, 27 August, 2013) <http://www.lawyersweekly.com.au/news/it-is-the-worst-time-in-living-history-to-be-a-law>.

3 This form of analysis, known as a SWOT, is a business analytic tool developed in the 1960s. It provides a useful practical means for contextualising external and internal environmental elements, both positive and negative. See Mike Morrison (2012) *SWOT Analysis (TOWS Matrix) Made Simple*, Rapid BI, Business & Organizational Development tools, training & services – Human Resources OD & Leadership <http://rapidbi.com/swotanalysis/>; Robert W Bradford and Brian Tarcy, *Simplified Strategic Planning, The No-Nonsense Guide for Busy People Who Want Results Fast* (Chandler House Press, 2000)

across both case studies, and then synthesises those outcomes, drawing the conclusion that teachers 'outside the gate' can offer important knowledge which, when placed proximate to injustice, engages the power of focused student energy.

This is a descriptive paper aimed at providing rich data to inform continued dialogue about alternative legal teaching models by alternative legal teachers. While recognising that an expansive field of knowledge and research exists in this area,[4] we argue that descriptive methodology has validity where a state of learning is pre-paradigmatic, requiring theory construction rather than verification.[5] Descriptive methodology is, further, an appropriate approach where phenomena may, by their nature, be better understood by giving voice to those living an event and then listening to and interpreting their experience. This is not a quantitative or statistical study, although such further research may have benefit. As with all case studies, this present study produces a purely 'local' knowledge which the synthesis of the two individual cases in part addresses.[6]

II. Theoretical Overview

The origins of western legal education lie within a practical and oral tradition that fuses law and moral schema. However, systematic legal education is only a relatively recent phenomenon.[7] The Australian legal profession is regulated at the state level, with oversight by national bodies. The journey to becoming a practising lawyer in Australia is broadly a two-step process (or three steps if employment is included). First, students must undertake an approved course of study at a tertiary institution – commonly either a Bachelor of Laws (LLB) or a Juris Doctor (JD). These courses must meet national proscribed curriculum standards known as the 'Priestley 11'.[8] Upon successful completion of a Priestley 11 degree, students seeking admission to practice must then comply with certain practical training requirements, all of which must meet the National Competency Standards for Entry Level Lawyers.[9] Pathways vary in each jurisdiction, but broadly applicants for admission are required to complete either Practical Legal Training (PLT) or some course of supervised practice (articles).

Aboriginal law forms no compulsory part of admission to legal practice in Australia and neither does education as to how Aboriginal people interface with the Australian legal system. However, as Aboriginal lawyer Irene Watson explained:

> It is through the possibility of Aboriginalising our legal education that we could bring another way of knowing the world and its legal systems.[10]

It has also been argued that a narrative teaching style is more fluid than textbook learning in creating new ideas and destroying the bundle of received wisdoms.[11] Narrative teaching is often excluded from traditional law teaching. However, it is recognised by critical theorists

4 Professor Giddings' 2013 study usefully demonstrates how these fields can be drawn together. See J Giddings, *Promoting Justice Through Clinical Legal Education* (Justice Press, 1st ed, 2013).

5 R E Stake, 'Case Studies', in N K Denzin and Y S Lincoln (eds), *Handbook of Qualitative Research* (Sage, 2000); C Perry, Y Alizadeh and A Reige, 'Qualitative methods in entrepreneurship research', in *Proceedings of the Small Enterprise Association of Australia and New Zealand Conference* (Southern Cross University, Coffs Harbour, NSW, 21–23 September 1997).

6 M Patton, Qualitative Evaluation and Research Methods, Sage, Newbury Park (Sage, 1990); G I Susman and R D Everard, 'An assessment of the scientific merits of social research', (1978) 23 *Administrative Science Quarterly* 582.

7 R C van Caenegem, *The Birth of the English Common Law* (Cambridge University Press, 1973); Bernard Schwartz, *The American Heritage History of the Law in America* (American Heritage, 1974).

8 *Uniform Admission Requirements Discussion Paper and Recommendations* (1992), 24–5. The Priestley 11 is named after Justice Lancelot Priestley, Chair of the 1992 Law Admissions Consultative Committee which developed the national framework.

9 Law Admissions Consultative Committee, *Uniform Admission Rules 2008,* Schedule 1.

10 Irene Watson, 'Settled and unsettled spaces', in Aileen Moreton-Robinson (ed), *Sovereign Subjects Indigenous Sovereignty Matters* (Allen & Unwin, 2007) 15, 23.

11 Richard Delgado, 'Storytelling for oppositionists and Others: A Plea for Narrative (1999) 87 *Michigan Law Review* 2411; Robert Kurzban, John Tooby and Leda Cosmides, 'Can race be erased? Coalitional computation and social categorization' (2001) 98(26) *Proceedings of the National Academy of Sciences* 15387.

and Indigenous scholars as being beneficial.[12] Narrative and story appear to be an all-pervasive way in which humans organise the world and make meanings.[13] They are fundamental to both Indigenous law and Indigenous knowledge transfer as well as persuasive advocacy.

In 2000, the Australian Law Reform Commission found that the development of high-level professional skills involved practical experience and work-based learning, and required development of skills in legal research, written and oral communication, advocacy, dispute resolution and management.[14] Critical legal scholars consider practical training important to any legal studies because it provides opportunities to explore major societal questions and advocate against instances where law legitimises inequality.[15]

Historically, of course, the law has been taught and learned within the profession, rather than in the academy, through Articles of Clerkship and Bar Readers training. Judges with a particular interest in law school curricula have queried the existence of a 'clear dividing line' between academic and practical teaching.[16] In 2012, the Chair of the National Alternative Dispute Resolution Advisory Council was quoted in *Lawyers Weekly* as saying that the Priestley 11 was 'acting as a straitjacket' on legal education, and blog posts following that item confirmed strong interest in practical legal training.[17]

III. Clinical Legal Practice (CLP)

CLP is a form of legal education which attempts to provide 'a learning environment where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practised.'[18]

Its frequent emphasis is to teach a practical and critical understanding of law and legal practice by exposing students to real legal problems in the context of 'real' clients. However, clinical legal education is also an important technique for theoretical training, and critical legal studies scholars have considered that CLP is important to any study of the law.[19] CLP also provides opportunities for guiding students to intriguing but less high-profile areas of law.

The literature reflects a sense that CLP programs are often asked to be all things to all men. These can include social justice,[20] human rights,[21] optimising the teaching of normative law,[22]

12 Kim, Economides, 'Anglo-American conceptions of professional responsibility and the reform of Japanese legal education: Creating a virtuous circle?' (2007) 41(2) *The Law Teacher* 155, 165.

13 Peter Brooks, 'The Law as Narrative and Rhetoric', in Peter Brooks and Paul Gewirtz (ed) *Law's Stories* (Yale University Press, 1996); B Prosser, 'Seeing red: poetry and metaphor as responses to representational challenges in critical narrative research' (2009) 22(5) *International Journal of Qualitative Studies in Education*, 607.

14 Australian Law Reform Commission (ALRC), *Managing Justice: a review of the federal civil justice system* (AGPS, 2000). The Report reflects the law at 31 December 1999. See chapter 2, Education, training and accountability, 22.

15 Anna Copeland, Clinical Legal Education Within a Community Legal Centre Context', (2003) 10(3) *ELaw – Murdoch University Electronic Journal of Law*, 1; G R Evans, *Calling Academia to Account: Rights and Responsibilities* (Society for Research into Higher Education and Open University Press, 1999); A H Evans and R L Hyams, 'Independent Evaluations of Clinical Legal Education Programs: Appropriate Objectives and Processes in an Australian Setting' (2008) 17(1) *Griffith Law Review* 52; M A Noone, 'Improving access to justice: Communication skills in the tribunal setting' (2006) 16(1) *Australian Journal of Judicial Administration*, 18.

16 See comments by The Hon. Mr Justice Zeeman of the Tasmanian Supreme Court in W P M Zeeman (1995) 13(2) , Curriculum – A Judicial Perspective, *Journal of Professional Legal Education* 215.

17 L Mezrana, 'Priestly 11 should include ADR', *Lawyers Weekly* (online, 9 August 2012) <http://www.lawyersweekly.com.au/news/priestley-11-should-include-adr>.

18 R Grimes, 'The Theory and Practice of Clinical Legal Education' in Julian Webb and Caroline Maugham (eds), *Teaching Lawyers' Skills* (Butterworths, 1996), 138.

19 Mark Spiegel, 'Theory and Practice in Legal Education: An Essay on Clinical Legal Education (1987) 34 *UCLA Law Review* 577; Anna Copeland, 'Clinical Legal Education Within a Community Legal Centre Context' (2003) 10(3) *E LAW – Murdoch University Electronic Journal of Law*; Adrian Evans, 'Specialised Clinical Legal Education Begins in Australia' (1996) 21(2) *Alternative Law Journal* 79.

20 Jerold S Auerback, 'What has the teaching of law to do with justice?' (1978) 53 New York University Law Review 457; Giddings, above n 4; Peter A Joy, 'Political Interference with Clinical Legal Education: Denying Access to Justice' (1999) 75 *Tulane Law Review* 235.

21 Mary Anne Kenny, ' Clinical Legal Education: Teaching Law Students About Human Rights http://www.unaa-wa.org.au/papers/ClinicalLegalEducation/ClinicalLegalEducation.htm

22 Irene Styles and Archie Zariski, 'Law Clinics and the Promotion of Public Interest Lawyering' (2001) 19 *Law in Context* 65.

giving meaning to life[23] and increasing the individual law school's competitiveness among students.[24]

While many CLP programs focus on community 'shop front' legal approaches, advocacy and 'test' case litigation are critical components to social and law reform. For example, many important legal issues, including those facing Aboriginal people, have been resolved through advocacy. The 'test' cases of *Mabo*[25] and *Wik*[26] are only two important examples.

It is within this theoretical context that this paper examines two innovative programs recently offered at an Australian law school. Case Study 1 is a student-run advocacy and public speaking program. Case Study 2 is a Clinical Legal Practice subject conducted by an Aboriginal Elder. Each case is studied below, providing a description and a SWOT analysis.[27] Following this, the outcomes are combined and synthesised to draw a conclusion.

IV. Case Study 1

The first program was, designed and led by the second author. It actively aimed to involve 'outlier' or nervous students, and was developed as a response to a perceived unmet need at the university to fill a gap between formal academic advocacy course work and practical, student advocacy such as moots or volunteer legal clinics.

A. *Purpose*

The program aimed to encourage aspiring advocates and those students who felt they lacked public speaking or advocacy skills to practically advance these skills. To achieve this, a pilot program began on a simple idea: students practise speaking in public each week in a safe, private environment, guided by guest professionals of the highest calibre. This setting also enabled participants to aspire to excellence aided by friendly, collegial, student-led personal development.

B. *Goals*

A key goal was that each student prepare an oral argument based on facts and relevant law, structured by logical principles, with the aim of as simple a presentation format as possible. The set of conditions which students had to follow became increasingly complex as the program progressed.

The program recognised that 'skilling up' in advocacy is a tool by which law students can become enablers of social change and also a means by which ordinary people's lives may be substantially improved.[28]

C. *Description*

The program ran over approximately eight sessions and continued beyond the pilot to a second semester. It adapted to accommodate students' formal study demands by spreading dates so as to avoid overloading students. Initial registrations for the pilot program came overwhelmingly from women, with over 75 per cent female participants. Participation numbers ranged from 5 to 15 students each week, with varying degrees of ongoing attendance.

Professional guests were asked to initiate each session by giving a short presentation on a pre-agreed topic relating to advocacy and public speaking. Guests included judges,

23 Clinical Legal Education Homepage, Fordham University (2013) <http://law.fordham.edu/clinical-legal-education/clinics.htm>.

24 Adrian Evans and Ross Hyams, 'Independent Evaluations of Clinical Legal Education Programs: Appropriate Objectives and Processes in an Australian Setting (2008) 17(1) *Griffith Law Review* 52, 54–5.

25 *Mabo & Others v. Queensland (No. 2*), [1992] HCA 23; (1992) 175 CLR 1.

26 *The Wik Peoples v. The State of Queensland & Ors; The Thayorre People v The State of Queensland & Ors* (1996) 187 CLR 1; (1996) 141 ALR 129; (1996) 71 ALJR 173; [1997] 1 Leg Rep 2, B8/1996, 12 June [1996] HCA 40; (23 December 1996).

27 Above n 3.

28 Giddings, above n, 4, 37.

barristers, specialist solicitors and a clinical neuropsychologist who covered topics including persuasiveness, the psychology of advocacy, case preparation, outlining an argument, measuring an audience, body language and advocacy at a student level. Each guest then remained for the balance of the hour, listening and providing feedback on each student's individual presentation. The professional element created formality and seriousness to students' presentations.

In the pilot program, the first session established the ground rules of trust and the 'padded wall' (what happens in the room stays in the room). Sessions commenced with statement of the order of events, followed by a one-minute stand-up talk by everyone in the room, who introduced themselves and described why they decided to study law. The second session required each student to give two thirty-second talks on a random, fun topic (*Marilyn Monroe was a genius, Homer Simpson for President)*. In this session, students also rotated roles during each talk, providing observation, evaluation and reaction to another student's talk. In the third week, students we required to talk longer and for the first time on a legal topic (*The Death Sentence Is Appropriate*, *law students should be more proximate to justice)*. Then, as the weeks passed, students were required to prepare in advance, with varying degrees of prior notice, more complex legal arguments (*persuade the guest why Mabo*[29] *was wrong*). The tasks were designed so that each time a student spoke, their argument required increasing levels of sophistication and complexity.

Students were also encouraged to respond to each speaker with their own feedback. Thus all students participated as both educator and student. Students actively navigated the involvement with senior members of the legal profession at every workshop, as the program sought to interlink students, academics and professional associates in new-found ways and with new-found freedoms. Critical to the program's success was the removal of competition and judgmental attitudes. The secure, 'padded-wall' environment built trust – student to student, with the guidance of professionals – to provide critical protection, motivation, and active cross-fertilisation aimed at improving creative learning outcomes. It was ok to fail. The program was popular with those students whose passion for law might, at times, outshine their academic results, or with students wanting to diversify their university experience. Students shared an anti-'spoon feed' attitude, seeing a direct path between improving their own skills in advocacy and becoming better equipped both for their own studies and for legal practice. As Giddings notes, such constructive engagement can make 'legal education more effective in developing the lawyers of tomorrow and maintaining the lawyers of today'.[30] It also has the ability to assist students improve their own value in a highly competitive market place for law graduates.[31]

The program developed an alternative space for education, combining a more cooperative and collaborative style of learning, which helpfully prepared more tentative students for the competitive and pressurised mooting environment. It allowed students with an interest in advocacy to become agents of their own learning and improvement in a safe environment, building their own confidence to participate in further, more challenging advocacy fields. It was also enthusiastically received by the professional guests.

D. *Objective Analytic Feedback*

At the time of writing, objective feedback is only available for the pilot program. At the conclusion of the pilot, students completed a feedback form comprising 13 questions, requiring a combination of 'yes' and 'no', '1' to '10' and descriptive or comment responses. Fourteen responses were returned. Outcomes revealed that students felt the seminar assisted their advocacy/public speaking, with the students rating their improvement at an average of 6.36 out of 10. Some students also indicated that these skills crossed over into academic work and thinking, due to a practical way of viewing academic assignments. Students rated program structure at an average of 8.23 out of 10. All students reported that they would 'recommend this program to others' and 85.71 per cent of all the students felt that the program met an unmet need at the university.

29 *Mabo & Others v. Queensland (No. 2*), [1992] HCA 23; (1992) 175 CLR 1.
30 Giddings, above n, 4, 4.
31 Giddings, above n, 4, 55.

E. *Strengths*

The strong support of the University and the Law Dean gave the program strength and freedom, empowering a small-scale, student-run program. Students strengthened their ability to create legally structured arguments. The openness of the program and ability of participants to shape their own experience created a deeply encouraging environment in which to speak and practise, with positive feedback.

Many students formed strong and beneficial friendships, and created study groups and other learning and emotional supports. Subsequently many also formed teams and participated in internal and external moots and advocacy competitions, as well as signing up for volunteer legal positions and running for student representative bodies. At least five students were selected to represent the university at senior national moot competitions, including the Castan Human Rights Moot, La Trobe University Environment Moot and Michael Kirby Contract Moot. A number are currently participating in the Willem C Vis International Commercial Arbitration Moot program.

F. *Weaknesses and Difficulties*

As Professor Giddings notes:

> very valuable insights can be gained by closely considering situations where things did not go according to plan.[32]

As the program was extra-curricular, students (who face the intense pressure of achieving highest possible grades to assist their career prospects) expressed feeling overburdened sometimes and needing to prioritise their academic studies, despite their interest in the program.

The program met with some gossip and unofficial student politics that undervalued or undermined it within the student body itself. This, although a detriment, was a minor weakness, because the students undermining the program were not participants in it, or privy to its operation, and the gossip had no noticeable impact on participants.

As it was the second author's first foray into leading such a program, preparation and clarity of direction were difficulties which needed revision in subsequent iterations. The seminars were demanding and required extraordinarily hard work for the organisers, with much to be achieved in limited time after hours, between classes and among work commitments.

It was also noted, anecdotally, that while lectures by famous advocates would pack the lecture theatres, this program had less 'cool', as some students were unable to appreciate the opportunity to receive individual feedback presented by senior, less high-profile guests attending.

G. *Opportunities*

The program created the opportunity to bridge the gap between the formal academic advocacy subject and the intense competitiveness of student moots. It also strongly supported the opportunity to build a culture of advocacy at an under-developed mooting law school and created a breeding ground for talented but unsure mooters.

H. *Threats*

Student 'laziness' was a major threat. While it is important to build a culture that pushes each student, culture and team building were essential in the program's first weeks. Formal performance measurements and the collection of objective analytical feedback was difficult, as it was not a formal law school program but rather a reaction to a perceived need. The second author's inexperience in leading such a program made it difficult to measure individual advocacy from starting point throughout improvement to the end outcome.

32 Giddings, above n, 4, 24.

I. *Outcomes*

The program remains ongoing despite its growing pains. Its second semester faced different, more complex problems than those of the first semester. It shifted focus away from support and group building to a more outcomes-driven focus – moot problems and pushing students harder. Also, the second author had less time to allocate to the program, given his own mooting commitments.

The program presented a clear and powerful opportunity to nourish the desire of law students to learn and grow while encouraging, helping and caring for students who found advocacy difficult. The wide range of skill levels present within the law school added to the complexity. Although new and teething, the program presented an innovative approach to legal education by having students step up and engage with the legal profession as their active guides, and by the university allowing the program freedom and support to grow by trial and error in uncharted, student-lead territory.

V. CASE STUDY 2

The second concept was a CLP program conducted 'on country' and led by an Indigenous Elder.

A. *Purpose*

The idea for the subject was initiated by the Elder, who wanted to convey to law students the legal burdens faced by his people. He saw the law as a fundamental barrier and sensed that if he could pass his knowledge to law students, they would better understand the issues and become able, in the long-term, to play an important role in removing those barriers. The law school required the teaching of professional practice tools and principles, while encouraging strategic and critical thinking beyond existing legal paradigms and offering opportunity for entirely alternative ways of viewing the Australian legal system. The first author was the formal 'lecturer' (in an adjunct role).

B. *Description*

Since the course was initiated, designed, taught and assessed by the Elder, the lecturer merely shaped the Elder's approach to ensure its fit within law school course requirements. It is believed to be the first of its kind in Australia designed and taught by an Aboriginal Elder.

The core concept of the course was a sustained consultation, with genuinely practical effects in which students engaged with the task of acting for an Indigenous Elder located in remote Central Australia – the client. Some classes were held in Melbourne (with more available at student request) but core teaching consisted of one week on country in remote Central Australia, where students slept rough, in sleeping bags within the desert landscape, and were taught by the elder. The Melbourne classes comprised:

- A pre-travel class concerned with client confidentiality, taking instructions, preparation for a view, cross-cultural legal practice, memo taking and clinical legal skills relevant to a practitioner's first meeting with a new client and client briefing.
- A post-travel class to work on the Elder's instructions.
- A class following provision of a letter of advice to the client, involving a teleconference with the Elder and his provision of further instructions.
- A class, attended by the Elder, to present the students' final advice.

Although protected by strict signed confidentiality agreements, in broad terms, the legal problem presented to the students by the Elder at the end of the 'on country' teaching period concerned an agreement between Government and the community to protect a significant parcel of their land.

C. *Strengths*

Student response was overwhelmingly positive, with expressions of strong emotional connection with what they were asked to do and the opportunity it provided them. Verbal feedback to the first author, their letters of thanks to the Elder and their ongoing active involvement in Indigenous *pro bono* legal advice for the Elder and other Aboriginal Peoples demonstrated that the 'real life' setting was compelling. All students recorded a transformation in their understanding of Indigenous law and a revision of assumptions about their legal knowledge. Each student individually expressed to the first author that they were deeply moved by the situation facing Aboriginal people with respect to policing, loss of human rights and in their day-to-day encounters with the law.

The university's support to the program was a major strength. Two full-time staff members were funded to visit 'on country' in the two years prior to the course being conducted. Travel costs to country for students and the first author as lecturer were met, along with the costs of two visits by the Elder to Melbourne, the first to meet senior staff at the law school and participate in meetings and a workshop with Hon. Michael Kirby and the second to attend (and assess) the students' final presentation. The Elder's assessment of the presentation was based on its value to him and his people in providing practical legal assistance. The author's assessment followed the criteria described to the students in the course materials, which had been created by the Elder and the lecturer working together. They actively took account both of Aboriginal law issues and of law school pedagogical and legal requirements.

D. *Weaknesses and Difficulties*

Students reported finding that the course posed more challenges than standard lecture format subjects. All students were in part-time work, some supporting children and family. Securing leave from work and withstanding the loss of one week's wages posed a major student issue.

A further difficulty – given the outback location, and rain blocking roads during the week leading up to the on country experience – was that the entire program was placed at risk. It also added to the lecturer's organisational difficulties, which, had they not been met *pro bono*, would have increased university expenditure for the subject, and the university was also involved in meeting additional unexpected transport costs.

As the subject was taught by persons not engaged on the university's full-time staff, there also arose points of genuine perplexity around their interfaces with the university system.

E. *Opportunities*

Students gained, and valued tremendously, the opportunity for active and 'real' involvement in case preparation for 'test case' litigation. This was clearly serious work, upon which the futures of many people rested. They recognised and welcomed the trust being placed in them, the seriousness of their obligation to study hard, fully understand the facts and law – and, as they expressed to the first author, produce an outstanding client outcome.

Informal, out-of-classroom, professional and personal mentoring opportunities also arose (at the campfire, during long drives, etc) for one-on-one contact between students and both the Elder and an experienced legal practitioner.

The involvement of students in addressing a real community problem also presented an opportunity for developing practical legal skills – review of massive documentation, its recording into a relevant and extensive chronology, complex legal research and synthesis of law and fact by preparation of a letter of advice and a draft brief to counsel which formed the basis of a subsequent Federal Case 'test' case, followed directly from the students' work. Without the students' work, the Aboriginal community would not have been able to instruct lawyers to that case.

The opportunity to connect with an Elder created opportunities for the permanent changes in students' perception and their long-term commitment to Indigenous issues. This was also an opportunity for a law school to directly contribute to improving conditions for Australian Aboriginals through the work done by the law students, which actually contributed valuable

legal assistance. Further, in honouring the knowledge held by an Aboriginal Elder, it provided an opportunity for the university to demonstrate its deep commitment to acknowledging Aboriginal knowledge and its potential contribution to improvement of Australia's legal system.

F. *Threats*

Students sensed the level of responsibility clearly being placed upon them, in a legal matter of very great moment to the Elder and his people.

However, other threats clearly existed, because the subject was not re-run. Those who designed and taught this Clinical Legal Practice course, including the Aboriginal Elder, do not know why it did not run again, again suggesting a divide between the full-time academic team and the external teachers. Funding was, as mentioned above, identified from the outset as a major threat. Given the need for students to take leave from work, there was concern that course numbers would remain low. When this was matched with extra travel costs, the subject began to be perceived as non-viable. Independent private funding sources from within the legal profession were available and offered to the university to support the course long-term, but there appeared to emerge a concern that the law school needed to remain independent, or that other law school subjects were not receiving such 'special' treatment, despite (or because of) its ability to attract external funding or interest from the profession.

VI. ANALYSIS OF BOTH CASE STUDIES

Analysis of the two case studies is illustrative in reimagining gateways to legal education. Students' response to both programs was overwhelmingly positive, with expressions of a real passion and enthusiasm for what they were being asked to do and the opportunity it provided them through the 'real life' setting. Both case studies demonstrated the great abilities of the students, when applied outside the tradition teaching assessment.

Anecdotally, the studies revealed improvement in students' study habits and motivation overall. Peer and student–teacher relationships were strengthened, with benefits to student 'wellness' from such personal support and through the new social networks formed in trusting and challenging environments.

Both programs provided participating students, who generally had extensive and creative law interests 'outside the mould', with learning tasks and challenges that were not otherwise open to them. Both programs placed an onus to 'give back' which resonated with all students, who reported in writing and anecdotally that their experiences required them to learn to be resilient and brave, as well as professionally competent.

There was a real willingness among the profession to support the teaching of the law by active practical professional input to complement and enrich the academic program.

Both programs were reported by students to be considerably more challenging than standard lecture-format subjects. However, due to students' financial and time pressures, a lower prioritisation seemed to be forced upon what was perceived as an 'out of the box' educational opportunity. Thus, a program outside the 'normal' lecture and tutorial program appeared to potentially become conflictual for the student.

Clearly non-traditional educators, Aboriginal Elder or student, offered real newness which created change and valuable new opportunities in a legal education. These teachers and their teaching methods were worthy of respect and time, despite their great difference from conventional law teaching.

Learning opportunities that stretched the power and tremendous energy of law students were not only exhilarating for them, but yielded strong outputs, with students reporting that they were taking their studies far more seriously following these innovative experiences.

However, both cases demonstrated that innovation in legal education systems is difficult. The resources involved can exceed those available to a 'start up', with difficulties in consolidating the program and capitalising on its full benefits and returns.

There appeared to be external factors that made it difficult to maintain support or sustain the programs, even among those actively supporting them. Among students, a culture that is

aspirational to life in a large law firm or clearly directed to perceived employment opportunities, can see alternative law teaching as non-normative and potentially irrelevant to serious career advancement, fitting it into the hobby or lifestyle category rather than considering it core legal education.

Universities are complex hierarchical institutions within which law schools must fit. Well-established, hierarchical organisations are well known to be less able to respond to innovation or entrepreneurial opportunity.[33] Within business, for example, 'start up's have been found to be better located within a separate standalone flexible entity or within an incubator. Institutional expectations and necessary procedures can stifle or misinterpret innovation. An active champion for the innovation among the full-time academic staff of a law school appears essential, even where the program enjoys – as did both these case studies – strong pro-active support from the Dean or Head of School, confirming Giddings' comment that CLP sustainability requires both 'pedagogical and political'.[34]

VII. SYNTHESIS

Leaders in both programs were persons with no formal legal qualifications – a law student and an Aboriginal Elder. However, law school programs that encourage students to 'jump off the rat race' for a short time, 'take time out' and mandate engagement with alternative learning opportunities appear to generate life-long benefits, equipping those students for a courageous professional life that will beneficially change law and society.

There is a need for respect to those undertaking such educational initiatives. Like any start-up, the initiative will require support and persistence. While embedding notions of alternative, experiential teaching approaches can lead to profound and transformative student benefit, and thereby contribute to a resilient, strong Australian legal system, recognition and reward for such programs is warranted – along with acknowledgement of the greater degree of difficulty they entail.

VIII. CONCLUSIONS

These two law teaching innovations were led by a student and an Indigenous 'client' respectively. Outcomes demonstrated the power of student energy when placed proximate to injustice and reiterated the powerful and unique 'window' available to law students to do 'real' good.

Such re-imagining of the legal knowledge hierarchy can lead to creative new approaches that can turn students into vital conduits of hope for the '*man coming from the country begging admittance to the law'*.[35]

33 Clayton M Christensen and Joseph I Bower, 'Customer Power, Strategic Investment, and the Failure of Leading Firms' (1996) 17(3) *Strategic Management Journal* 197; F Delmar and S Shane, 'Legitimatising first: organization activities and the survival of new ventures' (2004) 19 *Journal of Business Venturing* 385; Leonie M Kelleher, 'Entrepreneurial Research-Lessons Learned from Scott Shane's Intensive PhD Seminar in Entrepreneurship' (Paper delivered to *6th Australian Graduate School of Entrepreneurship Annual Conference*, Adelaide, February 2009); Joseph A Schumpeter, *Capitalism, Socialism and Democracy* (6th ed, Routledge 2006 [1942]).

34 Giddings, above n 4, 24.

35 Kafka, above n 1.