The role of the law school in providing pro bono services to communities in need – institutional imperative or educational strategy?

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The role of the academy in providing service to the community has undergone rapid, often controversial, development in the last 30 years. With increasing pressure on tertiary institutions to demonstrate relevance beyond teaching and research, and with increasing focus on the value of community engagement, it is an opportune time to consider some of the arguments for and against forms of direct community engagement in non traditional areas. The perceived need for the provision of pro bono legal services by legal professionals has resulted in focus on the legal academy as a possible source of legal services for disadvantaged and disenfranchised communities. This paper examines the philosophical and pedagogical issues that underline debate in this area, and concludes that articulated focus on service delivery to disadvantaged communities is an imperative in educating the lawyers of the future.

Keywords: Scholarship of community engagement, pro bono work and legal education, modelling of professional values in legal education

Introduction

The involvement of law schools in issues of pressing social, juridical, and political importance is not a novel concept – since the 1970's law schools in the US, Australia, and the UK have actively engaged in the public arena through scholarly discussion, public commentary, and active intervention in human rights and justice access issues. Such engagement traditionally stems from the educative and legal research role of the legal academy in pursuit of the refinement and evaluation of legal principle and doctrine, and is an obvious and desirable outcome of the teaching and evaluation of the operation of law.

The last 40 years have seen a gradual shift in the focus of law schools from engagement with topical, often controversial, legal rights causes[1], to a more focussed engagement with communities on day to day legal issues that may have less impact on the broader aims of legal research and scholarship.

At a time when there is more pressure than ever on law schools to demonstrate professional and community relevance in education, in research, and in leadership in the

community, there is a valuable opportunity to reflect on the role of the academy within the broader community, and to consider the extent to which traditional academic and scholarly goals can be achieved through such engagement.

One way in which law schools have increasingly involved themselves with the community is through the provision of legal services to persons with unmet legal need – most commonly, communities and individuals experiencing social, economic or legal disadvantage, and unable to access legal services to address this deprivation.

Clinical law programs in which law students, under the direction of law academics or legal practitioners, work in legal services to offer legal advice and assistance to the disadvantaged, have proliferated over the last 30 years, with most US law schools, the majority of Australian Law Schools[2], and a small but increasing number of UK law schools[3], offering clinical programs[4]. Programs take a variety of forms, including direct lawyer client legal advice and representation[5], community education and empowerment initiatives[6], or focussing on particular areas of public interest[7].

Such programs, which originally provided a link between the urgent need for legal services in disenfranchised communities, and the opportunity to provide valuable educational experiences to law students, have now become an accepted part of the legal services landscape.

Academic clinicians, while acknowledging the valuable community contribution, generally discuss and define such services in terms of the pedagogical value in providing students with an authentic environment in which to practice, evaluate, and critique the legal theory and doctrine encountered in classroom studies.

However more recently another element in the evaluation of clinical programs has arisen, focussing on the extent to which law schools can or should participate in the provision of pro bono legal services *per se*, for more than the traditional educational purposes.

The role of the law school – ivory tower or working at the coal face?

The debate surrounding the involvement of law schools in community legal work can be broadly summarised as follows.

Law schools are institutions of higher learning, designed to engage in dispassionate and objective pursuit of understanding of legal principles. In his article *The Justice Mission of American Law Schools*[8], Barnhizer (1992) suggests that the traditional view of most law schools would deny any obligation to advance justice[9], but that their function rather is to engage in intellectual analysis and critique of theories of law without reference to their practical impact on the community. He cites founding legal scholar, Christopher Langdell, who eschewed the study of the practice of law as too practical, applied, and vocational, which belief is reflected in the concept that active engagement "corrupts the objectivity and intellectual dispassion promoted by "passive withdrawal" [of the academy].[10] Indeed, those who expound this view might well argue that the contribution of knowledgeable, well educated lawyers ready to enter the legal profession, is a sufficient contribution to the community.

This view however begs the question: what is it that ensures a knowledgeable lawyer ready to enter the legal profession? Is it sufficient to have an intellectual "knowledge" of the law, disconnected to its practical application? Is this even possible? Is there more to "knowledge of the law" than knowledge of and capacity to analyse legal information and content?

Barnhizer contrasts the traditional view with that of scholars who accept that theory, applied thought, and *action* should be integrated in modern law school education, and goes on to suggest that the traditional view of the legal academy has shifted, with an influx of a diversity of scholars (and students) in the last three decades, with the result that radically different political and intellectual agendas now drive the direction of law schools.[11] Barnhizer concludes with the suggestion that law schools have an obligation to act in pursuit of justice goals, and raises the question, "what can law faculty, law schools, lawyers judges and legislators do, that helps American society address the awesome challenge it faces?"[12] The same question is obviously appropriate for Australasian law schools.

Writing in the early 1990's, Barnhizer's observations are dated to the extent that now, most if not all law schools accept that a degree of practical engagement is integral to an effective legal education. However this engagement is by no means achieved by the involvement of all students in clinical or practice environments. Rather, the focus of learning at law schools has expanded to include a degree of simulation of pre packaged practical experiences, and an element of evaluation of the operation of justice in society, as part of normal undergraduate studies. While there have been significant advances in the way that law is taught, with an increased emphasis on the practical and contextual operation of the law, there has been little advance in pursuing the underlying question posed by Barnhizer.

The primary law school justification for clinical programs to assist the disadvantaged and disenfranchised is the educational benefits for students, enabling the development of legal skills in a real, although supervised, environment. Involving students in the day to day delivery of legal services to people in great need not only enables students to apply and evaluate the theoretical law studied, but also opens the students' minds to issues of social justice and justice access. Thus the engagement has a threefold value: deeper critical understanding of the law; increased sensitisation to the justice access issues that shape a just society; and practical legal skills.

However there is no doubt that those who develop clinical programs are also aware of the enormous impact such programs have in meeting unmet legal needs. Thus, while educational benefit has been the priority for institutions whose primary goal is to educate, the capacity to convey benefit to others out of that educational experience facilitates another important goal – enhancing justice access in the community.

On a practical level there is inevitable tension between these two goals. With limited funding and ever more stringent reporting requirements, law schools are of necessity focussed on delivering the core goals of educating students in the law. The provision of legal services by law schools has not been considered a core goal, and as an expensive process must generally be justified by reference to the educational benefits to its participants. The experience of most clinical programs is that funding is sorely limited, services are provided on a shoestring, and the recognition of the work done in the

clinical programs is often not recognised in the same way as other forms of research and teaching are acknowledged within the academy.

The idea of students working at the coal face providing needed services to the community would come as no surprise to educators in some other professions[13], where the clinical dimension of education in a professional discipline has long been recognised as an imperative. In contrast to these other professional disciplines where clinical experience, usually in public hospitals, schools, and in the provision of some social services, is a requisite aspect of the education of the student professional, there has been a separation of the teaching of law as an intellectual discipline, from training in the practice of the law. Professional placement of law students has traditionally occurred after completion of their degree. In the absence of a state based structure of legal services, most post graduate experiential training of lawyers is provided by the private legal profession, and the service provided will primarily be to private, fee paying clients[14]. This contrasts markedly with these other professions where widespread state services facilitate extensive training of professionals in the provision of services to the community. Thus, whereas many graduates in professions such as health and teaching will be involved in services to the community as part of their training, very few law graduates are likely to have a similar exposure.

A Positive Pro Bono Obligation?

The suggestion of a positive obligation on law schools to engage in the betterment of justice access within the community by the imposition of a pro bono requirement adds an important element to the characterisation of the law school, and focuses the question of the law school's relationship with the community.

It is now accepted without question that the legal profession has an obligation to provide legal services to those who are unable to afford them. Indeed, it is suggested that this obligation is central to the maintenance of our social order and democratic values[15]. This expectation of pro bono contribution on the practicing profession has not traditionally been seen as extending to the law school, no doubt because of the very separation that scholars such as Langdell identified as essential for the appropriate degree of independence and objectivity in the intellectual field of law studies[16].

Indeed, some commentators go so far as to blame law schools for the shift away from pro bono work in the legal profession[17] in their failure to educate students in the professional values that underlie the operation and understanding of law. In fact, engagement by legal practices in pro bono work is also limited. Studies of unmet legal need in the US indicate that only about one fifth of the legal needs of the poor are met by existing legal services[18]. There are no equivalent studies in the Australasian context, no doubt because of the difficulty of obtaining relevant statistical information, but all available evidence points to a similar level of unmet legal need[19]. Blame for this state of affairs has been firmly placed at the feet of the legal profession. Pro bono programs are critical in meeting the needs of the poor and disadvantaged[20], but there simply are not enough of them.

As the pressure on the legal profession to provide better and more accessible pro bono service has mounted, the debate has spilled over to inquire what role law schools should have in relation to pro bono legal work.

Professional values and legal education: does knowledge of "Law" have meaning without an appreciation of professional values?

If law schools are seen as having a critical role in educating future lawyers to value and act upon their pro bono obligation, the parameters of discussion must shift from the value to some students of understanding theory in its social context, to the importance of future lawyers contributing to justice access as a key value of the legal profession.

There are two elements to this question. The first focuses on the influential role of the legal education experience in shaping future lawyers – lawyers with a commitment to pro bono legal service as an essential value of the legal profession. Many commentators argue that the law school should model and even mandate involvement in pro bono programs as a means of producing lawyers who will carry that commitment on in their professional lives[21], and in the same vein, others blame the lack of coordinated pro bono opportunities in turning students away from a commitment to public service[22].

This perspective characterises legal education as a process of educating law graduates who have, along with appropriate familiarity with required legal "knowledge" and concepts, also developed the cultural and professional values appropriate to the understanding and practice of the law.

Although there are surely academics who resist the proposition that they are training future legal practitioners, or that teaching values has anything to do with legal education, it is increasingly accepted in Australia that this should be a central focus of the law school, and the values of the profession, which includes the availability of justice in society, forms an important aspect of a legal education[23].

There is also extensive discussion of the importance and value of such a shift, exemplified in a recent extensive and influential report on legal education from the United States, *Educating Lawyers: Preparation for the Profession of Law* ("the Carnegie Report")[24].

The Carnegie Report proposes the development of professional values as a central aspect of legal education, not as an aspirational notion but as a central core of the appreciation and application of legal understanding that a law graduate should obtain at law school. However, proposals relating to professionalism should not be understood in the narrow sense of merely applied skills in an anti intellectual sense, simply suggesting more emphasis on "practical teaching", or that law schools should become trade schools. Rather the proposals are that a fundamental ethical dimension, the professional values of the law, be incorporated into all aspects of the learning and teaching of law. The proposal is that mere "knowledge" of the law is not enough for a good law graduate; nor is knowledge plus skilful performance sufficient for adequate practice or understanding of the application of the law. A real understanding of the law must encompass an ethical dimension, which is the minimum standard of the law graduate.

A central proposal of the Carnegie Report, well grounded in educational theory, is that for effective learning, the student must be an actor, engaged in active, not merely observational, learning. Professional values (encompassing a transcendence of self beyond technical excellence to include a wider responsibility in the community, and a capacity to make ethical judgments with respect and insight) must be embedded in all aspects of the law addressed in law school curricula. Failure to do so models lack of

professionalism: legal academics (like all academics) have an influence on their students, and if the professional values which inform, and in which both an understanding and an application of the law are embedded, are separated from law school curricular analyses of the law, this message is clearly passed on to students.

A role for the academy?

The second aspect of this question arises at this point. Is it the role of the academy or of the profession to take on responsibility for the inculcation of professional values?

The traditional argument is that this is essentially the role of the profession, but increasingly both practitioners and academics see it as a shared role, suggesting that a law graduate does not have an adequate understanding of law without critical appreciation of professional values. The "learning" of the law that commences in law schools is just the beginning of the life long learning of the law – including the appreciation and application of professional values - through practice (in whatever form) as a lawyer. The debate on the importance of instilling professional values from the commencement of law studies is led in Australia by leading legal academics and commentators[25]. Similar discussion occurs at various levels in the US. A foremost commentator on legal ethics, Deborah Rhode (2001-2), argues that legal academics must see coverage of professional values (not just the exposition of ethics rules) as their responsibility, and suggests that academics have an important modelling role for future professionals[26].

The Carnegie Report draws a close parallel between medical and legal education in respect of professional values: a medical student learns to take responsibility for their actions and judgments through real (supervised) patient care. As a consequence, in the US, much debate has centred on the question of mandating pro bono legal work for law students during their law degrees.

The US Model Rules of Professional Conduct articulate the obligation on practicing lawyers to engage in public interest legal service[27], but mandatory pro bono work is not required by the American Bar Association. The Model Rules of Professional Conduct issued by the ABA recommend but do not requiring practitioners to aspire to 50 hours of pro bono work per annum[28]. Few lawyers manage to achieve this goal[29]. Given the resistance to mandating pro bono work amongst the profession[30], it is not surprising that the ABA has not done so in relation to legal education. Nonetheless, in 1996 the ABA revised National Law School accreditation standards to require law schools to encourage and facilitate pro bono contribution by law students[31].

There appears to have been ready acceptance of the value of contributing to legal services by law schools in the USA, where an increasing number of law schools require a nominated amount of pro bono work by law students in order to complete law studies[32]. Others do not mandate pro bono work, but 90% of law schools have some sort of pro bono program[33].

The Carnegie Report acknowledges that embedding professional values through clinical law courses, which combine legal doctrine and analysis with an opportunity to engage in real (supervised) legal practice, and an exploration and assumption of the identity, values and disposition of the legal profession,[34] make clinical law programs peculiarly

appropriate as central carriers for the development of professional values within the law curriculum.

In Australia there is no formal requirement (aspirational or otherwise) for practitioners to engage in pro bono work, so it is not surprising that there has as yet been little attention paid to the concept of pro bono in law schools.

An obligation on Law Schools?

These considerations further raise a broader and more challenging proposition: do law schools as legal institutions, comprising law students and legal academics, have an institutional obligation to participate in addressing unmet legal need in a practical way?

Many Australian law schools already have a modest commitment in the form of clinical legal education programs, or legal clinics, engaging some students and staff (generally a limited number) in the delivery of legal assistance at a range of levels to those unable to otherwise access it. This contribution is not solely to the poor and disadvantaged, but may extend to representation in test cases and other litigation that would otherwise be beyond the reach of community groups or individuals[35]. These programs make a significant contribution in their communities. However, the value of these programs is generally couched in terms of the educational value to the students who elect to participate in the programs, and for the most part, the programs are elective not compulsory.

Limited student access to such programs means that they do not meet any perceived need to inculcate the public service values of the legal profession in all future practitioners. It is this deficiency that has led to proposals in the US for mandatory pro bono obligations on all law students[36].

An individual obligation on law students to achieve a given amount of pro bono work is consistent with legal professional values requiring each member to provide an altruistic service contribution to the community. Although the legal profession does not always achieve its pro bono obligation on an individual level, an increasing number of large law firms make a systematic and organised pro bono contribution without requiring every lawyer to participate in such service delivery. Thus law firms in Australia facilitate the involvement of law clerks and lawyers in legal clinics for the homeless through organised Public Interest Law initiatives in most States in Australia; firms make a commitment to particular communities and represent them in significant cases for no charge (for example, Aboriginal land claims); and firms outsource lawyers to community organisations at no charge. Such institutional commitment has proven to be one effective way for the legal profession to organise and maintain pro bono legal services[37].

Some commentators argue that law schools also have an ethical obligation to provide legal services. In some cases this view is couched in terms of an obligation to overcome the apathy of the legal profession and provide leadership to it[38]; while others express it in a more pragmatic sense, that law schools have the capacity, due to the sheer numbers of staff and students, to make a difference in the delivery of legal services[39]. Others suggest that law schools should have a justice mission encompassing research, teaching *and service* that looks to the development of their discipline and the betterment of society as its driving motivation[40]. The starting point of the pro bono

obligation is that the professional has a monopoly on access to the law and stands as a gatekeeper. The professional has knowledge and access not available to others, and the nature of the professional's work is that discretion, initiative and judgment in the implementation of that knowledge is in their hands. While law schools and legal academics do not act as legal practitioners in their academic role, nevertheless the argument of professional obligation seems to equally apply to them.

This paper suggests that the role of the law school must encompass the development of professional values in its graduates. It also proposes that the monopolistic knowledge within the academy, the professionalism of legal academics, and educational theory (as well as commonsense) mandates that effective teaching must include the modelling of such values. Both these considerations support the conclusion that such an obligation must inhere in law schools.

In addition, there is the relationship of the university (in which law schools are situated) to the community. In Australian and New Zealand, most universities are public, not private, institutions. They are, on a broad basis, publicly funded. This in itself places a special role on universities to provide leadership and commitment to the community of which they form a part.

A double engagement?

It is perhaps time to acknowledge that there is an intrinsic value in legal service provided by law students in the course of legal education that complements and supports both the educational benefits for students and the cultural benefits for the future profession. The changing role of law schools, the increased focus on the capacity of law schools to equip students with the skills and values to embark on a legal career, and the demand that publicly funded educational institutions demonstrate relevance in more than a narrow intellectual sense, together suggest that law schools and legal academics, and perhaps law students too, have a distinct role in providing leadership in the quest for broader access to justice in the community.

By direct community engagement,[41] the law school models professional values fundamental to both an understanding and an application of the law. There is a clear link between the role of law schools in educating future legal professionals, and their graduates' future role in community engagement.

These professional values include pro bono service, justice access, and the nature of the relationship between individuals and the law and its practitioners, including the respect and ethical judgments that lawyers make daily in their advice on and application of the law for their clients. These values are modelled to both law students (through the academics conducting the program), and the community (by the students, through the provision of the service). Such a program enables students to learn and apply professional values fundamental to the law, and at the same time to provide a service directly to the community.

Conclusion

The law is an instrument of justice in the community. It cannot be understood without this dimension, so in this sense the professional values of the law, including service to the community, are integral to the learning and teaching of the law, and to the engagement of the academy with the community.

Clinical law programs can engage with the community and address pressing social issues at two levels: the emphatic development of professional values in lawyers of the future, an essential aspect of their engagement with the community of the future; and the addressing of immediate specific community issues of justice access. Clinicians from other higher education disciplines where clinical placements are more routinely used have much to offer law schools in the development of sophisticated approaches to managing students in clinics, and the achievement of balance between client service and education[42].

The Carnegie Report summary concludes thus:

> "the calling of legal educators is a high one – to prepare future professionals with enough understanding, skill and judgment to support the vast and complicated system of law needed to sustain the United States as a free society worthy of its citizens' loyalty. That is, to uphold the vital values of freedom with equity and to extend those values into situations as yet unknown but continuous with the best aspirations of our past".

The same must be said of legal educators in Australasia.

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[1] In the USA, in particular, many early CLE programs focussed on the civil rights of African Americans, and in areas such as housing. There are numerous examples too of significant criminal cases being conducted by law students under the guidance of academic practitioners.

[2] See Kingsford Legal Centre, *Clinical Legal Education Guide (2007 - 2008),* University of New South Wales, 2007.

[3] See Nicolson, D (September 2007), Clinical Legal Education and Extra Curricular Law Clinics *Directions, UK Centre for Legal Education*.

[4] Most law clinics in Australia and many in the US and the UK adopt this approach. Programs are not of course limited to the stated countries – initiatives such as the Street Law Program, initiated in South Africa but now extending to communities as far away as Russia, demonstrate a community specific response to unmet legal need: see McQuoid-Mason, D. Teaching Street Law As Part Of The Curriculum In South Africa, *Association Of Law Teachers, Bulletin Number 107, 2005-2006,* at http://www.lawteacher.ac.uk/bulletin/107e.html (retrieved 28 April 2008)

[5] See n 2 above

[6] The Street Law program in South Africa focuses on taking the legal expertise of law students into the community in particular in the provision of legal education: See McQuoid-Mason, D, n 4 above

[7] Another form of such programs includes the student led initiative known as Pro Bono Students Canada, a national network of law schools and community organisations that match law students with public interest and other organisations for the provision of (supervised) legal work on a pro bono basis, extending from the provision of legal research and legal education, to assisting litigants in person: see De Brennan, S, Rethinking Pro Bono: Students Lending a Legal Hand, *2005 15 Legal Education Review 25*. In this article De Brennan sets out a brief history of the development and operation of pro bono legal work in Australia, with particular reference to clinical work by law schools.

[8] Barnhizer, D (1992) The Justice Mission Of American Law Schools *(1992) 40 Cleveland St Law Review 285*

[9] Barnhizer, D above n 8, 286

[10] Barnhizer, D above n 8, 327

[11] Barnhizer, D above n 8, 304.

[12] Barnhizer, D above n 8, 324

[13] Such as teaching, social work, medicine, dentistry, psychology, and other health services.

[14] There are government funded legal services, such as the South Australian Legal Services Commission, but these services provide only a small number of graduates with placement.

[15] Rose, H (1992) Law Schools Should Be About Justice Too *(1992) 40 Cleveland St Law Review 443* at 449

[16] See above, text at n 10.

[17] Chaifetz, J (1992) The Value Of Public Service: A Model For Instilling A Pro Bono Ethic In Law School *(1992-3) 45 Stan L Rev 1695*

[18] Rhode, D, (2001-2) The Profession And The Public Interest *54 Stan L Rev 1501*; Blaze, D (2005 – 6) Towards Access To Justice: Rethinking The Role Of Law Schools *2 Tenn J L Pol'y 67*. The precise amount of unmet legal need is not known, but it is generally accepted that there is a very significant failure to address legal need amongst poor and disadvantaged. See Davis, J (2007-7) Social Justice and Legal Education: Mandatory Pro Bono Legal Services *1 Charleston L Rev 85 2006-2007,* reporting a 2000 survey of the Legal Services Commission in the USA.

[19] See the comprehensive discussion of legal aid in Australia by clinician Noone, M The State of Legal Aid *29 (1) Federal Law Review 2001, 37 – 56*; and more recently, press release by the National Pro Bono Resource Centre commenting on a one off contribution of $22 million by the Federal Government to address areas of outstanding need. National Pro Bono Resource Centre, 1 May 2008, at http://www.nationalprobono.org.au/news_detail.asp?id=31 (retrieved 12 May 2008). See also submissions to the Senate Legal and Constitutional Committee Report into Justice Access and Legal Aid (tabled in Parliament 15 June 2004); Senate Journals p 3441, 2004,, particularly the submission from the peak body, Australian Council of Social Services available at http://www.acoss.org.au/upload/publications/papers/info%20353_legal%20aid.pdf (retrieved 14 May 2008).

[20] Rhode, D, (1998-9) Cultures of Commitment: Pro Bono For Lawyers and Law Students, *67 Fordham L Rev 2415 1998-1999, 2416.* In Australia, a survey of Community Legal Centres undertaken by the National Pro Bono Resource Centre indicated that without existing pro bono support from the legal profession key services, clinical programs and complex case work could not be managed: see Press Release of National Pro Bono Resource Centre, 6 September 2007, at http://www.nationalprobono.org.au/news_detail.asp?id=13 (retrieved 18 May 2008). This view is not universal. Reporting on a 2006-7 survey of law graduates, Granfield argues that there is no empirical evidence of a link between pro bono work at law school and later commitment to public service. Granfield, R (2006-7), Institutionalising Public Service In Law School: Results On The Impact Of Mandatory Pro Bono Programs *54 Buff L Rev 1355 2006-2007*,1380, 1405, 1411.

[21] Rose, H n 15 at p 445 remarks upon the important influence of the law school on students' moral development; as does Rhode D, n 20 at 2433;

[22] Chaifetz, J (1992-3) The Value Of Public Service: A Model For Instilling A Pro Bono Ethic In Law School, *45 Stan L Rev 1695 1992-1993* at page 1701, argues that law schools focus primarily on commercial law and clients, and thus shift student interests and expectations away from pro bono work; Hafen, J (1992) Public Interest Law and Legal Education: What Role Should Law Schools Play In Meeting The Legal Needs Crisis *2 B U Pub Int L J 7, 1992*, at page 11, suggests that whilst 35% of incoming law students profess interest in helping the poor, only 3% of outgoing students retain this desire.

[23] See for example: *Noone M.A. & Dickson J. (2001),* Teaching towards a new professionalism: Challenging law students to become ethical lawyers, *4 (2) Legal Ethics;* and Goldsmith, A, Heroes or Technicians: The Moral Capacities of Tomorrow's Lawyers, *J of Professional Legal Ed, 14 (1), June 1996, pp 1-23*
Future facilitation of academic discussion is being addressed by current projects such as an Australian Learning and Teaching Council funded Discipline Based Initiative in Law, which will provide data to enable a clearer view of the extent to which, and the means by which, professional values are embedded in law teaching in Australian law schools.

[24] Sullivan, William M, Colby, Anne, Welch Wegner, Judith, Bond, Lloyd and Shulman, Lee S (2007), *Educating Lawyers: Preparation for the Profession of Law*. The Carnegie Foundation for the Advancement of Teaching, 2007 ("the Carnegie Report"). One aspect of the influence of this Report is its source in the Carnegie Foundation: it forms part of an ongoing and iterative series examining professional education in nursing, medical, and engineering, commencing early in the twentieth century, and emerges not from either the legal profession or the legal academy, but considers legal education and the role of law schools in the light of both modern educational and empirical research

[25] Prominent Australian commentators to this effect include Ysiah Ross, Andrew Goldsmith, Stephen Parker, Neill Rees and David Weisbrot. See Rees, N, How Should Law Schools Serve Their Communities? *5 UWSLR 111*, 119

[26] Rhode, D (2001-2), *The Profession and the Public Interest, 54 Stanford L Rev 1501 2001–2001,* at 1519-1520.

[27] Hafen, J, above n 21, at pg 10

[28] American Bar Association, Model Code of Professional Conduct, 1993, cl 6.1.

[29] Davis, J above n 18, at 87

[30] The reasons for which include the inconsistency of mandating contribution that by its definition should be voluntarily, and the inconsistency of mandatory contribution with Constitutional rights – see Chemerinsky, E (2003-4), A Pro Bono Requirement For Faculty Members *37 Loy A L Review 1235 2003 – 2004*, at p 1236.

[31] Granfield, R above n 20, at 1356

[32] Granfield, R above n 20, lists the law schools with such requirements as at 2006, p 1371.

[33] Granfield, R above n 20, 1356. The nature of pro bono opportunities varies. In some schools voluntary involvement in clinical course work for degree credit is sufficient; in others a demonstrated number of hours of voluntary work is required.

[34] The Carnegie Report, above n 24, Recommendation 1

[35] For example, the Innocence Project operated by Griffith University aims to assist investigation of claims of wrongful conviction – see *Kingsford Legal Centre Clinical Legal Education Guide*, above n 4, p 15: and the South African Street Law Project, which has an educational focus- see McQuoid-Mason, D, above n 2.

[36] New Mexico School of Law is one of several US Law Schools which have mandated a clinical law program in response to the proposals in the Carnegie Report.

[37] The National Pro Bono Resource Centre provides a comprehensive history of the significant involvement of large Australian law firms in a range of structured pro bono activies, from the mid 1960's to the present: see National Pro Bono Resource Centre, History of Pro Bono, http://www.nationalprobono.org.au/page.asp?from=2&id=167 (retrieved 18 May 2008).

[38] Davis, J above n 18, 91

[39] Blaze, D above n 18, 77

[40] Barnhizer, D above n 8, 324

[41] Here discussed in the context of clinical law programs, but not limited to that context.

[42] See discussion for example in Barton K, Cunningham C, Jones T, and Maharg P, Valuing what clients think: Standardized clients and the assessment of communicative competence, *Clinical Law Review, v 13 No 1 2006, pp 1-65*