

## REFLECTIONS ON THE ROLE OF INNOCENCE ORGANISATIONS IN AUSTRALIA

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Wrongful conviction is an awful reality within criminal justice systems across the globe. Innocence organisations now exist in a number of countries around the world, with the aim of assisting innocent but convicted people. Originating in the United States, innocence efforts have seen particular success in that country — as evidenced through the volume of exonerations that have occurred there. Some organisations are university-based and where so, have the additional component of student learning as an aspect of their operation. Through interactive case analysis and supervised review of wrongful conviction claims, students cultivate work-ready skills and gain a greater understanding of the criminal justice system and their potential role within it. Utilising the experience of the Griffith University Innocence Project over the past 14 years, this article reflects on the role of innocence organisations in Australia in the context of both the legal framework within which they operate and in respect to educational aspirations. While experience to date suggests that exonerations in Australia will be rare, former student reflections indicate that the learning platform provided by a social-justice clinic such as this, may nevertheless have an on-going meaningful impact.

### I INTRODUCTION

More than 1,500 exonerations have occurred in the United States.<sup>1</sup> This correlates to over 13,000 years spent in prison by innocent

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<sup>1</sup> For eg, there are 1,623 exonerations listed in the United States alone. See The National Registry of Exonerations (United States), (15 July 2015) <<https://www.law.umich.edu/special/exoneration/Pages/learnmore.aspx>>.

individuals — and yet these numbers are considered the ‘tip of the ice-berg’.<sup>2</sup> Wrongful conviction is a veiled phenomenon in that it cannot be exactly measured.<sup>3</sup> In order to try and withdraw this veil, innocence organisations exist with the goal of investigating wrongful conviction claims — and where evidence of innocence comes to light, aim to correct such wrongful convictions.

University-based innocence network projects<sup>4</sup> (which provide one model within a broader range of individuals and organisations that aim to help wrongfully convicted people), originated in the United States in 1992.<sup>5</sup> Their blending of academic and discipline expertise through the combination of students, lawyers and academics, have had a formidable impact in that country in terms of exonerations and criminal justice reform.<sup>6</sup> An advantage of university-housed projects is the continually renewing stable of enthusiastic and idealistic students available each semester to serve as (supervised) case reviewers. At the same time, students are availed of a valuable hands-on learning platform within their legal degree.<sup>7</sup>

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<sup>2</sup> Samuel R Gross et al, ‘Exonerations in the United States 1989 through 2003’ (2005) 95(2) *Journal of Criminal Law and Criminology* 523; Clarence Ronald Huff, Ayre Rattner and Edward Sagarin, *Convicted But Innocent: Wrongful Conviction and Public Policy* (SAGE Publications, 1996).

<sup>3</sup> Samuel R Gross, ‘How Many False Convictions are There? How Many Exonerations are There?’ in C Ronald Huff and Martin Killias (eds), *Wrongful Convictions and Miscarriages of Justice: Causes and Remedies in North American and European Criminal Justice Systems* (Routledge, 2013) 45.

<sup>4</sup> This article is generally referring to those that fall within the ambit of the Innocence Network (an affiliation of organisations dedicated to assisting wrongfully convicted people). See Innocence Network, *Home Page* <<http://innocencenetwork.org/>>. Please note that there are also numerous other individuals and organisations operating throughout Australia and elsewhere that do not fall under the umbrella of the Innocence Network, and as such do not appear on this list, nor fall within the specific focus of this article.

<sup>5</sup> Innocence Project, *Home Page* <<http://www.innocenceproject.org/index.php>>.

<sup>6</sup> Ibid.

<sup>7</sup> Articles on the pedagogical attributes of innocence project clinics, include: Keith A Findley, ‘The Pedagogy of Innocence: Reflection on the Role of Innocence Projects in Clinical Legal Education’ (2006) 13(1) *Clinical Law Review* 231; Jan Stiglitz, Justin Brooks and Tara Shulman, ‘The Hurricane Meets the Paper Chase: Innocence Projects New Emerging Role in Clinical Legal Education’ (2002) 38(2) *California Western Law Review* 413; Carole McCartney, ‘Liberating Legal Education? Innocence Projects in the US and

Drawing on my experience as the Convenor and Director of the Griffith University Innocence organisation over the past 14 years, this article considers the role of innocence projects in Australia from both a service and educational perspective. (Reform based activities also generally form the third arm of project activity, however this aspect is not covered in depth within this paper). This article first presents a brief introduction to innocence organisations, outlining their origins overseas and in Australia. It then considers some of the challenges to the effective investigation and correction of wrongful convictions within Australia's legal framework and in doing so, touches upon areas ripe for reform. The final section focuses on the student-learning component within university-housed projects. Reflections from former Griffith University Innocence Project students are incorporated within this section to provide insights into the potential personal and professional impact of this social-justice clinic.

## II INNOCENCE ORGANISATIONS

Marion Coakley was a 28-year-old man (with second grade reading level and an IQ in the seventies) who was convicted of rape, despite a solid alibi that he was attending a bible studies meeting at the time the rape occurred.<sup>8</sup> When his case came to the attention of Barry Scheck and Peter Neufeld, they gathered the assistance of law students and investigated the matter, uncovering a variety of flaws in the police investigation and securing new scientific evidence that ultimately demonstrated Coakley's innocence. This was the seed from which the Innocence Project (established at the Benjamin N Cardozo Law School at Yeshiva University in New York) was subsequently created in 1992.

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Australia' (2006) 3 *Web Journal of Current Legal Issues: Legal Education Special Issue*.

<sup>8</sup> Barry Scheck, Peter Neufeld and Jim Dwyer, *Actual Innocence* (Signet, 2001) 24.

Since that time, innocence organisations have expanded throughout the United States and into a number of countries across the globe including Argentina, Australia, Canada, France, Ireland, Israel, Italy, The Netherlands, New Zealand and Taiwan, with 69 innocence organisations currently operating under the umbrella of the Innocence Network.<sup>9</sup> In Australia, the first officially established projects commenced operation in 2001 at the University of Technology Law School (UTS) in Sydney, NSW and the Griffith University Law School in Queensland,<sup>10</sup> with subsequent innocence organisations established in Melbourne and Western Australia.<sup>11</sup> While the initial projects in Australia were fortunate to draw heavily on the already established models in the United States, the U.S. model could not be wholly adopted here due to the different legal and law school environments in which they exist.

To date, Australian projects have not replicated the success seen in the United States in terms of attaining exonerations. Differences between the United States and Australia are likely to impact on the number of exonerations that can comparatively be expected. For example, the prison population in the United States is approximately 1,574,700<sup>12</sup> while Australian prisons host approximately 33,791<sup>13</sup> in full-time custody. Sentencing options (such as the death penalty) and the length of prison terms is another marked difference. It is not unusual for convicted people in the United States to be sentenced to

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<sup>9</sup> For a list of innocence organisations world-wide that are operating under the umbrella of the Innocence Network see Innocence Network, *Innocence Network Member Organisations* <<http://innocencenetwork.org/members/>>.

<sup>10</sup> The Griffith University Innocence Project was initiated at the Griffith Law School in conjunction with Nyst Lawyers, based on the Gold Coast.

<sup>11</sup> For a current list of innocence projects operating under the Innocence Network in Australia, please refer to the Innocence Network website: Innocence Network, above n 4. Please note, other individuals and organisations including other university-based organisations may also undertake wrongful conviction work in Australia, though not under the Innocence Network umbrella.

<sup>12</sup> E Ann Carson, *Prisoners in 2013* (Bureau of Justice Statistics, 2014) <<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5109>>.

<sup>13</sup> Australian Bureau of Statistics, *4517.0 - Prisoners in Australia, 2014* (ABS, 2014) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>>.

significantly longer detention periods than in Australia.<sup>14</sup> 330 individuals have been exonerated with DNA evidence in the United States to date, with an average of 14 years being served prior to exoneration.<sup>15</sup> As wrongful conviction investigations can themselves take years to undertake, and because many prisoners in Australia are serving relatively shorter sentences, applicants may have served their time or be eligible for parole prior to investigations being concluded — which for some applicants may raise the difficult decision of applying for parole and admitting guilt to secure release from prison, or maintaining innocence and remaining incarcerated. Innocent but convicted people who maintain innocence risk spending longer in prison than those who are guilty.<sup>16</sup>

While prison terms in Australia may not be as lengthy as those in the United States, the road to exoneration can be just as harrowing and protracted, due in part to a lack of post-conviction measures for the identification and correction of wrongful convictions. John Button and Darryl Beamish for example, both of Western Australia, were separately wrongfully convicted for approximately 40 years each.<sup>17</sup> For Lindy and Michael Chamberlain, it took 30 years for their exonerations to be solidified through the Coroner's finding that a dingo had taken their baby girl and the death certificate of their daughter Azaria rectified accordingly.<sup>18</sup>

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<sup>14</sup> For a review of the specific cases and the sentences originally imposed see Innocence Project, *DNA Exonerations Nationwide* (2015) <[http://www.innocenceproject.org/Content/DNA\\_Exonerations\\_Nationwide.php](http://www.innocenceproject.org/Content/DNA_Exonerations_Nationwide.php)>.

<sup>15</sup> Ibid.

<sup>16</sup> For further discussion surrounding this issue see, eg, Gabe Tan, *The Dilemma of Maintaining Innocence* (2011) <<http://www.innocencenetwork.org.uk/wp-content/uploads/2011/11/Gabe-Tan-APL-PPMI-Report-2011.pdf>>; Michael Naughton, 'Does the NOMS Risk Assessment Bubble Need to Burst for Prisoners Who May be Innocence to Make Progress?' (2009) 48 *The Howard Journal of Criminal Justice* 357; Michael Naughton, 'Why the failure of the Prison Service and the Parole Board to Acknowledge Wrongful Imprisonment is Untenable' (2009) 44 *The Howard Journal of Criminal Justice* 1.

<sup>17</sup> *Beamish v The Queen* (2005) 62 WASCA; *Button v The Queen* (2002) 35 WASCA.

<sup>18</sup> See, eg, Malcolm Brown, 'Dingo baby ruling ends 32 years of torment for Lindy Chamberlain', *The Guardian*, 13 June 2012; Joanna Kyriakakis, *The Conversation, Lessons from the Chamberlain case: the human cost of wrongful*

### III THE LEGAL FRAMEWORK FOR INNOCENCE WORK IN AUSTRALIA

The different mechanisms that exist in the various countries around the world for the processing of post-appeal wrongful conviction claims, influence the type of work undertaken by the innocence organisations in those jurisdictions, as it is through those mechanisms that applications reviewed by the various groups proceed. For example, in England, Wales and Scotland, the Criminal Cases Review Commission (CCRC) operates as an independent government-funded body to review miscarriage of justice claims.<sup>19</sup> The CCRC has significant resources, investigative powers and the ability to refer matters to the appellate courts. However, university-based innocence organisations (with their more explicit dedication to the narrow ambit of ‘factual innocence’ claims) still have an important role to play in assisting wrongful conviction applicants.<sup>20</sup>

Canada offers another example: In 2002, updated pardon provisions were legislatively enacted alongside the creation of the Criminal Cases Review Group. The new provisions were designed to create more transparency in dealing with wrongful conviction applications and the Group was established to provide greater ‘arm’s length’ investigation into the miscarriage of justice claims.<sup>21</sup> This Group has not however, replaced innocence organisations that still actively operate to assist wrongful conviction claimants in Canada.

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*conviction* (2012) <<http://theconversation.com/lessons-from-the-chamberlain-case-the-human-cost-of-wrongful-conviction-7730>>.

<sup>19</sup> Criminal Cases Review Commission, *About the Criminal Cases Review Commission* <<http://www.justice.gov.uk/about/criminal-cases-review-commission>>.

<sup>20</sup> For further reading on relevant issues within this point see Michael Naughton, ‘Wrongful Convictions and Innocence Projects in the UK: Help, Hope and Education’ (2006) 3 *Web Journal of Current Legal Issues*; Lynne Weathered and Stephanie Roberts, ‘Assisting the Factually Innocent: The Contradictions and Compatibility of Innocence Projects and the Criminal Cases Review Commission’ (2008) 29(1) *Oxford Journal of Legal Studies* 43.

<sup>21</sup> Irwin Cotler, *Applications for Ministerial Review - Miscarriages of Justice* (2004) Department of Justice, Canada, 6 <<http://publications.gc.ca/collections/Collection/J1-3-2004E.pdf>>.

In Australia, restrictive appellate avenues and minimal post-appeal investigatory and discovery powers make the exposure and correction of wrongful convictions a resoundingly difficult task. A number of factors significantly hinder the ability for wrongful conviction claims to be fully considered, investigated and, where appropriate, corrected. These include: 1) the strict rules surrounding the admission of ‘fresh’ evidence; 2) the general restriction to one appeal in the Court of Appeal; 3) the disinclination of the High Court to hear new or fresh evidence; 4) the lack of investigative and discovery powers subsequent to an unsuccessful appeal; and 5) the reliance on the pardon petition procedure for the review and referral of wrongful conviction claims. These issues are briefly expanded upon below.

In most jurisdictions in Australia there is a restriction to one immediate appeal only following a trial, which occurs at the State level.<sup>22</sup> While the High Court of Australia may offer a subsequent appellate avenue for a small percentage of criminal cases, current judicial interpretation restricts the High Court from hearing fresh evidence so that even if fresh and compelling new evidence of innocence became available, it would be unable to take that into account.<sup>23</sup> This would inevitably be the case even where strong new evidence of innocence became available subsequent to the applicant’s exhaustion of their one appeal.<sup>24</sup>

While such limitations exist at the state and High Court levels, wrongful conviction applicants are still generally reliant on petitioning the executive government under the relevant pardon provisions for consideration of their claim and a decision as to whether to refer their matter back to the Court of Appeal. The current pardon provisions in Australia are akin to those that have been replaced in England and Canada. The new system in England has resulted in a threefold increase in the number of referrals to their

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<sup>22</sup> See *Grierson v R* (1938) 60 CLR 431; *R v Nudd* [2007] QCA 40.

<sup>23</sup> *Ratten v R* (1974) 131 CLR 510; *Re Sinanovic’s Application* (2001) HCA 40; *Mickelberg v The Queen* (2004) WASCA 145.

<sup>24</sup> *Re Sinanovic’s Application* (2001) HCA 40.

courts of appeal,<sup>25</sup> highlighting the impact that an independent and empowered body can have for wrongful conviction applicants.

In strictly limited circumstances, New South Wales offers an additional procedure for the consideration of claims through the courts, though this does not replace the need for an organisation such as the CCRC.<sup>26</sup> Both the Tasmanian and South Australian governments have recently acknowledged the significant criticism of the political positioning of pardon decisions,<sup>27</sup> and in 2013 South Australia introduced legislation enabling a second or subsequent appeal directly to the courts.<sup>28</sup> The Tasmanian Parliament has enacted similar legislation.<sup>29</sup> Such additional appellate avenues are welcome reforms in making direct court access more available to wrongful conviction applicants with fresh and compelling evidence to support their claim. However, despite these reforms, numerous challenges remain for wrongful conviction applicants who are attempting to uncover potentially exculpatory but ‘hidden’ evidence to support claims made under either these new avenues or the traditional pardon provisions. As noted by Law Council of Australia in regard to the pardon provisions:

...the entire burden, including the financial burden, of identifying, locating, obtaining and analysing further evidence rests entirely with the convicted person...He or she has no particular power or authority to

<sup>25</sup> Richard Nobles and David Schiff, ‘The Criminal Cases Review Commission: establishing a workable relationship’ (2005) *Criminal Law Review* 175.

<sup>26</sup> See *Crimes (Appeal and Review Act) 2001* (NSW) s 78; David Hamer, ‘Wrongful Convictions, Appeals, and the Finality Principle: The Need for a Criminal Cases Review Commission’ (2014) 37(1) *UNSW Law Journal* 270.

<sup>27</sup> See, eg, David Caruso and Nicholas Crawford, ‘The Executive Institution of Mercy in Australia: The Case and Model for Reform’ (2014) 37(1) *UNSW Law Journal* 312. See also Shadow Attorney-General, *Progress on right to appeal legislation welcomed*, Tasmanian Labor (2015) <<http://taslabor.com/progress-right-appeal-legislation-welcomed/>>; Attorney-General of Tasmania, *Right to Appeal legislation to be released for consultation in coming weeks*, Tasmanian Government (2015) <[http://www.premier.tas.gov.au/releases/right\\_to\\_appeal\\_legislation\\_to\\_be\\_released\\_for\\_consultation\\_in\\_coming\\_weeks](http://www.premier.tas.gov.au/releases/right_to_appeal_legislation_to_be_released_for_consultation_in_coming_weeks)>.

<sup>28</sup> See *Criminal Law Consolidation Act 1935* (SA) ss 353A(1)(3).

<sup>29</sup> See *Criminal Code Amendment (Second or Subsequent Appeal for Fresh and Compelling Evidence) Act 2015* (Tas). See the article by Bibi Sangha in this issue.



compel the production of information, interview witnesses or conduct scientific testing on relevant materials.<sup>30</sup>

Even with DNA-based wrongful conviction claims, significant obstacles to investigation and correction exist.<sup>31</sup> Access to information is the vital starting point of investigations into wrongful conviction claims. While a significant amount of material is likely to be available from the applicants themselves which will allow for a review of their matter (this will often include the trial transcript, committal transcript and brief of evidence amongst other things), these documents do not and cannot confirm the current existence or otherwise of evidence that could now be subjected to DNA innocence testing. As such, innocence organisations may work for years on a wrongful conviction application, with the goal of seeking the authority to undertake a DNA innocence test (ie. to provide a compelling argument to the relevant authority as to why DNA innocence testing should take place in this specific case) without knowing whether the evidence sought to be tested actually still exists, and where there may ultimately be no evidence to test. For wrongful conviction applicants who have undergone years of prolonged wrongful incarceration — which has subsequently led to a grain of hope that evidence exists upon which DNA testing could take place and their innocence proved — one can only imagine the devastation in being advised that the evidence no longer exists or has been destroyed.

Moreover, while DNA testing is often undertaken prior to the trial, such evidence is not infallible. There is potential for incorrect

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<sup>30</sup> Law Council of Australia, *Policy Statement on a Commonwealth Criminal Cases Review Commission* (2012), [9] <<http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-dated/20120421ApprovedLCAPolicyStatementonCthCriminalCasesReviewCommission.pdf>>.

<sup>31</sup> Currently DNA innocence testing regimes are only available in New South Wales and Queensland. See *Crimes (Appeal and Review) Act* (2001) (NSW) ss 96, 97; Department of Justice and Attorney-General, *Guidelines for applications to the Attorney-General to request post-conviction DNA testing* Queensland Government Justice Department, (2010) <[http://www.justice.qld.gov.au/\\_\\_data/assets/pdf\\_file/0008/58283/dna-guidelines-august2010.pdf](http://www.justice.qld.gov.au/__data/assets/pdf_file/0008/58283/dna-guidelines-august2010.pdf)>.

interpretation, cross-contamination and laboratory errors among other things. It is also possible that certain items collected from the crime scene may not have been DNA tested in the original investigation of the case but in the post-appeal review of the matter, be identified as items which could be probative of the identity of the perpetrator and therefore desirable for testing. As such, preservation of crime scene evidence, which contains biological material, is essential to the success of any DNA innocence testing legislative regime. Yet current laws for the most part, do not require the preservation of such evidence and as stated previously, few investigative avenues are open to wrongful conviction claimants despite the burden resting with them to uncover the evidence that a miscarriage of justice has occurred.

Former CCRC Commissioner, David Jessel, described the expansive investigatory powers given to the CCRC as the key ingredient in moving from a claim of innocence to proof of innocence.<sup>32</sup> Without such empowered organisations in Australia, many more wrongful convictions will remain unidentified and uncorrected and the activities of innocence organisations or others working on behalf of wrongful conviction applicants, hampered. Issues such as those raised above, have become part of the law reform agenda of those associated with the Project and students, via their proximity to the cases and the broader reform agenda, not only work on individual matters but become aware of and engaged with the wider legal, political and social context within which the Project operates.

#### IV STUDENT LEARNING AND REFLECTIONS

(Please note that this section of the article draws heavily on my experience as the academic associated with the Griffith University Innocence Project and the reflections of former students of the Project.)

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<sup>32</sup> David Jessel, 'Innocence or safety: Why the wrongly convicted are better served by safety', *The Guardian* (London, UK), 15 December 2009.

### A *Student Learning through Service Provision*

Established in 2001, the Griffith University Innocence Project was inspired by the operation of innocence projects in the United States. Its fundamental goal is assisting factually innocent but convicted people in Australia.<sup>33</sup> In line with this role, Project activity is distinctively geared toward the discovery of new evidence of innocence, as opposed to reviewing or considering legal arguments. The Project itself does not take on a legal relationship with applicants, nor does it do legal work.

Students offer a unique resource and combine to dedicate well over a thousand hours of work in reviewing files each semester, for their course credit. Lawyers associated with the Project all work pro-bono (and in doing so, are role-modelling to the students one way of giving back to society within a professional environment).<sup>34</sup> Students are aware that their review activities may have a significant impact on the life of a potentially innocent but convicted person. For many applicants, innocence organisations will offer the only possibility of a fresh investigation of their case and therefore the only avenue to potentially proving their innocence — and students are often excited at the prospect of uncovering a wrongful conviction and helping an innocent person attain their freedom. For these reasons, expectations in regard to both applicants and students alike need to be managed as to the probable outcome of the investigation. Prisoners are disempowered and claims of innocence by people in prison, no matter how true, are notoriously difficult if not impossible to prove.

Because of this, it is also important that exonerations are not considered the only benchmark of “success” within university-based projects. Quality student learning, skills gained through case-file management, exposure to ethical learning moments, the provision of

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<sup>33</sup> Griffith University Innocence Project, *Home Page*, <<https://www.griffith.edu.au/criminology-law/innocence-project>>.

<sup>34</sup> For the list of Griffith University Innocence Project Executive Committee and Advisory Board members see Griffith University Innocence Project, *Board Members* <<https://www.griffith.edu.au/criminology-law/innocence-project/board-members>>.

a social-justice service and a heightened engagement with the legal, political and professional environment into which students will enter, should also be regarded as successful outcomes of this clinic.

Social justice activism and the building of professional skills and values are often at the heart of clinical education.<sup>35</sup> Wizner and Aiken comment:

The primary obligation to provide legal services to the poor resides with the government, and to a lesser extent, with the legal profession, not with law schools. Nevertheless, law schools do have some obligation to contribute to the solution of the crisis in access to justice, and it seems obvious that the obligation is best accomplished by law school clinics assisting low-income individuals and communities that are underserved or have particular difficulty obtaining lawyers because of the nature of their legal problems.<sup>36</sup>

While the introduction of clinics into a law school curriculum may not be easy,<sup>37</sup> it is generally acknowledged that clinical legal education plays an important role in preparing students for the workplace.<sup>38</sup> Indeed, legal clinics are one of the few avenues within a legal education where there is interaction between the client, the lawyers, the student and the academic — groups that may otherwise be ‘at best passing acquaintances’.<sup>39</sup>

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<sup>35</sup> See Jeff Giddings and Jennifer Lyman, ‘Bridging different interests: The contributions of clinics to legal education’ in Frank S Boch (ed), *The Global Clinical Movement* (Oxford University Press, 2011) 297; Stephen Wizner and Jane Aiken, ‘Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice’ (2004) 73(3) *Fordham Law Review* 997; Judith Dickson, ‘The Role of Clinic in Linking Law and Justice’ (2004) 11(1) *Murdoch University Electronic Journal of Law*.

<sup>36</sup> Wizner and Aiken, above n 35, 997.

<sup>37</sup> Giddings and Lyman, above n 35; Wizner and Aiken, above n 35.

<sup>38</sup> See, eg, Deborah Maranville, ‘Passion, Context and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences’ (2000) 7 *Clinical Law Review* 123; Giddings and Lyman, above n 35.

<sup>39</sup> Giddings and Lyman, above n 35.

In the broader context, the student engagement with the wider legal and political framework under which they are reviewing the wrongful conviction claims, also promotes valuable learning opportunities within their university experience. Curran notes the importance of legal clinics that provide an environment where students can learn about law reform through seeing where needs are not being met, where there are weaknesses in the legal system.<sup>40</sup> Johnstone comments that:

University legal education should seek to promote personal development by cultivating knowledge and understanding, intellectual virtues, imagination, intellectual skills, self-reflection, moral virtues and habits, a capacity for social and political involvement, and a sense of responsibility for the values one espouses and the relationships into which one enters.<sup>41</sup>

The collaboration between lawyers, academics and students that occurs within project activity, aims to facilitate a learning and service environment to open students' eyes to the reality of the operation of the rules and principles applying within the criminal justice system and help equip students with skills to carry out their aspirations in the real world. Active questioning in interactive meetings is designed to enhance student understanding while cultivating ethical and professional values. The drawing together of professional lawyers with academics and students to undertake the case reviews is an essential component to preparing students for the profession they will enter. As stated by Giddings:

... students' clinical experience have challenged law schools to pay more attention to factors previously neglected in academic legal education ... clinics draw attention to the significance of clients, to questions about access to justice and the distribution of legal services, to the contexts in which ethical decisions take place, and to the uncertain or contingent nature of legal problems that add complexity to the real practice of law.<sup>42</sup>

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<sup>40</sup> Liz Curran, 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change' (2004) (December) *International Journal of Clinical Legal Education* 162.

<sup>41</sup> Gerry Johnstone, 'Liberal Ideals and Vocational Aims in University Legal Education' (1999) (3) *Web Journal of Current Legal Issues* [4(i)1].

<sup>42</sup> Giddings and Lyman, above n 35, 299.

## B *The Course*

Students are required to make written application to undertake this capstone course and it is clear from their applications that the Project appeals to students who have a passion for justice and a desire to make a difference, while at the same time making a closer connection between their studies and the professional environment they will enter. These are worthy attributes to cultivate in the broader context of effective university education.<sup>43</sup> The idealism and activism that appears to attract students to the Project, is also enhanced through the realisation that their work links them to an international social justice movement.

The learning process begins with an intensive introductory program. This introduction to the known systemic causes of wrongful conviction both in Australia and overseas, is designed to challenge any potential complacency about the criminal justice system and heighten student awareness to potential issues that may arise in their case reviews. The initial intensive program also attempts to highlight the devastating and often on-going impact that a wrongful conviction causes to the individual and their family, through the relaying of exoneree stories.<sup>44</sup>

Following the intensive program, students immediately engage in the case reviews. Approximately 330 matters have been reviewed over the 14 years that the Project has been operating. In undertaking these reviews, students are allocated to teams and actively directed in the forensic management of the mass of documentary evidence

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<sup>43</sup> McCartney, above n 7, 9-10.

<sup>44</sup> For further reading as to the human impact and potential on-going implications of a wrongful conviction see, eg, Adrian Grounds 'Psychological Consequences of Wrongful Conviction' (2004) 46 *Canadian Journal of Criminology and Criminal Justice* 165; Jennifer Wildeman, Michael Costelloe and Robert Schehr 'Experiencing Wrongful and Unlawful Conviction' (2011) 50(7) *Journal of Offender Rehabilitation* 411; Kathryn Campbell and Myriam Denov 'The Burden of Innocence: Coping with a Wrongful Imprisonment' (2004) 46(2) *Canadian Journal of Criminology and Criminal Justice* 139; Rachel Dioso-Villa, 'Without Legal Obligation: Compensating the Wrongfully Convicted in Australia' (2012) 75(3) *Albany Law Review* 1329.

involved in each case throughout the semester — such as the police record of interviews, committal depositions, trial transcripts and other documents. Cases can involve thousands of pages of documentation and the large amount of material and information to be reviewed and analysed is one of the challenges in balancing the service and educative aspects within the Project. Continuous interaction between the academic, the lawyers and the students throughout each week of the semester is required. As Findley stated:

Generally students working in an Innocence Project environment, undertake a high level of ownership regarding their cases but there is a need to balance this with the need for guidance, structure and supervision in the tasks they undertake.<sup>45</sup>

Weekly meetings at the Griffith University Innocence Project incorporate task designation, team work allocation and presentations, evidential analysis, procedural considerations, factual and ethical questioning and broader reflective discussion on surrounding issues of the criminal justice system — all of which form aspects necessary for the effective progression of the case reviews. Ethical learning moments will arise through the unfolding work on real cases from wrongful conviction claimants across the country, as it becomes apparent just how easily a wrongful conviction might occur and moreover, how many cases are far from black and white as to either innocence or guilt. This layered experience promotes the questioning of easy assumptions about guilt or innocence and demands students search for accuracy in evidence by thorough attention to detail, thereby teaching students ‘about the importance of being sceptical, vigilant, and thorough; about ethics, values, and judgment; and about the criminal justice system itself’.<sup>46</sup> The complex exchange of ideas on legal, ethical, evidential and humanitarian aspects as they arise within the case reviews throughout the semester are also aspects that meet calls for law schools to provide more opportunities for students to gain skills and confront ethical and moral dilemmas so they are better prepared to enter the legal system.<sup>47</sup>

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<sup>45</sup> Findley, above n 7, 268.

<sup>46</sup> Findley, above n 7, 241.

<sup>47</sup> McCartney, above n 7.

Somewhat unique to wrongful conviction clinics is the student involvement in the review of the entire case. Knowing the end result of the matter offers students a key opportunity to understand the place and importance of every piece of evidence and each element of the criminal justice process. By the close of the semester, students know their cases in intricate detail — and have witnessed the interplay between law, facts and justice. Making such a strong connection between law and justice is a key pedagogical aspiration within the legal clinical course environment.<sup>48</sup> Further, placing students in a position of supervised responsibility for a potentially innocent person can awaken some of the privileges and responsibilities of being a lawyer. As one former student reflected:

The Project had a significant impact on me. I would frequently spend weekends in the Project room working on cases. For the first time in my degree I had a real responsibility to real people; these weren't hypothetical cases, people were incarcerated and we were their last chance. The significance of that responsibility did not escape me. It taught me to value the knowledge I had acquired; whilst most students look begrudgingly on their assessments, the Project drove home to the value in having a law degree and the responsibility that comes with being vested with the knowledge of our justice system. (SRN 22)<sup>49</sup>

In a legal clinic such as this, students have the opportunity to build work skills, discover the interplay between law and justice and reflect on their role as a lawyer, both in the context of the immediate service provision and more broadly.<sup>50</sup> Within the end of semester reflections (which form part of the student assessment) students often express their drawing of such links in a variety of ways. However, whether there was a longer-term effect from their clinical experience was unknown. In 2012, the Project had completed 10 years of operation, presenting a timely opportunity to conduct a survey which asked former students about their current perspectives on whether their time with the Project had prepared them for the workplace or had some other longer-term impact on them.<sup>51</sup> While the survey itself

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<sup>48</sup> Jeff Giddings, 'Why No Clinic is an Island: The Merits and Challenges of Integrating Clinical Insights Across the Law Curriculum' (2010) 34 *Journal of Law and Policy* 261; Dickson, above n 35.

<sup>49</sup> Statement by former Griffith University Innocence Project Student, 2012 Student Survey, LAW/07/11/HREC.



was loosely structured (and this therefore needs to be taken into account in regard to the analysis below), the responses do offer insights into the impact of this social justice clinic.

### C *Student Reflections*

The survey questioned former students on a range of matters, mostly aimed at gaining insight into whether there was any on-going impact from the experience that the Project presented to them as part of their university degree. For the purpose of this article, their answers have been categorised into the following three areas: 1) work ready skills gained; 2) the professional/personal impact of their time with the Project; and 3) attitude to human rights work/ pro-bono work/ law reform activities. A sampling of individual comments has also been incorporated below to provide more detailed examples of student perspectives.

#### 1 *Work ready skills*

44 of the 45 former students surveyed (97 percent) stated that they gained work ready skills from their time with the Project with several noting this was important to them in feeling more confident and prepared when they entered the legal profession.<sup>52</sup> Students

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<sup>50</sup> Giddings and Lyman, above n 35.

<sup>51</sup> The survey was undertaken in 2012 (ethical approval: LAW/07/11/HREC). The Project was able to contact 94 of the 185 students who had undertaken the Project over the 10 years from 2002-2011. As some students undertake two semesters within course, they were not included twice in these student numbers. Of those, 90 students were sent questionnaires, 45 of which were returned (a 50 percent response rate on surveys sent and a 24 percent response rate from all students who had undertaken the course over the ten-year period). As might be imagined, it was more difficult to contact students from the earlier years. Of the 45 responses received, the breakdown as to the student's year of enrolment is as follows: 2002: 0, 2003: 5, 2004: 5, 2005: 2, 2006: 4, 2007: 3, 2008: 5, 2009: 5, 2010: 7, and 2011: 9. The questions were relatively loosely structured making quantitative analysis problematic and some responses did not always have a direct 'yes' or 'no' response, however, the categorisation into percentages as noted above do accurately reflect the responses received.

<sup>52</sup> 44 out of 45 responses responded affirmatively to this question. At the time of the survey, four respondents who answered this question were still engaged in

themselves identified: case file management and letter writing skills; advocacy and communication skills; legal drafting skills; problem-solving and teamwork/ interpersonal skills; administrative skills pertinent to an effective legal environment; the ability to critically analyse evidentiary materials and transcripts; the ability to dissect and identify inconsistencies in evidence; the ability to summarise lengthy transcripts and the ability to present to legal superiors, amongst a range of work ready skills they had gained. Specific comments included:

I believe that the skills I gained by participating in the [Griffith University] Innocence Project put me ahead of other graduates when I was seeking employment. In particular, I had practical experience relating to evidence examination, client interviewing, document drafting and team work which directly assisted me in my employment as a trainee solicitor upon graduation. (SRN 11)<sup>53</sup>

Yes, working in a law firm certainly requires the effective recording of information and communication. Only the [Griffith University] innocence project at university demonstrated the need for file notes and also an effective precedents folder which is extremely useful in day-to-day practice. Also being exposed to the meeting like environment every Tuesday with a lawyer certainly assisted in being more confident when commencing work upon graduation. (SRN 26)

[the] file management skills that I use today in my job were developed over the two semesters I spent working with the project. The need for accurate detail, interviewing skills (when speaking with expert witnesses) and the need to work in a close group enabled me to enter the workforce with a confident approach. (SRN 27)

Without doubt the most practically relevant subject made available to me throughout the course of my six years at Griffith University. (SRN 35)

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active studies in preparation for full-time entry into the workforce and one was not looking for work due to family commitments. As such, 40 of the 45 former students who answered this question were in the position of being able to work at the time of the survey. 39 of these 40 were actively employed (97 percent) — the vast majority in legal offices or other legally related positions.

<sup>53</sup> 'SRN' refers to the identification number allocated when compiling the student survey responses.

## 2 *Professional and Personal Impact*

41 of the 45 former students respondents (91 percent) stated that the Project had a personal and/or professional impact on them, which had stayed with them into their future.<sup>54</sup> Specific comments included:

Yes, I would say it had both a personal and profession impact. Personally, it solidified my ideas about why I had decided to complete a law degree in the first place, and my desire to fight against injustice within the criminal justice system. Professionally, well, I became a criminal defence lawyer, so I think it certainly helped point me in that direction...the lessons I learned while completing the Project are certainly still with me. (SRN 24)

Incredibly so, I came into the Project to develop my prosecutorial aspirations and left wanting to work as a defence solicitor. Personally it has affected me deeply, I grew up in admiration and respect for police and the entire justice system...I am now painfully aware that the legal system can, and does, get it wrong...The impact of the project will undoubtedly always stay with me. (SRN 25)

It has impacted on my life in many ways. It was an honour to be part of a project that is dedicated to changing people's lives for the better and has faith in people when no one else does...I also learnt to fight against aspects of the system that are taken for granted. It had an impact on my opinion of those facing the charges – I realized that there is always another side to the story and it really helped me in the profession I chose...I often talk about my time at the [Griffith University] Innocence Project and it has really changed the way I think. I am often caught in heated debates about the criminal justice system. (SRN 34)

38 of the 45 former students (84 percent) said their experience influenced their career choice to some extent and the responses below are indicative of the range of that influence. Specific comments included:

The Project helped me to decide that criminal law was not for me. I was too emotionally engaged with the work and realized that I couldn't do

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<sup>54</sup> Of the 41 students, 39 directly answered the follow up question as to whether the impact has stayed with them into their future and all stated that it did. Two students did not answer the follow-up question, but in their answers to earlier questions had already discussed the way the impact was still with them.

that day in/day out. It was hard not to get emotionally involved. (SRN 4)

Following my involvement with the Project, I changed by view of wanting to work in a capacity as a prosecutor, and instead wanted to work for a firm that had a strong commitment to social justice. (SRN 16)

Yes, I actively pursued a career in which a human/individual rights aspect can be integrated as a priority. (SRN 18)

As my desire to become a lawyer was borne was from my desire to help others, witnessing firsthand this deficiency in the criminal justice system – with the corresponding, devastating results for defendants – cemented my decision to practice as a criminal defence lawyer. (SRN 26)

### 3 *Attitude to human rights work/pro-bono work/law reform activities*

In building on the aspects noted above, 40 of the 43 respondents (93 percent) also stated that their time with the Project positively influenced or reinforced their commitment to pro-bono work, human rights work, individual rights and/or law reform. Specific comments included:

It certainly influenced my thoughts in regards to things. When looking at firms for jobs those things play a big part for me. I have several pro-bono files in my current position. (SRN 7)

Definitely. Made me more committed to social justice causes and was the first time I ever really thought about why Legal Statutes should be changed. (SRN 14)

Absolutely. I don't think you could participate in the Project without developing or extending your views on such topics...The Project was my first experience in pro-bono work and it has shaped my subsequent views on the need for extensive pro-bono networks in Australia. (SRN 22)

Absolutely – although I currently do not hold a practicing certificate, I am passionate about volunteer and pro-bono work. It is essential to

ensure every member of the public has access to legal assistance in any form. (SRN 27)

I am definitely now going to be more proactive throughout my career in the field of human rights and law reform as a result of having participated in the [Griffith University] Innocence Project. (SRN 31)

The survey concluded with the option for students to make additional comments. Many of these responses mirrored themes already expressed throughout this section. Specific comments included:

I look back on my time with the Project as one of the highlights of my undergraduate career. I think it is an incredibly worthwhile project for a number of reasons:

- It provides prisoners with a new opportunity to be heard. Even if nothing eventuates with their case, the [Griffith University] Innocence Project gives these people an opportunity to express their concerns regarding their matter...I think that regardless of whether the applicant is innocent of the crime or not, hearing their concerns is still a valuable way to obtain feedback about how our criminal justice system operates and where improvements can be made.
- The exposure students get to real cases and what it might be like to think and work as criminal defence lawyers do. A legal education, while necessarily academic, really should include more opportunities for students to engage with the system that they are signing up to be a part of.
- Most importantly, the Project allows students to be involved in an effort that ensure our criminal justice system is held accountable where things go wrong. (SRN 6)

Elie Wiesel once said, "There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest". I think that the [Griffith University] Innocence Project captures this sentiment. Legal justice may never come for the applicants who have been wrongly convicted, however I hope they will know that many good people tried. (SRN 9)

I would recommend the Project to *all* law students. If for no other reason than that it drives home the fact that as lawyers we have a

*responsibility* to the community to facilitate access to the legal system.  
(SRN 22)

The project is so important and was an integral part of my university studies...The skills obtained, the knowledge gained and the opportunities had were significant and provided an unprecedented experience. (SRN 27)

The survey responses suggest that the student exposure to the human tragedy of wrongful conviction, their active involvement in the complexity of the case reviews and their increased awareness of the ramifications and implications of the legislative structures and policy issues that surround this work, not only assists students gain work-ready skills and make more informed decisions about their career, but further cultivates a broader range of attributes that enhance their overall university learning experience in a way that may well have a longer-term personal and professional influence, including a strengthening commitment to social-justice issues and human rights based endeavours.

## V CONCLUSION

The effectiveness of innocence organisations in Australia in attaining exonerations will continue to be reliant on a number of factors, including the legal framework within which they operate. Australia needs a larger response to the investigation, identification and correction of wrongful convictions, such as an independent and empowered CCRC. However despite the limited resources and restrictions on their investigative abilities, the drawing together of professional lawyers with academics and students through projects housed within universities, not only provides a social justice service, but also has wider educational value.

Exonerations are difficult to achieve and will be rare. Success if limited to this milestone will too often be disappointingly inaccessible. And so while the exoneration of innocent but convicted

people through the individual case reviews will always be the immediate goal of the work undertaken, quality student learning, professional skills gained through case-file management, exposure to ethical learning moments, engagement with policy and reform issues, and the opportunity for students to build upon their own sense of professional responsibility and human rights consciousness in a way that is likely to stay with them into their futures, need also be regarded as successful outcomes within university-based projects.

Through exposure to the potential injustice at both ends of the spectrum (the guilty free, the innocent convicted) — and a greater understanding as to the significant degree of grey area in between — students learn about the important role of lawyers and others within the system. These students will go out into the world with a greater understanding of the legal and political environment within which they will work. Some future reforms within our criminal justice system may well rest in hands of students such as these, as they venture forth in their careers. A university clinical course such as this, even if unsuccessful for the immediate applicant all involved were hoping to assist, may later result in wider, more resounding outcomes.