

Educating Lawyers for Transnational Challenges

May 26-29, 2004

Hawaii

Using Technology to Enhance Clinic-based Learning

Paper prepared by Professor Jeff Giddings*, Director of Clinical Legal Education Griffith Law School, Brisbane, Australia for the conference session (Saturday, May 29, 9:00-10:30 am) on Special Methods and Tools for Educating the Transnational Lawyer - Clinical/Experiential.

Introduction

The past ten years has seen increasing use of clinical teaching methods in Australian law schools.¹ Australian clinical programs tend to have a very strong focus on community service and this has influenced the manner of their development and the mechanisms used to ensure their sustainability. Most clinics have a general client base with some specialist programs established in areas including alternative dispute resolution², criminal justice³, employment law, environmental law, family law⁴, refugee law and supporting victims of sexual assault⁵.

Australian clinics almost all utilise face-to-face models of service delivery. Advice models relying on or enhanced by new technology have not been adopted by many clinics although this is likely to change. Greater awareness of the legal needs in remote and regional areas has seen various service innovations.⁶ There is room for clinics to be more innovative in the models and technology they use to provide learning opportunities for students and legal services to various communities.

This paper briefly outlines the development of Griffith Law School clinics that integrate the use of technology to provide enhanced clinical experiences to students and to deliver legal advice services to geographically isolated towns in regional Queensland. The paper also considers the use of technology to provide opportunities for simulation-based international negotiation exercises.

Students Delivering Family Law Advice to Remote Communities

In 1999, Griffith Law School was one of four Australian law schools to receive financial assistance from the Federal Attorney-General's Department for the operation of a clinical program. This clinic has focused on family law issues facing self-representing litigants and students must have completed the classroom-based *Family Law* course before they can enrol in this clinic. The clinic operates in partnership with Caxton Legal Centre, a community-based not-for-profit legal centre, and Learning Network Queensland, a distance education provider.

Since 2002, a similar clinic with a more general ambit has been developed, providing a clinical experience for law graduates enrolled in the Practical Legal Training Program, one of the avenues for admission to legal practice. The same technology is used and students have provided advice and assistance on a diverse range of legal issues. The virtual clinic experience is combined with a face-to-face client clinic experience with students given the opportunity to contrast the two service models and to develop skills relevant to each model.

Audio-graphic conferencing technology is used to enable students based in Brisbane to deliver advice and other assistance to clients in towns hundreds of kilometres away. This technology links students based in Brisbane and clients attending an open learning centre⁷ through phone and shared internet access. Advice and ongoing assistance is provided as part of 2 programs, one focussing on family law and the other more general. The towns targeted for this service are ones with very limited access to free legal assistance services.

The lack of access to legal services in Queensland rural communities was important to the development of this clinic. The last two decades have a continuing move away from regional Australia by professionals including lawyers, doctors and teachers. While governments have directed considerable resources to encouraging medical practitioners to work in regional and remote Australia, the same has not happened for legal professionals. Geographical remoteness, family isolation, high costs of transport and a scarcity of support and counseling services, all exacerbate the difficulties caused by family breakdown and separation.

Although there are challenges inherent in using the telephone to interview clients, the main benefit of using audio-graphic technology is that it has a broad geographical reach, and it facilitates access to legal services to a larger number of clients in a shorter period of time, with travel cost to clients minimised. There is also the possibility that many people are less guarded and more open and honest when speaking on the telephone, in comparison to face-to-face interviewing. As people living in remote communities make use of the telephone regularly to communicate with neighbours, friends, family, and for business purposes, it is more likely that they are comfortable communicating via the telephone. Further, the interviewer is less likely or able to form biases based on things such as appearance, status, or ethnicity, thus increasing objectivity.⁸

The use of the telephone to interview clients has been a challenge in itself for the students and teachers of the Clinic. It is interesting to note that the standard texts on legal interviewing and counselling say very little, if anything, about non face-to-face communicating with clients. Telephone interviews are essentially different from face-to-face interviews and other skills are needed, for example, to build rapport and trust with a client on the telephone is likely to take longer than face to face. The techniques of voice modulation, clear instructions and ensuring that a client has understood any advice given are extremely important when you cannot see the client. However, one skill that is universal across differing methods of interviewing is that you must listen to the client. There are clearly opportunities for encouraging students to reflect on these important aspects of their work with clients.

International Collaborations

Many law schools utilise exercises simulating the sorts of transactions managed by lawyers involved in transnational practice. Lawyering skills including client interviewing, negotiating and legal writing lend themselves to effective development through use of carefully developed simulations. The transnational dimensions of such work could be addressed by law schools developing international collaborations with students acting on behalf of clients from their respective countries.

Much of the work between lawyers in such simulations could be handled by email and it would be possible for the academics involved to make use of bulletin boards and other

mechanisms to provide feedback to students and encourage them to reflect on the work they have done. Making use of such mechanisms would also be relatively inexpensive.

I would be interested in working with academics from different countries to develop scenarios providing opportunities for students to conduct simulated interviews with their respective clients then prepare for and conduct virtual negotiations with students from law schools in other countries. Agreements could then be drafted to document any agreement reached and to provide for future arrangements, including dispute resolution.

The outcomes of such exercises could then be discussed by the students directly as well as with their respective teachers. Local lawyers involved in such transactions could be involved in explaining how such work is actually done in practice. Such exercises could be tailored to meet the time and resources available although it would be obviously be useful for them to be sufficiently detailed to give the give a strong sense of realism to the work to be done by the students.

* This paper draws on material from an article written with my friend and clinic colleague, Barbara Hook. See J. Giddings & B. Hook, 'The Tyranny of Distance: Clinical Legal Education in "The Bush"' (2002) 2 *International Journal of Clinical Legal Education* 64.

¹ For an account of the history of Australian clinical programs, see J. Giddings, 'Clinical Legal Education in Australia: A Historical Perspective' (2003) 3 (1) *International Journal of Clinical Legal Education* 7-28.

² J. Giddings, 'Using Clinical Methods to Teach Alternative Dispute Resolution: Developments at Griffith University'. (1999) 9 (3) *Australasian Dispute Resolution Journal* 206-215.

³ R. Watterson, R. Cavanagh & J. Boersig, 'Law School Based Public Interest Advocacy: an Australian Story' (2002) 2 *International Journal of Clinical Legal Education* 7-37 & L. Weathered, 'Investigating Innocence: The Emergence of Innocence Projects in the Correction of Wrongful Conviction in Australia' (2003) 12(1) *Griffith Law Review* 64-90.

⁴ J. Giddings & B. Hook, 'The Tyranny of Distance: Clinical Legal Education in "The Bush"' (2002) 2 *International Journal of Clinical Legal Education* 64-85 & S. Campbell & A. Ray, 'Specialist Clinical Legal Education: An Australian Model' (2003) 3 (1) *International Journal of Clinical Legal Education* 67-77.

⁵ A. Evans, 'Specialised Clinical Legal Education Begins in Australia' (1996) 21(2) *Alternative Law Journal* 79.

⁶ J. Giddings, B. Hook & J. Neilsen, 'Legal Services in Rural Communities: Issues for Clients and Lawyers' (2001) 26 (2) *Alternative Law Journal* 57-63 & M. Rawsthorne, 'Law by Telecommunications: The Magical Solution for Rural Australians?' (2001) 26 (2) *Alternative Law Journal* 85-88. See also the website for the Western Queensland Justice Network, www.wqjn.legalaid.qld.gov.au

⁷ Learning Network Queensland has more than 50 such centres across Queensland. See <http://www.lnq.net.au/>

⁸ Law & Justice Foundation of New South Wales, *Email Law: A Planning Guide for the Delivery of Free Legal Assistance via Email*, 2001 & S. Scott & C. Sage, *Gateways to the Law: An Exploratory Study of How Non-profit Agencies Assist Clients With Legal Problems*, 2001.