

Chair: Denis, what's this idea you have that CLCs' legal practice is different from the norm?

Denis: (kicks off)

Cristy: (chimes in)

Simon: (has something to say on it)

And so on ...

From time to time the **Chair** intervenes to ask something, or seek clarification.

After about 30-40 minutes the **Chair** suggests we go to the audience for their comments and questions.

Denis Notes

What is the Role of a Community Lawyer

- Legal Centres were created as an alternative to the private profession for low income people – but did not necessarily focus on low income needs.
- Middle class advice for low income people!
- Centres now focussed on accessibility for vulnerable communities – targeting clients and problems
- The broader role of a CLC Lawyer is achieving change to help the community

An Economic Perspective

- Protect the Right to Income, housing and essential services
 - Access to Centrelink income + avoidance of debt
 - Tenancy, mortgage default, woman & elder abuse
 - Energy and communications, health, education
- The Right to Safety
 - Immigration and access to permanent residence
 - Family violence, police intimidation, discrimination

The Changing Role

- Legal Aid – Provision of Criminal and Family Law
 - Reduced need for these services from CLC's
- CLC's -Targeting low income communities
 - Advice, fines, debts and family violence
- Achieving Change
 - Private profession and VLA have concentrated on service delivery
 - CLC's have developed roles in community development and legal education

Achieving Change -The Journey – Casework to Reform

- Individual cases – Individual to community
 - Campaspe Loddon – Missing Persons Guide
 - Grouped cases – More value for effort -Target specific clients and problems

- West Heidelberg – Bulk Debt
- Springvale CLC – Young Refugees (minors)

Achieving Change – Non Casework

Community Development – Engaging with Communities to investigate and research problems -Seek out the clients

- Footscray CLC – “Out of Africa into Court”
- Flem/Ken CLC - Police Complaints

Policy and Campaigns – Changing the Law to create client rights

- Tenants Union – Rooming House reforms
- Consumer Action – Pay Day Lending restrictions

Why do we do it?

- Not about money!
- Determined to make a difference
- Passionate and committed to justice
- Work for the marginalised

DO YOU MAKE A DIFFERENCE?

- Yes – but don’t get too comfortable
- See your client not just the legal problem
- Stay passionate – it is not just a job!

CRISTY'S NACLC CONFERENCE NOTES

What is the necessary background?

- Language is a vehicle through which power can be demonstrated, particularly in institutional settings – government, professional interactions etc ¹– we can see this by the different language that is ‘appropriate’ in different settings²
- Power is often demonstrated in legal settings – e.g. police interviewing a suspect, a judge in a court room
- Perhaps more surprisingly, it is also seen in conversation between lawyers and their clients (where they are on the ‘same side’) – one possible reason for this is the professional’s need for (and right to) autonomy³

What has other research in this area shown?

- Lawyers commonly use traditional (or authoritarian) styles of interaction rather than a participatory style – the linguistic indicators of authority or control are⁴:
 - Lack of usual conversational openings (i.e. greetings etc);
 - Register – type of language used – formal, technical c.f. informal, layperson etc;
 - Controlling the topic including by asking ‘closed’ questions and interrupting often;
 - Limited reaction to displays of emotion;
 - Forms of address – what (if anything) do you call the client?
- Some argue that lawyers and clients inhabit two different worlds – the ‘real’ world and the ‘legal’ world – there is a need for different language in each of those domains, and the lawyer’s job is to translate the client’s real-life version into a legal framework⁵
- Lawyers will often make the distance between them and the client seem large (e.g. if client tries to use legal terminology, the lawyer will often dismiss it or correct it)⁶
- One study found this was a reason for disappointment on both sides – the clients complained that the lawyers failed to grasp the human side of their problem and were only interested in the legal outcome, while the lawyers complained that the clients were too emotional to get to the bottom of the legal issue⁷
- Another study found that the lawyer should ‘allow’ the client to tell their story at the beginning if they ever want to be able to deal with the legal

¹ Conley and O’Barr (2005)

² Bourdieu (1991)

³ Sarat and Felstiner (1992)

⁴ Danet and Bogoch (1984)

⁵ Maley (2005)

⁶ Danet and Bogoch (1994)

⁷ Goldsmith (1980)

issue – if they don't, the client may well spend the entire interview attempting to get back to their story⁸

What did my study entail?

- Going to a big, generalist CLC (Caxton) that uses volunteers in evening advice sessions – generally, 20-30 minutes of advice – this setting is different from any previous studies – there have been studies in free legal settings, but none in a self-help legal setting, where the client is expected to use the advice to tackle the legal problem themselves, rather than the lawyer 'taking on' the case.
- Approaching clients who indicated they used a language other than English at home, to see if they would participate – if they said yes, then once a lawyer picked up that intake sheet, I asked them if they were happy to participate – ended up analysing only 3 interviews – very small, exploratory study
- Several clients declined to participate, but no lawyers did
- Recording the interviews and analysing them in terms of:
 - Placing emphasis on the fact that the lawyer is a lawyer and the client is not - register; and
 - Simultaneous speech, particularly overlaps or interruptions that demonstrate control over the conversation (i.e. are not 'cooperative')

What did my study show?

- Lawyers did use formal language and legal register, but not as much legal terminology as one might expect
- The lawyers used informal style, most commonly demonstrated by their choice of words – e.g. 'get it sorted out'
- Informal style demonstrated by use of colloquialisms – 'our friend' and 'cowboy' – not always understood by the client because of the fact that English was not his first language
- One lawyer even used swearing (i.e. extremely informal language) – crap furniture etc
- Lawyers confirmed the client's understanding of their legal situation, when they got it right i.e. they did not try to distance their specialised knowledge from the client
- Lawyers did not use intrusive interruptions (the most authoritarian type) even once in this data – instead, they used collaborative interruptions which confirmed to the client that either:
 - the lawyer was listening; or
 - the client was on the right track (either that they were providing useful info to the lawyer, or were understanding their legal situation)

Why might my study have shown different results to other studies?

⁸ Gellhorn (1998)

- 2 possible reasons from linguistic point of view:
 - context - self-help model and no gatekeeping role by lawyers;
 - ESL status of clients
- In today's session – is there something different about CLC lawyers – even those who are only volunteering their time i.e. not career CLC lawyers?

Bibliography

Bourdieu (1991) *Language and Symbolic Power*, U.S.A.: Polity Press.

Conley and O'Barr (2005) *Rules versus Relationships: The Ethnography of Legal Discourse*, Chicago, U.S.A.: The University of Chicago Press Ltd.

Danet and Bogoch (1984) Challenge and control in lawyer-client interaction: A case study in an Israeli Legal Aid office, *Text 4(1-3)*, 249-275.

Danet (1994) Power, distance and solidarity: Models of professional-client interaction in an Israeli legal aid setting, *Discourse and Society 5(1)*, 65-88.

Gellhorn (1998) Law and language: an empirically-based model for the opening moments of client interviews, *Clinical Law Review 4*, 321-358.

Goldsmith (1980) The initial attorney/client consultation: A case history, *Southern Speech Communication Journal 45*, 394-407.

Maley et al (2005) Orientations in lawyer-client interviews, *Forensic Linguistics 2(1)*, 42-55.

Sarat and Felstiner (1992) Enactments of power: Negotiating reality and responsibility in lawyer-client interactions, *Cornell Law Review 77*, 1447, 1450-1458.

SIMON'S NACLK CONFERENCE NOTES

How do ethical issues arise?

- Earlier thoughts about the role of CLCs led me to think about how CLCs offer a different model of legal practice, as Denis describes.
- I'd call it a radically different model, because it challenges assumptions that underpin the conventional model, eg the lawyer/client power relationship, as Cristy describes.
- I wondered whether and how that difference affects legal ethics: does CLCs' radical legal practice invite or require radically different legal ethics?
- A prominent legal ethicist, David Wilkins, has proposed that the wide variety of legal practices invites a wide variety of legal ethics: the different circumstances of legal practice demand appropriate ethical rules.
- A good local example of this is the way that the Aust Sols Conduct Rules (ASCR) accommodate the realities of commercial legal practice, by recognising 'information barriers'.
- An information barrier enables a practice to achieve their own aims while, at the same time, complying with conventional ethical rules, but only because those ethical rules have been varied.

What ethical issues arise?

- So I asked myself 'What conventional ethical rules are in tension with the essential – and essentially different – nature of CLCs' legal practice?'
- I identified something that is distinctive about CLC practice: pursuit of systemic change. What conventional ethical rule can be in tension with this? It is notorious in the literature and history of progressive lawyering that pursuit of change can be – or raises the risk of being – at the expense of what the ASCR call a lawyer's 'fundamental' duty: 'to act in the best interests of a client',
- I went back to basics, asking where the duty came from and what the policy rationale for it is.
- Short story – there is no getting around it. If a lawyer has a client, then all or any of: the lawyer's role in society and the legal system, the client's place in the legal system, and the formal and informal nature of the relationship between lawyer and client, mean that a lawyer is legally, ethically and morally bound to act in the client's best interests, or on the client's instructions. It is a happy coincidence if the client's interests are best served by pursuing – or the client's instructions are to pursue – larger change. Absent instructions, there is no room for a CLC lawyer to depart from this ethical rule.

What about conflict/confidentiality?

- Something else that is distinctive about CLCs' practice is active promotion of access to justice. A conventional ethical rule that can constrain this is the rule of conflict of interest. As the ASCR make clear, this is closely connected with the duty of confidentiality.
- The possible constraint on CLCs comes from, for example, a lawyer's not being able to advise or act for two parties to the same dispute when there are no other appropriate and available sources of advice or representation.
- Again, I went back to basics, asking where the duty came from and what the policy rationale for it is.
- Conflict and confidentiality rules are derivative of the duty to act in the client's best interests.
- The duties assume a model of legal practice which – as partnership law does – ascribes to all the knowledge held by one.
- In CLCs there is no necessary attribution of knowledge. It is a practical question of who has access to the knowledge.
- If anyone other than the advising lawyer has access, then further questions, which follows from the rationale for the rule, are: 'For what purpose do they have access to the knowledge?. Are the client's interests actually – or realistically at risk of being – adversely affected? How? By the sharing of – or by the mere accessibility of – the information?

Where does it lead?

- There is room here to argue at least for information barriers, but on terms that are different from those prescribed by the courts for commercial litigation.
- There is room too to argue for a different statement of the ethical rule, that recognises that it matters when client interests are at stake but that it can otherwise give way to a duty to promote access to justice.