THROWING STUDENTS IN THE DEEP END, OR TEACHING THEM HOW TO SWIM? DEVELOPING "OFFICES" AS A TECHNIQUE OF LAW TEACHING

SALLY KIFT & GEOFFREY AIRO-FARULLA*

INTRODUCTION

"Offices" (teacher-less, cooperative learning groups) were introduced to Griffith University in the Law School's first year of teaching in 1992. They were further developed through two National Teaching Development Grants from the Committee for the Advancement of University Teaching in 1993 and 1994. The 1993 grant was used to refine the first year program and to develop a second year program as that year was first taught. Similarly the 1994 grant was used to refine the second year program and develop an Office program when third year was first taught. The Offices project[1] has two main aims: to develop in students a range of skills valued by employers, but not traditionally part of the core law curriculum; and to provide "situated"[2] learning of substantive legal material. It was first discussed in an article in this journal in late 1993.[3] As that article noted,[4] the project is still very much in its formative stage, and undergoes continual evaluation and redesign.

This article reports on the developments and lessons learned during the implementation and evaluation of the 1994 grant. Part 1 sets out the cognitive theory underlying Offices and the relationship between the program's main aims. Part 2 describes the background to the implementation of the 1994 grant, and Part 3 describes the Office tasks formulated during that process. Part 4 summarises the practical lessons we learned about how Offices should be run.

Using Collins, Brown and Newman's framework of "cognitive apprenticeship", Part 5 evaluates the learning environment that we have constructed in Offices, and proposes paths for future development.[5]

Finally by way of introduction, it should be stated that the observations and conclusions set out in this article draw extensively on the results of a range of evaluative measures. Particularly the 1994 project was evaluated through continual informal student feedback during the life of each program, student surveys conducted at the end of each of the four semester programs, regular sharing of perceptions and analyses between the staff involved in its implementation, through discussion of the Offices project at the Faculty's governing committee, and by comparing the learning environment with the "cognitive apprenticeship" framework referred to above.

1   TEACHING SKILLS AND SITUATED LEARNING

University teaching has traditionally been viewed as the transmission of a knowledge base from teachers to students. Some disciplines, particularly in the humanities, have also emphasised the development of conceptual and analytical skills such as critical analysis, creative thinking and problem solving. More recently attention has focussed on developing a wider range of skills in students. These include "generic" skills thought to be relevant to most workplaces (for example, teamwork and communication skills), and those specifically related to the expected professional destination of a discipline's graduates. For law students, these include things like legal drafting, client interviewing, negotiation and advocacy skills.

There are two main reasons for the increasing emphasis on skills development in higher education. First, there is evidence that employers tend to value generic skills such as the ability to work as a member of a team, oral communication skills and the ability to adapt to new situations at least as much as they value graduates' traditional strengths.[6] Under increasing political pressure to be seen to be more "economically relevant", universities are expected to respond to such employer demands.[7] The second, more important, reason is the profound shift that is occurring in cognitive theory This shift has been neatly described by Resnick.[8] Traditionally,

legal education, like most other western education, has been based on "an implicit assumption that skill and knowledge exist independently of the contexts in which they are acquired, that once a person learns something, she knows it no matter where she is".[9] However,

> Current cognitive theory emphasises three interrelated aspects of learning that, together, call for forms of instructional theory very different from those that grew out of earlier … psychologies. First, learning is a process of knowledge construction, not of knowledge recording or absorption. Second, learning is knowledge-dependent; people use current knowledge to construct new knowledge. Third, learning is highly tuned to the situation in which it takes place.[10]

This epistemological shift has many implications for legal education. First, viewing learning as a process of knowledge construction encourages student- rather than teacher-centred learning.[11] One way of moving the focus from "teachers as knowledge transmitters" to "students as knowledge constructors" is to remove the teacher from the classroom, at least for some of the time. Students are far more likely to adopt new learning strategies when they feel in charge of their own learning.[12] Offices unequivocally place students in charge of their own learning while in the Office, and undermine their expectations that learning outcomes must be directed by teachers. This is enhanced by the project's greater reliance on self and peer assessment than on teacher assessment.[13]

However, students will not spontaneously develop new learning strategies on their own. Learning strategies, including the ability to self and peer assess, must be taught as part of the curriculum. Otherwise the absence of a teacher leaves students in an instructional vacuum, not knowing how to achieve what is expected of them. "Throwing students in at the deep end" may force them to learn enough to make it through the program, but will rarely produce experts. It more often produces apathy, intra-group conflict and/or the adoption of inappropriate strategies. One of the most difficult aspects of the Offices project is working out how and when to teach the appropriate learning strategies, given the teachers' absence from Offices themselves. This is discussed further below in Part 5.

The changes in cognitive theory also mean that the place of skills training in legal education needs to be carefully considered. Skills training is usually introduced into a law program through

separate subjects, rather than by incorporating it into substantive law subjects. However, it is now recognised that

> skills and knowledge are not independent of the contexts — mental, physical and social — in which they are used. Instead, they are attuned to, even part of, the environments in which they are practiced. A new challenge for instruction is to develop ways of organizing learning that permit skills to be practiced in the environments in which they will be used. Such contextualised practice is needed both to tune skills and knowledge to their environments of use and to provide motivation for practicing abilities that in isolation might seem purposeless or meaningless.[14]

The Offices project seeks to incorporate skills training into substantive subjects because "knowledge" (what is known) and "skills" (abilities that allow what is known to be used) are interrelated. Each becomes more meaningful to students by being "situated" in the other's context.

> A critical element in fostering learning is to have students carry out tasks and solve problems in an environment that reflects the multiple uses to which their knowledge will be put in the future. Situated learning serves several different purposes. First, students come to understand the purposes or uses of knowledge they are learning. Second, they learn by actively using knowledge rather than passively receiving it. Third, they learn the different conditions under which their knowledge can [and can not] be applied… Fourth, learning in multiple contexts induces the abstraction of knowledge, so that students acquire knowledge in dual form, both tied to the contexts of its uses and independent of any particular context. This unbinding of knowledge from a particular context fosters its transfer to new problems and new domains.[15]

Traditional law school education requires students to use knowledge in a limited number of contexts: primarily tutorial discussions, essays and exams. These do not closely resemble the conditions under which students' knowledge is likely to be used in the future, and are too similar to lead to much abstraction or generalisation. By using role-plays set in a variety of contexts, Offices can more closely approximate the multiple contexts in which legal knowledge and skills can be used.

Positioning the Offices program within substantive subjects also addresses the fact that learning is knowledge-dependent but many students are knowledge-poor. For instance, most students of administrative law know very little about the decision-making processes that are the backdrop to the legal principles studied in that subject. This lack of reference points limits their ability to

construct effective knowledge about administrative law principles. By getting students to engage in a decision-making process as part of the Offices program, students gain a common reference point which they can use to deepen their understanding of legal principles.

Emphasising group work in Offices serves a number of functions besides responding to employers' priorities. Group work more closely approximates the actual conditions in which most mental activity is engaged in outside of school.[16] It provides a site for the social interaction necessary for many students to effectively negotiate and construct knowledge. It allows skill to build up bit by bit while permitting participation, even for the relatively unskilled, through task sharing.[17] A challenge in designing Office tasks is to ensure that students are motivated to complete them as a group, rather than leaving them to one member on some kind of rotational basis.

2   BACKGROUND TO THE 1994 TEACHING DEVELOPMENT GRANT

Offices have been part of Griffith's law program since its inception. The first year of the law program consists of one 50 credit point subject, Law and Legal publications.[18] In 1992 Offices were used to develop group work skills and as a site of integration with the students' other disciplines. All students in an Office were in the same integrated degree program, and were given readings which, as far as possible, related to the work they were doing in law and their other degree. Each Office discussed and answered a series of questions about their readings and, each week, several reported back to the large group class about their reading and discussion. This was intended to provide a variety of interdisciplinary perspectives to each week's material, and an opportunity to assess office work.

That first year's experience showed that it was not always possible to come up with readings that were directly relevant to both law and the students' other disciplines, with students commenting adversely on what they saw as "forced" integration or integration for its own sake. Furthermore, a number of interpersonal problems developed in Offices that the students could not solve themselves. Thus the 1993 grant was used to improve the

reading material and questions for discussion, and to develop structured exercises aimed at team-building and the resolution of interpersonal disputes within the 0ffice.[19]

The second year program at Griffith consists of two 30 credit point subjects which study the legal creation and regulation of institutions. Constitutional and Administrative Law looks at governmental institutions, whilst Associations and Trusts looks at non-governmental institutions. These subjects are grouped together to give an annual theme.[20] Links between them are explored through occasional jointly-taught classes and a shared assignment.

Initially, we also intended to explore these links in second year Offices. We had intended to use Offices in much the same way that they were used in first year, adding readings exploring the links between the two subjects to readings integrating law with the students' other disciplines. However, we rethought this in the light of the 1992 experience. We wanted to avoid repeating the mistakes of the previous year in forcing integration, and we wanted to extend students' abilities and skills beyond the exercises given in first year. We came to see Offices as a potential site for the situated teaching of both generic and legal skills, particularly through the use of role-plays. In first semester 1993, we experimented in a limited way by introducing client interviewing roleplays. This built upon first year studies, where students read about client interviewing and watched and commented on, but did not participate in, a client interviewing role-play performed by staff. "Clients" (played by law school administrative and research staff) presented to each second year Office with a problem drawn from Associations and Trusts. The students took instructions, researched the answer and provided the client with written and verbal advice. Students responded positively to this use of Offices, clearly enjoying their "real-world" aspects.

We were so encouraged by this that we became overly ambitious. In second semester 1993, we tried to develop a program that would integrate the students' law studies with their other discipline, integrate the two law subjects, and involve the students in role-plays that would develop a wide range of skills — not just client interviewing and advising, but document drafting, oral and written advocacy bureaucratic decision-making, and negotiation. We developed a role-play focussing on the creation, operation and regulation of various institutions (a joint venture company, an

environmental public interest group, a government regulatory agency) within a wider scenario involving international business with Japan (a joint venture between a Japanese and an Australian company to export woodchips to Japan).[21]

Our experience that semester demonstrated the limits of Offices. Students became confused about how Office work related to their law subjects, and felt that it was at best only tenuously connected with the work they were doing in their other degree. Attempting to develop so many skills meant that there was not time to concentrate properly on any of them. The students felt that the work load was excessive. Many Offices minimised tasks by completely delegating each week's work to one member of the Office as often as possible.[22] We learned that, particularly with Offices, less is more: more had been accomplished in the simple first semester program than in the theoretically elegant, elaborate second semester program. Offices had become overburdened.

3   IMPLEMENTING THE 1994 GRANT

By the time we implemented the 1994 grant, we had the benefit of the previous year's experience and the evaluations that had been done, including student surveys and the convergent interviews[23] conducted as part of the 1993 grant. We were much more aware of the Offices' limitations and realised that our aims and processes had to be significantly revised. We were perhaps more strongly guided by student opinion than normal: with no teachers present in Offices to reinforce the educational worth of each weekly task, some concessions had to be made to student sentiment to obtain and maintain their commitment to the overall program. Feedback suggested that students perceived only a tenuous connection between Offices and their other disciplines, and many disliked using Offices simply to read and discuss materials[24] (the most effective way we had found to integrate disciplines). On the other hand, they had enjoyed the client interviewing and negotiation exercises. Offices seemed better suited to this sort of activity. Thus integration between law and the students' other disciplines, and between each year's law subjects, was minimised as an aim of the Office program after first year.

We adopted a number of strategies to optimise the development of collaborative skills and cooperative functioning and to minimise

the task delegation. We set out to make Office tasks more directly relevant to the subject of which they formed part, and to make obvious the connection between the skills developed and students' potential future employment. We sought to construct thematic programs, rather than a series of discrete tasks. Decisions taken in one week would affect what an Office did in the following weeks, so there would be a more direct correlation between individual input and group output. This inter-relationship is best exampled in the second semester second year program designed for Constitutional and Administrative Law described below. To ensure work was completed, Offices were still usually required to complete a weekly task. However, rather than allocating a small mark to each week's work, more marks were allocated to a few items to be handed in at various stages. There would thus be less incentive for students to delegate tasks because the work could not be evenly divided between Office members. We also sought to set tasks that were better completed by group brainstorming than individual effort.

First Semester Second Year (Associations and Trusts)

We added client interviewing to group work as the other major skill to be developed in the second year program. It was an obvious choice because students are introduced to client interviewing in the first year, interviewing is integrally connected with more generic verbal and non-verbal communication skills, and the second year students had responded very favourably to such role-plays in 1993. The students' group-work abilities would develop in the course of roleplays requiring them to work effectively as a team to plan, conduct and evaluate interviews of "clients". This added a layer of complexity over first year Office activities — rather than just having to communicate within the group, the Office would have to communicate with an outsider as well. On the other hand, we did not want to immediately abandon the familiar for the unfamiliar. Students also had to be prepared in some way for the difficulties in group dynamics that might arise, particularly dominance by one or more members, and free-loading.[25] The semester program therefore started with some familiar tasks addressing these needs. The client interviewing tasks started in the fourth Office. The program, which

was worth 5% of the marks for the subject for the year, is summarised below:

Office One: The first Office started with an introductory team-building exercise, after which the group discussed aspects of assertive and aggressive behaviour. These exercises were supported by a video and culminated in each Office devising a strategy for dealing with aggressive, freeloading or unethical behaviour. The outcomes were reported back to large group class because we thought that all students would benefit from hearing how different groups intended to address potential problems that might arise during the course of the semester. Contemporaneous feedback on this exercise was that it was very successful.

Offices Two and Three: The next two Office tasks arose directly out of the material being taught in Associations and Trusts. To maintain continuity with first year, they followed the familiar pattern of group discussion of a set reading. As suggested by Dick et al, controversial topics were set to maintain interest and motivation.[26]

Offices Four and Five: The instructions for these weeks set out the aims and objectives of the interviewing training. Offices were given theoretical readings on client interviewing, dealing with matters such as active listening, barriers to effective communication, questioning techniques and sequences, stages and tasks of the interview, the benefits of a client-centred approach to interviewing, Law Society Client Care information, and hints for effective note taking. The readings were broken up with related exercises illustrating the techniques and requiring reflection on the group's understanding and competency. To prepare for the interview role-play, students were informed of the general area for advice (a trusts problem involving the use of resulting and constructive trusts to settle a property dispute between persons in a de facto relationship) and asked to prepare an interview management checklist. Finally, the ground was laid for later self-assessment by having the Office choose one of the Australian Client Interviewing Competition standards on which to focus its skills development. Students had to identify techniques that would translate the standard into effective interviewing practice and how they would be demonstrated in the interview. This statement of

group development priorities and the means of its demonstration was an assessable item of work.

Office Six: The Office chose two of their number to conduct the interview in accordance with the checklist. The interview was videotaped for subsequent student and staff assessment. Students knew that their Office's performance in conducting the interview would be taken into account in their overall assessment. Students were reminded that the relationship between lawyer and client usually continues beyond the first interview, the traditional focus of interviewing instruction. To simulate professional practice, students completed a sequence of follow-up tasks. The first, completed that week, was preparation of a "file note" of the client's interview and instructions. This was an assessable item.

Office Seven: The Office drafted a Memorandum of Legal Advice for their "supervising partner", using the file note as a basis. This was also an assessable item of work. As is usual in the setting of Office tasks, students were provided with relevant readings and detailed instructions to assist them. The instructions drew attention to the fact that in preparing the in-house memorandum and the follow-up letter to the client, the Office was using language professionally and had to adapt its language to suit the different audiences.

Office Eight: The interview process culminated in the Office preparing a letter of advice to the client. The letter, particularly the appropriateness of its structure, content and language, formed a further item of assessable work.

Offices Nine and Ten: In these weeks, the Office reviewed the videotape of its interview and evaluated its conduct against the background of the later tasks for which the interview had provided the foundation. Students could also view other Office's videotapes if they wished. The Office had established its own assessment criteria earlier in the program, but these were supplemented by criteria set out in the weekly instructions. The written evaluation was the final assessable item for the semester.

Second Semester Second Year (Constitutional and Administrative Law)

In second semester, the skills focus remained on interviewing, but in a changed context: government official-client rather than lawyer-client. This maintained continuity in the program, and at the same time helped students to free the underlying communication skills from the specific context in which they had first been learnt and make them more generalisable. At the end of semester the groundwork was laid for third year Offices by introducing cross-cultural communication issues which might arise in an interviewing context.

The second semester Office's program also aimed to strengthen the students' self and peer assessment abilities. At various stages each Office assessed both its own work and the work that other Offices had done. Offices also had to rely on a fellow Office's work in order to take the next step in the decision-making process. Each Office appreciated from an early stage that the quality of its work was important, not only for its own learning process, but also for that of the others. In this way we tried to develop a sense of shared responsibility for learning, a variant on the cooperative learning emphasised in the leaderless groups. It was hoped that this indirect form of peer assessment would exhort Offices to greater efforts and would equally encourage Office members to take greater interest in the passage of their Office's own work through the decision-making maze.

We were also very interested in exploring Offices' possibilities for situating the teaching of administrative law, renowned as a "hard subject". Traditionally, teaching of administrative law concentrates on avenues for reviewing administrative decisions. We thought that many of the difficulties students experience in the subject could be ameliorated if they better understood primary decision-making processes — how administrators do their jobs. We hoped students would gain a different perspective on the legal principles if they stood in the shoes of a decision-maker trying to make the best decision. Cognitive theory suggests that looking at the operation of legal principle in this different context should deepen students' understanding of the relevant principles and help their abstraction.

The decision to be made was whether a person currently in

receipt of a sole parent's pension (SPP) from the Department of Social Security (DSS) was in a "marriage-like relationship" as that term is defined in S 4 of the Social Security *Act* 1991 (Cth). This decision was chosen for its inherent interest, relevance to real life and authentic practice, and its potential to raise some interesting questions about the interview process. The decision-making process was simulated by the Offices going through the procedure of gathering information concerning a particular case; identifying the relevant law and policy applying to it; making the decision and drafting reasons for it; and internally reviewing it.

As part of the process, each Office first role-played an investigative interview of a pensioner by a DSS Field Assessor, and later (following the cancellation of her pension), roleplayed an interview with the same pensioner by a solicitor in a Welfare Rights Centre. Students thus were given the opportunity to compare and contrast the different client interviewing processes at work in the two professional contexts. Tensions and delicacies in the interview process could also be tested and experienced. In particular, the need for empathy and good communication skills could be highlighted in relation to the intensely personal issues explored by the interviewing officers when seeking to determine (Field Assessor) or provide legal advice on (Welfare Rights Centre lawyer) whether the pensioner was living in a marriage-like relationship. A summary of the program, which again was worth 5% of the marks for the subject for the year, is set out below:

Offices One and Two: These weeks were used to familiarise the Offices with the context within which their work for the semester would take place. The objective was not to teach students all the intricacies of SPP entitlements nor to make them familiar with DSS's myriad forms and procedures. The purpose of the simulation only required that Offices be provided with a basic, accurate reflection of the law and practice, supported by a working compilation of extracted departmental forms and manuals. Students were given some brief background information on the general functions of the DSS, on the SPP, and on DSS procedures for review of entitlements and decisions. We used the actual DSS forms to create a simulated client file to give to each Office. Some detail and accuracy was sacrificed for the sake of manageability but, overall, the process was a good representation of an

administrative decision-making process with an interview component. Each Office was provided with a "File" containing the basic documents necessary for a review: the originating *Form SA2 Pension Claim*, a periodic *Form SA138 Sole Parent Review* and the investigative *Form SS284 Assessment of Marriage-Like Relationship*. The purpose and inter-relationship of these forms were explained in the accompanying instructions. To complete the scenario, the culminating *Form SA260 Member of a Couple Assessment* was included with the instruction that in Office 4 a departmental officer would have to use the other forms to make a recommendation on this form. In Office 5 the original decision-maker would use the form and the recommendation to make the primary decision.

The specific task was to prepare, as a DSS Field Assessor, for an interview as part of a review of a SPP recipient's entitlement. Students were asked to consider the transferability of the interviewing skills explored in first semester to the Field Assessor's professional situation, particularly in the light of the Department's own procedures manual on conducting interviews. In the final stages of preparing for the interview, students considered the practical dynamics of conducting an interview that would focus on highly personal matters; how comfortable would students feel with the subject matter of the interview, how would they deal with a client who might be (understandably) angry or upset by personal questions, did they think that their own prejudices or opinions might interfere with the interview process?

Office Three: In this week, students experienced the administrative process of fact gathering against the background of an existing file of material, by simulating the Field Assessor's visit to, and interview of, the pensioner. The pensioner was role-played by a female member of another Office group,[27] who had been given secret instructions. Students had to elicit the relevant information from the client and prepare a record of interview to add to the File, which, students were reminded, would be passed on to a different Office for processing the following week. Finally Office groups were required to evaluate how they had conducted their interview against the departmental guidelines for the conduct of such interviews. The written evaluation was an assessable item.

Office Four: This week's aim was for students to experience fact

analysis and the drawing of inferences as part of a decision- making process. Using another Office's File, particularly the record of interview, and material extracted from the departmental manuals, the Office had to assess the information before it and make a recommendation to the Original Decision Maker in the format required by *Form SA260* Mem*ber of a Couple Assessment.* Again, students were reminded that this recommendation and its supporting summary of relevant facts and evidence would be used by another Office for taking the next step in the decision-making process. Finally, students assessed the process of reducing the very personal circumstances of the SPP recipient to a few lines on a structured form, in light of their ideas of good decision making.

Office Five: This week students experienced the decision-making process from the point of view of the Original Decision Maker (ODM). Consistent with departmental procedures, each Office only had before it a summary and recommendation completed by somebody else. The task was to apply principles of good decision-making to determine whether or not the client was in a marriage-like relationship and prepare written reasons for its decision.[28] Students were reminded that, as administrators, they had to be mindful of the departmental policy and procedures manual as well as the relevant law. Finally, the Office considered the efficacy of the decision-making process they had just experienced, particularly whether it had become divorced from the facts of the case because of the continual overlaying of law, policies and guidelines through highly formalised processes. The written reasons for decision was an assessable item.

Office Six: This week, students experienced the administrative decision-making process from the perspective of an Authorised Review Officer (ARO) conducting an internal review of another Office's original decision. Unlike the ODM, the Office, as an ARO, had the entire client file before it.[29] It had to examine the contents of the file and consider whether the law and departmental policy had been followed in dealing with the client. Department of Social Security procedures require the ARO to provide feedback to the ODM. In this way peer assessment was built into the program. The "internal departmental feedback" was transmitted to the relevant Office for their consideration. Finally, Office groups were asked to reflect critically on the entire decision-making process as they had

experienced it over the past weeks, to compare their experience in the differing decision-making roles, consider the dynamics of high volume decision-making of the type simulated and offer recommendations for improvement.

Office Seven: Offices this week moved outside the department and prepared to conduct the second client interview, this time in the role of a Welfare Rights Centre lawyer advising the same SPP pensioner of her rights, avenues and prospects of appeal on the cancellation of her pension by the DSS. Background information on the Social Security Appeals Tribunal and, to a lesser extent, the AAT was provided (the AAT is covered in more depth elsewhere in the subject). Offices had an opportunity to review their generic interviewing skills and to reflect on the difference in conducting interviews with the same client from different professional perspectives. As occurred in first semester, the Office was to focus its skills development on one aspect of the interview only. We nominated the advising stage because we thought that the students' understanding of the administrative processes could be deepened and tested at this stage. The Office was required to identify how advice skills could be demonstrated in the interview. The criteria thereby established formed the basis for peer assessment of another Office's interview performance in the interview in Office Nine.

Office Eight: The simulated lawyer/client interview took place this week. It was videotaped and again another Office provided the client. The clients were briefed with an extended version of the facts originally given to the clients for the role-play in Week Three. The Office meeting concluded with the group reflecting on the two interview experiences: what lessons were learnt about client interviewing from two interviews with the same client, but from different professional perspectives and for different purposes.

Office Nine: This was the final week of the administrative law simulation. Offices evaluated another Office's second interview using the criteria developed in Office 7, and the general Australian Client Interviewing Competition Judging Standards. To facilitate the peer assessment, Office groups were given some background reading on evaluation.[30] The evaluation was transmitted to the Office concerned for consideration at its next meeting. The written evaluation was an assessable item.

Offices Ten and Eleven: As groundwork for third year offices, these two weeks were used to introduce students to issues of cross-cultural communication. They focussed on effective interviewing practice and communication skills in a cross-cultural environment. Students completed a number of short exercises and role-plays, handing in a completed workbook. This segment trialled part of a training module developed by the Centre for English Teaching, University of Sydney.

In the final week of both semesters, each Office completed a written evaluation of the semester program,, assessing a variety of matters from both group and individual Office member perspectives. These evaluations provide many of our insights into the program and an impetus for modification that is likely to continue for some years yet.

First Semester Third Year (Property Law)

In comparison to the second year program, the third year program, run for the first time in 1994, is much less developed and will be changed significantly in 1995. For this reason we have provided less detail of its content and structure. Third year offices are linked to Property Law, which is a compulsory full year 40 credit point subject. Negotiation was added to group work as the primary skill to be developed in that year. Students had been introduced to negotiation briefly in the 1993 second year program.[31] Negotiation skills meet other criteria for Office development in being familiar to all students, even if not in all their theoretical glory, and in being a useful introduction to other forms of alternative dispute resolution. Fourth year electives available to students include Negotiation and Advocacy and a Clinical Legal Program, so future incremental skills development can occur. Group work abilities would be further developed through the Offices conducting role-plays of team negotiations. Dealing with another team, rather than a single client, adds another layer of complexity to the group work situation over the previous year. It was made clear to the students that the program did not purport to be an exhaustive training in negotiation, but rather sought to open students' minds to the possibilities of developing skills as negotiators both in professional and personal life.

The first semester program was very much a product of the

student evaluations and the results of the convergent interviews conducted under the 1993 grant. The third year students had been involved in all our experiments and studies and quite justifiably their views should be noted. Continued student support for the project depended on the value of the skills being developed in Offices being confirmed to them. In particular, they required reassurance that these skills were desired by prospective employers and therefore marketable. Rather than ask students to take our word for this, we started the program with an exercise designed to provide this confirmation.

Thus the first Office was a "skills audit". Each Office generated a list of skills it considered had been addressed by the Griffith law program in the first two years. It then added any other skills the Office thought employers would regard as desirable in graduate employees. The audit was completed by each Office member assessing her or his individual and the group progress towards mastery of those skills. Students were then furnished with a series of recent newspaper articles in which employers identified the skills they valued highly in graduates[32] and asked to compare the two lists and reflect on any apparent similarities and/or differences. This exercise seemed to firmly lay the foundation for the new year's program.

To provide an incremental and natural link with the previous years' Office work, the first Office on negotiation focussed on the generic skill of negotiation as communication. Students re-examined many of the interpersonal skills developed in Offices and elsewhere in the law curriculum, but in the transferred situation of a negotiating framework. Students were then given readings dealing with various negotiating strategies and their strengths and weakness, the phases of a negotiation session, and how awareness of the different phases may play a role in an overall strategy. In large group class, students were shown a video modelling good negotiating practice and were given a simple negotiation exercise. Each Office then prepared for the negotiation by developing a written strategy, including its opening position, the range within which it was prepared to negotiate, and how it would deal with tactics and counters that the other team might use. This was an assessable item. Each Office had access to checklists for model practice and post-negotiation evaluative criteria.

The negotiation exercise, drawn from Property Law, was a

residential tenancy negotiation between landlord and tenant involving arrears in rent, the owner's urgent desire to regain possession, an ineffective notice to quit, damage to both owner's and tenant's property, and the existence of a tenant's fixture (a valuable tapestry).[33] Each negotiation was videotaped for evaluation by staff and students. The next task was evaluation of the negotiation using the checklists provided earlier. Each Office first reviewed its own performance and then critically assessed that of the opposing Office, using the criteria for constructive feedback which all students had been using since the first year of the course and other material on evaluation skills.[34] Both evaluations were assessable items.

As a respite from negotiation, and to keep Offices tied to Property, the last Office of the semester was devoted to a practical application of the law of conveyancing. Each Office was given the facts of a hypothetical conveyance, together with relevant documents and search results, and required to complete a settlement statement, showing the details of each adjustment calculation on an adjustment sheet.

Second Semester Third Year (Property Law)

The second semester program provided the opportunity for students to plan and conduct a second major negotiation, this time based on the intellectual property segment of the subject. Students were given instructions in a copyright negotiation involving several pieces of Aboriginal art, one of which was sacred, which were being adapted and exploited to varying degrees. Again, each Office submitted a detailed negotiation plan and an evaluation of the negotiation for assessment. The videos of the first semester's negotiations had shown that Offices had made little attempt to adhere to their negotiation plans. To overcome this we tried a new device in second semester. Each Office nominated two paired teams of negotiators to conduct the negotiation on behalf of their client. At a convenient point approximately half way through each negotiation, each Office team recessed and discussed the negotiation's progress. Fresh instructions could be given to the pair of negotiators who were taking over. As had been pointed out to the students earlier, this made it more important than ever for the Office to plan its negotiation strategy, tactics and objectives very

carefully, to ensure consistency during the negotiation. We found that, even allowing for the improvement to be expected second time around, this negotiation proceeded far more smoothly.

The second negotiation was set against the background of Aboriginal art to provide a starting point for the other main work of the semester: developing cross-cultural communication skills. A cross-cultural communication consultant was employed under the 1994 grant to develop materials for use in Offices. Prior to the negotiation planning, he had given a lecture raising issues and highlighting the need for awareness of cultural and communication issues in this type of negotiation. After the second negotiation had been evaluated, students embarked on a program of cross-cultural communication training, in which exercises, quizzes and role-plays were used to develop an information base, explore stereotypes and biases, and develop awareness and skills, particularly communication skills. Nominated students acted as session leaders in Offices. They were given readings on the skills associated with that role and were provided with detailed instructions for the conduct and timing of the sessions and the matters to be addressed in the de-briefing and follow- up discussion after each exercise. There was also opportunity for further de-briefing with the consultant. The assessment component was a written group assignment critically examining the relevance of cross cultural issues in a legal setting and considering ways in which the legal system might better accommodate cultural diversity in the future. As occurred in second year, the last Office of each semester was dedicated to an evaluation of each semester's program, both from an Office group perspective and from the point of view of the individual Office members.

4 LESSONS IN FORMULATING AND ADMINISTERING OFFICE TASKS

Connection with the Subject

Perhaps the most important lesson we have learned over the last two years is the importance of the Office program being closely integrated with a subject rather than running independently. Using a few legal principles taught in a subject as a basis for a role-play is not sufficient. For a number of practical, motivational and

theoretical reasons, subject convenors must be fully committed to the program and be prepared to lay the ground work for Offices in class. The practical and motivational reasons are discussed here. The educational reasons are discussed below in Part 5.

It should be emphasised that it is the *program as* a *whole* and not necessarily the weekly tasks that requires the close integration. (To attempt the latter while theoretically ideal may well be practically impossible and unmanageable). To example the integration of an Office program, in the large group classes in Constitutional and Administrative Law, frequent reference was made to students' own attempts in Offices to draft reasons for decisions. Against this experiential background the technical requirements of reasons for decision could be better taught and illustrated. Similarly, other teaching in large and small group classes was integrated with Offices in that much of the same material was covered in both, though from a different perspective: for example, the identification of relevant and irrelevant considerations, the processes of administrative decision making, internal departmental reviews and the like. Frequently in large group class, the teacher would refer to the Office program for context to explain and illustrate particular points. Therefore, while the Office tasks from week to week might not have exactly mirrored the work done in large group, the whole program was directly linked and relevant to the student's course of study in the substantive law subject. In the client interviewing program, by modelling the client interview in large group class, by the proposed coaching of students on good practice in small groups (see further in Part 5 below) and by then role-playing interviews in the Offices program with the role-play situated in the substantive law of the subject, the Office work is again integrated into the subject and entrenched as the end point in an (integrated) approach to the skills training.

The most important practical reason for integrating the Office program into subjects is for the teacher to reinforce and validate the written instructions. The weekly instructions must be formulated with great clarity, setting out a logical progression through each step of the task and indicating how performance of the task is to be demonstrated. But no matter how clear the instructions are, it is always helpful, and frequently essential, to run over the week's task and reinforce its place within the overall program in large group

classes, even if all that is done is to repeat what has been written. Clear instructions are always important when setting assessment, but this is even more so when each week of a program depends on material being submitted the previous week. Class discussion of how the previous Office went is also very useful for identifying problems. On occasion we had to come up with immediate solutions to problems that threatened to paralyse the program. Evidence of the importance of orally reinforcing the instructions came when the second year students evaluated the second semester assessment criteria as being much clearer than the first semester's, even though they were substantially the same on paper. The difference was that we had orally discussed the criteria with the students in second semester.

In motivational terms, Offices should be integrated into subjects because students will not take seriously a program that they feel is marginal to the "real" work done elsewhere in the subject. This problem will be particularly acute where the running of Offices is left to somebody not otherwise involved in the subject (especially if the teachers appear uninformed about, or disinterested in, the program). To ensure that students take Offices seriously, both the subject convenor, or at least the week's lecturer, and the person preparing the materials should address the class on the content of the program each week. Even where staff and students accept the Office concept, continual motivation is required. While even the most ardent student critics of Offices agreed that the role-plays made learning fun and easier, it is often difficult to convince students that theoretical readings on a subject are worthwhile. Students need to be convinced that spending time on theory is necessary to equip them to perform the task. It is much easier for a teacher to do this in person than in writing.

The timing of Offices can be important. On the one hand, if Offices groups are to interact, as in the negotiation roleplay, or even where a member of one Office goes to another as a client, then they have to be held concurrently. On the other hand, if they are all on at the same time then many video cameras are needed simultaneously. The ideal is to hold several Offices at several times on the one day. Proximity to lectures is also useful. Holding Offices just after lectures is good for laying ground work; holding Offices just before lectures is good for debriefing and reporting back. Both are useful for reinforcing the program's place in the course.

Debriefing can be a particularly useful outlet for student enthusiasm and/or frustration not otherwise available in Offices' teacherless environment. It also seems more important than usual to schedule Offices at times that are relatively convenient to students. One of the biggest problems we faced in 1994 was dealing with student resentment that Offices were timetabled early in the morning on a day when they did not have any other law classes until mid-afternoon. The level of resentment was much higher than any we had previously encountered from timetabling of classes — probably because students perceived that teachers were not sharing in their discomfort.

Teaching and Administrative Load

Although Offices do not involve direct class contact, they certainly affect teaching load. Office activities need to be carefully planned, detailed written instructions are required, and written submissions must be marked. Further, as is becoming increasingly apparent, they need a good deal of support through other classroom activities, particularly modelling and coaching. Class time must be used on a regular basis to review what happened in the previous Office, provide general feedback on the work that was produced, and/or discuss instructions for the next Office. All members of the teaching staff in a subject which uses Offices should be actively involved in the Office program, not only to ensure at least the appearance of interest, but also to ensure that Office work is closely connected to the rest of the work in the subject. Teaching staff need to understand how modelling and coaching relates to the Office program, and their role in creating a culture of expert practice (discussed further below). Overall, if effected properly Offices should be so clearly part of a subject that there is no question that the time students spend in them is credited (as original hours!) to the teaching load of at least one member of staff in the subject.

Physically administering Offices is a big job and they must be very well organised. If video cameras and tapes are supposed to be available for students to video or view their client interview then you should ensure that the camera is available, the battery is charged, the tape is the correct size and the whole thing works! In a leaderless environment, students are very unforgiving of any organisational hiccups. This is partly because they have no-one to

complain to and the onus is on them to remedy the problem, and partly because the tasks are generally time intensive and there is little margin for error. It was difficult and time consuming to compile the DSS and SPP material for second year second semester.[35] While that was largely a one-off effort (unless the DSS changes the forms radically!), maintaining the files used in the simulation, ensuring that each Office received the right file and returned the necessary documents, organising clients and videos and so on was onerous, and this must be done each time the program is run. If Offices are going to be used in several places in the curricula then it is useful to have the planning input and assistance of at least a part time skills/Office coordinator or similar. After having funding for such a position during 1993 and 1994 under the Teaching Development Grants, Griffith has committed to funding a skills coordinator position on a permanent basis. In our experience, the teaching staff also needs significant administrative support in such things as monitoring attendance, handing out and collecting materials each week, organising videos when they are to be used and so on. For 1995, a teaching assistant who is a recent law graduate has been employed for approximately two days per week to conduct the administration of Offices for years 1 to 3.

It was both interesting and useful to discover that students make the best clients. After viewing hours of videotaped interviews of student, academic and administrative staff "clients", it was clear that academics were the poorest role-players. The problem was that, unless they purposely set out to be difficult or emotional clients, they tended to give the facts in a coherent, logical and structured fashion and to steer the interviewers towards the legal issues — a well-meaning but not particularly useful approach. This is a happy coincidence — while there is some administration involved in organising the students to be clients, it is much less than that involved in organising sufficient staff members to perform these roles in addition to their other duties. In fairness to the law school administrative staff, it should be said that they also made very good clients, but again, time constraints meant that they were hard to organise. Finally, it was very rewarding to witness the enthusiasm with which the students threw themselves into the role-plays whether as legal practitioners, clients or DSS assessors.

Assessment

Though every effort is made to connect the Office program's goals for learning with the assessment strategies devised,[36] a number of assessment issues remain unresolved in the Office program. Most importantly, developing students' group work abilities is a central aim of the program but we can only assess group outcomes, not processes. This means that some of the most important lessons students learn are not addressed in the assessment scheme. For instance, in 1994 several members of an Office consulted us about the almost total breakdown of their ability to work together. After we had discussed the issues and offered to provide a mediator at their next Office meeting, the students organised an extra meeting and resolved the problem themselves. Individual feedback from all parties indicated that everybody learned some valuable lessons from the episode. We have not yet devised a way of giving students their due for this kind of achievement, though as Ramsden suggests these "attitudinal aspects" are explicitly identified in the program's aims and objectives,[37] and we have attempted to highlight the positive impact individual student's values and commitment to the program will have on group work submitted for assessment.

Some students consider that the program requires too much work for the marks available. For our part, while recognising that Office marks are not the easiest marks to get in the relevant subject, we think the marks are appropriate given the subjects' relatively high credit point weightings. We are also concerned that allocating more marks would mean that Office marks could make the difference of a grade. We are reluctant to allow that to happen because of the free-rider problem and because the better students are concerned that they are penalised by group assessment.

These are perennial problems associated with group assessment.[38] All Office work is assessed on its merits, not simply on the fact of its submission, for which a number of students would argue. We tried this in 1993, but it clearly tempted students to submit unsatisfactory work, even though this often adversely affected the next week's task. A possible solution is to have a requirement that submitted work be assessed on a pass/fail basis, whereby students are required to pass each exercise and resubmit until they do so. However, this procedure is simply not possible

where the next week's work is dependent on that of the previous week and there is not the opportunity to have an Office resubmit before their next meeting. We understand the better students' concern, but do not accept that group work is necessarily of a lower standard than individual work. We do, however, allow for the fact that Office tasks often require students to consider, debate and write up complex issues in a short time. We do not expect the kind of polish that we would look for if Offices had longer to spend on the item. We are still trying to come up with a way of getting Offices to deal effectively with free-loaders. Group-work exercises addressing this issue help, but are not a complete solution. We have told students that they can indicate to us whether any member(s) of the group should not get the full marks earned by the Office. However, they are even more reluctant to adopt this policing role than they are to let a free-loader get the marks, so this has not had much impact on marks. It does at least mean that students accept the result as their own choice, rather than imposed by the nature of group work.

It is clear that assessment plays an important role in determining the quality of student learning.[39] Just as Ramsden states that "assessment is about several things at once",[40] one of assessment's key functions as an aspect of student learning is its role as a motivator for learning.[41] Students learn best when they are both intrinsically interested and motivated to do the work[42] and satisfied that it is being appropriately valued in the assessment scheme.[43] But it is not enough to simply allocate marks to work, or to set interesting tasks. Students with heavy workloads will always engage in an ordering of priorities.[44] If students are busy with other assessable work, they will sacrifice work that is no more than intrinsically worthwhile. However, if they are only doing the work for the marks allocated, without interest or commitment, most will do no more than the minimum necessary to achieve the kind of mark they aim for, particularly when there is the added complication of working as a team. Ultimately, we doubt that increasing the marks available would add much to the students' motivation. The absence of teachers as motivators means that Offices require students to be more intrinsically motivated than normal classes. Provided the assessment is within the range most students consider valid, motivation depends more on the nature of the tasks set than the amount of marks they are worth. However

assessment practice and procedure need to be closely monitored: if students do not think that the assessment is valid then they will treat Offices as being of no value to them, whatever their intrinsic worth.

Attendance

Monitoring attendance in the absence of teachers can be difficult. In order to be credited with the marks earned by their Office, students must attend at least 75% of the meetings held each semester (we nominate the precise number, so that there is no argument about whether or not the requirement is met). Wanting students to take responsibility for their own learning, we started with an excessively laissez-faire attitude, leaving the Offices to administer their own rolls as proof of attendance. This did not work. Records were not always kept accurately and on some occasions were altered retrospectively. Getting Offices to hand in signed cards was better but still not good. Some Office groups signed the card in the lecture held several days before the Office was scheduled and submitted it as proof of attendance, without actually holding the meeting.

We now require a member of the Office group to collect a stamped attendance card from the Faculty Office no earlier than ten minutes before the Office is due to commence and to return it, signed by those who attended, no later than 15 minutes after the time the Office finishes. This seems to ensure that people actually attend, but does not guarantee that they stay for the whole Office or contribute effectively. Intrinsic motivation through setting interesting and relevant tasks has a role to play here, but in the end responsibility for this comes down to the group. Part of the training on group dynamics done early in the second year program was directed towards dealing with this.

Ethical Issues

Associated with the question of attendance monitoring is the question of ethics generally. We realise now that students need to be developing an appreciation of the ethical dimension of their Office work from year one. Addressing ethics earlier in the program should help to minimise student attempts to falsify their attendance rolls and may overcome a related difficulty experienced

in third year negotiation Offices, where one Office group invented facts to suit themselves. This completely threw out one of the inter-Office negotiations and produced some interesting inter-group dynamics. This team repeated the conduct in second semester, despite warnings. It is difficult to assess whether this would have occurred had a teacher been present, though the video camera did not seem to be a deterrent. It is tempting to put this isolated occurrence down to particular personalities at work in the Office group concerned and trust that it will not re-occur in the future. However, it is clear that Office ethics require further attention. It may be that a suitably stem lecture from a authority figure like the Dean may be sufficient to deal with most ethical problems that arise but, in any event, the issue remains.

5   EVALUATION OF THE OFFICE LEARNING ENVIRONMENT

Overall, we are happy with the way that the program is developing. The client interview program in the first semester of second year requires students to actively work through some Associations and Trusts material in different contexts, seeing how the same material can be organised in different ways for different purposes. Their communication and group work skills develop, while their understanding of the legal principles deepens through exploring how those principles actually work in practice. Drafting the legal advices provides students with an authentic[45] encounter with fact/law interdependency in a way that forces recognition and resolution in less well-defined circumstances than those with which they are typically familiar through law school hypotheticals.[46] They quickly learn that skills and knowledge are interdependent: they cannot interview effectively without knowing what they are looking for, and they cannot correctly work out the legal principles if they have not found out the facts they need. Requiring preparation of a logical and structured account of the client's instructions immediately after the interview makes obvious to students in what way if at all, the interview process has been less than satisfactory. This has a positive impact on the student's future development of problem-solving abilities, demonstrating the analytical link between fact and law that law students are rarely able to comprehend at such an early stage in their education.

In some ways, the second semester program comes closest to fulfilling the project's promise. There is no strained association of skill, group effort and substantive law. The clear link between the substantive law and the experiential learning environment, in an area that has traditionally caused administrative law students some degree of difficulty, was satisfying to both staff and students. That second semester neatly and incrementally flowed on from first semester was also gratifying. Having a common set of facts to refer to when illustrating principles was extremely useful.

As we have already indicated, the third year program may require some recasting in light of changed goals and student feedback. However, we can say that the skills audit was a great success and went a considerable way towards renewing student faith in the program. Perhaps in future years consideration should be given to incorporating this type of employer feedback into the program at more regular intervals. We are still assessing the viability of negotiation training in an Offices context, particularly in light of the various matters discussed in more detail below. Generally, however, we believe the benefits of the program far outweigh any detriment and that existing problems can be solved given an appropriate framework of analysis. Collins, Brown and Newman[47] have developed a framework for designing educational environments, which we are using to assess the strengths and weaknesses of the learning environment we have created in Offices, and to design improvements for the future. They argue that "standard pedagogical practices render key aspects of expertise invisible to students",[48] creating problems of "brittle skills and inert knowledge".[49] This is because modern forms of education — including legal education — abstract the learning of knowledge and skills from the contexts in which they will be used. In contrast, apprenticeship models of education, which were dominant in the past, embedded skills and knowledge in the context of their use. By analysing how three successful teaching programs overcame problems by adapting apprenticeship-like methods to formal schooling, Collins, Brown and Newman have developed a general framework of instruction designed to provide students with a "cognitive apprenticeship". Aiming to teach the processes that experts use to handle complex tasks, cognitive apprenticeship emphasises the situating of conceptual and factual knowledge in the contexts of their use, and "learning-through-guided-experience on

cognitive and metacognitive … processes".[50] Cognitive apprenticeship requires making visible the internal aspects of expertise that standard teaching practices keep invisible, and the fostering in students of abilities to monitor and correct their own work.[51] Their framework directs attention to four key aspects of any learning environment: content, method, sequence and sociology.

Content

In addition to domain knowledge (the traditional focus of legal education), Collins, Brown and Newman advocate teaching heuristic strategies, control strategies and learning strategies. Heuristic strategies are the "tricks of the trade" that an expert has to help accomplish tasks. Most are tacitly learned, but some can be explicitly taught. Control strategies are used to manage the problem solving process and require conscious reflection on that process to determine how to proceed. Learning strategies mean knowledge about how to learn.

We have tried to incorporate each of these types of content into the Offices program. Domain content, of course, comes from the substantive subject of which the Office program is a part. Heuristic strategies are included in the materials dealing with the relevant skill. Control strategies for dealing with the most common problem — managing group dynamics — is provided in the group work exercises that were developed under the 1993 grant. The primary learning strategy that we have included is self and peer assessment. We consider that we have not reached the optimum level of instruction in either control or learning strategies, and that this stems partly from the problems in our methodology discussed below.

Method

The need to "formulate explicitly the strategies and skills underlying expert practice" is the central premise of cognitive apprenticeship,[52] which has a "modelling-coaching-scaffolding and fading" paradigm at its core. Modelling occurs when students observe experts carrying out a task while explaining how and why the task is being accomplished as it is. Coaching is based on immediate interaction with, and feedback to, students as they

attempt the task for themselves. Scaffolding is providing support to a student by way of verbal or written suggestions, hints or prompts, or completion of parts of the task that students cannot yet manage; and aims to allow students to do on their own as much as possible as soon as possible. Fading "is the gradual removal of supports until students are on their own".[53]

In the Office environment the teacher has certainly faded. However, the tendency has been for this to be somewhat abrupt and premature, rather than gradual and as a culmination of earlier processes. Removing the teacher from the class at the same time that students are asked to do new things can be tantamount to simply "throwing them in at the deep end". This is not such a problem in first year Offices, where students are expected to engage in activities quite similar to both their previous educational experiences and their small group activities. Clearly, however, students need to engage in a wider range of activities if their legal education is going to be meaningfully situated. The problem of abrupt and premature fading is more pronounced in later year Offices, where students are required to engage in novel, complex activities. In particular, the teachers' absence from Offices limits their opportunity to model and coach in that environment. For students to make the most of Offices, modelling and coaching must first have occurred elsewhere. A key next step in developing the Office program is to ensure that this occurs.

For instance, with client interviewing, the process is already modelled in first year in a large group class. This could be repeated once or twice in second year; it was done once by video in second year in 1994, but this may not be sufficient. Small group classes are the obvious place where coaching could occur. This would also accord with the desire to integrate the Office program into the subject. For instance, early in the year some small groups could focus on an exercise where one student is given the facts of the tutorial problem to be solved in the class. The other students could ask questions of that student to elicit the facts, whilst being coached by the teacher. The class could then go on to discuss the solution of the problem in the normal way. Around the same time, the Office material could introduce students to some of the theoretical and practical issues in client interviewing and provide scaffolding material. The teacher could then "fade", by having the students do a client interview in Offices. Small groups run along these lines

would be fun and stimulating for the students and would help to further situate the students' learning. Linking Office activity with activities in other classes in the subject would reinforce the program's place in the mainstream rather than marginalising it, which is very important for maintaining student motivation.

Collins Brown and Newman also advocate the use of the methods of articulation, reflection and exploration. Articulation involves "getting the students to articulate their knowledge, reasoning, or problem-solving processes".[54] Students reflect by comparing their own processes with those of an expert, other students and, eventually an internalised model of expertise. Exploration is the culmination of fading, when students explore problem solving on their own.

In Offices we promote articulation primarily by having a number of the group adopt the role of monitor and critic during Office activity, one of the methods suggested by Collins, Brown and Newman. A useful articulation technique is to stop the activity midway, have the monitors provide feedback to the students who were performing it, then the two groups swap positions, and when the task is completed the monitors again provide feedback. This closely links the activities of articulation and performance of the task and maintains involvement in the overall process.

Reflection is encouraged through the self and peer assessment activities built into the program. However it is apparent that students need to be taught how to assess and evaluate as a learning strategy. Modelling and coaching is important here as well, as is the ability to "replay" both expert and student performances for comparison.[55] Whilst we have used modelling of expert performance and videos to record the student performances, when evaluating their own performances the students not been able to replay the expert performance as a point of reference. This can easily be remedied by providing the students with a video recording of the expert performance, including the expert's own self-evaluation, giving them examples of both the activity itself and an evaluation of that activity to guide them in their own evaluation. Exploration is central to developing student independence, and this is a major strength of Offices. In the past, however the Office program has tended to rely too heavily on exploration and failed to sufficiently frame it with other methods. Balancing exploration with modelling and coaching of both skills and learning strategies,

particularly the ability to self and peer assess, is a key challenge in the future development of Offices.

Sequencing

Collins, Brown and Newman focus on three aspects of the order in which tasks are introduced to students, recommending increasing complexity, increasing diversity and global before local skills. In Offices, we seek to increase the complexity in the interpersonal skills students are required to exercise in stages. In first year students just have to communicate with people in their own Office. In second year, a single outsider (the client) is introduced. In third year, the Office must engage in a more complex negotiation with another Office. We similarly seek to increase the diversity of skills that students exercise by concentrating on group work skills in first year, adding to this interviewing skills in second year, and adding cross-cultural communication and negotiation skills in third year. We also seek to diversify the contexts in which the skill is being used — for instance students role-play interviewing as a lawyer and as a government official who has to make a decision. In 1995, we are considering extending this a stage further by having the Offices role-play the conduct of a Social Security Appeals Tribunal hearing. A benefit of diversifying is that "as students learn to apply skills to more diverse problems and problem situations, their strategies become freed from their contextual bindings (or perhaps more accurately, acquire a richer net of contextual associations) and thus are more readily available for use with unfamiliar or novel problems.[56] One of the mistakes we made in 1993 was to not pay sufficient attention to the pace at which we diversified skills, trying to add too many in too short a time.

In recommending teaching global before local skills, Collins, Brown and Newman argue that before students are taught a specific skill, they should be introduced to the aim or use of the overall process, how all the pieces fit together in a conceptual map. Thus, rather than first being taught lower level skills and knowledge and then how to combine these to solve interesting or realistic problems, students should first be helped through the lower level knowledge and skills so that they can solve such a problem. Once the overall activity is understood, they learn the component parts better because they can make better sense of the pieces, they have a

clear goal to aim for and are better able to monitor their own performance.[57] At a macro level, the foundation subject, Law and Legal Obligations, aims to help students build up a broad conceptual map of law and legal practice to serve as a framework for the rest of their law studies. It seeks to show how different areas of substantive law (contract, tort, equity) are interrelated, and how substantive law and lawyering skills such as client interviewing, negotiation, and advocacy together provide resources for legal problem solving. This provides some basis for the later Office activities. It would be useful as part of the Office program to reinforce how specific skills (such as client interviewing or negotiation) fit into the global activity of lawyering. In our experience, to engage students this kind of material has to be considered in classes involving teachers, rather than via Office readings.

Sociology

Collins, Brown and Newman identify five critical elements of the social context in which learning occurs: situated learning, a culture of expert practice, intrinsic motivation, exploiting cooperation, and exploiting competition. Situated learning has been discussed above. We see this as a key strength of Offices, but Offices do not exhaust the need for or opportunity to situate the learning of law. Indeed, as discussed above we predict that Offices will be most successful when they are the culmination of similar situated learning activities that take place with the teacher present.

Expertise is defined as "the practice of solving problems and carrying out tasks in a domain". A culture of expert practice is one where teachers and students cooperate to do these things, while simultaneously engaging in a dialogue about how experts do them, with the aim of teaching them how to "think like experts".[58] Of course, law schools have long claimed to teach students to "think like lawyers", but there are at least two problems with the way this has been done. First, legal expertise has been primarily characterised as involving the recall and use of the texts of appellate court judgements and primary statutes. This bears only limited relationship to the way that lawyers think and act in practice. Legal education should seek to teach expertise in a much wider range of activities. Secondly, "expertise" generally is not

well understood. Unpacking the mental processes that underlie expertise is a major focus of current cognitive research.[59] Law schools generally have done little to incorporate the results of this research into their teaching methodology.[60] Offices contribute to a culture of expert practice by explicitly positioning students as professionals-in-training, but do not create one on their own. Modelling and coaching of expertise are essential as well as opportunities to practice and explore it.

Students learn better when they are intrinsically motivated to perform the set tasks than when they perform them purely for the marks involved. Intrinsic motivation comes when they are interested in the tasks, see their worth, or at least can understand their purpose. Students respond very favourably to Office tasks when they see the relevance to their future work as lawyers or other professionals, and their intrinsic motivation is very high. Sometimes the relevance of an Office task is not apparent to students. When this happens in a "normal" classroom, the teacher is present to motivate students by explaining the relevance of the task or by showing how it can be interesting. This is more difficult to do in Offices. Generally speaking, attempts to motivate through written instructions are unsuccessful. It is often necessary to precede an Office task by a class discussion of the nature of the task and how it fits into the overall picture. Certainly we have found the marks allocated to the Office program alone to be an inadequate motivator. When students have been unable to see the connection between Office work and their other studies or work they can imagine themselves doing as graduates, they have engaged in a number of work minimising strategies and undermined the spirit of the activity. Support from the whole teaching staff is also crucial — a few ill-judged words, or even an apparent lack of interest, can quickly sap students' confidence in the value of participating in what is obviously an experiment (no matter how sound its theoretical basis).

While Offices focus on group work specifically to exploit cooperation, less thought has been given to exploiting competition. One way in which we sought to do this in the second year second semester program was to swap the Offices' forms at each stage of the decision-making process. We hoped that the students' concern about their peers' judgement on their work would motivate them to complete each task as well as they could. It is hard to judge how

successful this was — certainly on occasion an Office still handed in substandard work, making life more difficult for the next Office.[61] In any case, Collins, Brown and Newman stress that in exploiting competition the focus of comparison should be on the problem-solving process, not the outcome of that process.[62] The fact that Offices mainly work in isolation from each other means it is difficult for students (or staff) to compare their processes, and therefore difficult to exploit competition in a constructive way. In general, it seems to us that there is more than enough competition in the rest of the law school curriculum and that an emphasis on cooperation in Offices is a useful balance to this.

6   CONCLUSION

Offices add a dimension to law school that other types of classes cannot. Even with the limitations we have identified in the Office program to date, we are convinced that it has provided a very positive learning experience for almost all students. However, Offices should not simply be tacked on to a subject and run in isolation. Their introduction has implications for the whole teaching program in the subjects of which they are part. To get the most out of Offices, they need to be firmly integrated with activities that occur in large and small group classes. Ideally something like a cognitive apprenticeship framework should be employed throughout the subject.

Of course, spending class time in substantive law subjects modelling and coaching skills such as client interviewing or negotiation takes time away from teaching content. All law teachers are familiar with coverage pressure. Not only is the amount of substantive law that could or should be taught growing rapidly but law schools are now expected to teach a wider range of theoretical, critical and contextual material. Resources are tightening while student numbers increase: universities are expected to do more with less. Now "cognitive apprenticeship" with its emphasis on "situated learning" is being added as well. Will it be the straw that breaks the camel's back?

Not in our view. Rather, it has the potential to help us resolve the competing pressures once two basic premises are accepted. First, teaching students an ever increasing mass of detail simply for the sake of coverage is a largely useless activity given that

cognitive research has demonstrated that little of this detail is remembered even a short time later, and even good students graduate with fundamental misunderstandings of subjects studied in this way.[63] Our aim should be for students to learn things that they can continue to use throughout their lives, not to test their short-term memory. Second, the pace of change is such that much of the detail we currently teach is likely to be superseded in a relatively short time. Our aim should be for students to learn how to use basic principles flexibly and creatively and how to keep learning more details as they need to.[64] Cognitive apprenticeship provides a method of achieving these aims. Situated learning of the basic principles makes them more likely to be remembered and generalisable to new situations. Teaching learning skills makes students ultimately independent of teachers, so they will be able to keep on learning. Offices do not, on their own, amount to a cognitive apprenticeship framework. Just as being thrown in the deep end is not *the* best way to learn how to swim, throwing students together without preparation and without a teacher present is not the best way for them to learn how to be lawyers. However, once students are taught a few basic strokes, and how to help themselves and others improve them, then Offices can be a very powerful part of a wider cognitive apprenticeship.

1 The "project" is to develop linking "programs" to run as part of different subjects.

2 B Dick, L Godden, K Healy & M Le Brun with G Airo-Farulla & D Lamb, A Case-Study of the "Offices" Project At Griffith University: Implementing Educational Theory (1993) 4 *Legal Educ Rev* 273 at 276–7. *See* also JS Brown, A Collins & P Dugid, Situated Cognition and the Culture of Learning (1989) 18 *Educ Researcher* 32; A Collins, JS Brown & S Newman, Cognitive Apprenticeship: Teaching the Crafts of Writing, Reading and Mathematics in L Resnick (ed) *Knowing, Learning and Instruction* (Hillsdale: Lawrence Erlbaum, 1989) at 453.

3 *Id* Dick et al. *See* also M Le Brun, Law at Griffith University — The First Year of Study (1992) 1 *Griffith Law Rev* 15.

4 *Id* Dick et al*, supra* note 2, at 277.

5 Collins, Brown & Newman, *supra* note 2, at 453.

6 In a survey of 103 employers of Griffith graduates, 83% said that teamwork skills, oral communication skills and the ability to solve problems were very important in graduate employees.

7 Of course, university education should be about more than simply making graduates to the orders of employers and governments. If there were no good

educational reason for paying more attention to teaching skills, then resisting that political pressure would be a battle worth fighting.

8 L Resnick, Introduction in L Resnick, *supra* note 2, at 1.

9 *Id* at 11.

10 *Id* at l, emphasis in original.

11 *Id* at 2. See also P Ramsden, Learning to Teach in Higher Education (Melbourne: Routledge, 1992), particularly at 5–6, which prescribes a focus on how students learn as the best method of improving teaching. For a discussion of student centred teaching in law, see M Le Brun & R Johnson, *The Quiet (R)evolution* (Sydney: Law Book, 1994) at 89–91.

12 Resnick, *supra* note 8, at 9.

13 The ability to adapt existing learning strategies and develop new ones when new contexts are encountered, and the ability to self-assess one's performance, are both key enabling characteristics of life-long learning. *See* R Crebert, *HECIAVCC Project on the Enabling Characteristics of Undergraduate Education: Discussion Paper* (QUT: Academic Staff Development Unit, 1994).

14 Resnick, *supra* note 8, at 3.

15 Collins, Brown & Newman, *supra* note 2, at 487.

16 Resnick, *supra* note 8, at 12.

17 *Id* at 13.

18 This is described fully in Le Brun, *supra* note 3.

19 See further Dick et al, *supra* note 2.

20 This is a development of the Foundation Dean, Charles Sampford's ideas originally set out in C Sampford, Rethinking the Core Curriculum (1989) 12 *Adelaide L Rev 36.*

21 The four integrations then in place were Law and Japanese, Law and International Business, Law and Environmental Science and Law, Politics and Public Policy. Media Studies and Accounting have since been added.

22 See Dick et al*, supra* note *2,* at 286. Some students then complained about being marked down if that individual did not complete the work properly or submit it on time.

23 These are described and the results analysed in Dick et al*, supra* note *2.*

24 *Ibid.*

25 *Id* at 282.

26 *Id* at 294. of equity and trusts in the resolution of property disputes between persons in a de facto relationship, students were asked to discuss the nature and definition of "family" and whether different family groupings, such as gay or lesbian relationships, should be included for the purposes of de facto and other relevant legislation.

27 Originally, we had intended to have someone from the same Office group role-play the pensioner, but the students themselves suggested that it would be "more uncomfortable" and the simulation more effective if someone less well known to the interviewer played the client role.

28 The reasons were required to be prepared in accordance with the Administrative Review Council's Statement of Reasons — An Explanatory Memorandum: see ARC, Third Annual Report 1979 Appendix 11.

29 For simplicity's sake, we amended the process by not having the ARO speak to the client by telephone, as is usually the case.

30 See generally N Tarr, The Skill of Evaluation as an Explicit Goal of Clinical Training (1990) 21 *Pacific Law J* 967.

31 This did not remain the case in the 1994 second year program described above and so for future years this aspect of incremental development will no longer be available.

32 See for example S Marginson, General Skills Work for Graduates, *The*

Australian, HES, 14 April, 1993.

33 A residential tenancy situation was deliberately chosen as being of likely personal relevance to students and a matter where the law is not too complicated.

34 Tarr, *supra* note 30.

35 People interested in replicating that part of the program should feel free to request a copy of the materials from the authors.

36 Ramsden, *supra* note 11, at 189.

37 *Id* at 189–190.

38 For two interesting discussions on group assessment see: GD White, Evaluation of Small Student-Led Discussion Groups as an Adjunct to a Course in Abnormal Psychology (1978) 5 *Teaching of Psych* 95 and R Conway, D Kember, A Sivan & M Wu, Peer Assessment of an Individual's Contribution to a Group Project (1993) 18 *Assessment and Evaluation in Higher Educ* 45.

39 See for example Ramsden, *supra* note 11, at 182.

40 *Ibid.*

41 N Rogers, Improving the Quality of Learning in Law Schools by Improving Student Assessment (1993) 4 *Legal Educ Rev* 113 at 118–120.

42 Ramsden, *supra* note 11, *at* 65.

43 See for example JW Barnes, The Functions of Assessment: A Re-Examination (1990–91) 2 *Legal Educ Rev* 177 at 181–182.

44 *Ibid.*

45 Brown, Collins & Dugid, *supra* note 2, at 34.

46 *Id* at 39–40.

47 Collins, Brown & Newman, *supra* note *2.*

48 *Id* at 454.

49 *Id* at 457.

50 *Ibid.*

51 *Id* at 457–8.

52 *Id* at 480.

53 *Id* at 482.

54 *Ibid.*

55 *Id at* 483.

56 *Id* at 485.

57 *Id* at 485–86.

58 *Id* at 488

59 *Id* at 480, 488.

60 *Ibid.* For an excellent discussion of how this research can be incorporated, see J Mitchell, Current Theories of Expert and Novice Thinking: A Full Faculty Considers the Implications for Legal Education (1989) 39 *J of Leg Ed* 275.

61 One situation where the offices were unfortunately too much like real life!

62 Collins, Brown & Newman, *supra* note 2, at 490.

63 *See* Ramsden, *supra* note 11, ch 3.

64 *Ibid.*