Legal Education Review

(2002) Vol 13 No 2

ARTICLES

TEACHING NOTES

Subscriptions. The *Legal Education Review* is published twice each year. Subscription rates are $A35 per year or $A60 for two years for individual subscribers within Australia or New Zealand; $A40 per year or $A70 for two years for individual overseas subscribers; $A50 per year for libraries within Australia; $A55 per year for overseas libraries.

Subscription requests should be sent with payment enclosed to The Business Editor, *Legal Education Review*, c/- Centre for Legal Education, Faculty of Law, University of Newcastle, University Drive, Callaghan NSW 2308 Australia.

Those wishing to subscribe to the *Legal Education Review* in North America are advised to contact: Gaunt Inc, Gaunt Building, 3011 Gulf Drive, Holmes Beach, Florida 34217-2199 USA, who are sole distributors of the journal in that area.

The *Review* was established in 1989 with the support of a grant from the Law Foundation of NSW. The editors of the *Review* are appointed by the Australasian Law Teachers' Association (ALTA). Membership of ALTA includes a subscription to the *Legal Education Review*. For enquiries about ALTA contact: ALTA@law.uts.edu.au

Editorial Objectives and Submission of Manuscript. The *Legal Education Review* is an independent, refereed journal whose objectives are to encourage and disseminate research into legal education and to stimulate discussion, debate and experimentation on topics related to legal education. A style guide is available from the editors. If possible, manuscript should be submitted both in written form and on computer disk.

Address for submission of all papers (Articles, Teaching Notes):
Lyndal Taylor, Editor in Chief, *Legal Education Review*
Faculty of Law, University of Technology, Sydney
PO Box 123, Broadway, NSW 2007
Australia.

Typeset by Last Word, Glen Waverley, Vic

ISSN 1003-2839

(2002) Vol 13 No 1

(2002) Vol 13 No 1

(2002) Vol 13 No 1

(2002) Vol 13 No 1

A Proof-oriented Model of Evidence Teaching

*Andrew Palmer**

The "new evidence scholarship", which has revitalised evidence research and teaching in North America in the last thirty years, still seems to have had very little impact in Australia.[1] The key feature of this new scholarship is a transformation of evidence "from a field concerned with the articulation of rules to a field concerned with the process of proof",[2] "a shift away from the rules of evidence towards the process of proof and the way inferences should be drawn from a mass of evidence".[3] In Australia one can point to scholars[4] such as Richard Eggleston,[5] David Hodgson,[6] David

* Senior Lecturer, Law School, University of Melbourne; Barrister, Victorian Bar. I would like to acknowledge the helpful comments made by my wife Madeleine, by my colleagues Andrew Kenyon and Ian Malkin, by the anonymous referees, and by the Editor, on drafts of this article; responsibility for the views expressed is, of course, my own.

1 For a general overview of the "new evidence scholarship" see J Jackson, Analysing the New Evidence Scholarship: Towards a New Conception of the Law of Evidence (1996) 16 *Oxford Journal of Legal Studies* 309; as Jackson notes, the phrase "new evidence scholarship" derives from R Lempert, The New Evidence Scholarship: Analyzing the Process of Proof (1986) 66 *Boston University Law Review* 439.

2 Lempert, *supra* note 1.

3 Jackson, *supra* note 1.

4 The names which follow are not intended to be exhaustive!

5 See R Eggleston, *Evidence, Proof and Probability* 1 ed (London: Weidenfeld and Nicolson, 1978); R Eggleston, The Probability Debate [1980] *Criminal Law Review* 678; R Eggleston, *Evidence, Proof and Probability* 2 ed (London: Weidenfeld and Nicolson, 1983); R Eggleston, Focusing on the Defendant (1987) 61 *Australian Law Journal* 58; R Eggleston, Wigmore, Fact-finding and Probability (1989) 15 *Monash University Law Review* 370; and R Eggleston, The Philosophy of Proof (1991) 65 *Australian Law Journal* 130.

6 See D Hodgson, Probability: The Logic of the Law—A Response (1995) 15 *Oxford Journal of Legal Studies* 51; D Hodgson, The Scales of Probability: Probability and Proof in Legal Fact-finding (1995) 69 *Australian Law Journal* 731; and D Hodgson, *The Mind Matters: Consciousness and Choice in a Quantum World* (Oxford: Clarendon Press, 1991).

Hamer,[7] and Andrew Ligertwood,[8] as having published work which falls somewhere on a spectrum that ranges from actively engaging with the new evidence scholarship, to applying its insights, to sharing its concerns. For most published Australian evidence scholarship, however, Lempert's description of evidence as a "field concerned with the articulation [and critique] of rules" remains apt.[9] Given the minimal impact of the new evidence scholarship on evidence research in Australia, it would be surprising if the new evidence scholarship had had a significant impact on the teaching of Evidence in Australian law schools, and a cursory examination of a range of Australian evidence teaching texts confirms an almost exclusive focus on the rules of evidence, and a corresponding neglect of the processes of proof.[10]

Undeterred by my own lack of published "new evidence" work, however, I have recently been involved with others in a redesign of the evidence courses at the University of Melbourne in a manner which entailed a shift in

---

7 See D Hamer, The Civil Standard of Proof Uncertainty: Probability, Belief and Justice, (1994) 16 *Sydney Law Journal* 506; D Hamer, The Continuing Saga of the Chamberlain Direction: Untangling the Cables and Chains of Criminal Proof (1997) 23 *Monash University Law Review* 43; D Hamer, "Chance would be a fine thing": Proof of causation and quantum in an unpredictable world (1999) 23 *Melbourne University Law Review* 557; and D Hamer, "Hoist with his own petard"? Guilty Lies and Ironic Inferences in Criminal Proof (2001) 54 *Current Legal Problems* 377.

8 See A Ligertwood, *Australian Evidence* 3 ed (Sydney: Butterworths, 1998) ch 1 and *Australian Evidence: Cases and Materials* (Sydney: Butterworths, 1995) ch 2.

9 *Supra* note 1.

10 See, for example, PK Waight & CR Williams, *Evidence: Commentary and Materials* 5 ed (North Ryde, NSW: LBC Information Services, 1998); M Aronson & J Hunter, *Litigation: Evidence and Procedure* 6 ed (Sydney: Butterworths, 1998); S McNicol & D Mortimer, *Evidence* 2 ed (Butterworths Tutorial Series, Sydney: Butterworths, 2001); and my own *Principles of Evidence* (Sydney: Cavendish Publishing Australia, 1998). This is not intended to suggest that these texts or the courses which rely on them are narrowly "black letter"; it is not necessary to focus on the processes of proof to be innovative or exciting: see, for example, J Hunter & K Cronin, *Evidence, Advocacy and Ethical Practice: A Criminal Trial Commentary* (Sydney: Butterworths, 1995), and J Hunter, Teaching Plumbing with Periclean Ideals: Should it be done? Can it be done? Advocacy and Courtroom Scholarship (1996) 30 *Law Teacher* 330. Ligertwood's texts, *supra* note 8, clearly do pay some attention to the processes of proof; and see also K Mack, Teaching Evidence: Inference, Proof and Diversity (2000) 11 *Legal Education Review* 57, discussed in more detail *infra*, text accompanying note 53.

focus away from the rules of evidence, and towards the process of proof.[11] The particular orientation which the redesign described in this article took was to attempt to develop students' skills in factual analysis; the aim, then, was to adopt an approach first championed by Wigmore in the *Science of Judicial Proof*,[12] and subsequently expounded by Anderson and Twining in their *Analysis of Evidence*.[13] This is a proof-oriented model of evidence teaching, in the sense that the emphasis is on teaching students how to go about proving the facts in issue in litigation. The "new evidence scholarship" is a broad church,[14] however, and there are any number of ways in which an Evidence course could be redesigned along "new evidence" lines.[15] The particular redesign discussed in this article is not, therefore, being put forward as the last word in Evidence courses (it is not even the last word in Evidence courses at the University of Melbourne, which have continued to evolve since the completion of this article), but it is hoped that it might stimulate some thought about the ways in which we teach Evidence in Australian law schools. The article falls into two main parts: the first describes the redesign in some detail; the second deals with some of the objections which might be made to it.

Steps Towards a Proof-oriented Model of Evidence Teaching

Evidence in the LLB at the University of Melbourne is generally taken as a final year subject, taught over one semester in two or three streams. Prior to its redesign, it might more accurately have been called "The Law of Evidence" than "Evidence", because its focus was almost exclusively on the *rules* of evidence. That said, the course was not entirely traditional in its approach. In particular, it used a problem-based methodology, rather than focussing on the reading

11 This ongoing process of redesign has been a collaboration with my teaching colleagues, Dr Andrew Kenyon & Dr Jeremy Gans.

12 JH Wigmore, *The Science of Judicial Proof: As Given in Logic, Psychology and General Experience, and Illustrated in Judicial Trials* 3 ed (Boston: Little, Brown and Company, 1937); see also Wigmore, *The Principles of Judicial Proof: As Given by Logic, Psychology, and General Experience, and Illustrated in Judicial Trials* (Boston: Little, Brown and Company, 1913).

13 T Anderson & W Twining, *Analysis of Evidence: How to do Things with Facts* (London: Weidenfeld and Nicholson, 1991).

14 See Jackson, *supra* note 1.

15 See, for example, Mack, *supra* note 9.

and analysis of appellate judgments,[16] but its focus was nevertheless almost entirely on the exclusionary rules. The high enrolment and low staff/student ratios in the LLB course did not make it an ideal environment for experimentation, however.

A better environment for experimentation with the introduction of a proof-oriented teaching model was provided by a new law program, the Juris Doctor, or JD. This is a fee-paying graduate law degree where the intake is limited to 24 students. The introduction of the JD at the University of Melbourne was used as an opportunity to trial the proof-oriented model of teaching evidence, before introducing it into the LLB. At the time of writing, the new Evidence course has been taught four times on the JD, and twice on the LLB. What follows, then, is a description of the JD Evidence course, followed by a discussion of the differences in approach required when the proof model was introduced into the mass-enrolment LLB Evidence course.[17]

The JD Evidence course

The JD is taught over two years, in six trimesters, in each of which the students are required to take four subjects. Evidence is taught in the first trimester, along with Legal Research and Method, Criminal Law, and Procedure. This placement is in direct contrast with the majority of LLB courses, where Evidence (or Litigation) is typically taken in the final or penultimate year. An obvious consequence of its placement in the JD is that students do not bring much experience or knowledge of the law, or bodies of legal rules,

16 The reasons for this can be briefly set out. First, our aim in the course was to provide students with a good grasp of basic principle, rather than the ability to construct the kind of argument about the scope or operation of an exclusionary rule that might be made on an appeal in the High Court. Secondly, being a later year subject, we felt entitled to assume that the skills to be gained from reading, analysing and synthesising case law – important as they are – are skills which students should already have learnt in earlier subjects, and which they should not need to be taught again in Evidence; cf AG Amsterdam, Clinical Legal Education – A 21 Century Perspective (1984) 34 *Journal of Legal Education* 612, 618: "… *why* do we need to teach case reading and doctrinal analysis to the same students twenty-nine times *sub nom*. torts, contracts, criminal law, admiralty, antitrust, civil rights, corporations, commercial law, conflict of laws, trusts, securities regulations and so forth?"

17 During the same period a new specialist LLM subject, Proof in Litigation, which is concerned solely with the process of proof, has also been developed; this subject is not, however, discussed in this article.

to Evidence. A less obvious consequence, is that students take to later subjects the awareness of, and sensitivity to, factual issues, that they develop in Evidence: "how would I prove that" has apparently become a question students learn to ask of the elements of the causes of action they encounter in later year subjects.[18] The discussion of the Evidence course falls into three parts, dealing respectively with teaching methods, course content, and assessment.

Teaching Methods

There are twelve classes in the course, each of three hours duration; typically these take place once a week. The course is divided into 12 units, corresponding to these classes. Students are provided with course materials, which together with the text *Principles of Evidence*,[19] constitute the primary teaching resources for the subject. The materials for each unit fall into two distinct parts:

- The *Information* section details the objectives and reading for the unit. All the essential reading is marked with an asterisk. Almost all of the essential reading is provided in *Principles of Evidence* or the subject materials.
- The *Materials* section of each unit contains an outline of the points that will be considered in seminars through mini-lectures and class discussion. The Materials section commences with an Introduction, including instructions about what students should read and prepare before class. The Materials section also includes a series of problems and questions for each week of the subject, some of which will be dealt with in class, others of which are there to provide students with the opportunity for further exercise and reflection. In some units, the Materials section also includes selected legislative provisions, case extracts and articles. These are the minimum required reading for each unit. One of the units, which covers criminal investigation and procedure, has an extra section headed Lecture Notes, which provides a basic outline of the law relating to the topics dealt with in that unit, which are not covered in *Principles of Evidence*.

The materials are also made available via the Evidence Subject Homepage which includes downloadable versions of all these subject materials (excluding some article and case extracts), and online links to some of the listed reading.

---

18 According to the teachers of some of the later subjects.
19 Palmer, *supra* note 9.

There is, however, no attempt to systematically cover the material contained in each unit through lectures. Rather, "mini-lectures" on selected topics within the unit are interspersed with the discussion of problems designed to highlight some aspect of the material under discussion, or to provide an opportunity to apply a rule which has just been expounded. The problems are typically taken from reported cases, often from the leading cases in the area, with students not being told how the court decided the case until after they have completed their own analysis (the aim in approaching a case in this way is to provide the students with the basis for a critique of the court's decision because they form their own views about how the case should have been decided before being exposed to the court's actual decision).

The usual method of dealing with problems is to require students to discuss the problem with their immediate neighbours first (ie student-selected small group discussion), before the problem is discussed by the group as a whole, led by the teacher. The reason for the initial small group discussion is to ensure that each student has the opportunity to actively engage with the problem through debate and dialogue with a peer. This may then provide them with the confidence to contribute to the discussion of the problem by the group as a whole, but even if it does not, it ensures that all students have the opportunity to discuss the problem, and that no student is able to sit back and passively rely on the contributions of others.

Most of the problems are sufficiently short that they can be done in class whether or not students have prepared them prior to coming to class, but where the problem is particularly lengthy, preparation will be required. Sometimes, for example, in order to expose students to the primary materials out of which evidential arguments must be constructed, a problem will be based on lengthy extracts from records of interview, depositions, or the examination and cross-examination of witnesses on a voir dire. Such problems have to be prepared in advance. Given the non-systematic nature of the coverage of material in class, however, an onus is also placed on the students to complete the readings set out in the materials, and to raise any points of obscurity or interest in class.

Course Content

As noted above, the course is divided into 12 units. The final week is a revision unit and covers no new material. The

law of evidence is covered in eight weeks, in units 4 to 11.[20] Obviously covering the law of evidence in only eight weeks requires a certain amount of squeezing; I will discuss the justifications for, and acceptability of, doing this in the second part of the article. It is, however, the first three units which are the crucial ones for present purposes. These first three weeks of the course are basically a "law-free zone", focusing only on the skills of factual analysis, with evidence being analysed without any regard to its admissibility. Before describing the course content further, it may be useful to define precisely what it is that is meant by "factual analysis".

Anderson and Twining offer a useful definition, turning on the distinction between "legal" and "factual" analysis:

> Legal analysis ordinarily requires analysis of the facts, but customarily this analysis is limited to selection and variation and to identification of facts needed and lines of investigation to be pursued. Which of the given facts are likely to be (or should be) perceived as important by the court? How can the facts be structured to make it clear that the case at hand falls clearly within the rule for which the student or practitioner contends? What additional facts are necessary to determine the principles to be applied? Although facts are crucial in law analysis, the facts are ordinarily treated as given and are used to manipulate and test the scope and applicability of legal rules.
>
> Factual analysis is different. It is more familiar to practitioners than to students. The skills necessary are those required to organize and analyze a mass of raw data – the evidence actually or potentially available – and to determine

20 Those weeks are currently – the process is ongoing and likely to remain so for some time – divided as follows: 1. Introduction to the law of evidence. This is an "omnibus" unit, which introduces students to the main sources, principles, techniques, terminology and concepts of the law of evidence in Australia; and outlines the main methods for adducing evidence, including the limitations on the availability of evidence imposed by the law of privilege and immunity. 2. Criminal investigation: the gathering of evidence. This deals with investigative powers, suspect's rights, including the right to silence (and silence at trial), and the public policy discretion. 3. Criminal investigation: interrogation and confession. This deals with the admissibility of admissions and confessions in criminal proceedings. 4. Hearsay: the exclusionary rule. 5. Hearsay: exceptions to the rule. Previous attempts to teach both aspects of the hearsay rule in one week have proved consistently unsuccessful, with students requiring more time to assimilate the rule. 6. Opinion evidence. 7. Tendency and coincidence evidence. 8. Credibility evidence.

> the inferences that can properly be drawn from that data in relation to the ultimate facts in issue in a case. To illustrate the distinction, factual analysis ordinarily assumes that the applicable legal principles are given. Agreed jury instructions for a trial, an indictment, or the settled pleadings would be examples. From these the lawyer can determine the ultimate factual propositions that must be proved if the plaintiff or prosecutor is to win. The analytic and reasoning task for the lawyer then becomes determining whether the factual data available as evidence support inferences that can be ordered to frame a compelling argument that the elements of the ultimate propositions have or have not been proven according to the applicable standard of proof. Although the principles of logic are involved in both legal analysis and factual analysis, the application of these principles in factual analysis differs from their application in legal analysis.[21]

It is, then, the skills of factual analysis which the first three units of the course aim to teach students. The reason for introducing factual analysis *before* admissibility is to prevent the exclusionary rules dominating student thinking. In this author's experience, if the exclusionary rules are introduced first, students can tend to be blinkered by the question of admissibility in a way which prevents them from both thinking creatively about the ways in which they might attempt to use a particular item of evidence, and thinking critically about whether the rules help or hinder the trial process. Indeed, once students know the exclusionary rules, they can too quickly rule evidence out of their consideration by assuming that it will be inadmissible. The rules of evidence are deferred, then, until after the students been exposed to the principles of proof, and when they are introduced they are represented as being of secondary importance to the "main process": that of using evidence as part of the process of attempting to prove or disprove a case. Indeed, the first assessment task (currently worth 25% of the marks for the course) requires the students to analyse a brief of evidence without any consideration of admissibility issues at all.

Even in the admissibility units, the focus on proof is maintained, with the problems consistently requiring students to both construct case theories and to see items of evidence in the context of an overall case. The reading of appellate decisions is generally avoided because in such

21 Anderson & Twining, *supra* note 12, at xx.

cases the "facts" have already been "found"; approaching cases on the basis that the "facts" themselves are not neutral, and are actually the main point of controversy between the parties, sometimes appears to be a startling concept for students who take Evidence near the end of their degree, as the LLB students do. For the JD students, having this awareness from the start will hopefully inoculate them against the fallacy that "the facts" are indeed "facts".

Teaching for the three proof units of the course currently revolves around a progressive analysis of a hypothetical homicide brief, *R v Smith*, which is loosely based on the facts in *Wilson v R* (1970) 44 ALJR 221. Homicide was chosen because of its inherent fascination, and because it allowed for the presentation of a complex body of information, including a variety of different kinds of witnesses, a variety of different kinds of evidence (including things like hearsay and propensity evidence), and a variety of possible outcomes. The reading materials for these units are drawn from a variety of sources of varying degrees of difficulty.[22]

The first of the three proof units is called "Introduction to the Analysis of Evidence", and the objectives for the unit are that students completing it should:

- understand the role played by evidence in litigation;
- be able to identify the facts in issue in a case;
- be able to prepare a chronology;
- be able to identify matters requiring further investigation;
- be able to develop a theory of the case;
- be able to state that theory in the form of a narrative;
- be able to anticipate an opponent's theory of the case; and
- be able to identify the issues which are likely to the subject of genuine dispute in a case.

The students' analysis of the *Smith* brief begins with the preparation of a chronology. The ability to organise a mass of information according to time of occurrence is an obvious and basic pre-requisite to the development of both investigative strategies and a theory of the case, which is essentially

22 Including Wigmore (1937), *supra* note 11; Anderson & Twining, *supra* note 12; D Schum, *Evidential Foundations of Probabilistic Reasoning* (New York: John Wiley & Sons, 1994); D Schum, *Evidence and Inference for the Intelligence Analyst* (2 volumes, Lanham: University Press of America, 1987); and D Binder & P Bergman, *Fact Investigation: From Hypothesis to Proof* (St Paul: West Publishing, 1984). These will soon be replaced by a new text by the author: *Proof and the Preparation of Trials: How to do things with evidence* (Sydney: LBC, 2003).

an extended factual allegation which satisfies the proof requirements of the cause of action or criminal offence in question, or which rebuts the same.[23] On the investigative side, the chronology reveals gaps in the information currently available to the student, which suggests areas requiring investigation. On the case theory side, the chronology provides the materials out of which a "story", or case theory, can be constructed. The mere sequence of events is likely to suggest relationships between facts which might not otherwise be apparent. The students "homework" is to return the following week with a narrative of what happened, and the reasons for believing that that is what happened, in the form of the kind of address they would like, as prosecutors, to be able to deliver to a jury at the close of the trial.

The second week – "Analysing Individual Items of Evidence" – is, as its name suggests, concerned with the microscopic analysis of the individual items of evidence contained in the brief. Its objectives are that students completing it should:

- be familiar with the main classes of evidence, according to both the source of the evidence and the relationship it bears to the facts in issue; and
- have developed the ability to analyse individual items of evidence and to identify issues of fact, including the ability to:
  - identify information and inferences which could be used to prove or disprove the facts in issue in a case;
  - describe the specific use or uses for which information is or might be relevant; and
  - articulate, and represent, any chain of reasoning which shows information to be relevant (or not).[24]

The first of these objectives involves familiarising the students with the main classes of evidence, according to both the source of the evidence and the relationship it bears to the

---

23 See, inter alia, S Lubet *Modern Trial Advocacy: Analysis and Practice* (Notre Dame: National Institute for Trial Advocacy, 1993), Chapter 1; E Imwinkelried, The Development of Professional Judgment in Law School Litigation Courses; The Concepts of Trial Theory and Theme (1986) 39 *Vanderbilt Law Review* 59; and E Ohlbaum, 'Basic Instinct: Case Theory and Courtroom Performance' (1993) 66 *Temple Law Review* 1.

24 With acknowledgement to Kathy Mack of Flinders University, whose objectives were partly used as the basis for these: see Mack, *supra* note 9, at 58.

facts in issue.[25] The second is concerned with developing students' abilities to construct arguments about evidence. The aim of teaching students to be able to "represent" chains of reasoning is a pre-cursor to the evidential charts dealt with in the third week of the course. An important component of this unit is an emphasis on the role of generalisations in inductive reasoning.[26] The underlying premises of this unit are that fully articulating the reasoning which makes evidence relevant also exposes the weak links in a chain of reasoning,[27] and that being able to do this is useful in relation to the evidence being adduced both by oneself and by one's opponent.

If the second unit was about pulling the brief to pieces, then the third unit, "Organising Complex Masses of Evidence", is about putting it back together again. Its primary objective is that students should:

- have developed the ability to analyse complex masses of evidence, including the ability to:
  - draft a narrative statement of a theory of the case and of the evidence and inferences which could be used to support that theory;
  - use the outline method to organise the evidence in a case;
  - use the chart method to organise the evidence in a case; and
  - evaluate the strengths and weaknesses of opposing cases.

The fundamental objective, then, is to help students to develop the ability to organise the complex masses of mixed evidence which are typical of litigation. Three main methods are offered: the narrative method, the outline method and the chart method. The key point that each of the methods has in common, is that students are required to identify what it is that they will have to prove in order to succeed in the litigation (ie the facts in issue, and the subset of that, the facts genuinely in dispute), and to explain how they will go about proving it.

---

25 Based on the taxonomy of evidence in Schum (1994), *supra* note 21, at 115, where evidence is classified according to two dimensions: first, its source, real or testimonial; and secondly, its relationship to the facts in issue, direct, circumstantial or ancillary (which includes, for example, evidence relating to the credibility of a witness or authenticity of an item of real evidence).

26 See, for example, Schum (1994), *supra* note 21, at 86-92.

27 As well as those links which depend on biased or unfounded generalisations, assumptions or beliefs: cf Mack, *supra* note 9.

The narrative method,[28] which is the one which comes most easily to students, really just requires them to explain in prose what they have to prove, and how they will prove it. The outline method is a more rigorous version of the kinds of outlines sometimes used by lawyers.[29] The outlines students are required to develop are essentially a nested series of factual propositions descending from the facts in issue to the actual sources of evidence, setting out all intermediate inferences and necessary generalisations. The chart method taught in the course is a modified version of that described by Anderson and Twining in *Analysis of Evidence*, which is itself based on the method expounded by Wigmore in *The Science*.[30] The major drawback to Wigmorean charts – as anyone who has ever seen one will know – is that they are forbidding to look at, and all but impossible to decipher. This obviously limits their usefulness. The charts which students are taught to prepare in the course instead rely on modern flow charting or argument mapping software which permit students to include text in the chart.[31] This means that a chart can include all of the information contained in an outline which – at least for those with a preference for information to be presented in a more visual form – can be an aid to the comprehension of the case.

All of the methods serve the same fundamental purposes. In particular, they enable the student to identify all of the elements of the charge and any defences; the evidence available to prove each such element; any gaps in the evidence; as well as the areas which are not in dispute, and those where there is a conflict of evidence. By doing this, students will be able to identify the evidence they need to adduce from their own witnesses, and should be able to identify appropriate aims for the cross-examination of their opponent's witnesses.

The Assessment

As Ramsden has pointed out, from "our students' point of view, assessment always defines the actual curriculum".[32] It

28 So called, because it is very loosely based on Wigmore's "narrative method": see Wigmore (1937), *supra* note 11.

29 See, for example, Binder and Bergman, *supra* note 21.

30 See Anderson and Twining, *supra* note 12, at 108-155.

31 A number of products have been tried by students including Microsoft Visio, MindManager (available from http://team-link.org) and Reason!Able (available from http://www.goreason.com). The latter has proved the most popular, in part because it is available free of charge to University of Melbourne students.

32 P Ramsden, *Learning to Teach in Higher Education* (London: Routledge, 1992) 187. See also, D Rowntree, *Assessing Students: How shall we know*

was essential therefore that the new assessment actually set out to assess whether students had acquired the skills in factual analysis specified in the objectives. It also seemed a good idea to try to move towards a form of assessment more closely modelled on the kind of task lawyers have to perform in practice. As Gibbs has argued in relation to the transferability of skills:

> It is necessary to bring elements of the world of work into the classroom, to confront students with situations and problems which resemble those they will eventually have to tackle, and to allow them to learn the necessary skills in work-like contexts, tackling the problems in the way they will eventually have to tackle them outside academia.[33]

In the legal context, this is often referred to as a "clinical" approach to legal education.[34] According to Amsterdam, such an approach includes the following characteristics:

> 1 Students were confronted with problem situations of the sort that lawyers encounter in practice. The situations might be simulated … or they might be real …
>
> 2 The problem situations were: (a) concrete, that is, textured by specific factual detail; (b) complex, that is, they required the consideration of interacting factors in a number of dimensions – legal, practical, institutional, personal and (c) unrefined, that is, they were not predigested for the student through the medium of appellate opinions or coursebooks, but were unstructured, requiring the student to identify "the problem[s]" or "the issues[s]".
>
> 3 The students dealt with the problem *in role*. They bore the responsibility for decision and action to solve the problem. They had to (a) identify the problem; (b) analyze it; (c) consider, formulate and evaluate possible responses to it; (d) plan a course of action; and (e) execute that course of action.[35]

---

them? Rev ed (London: Kogan Page, 1987) 1; and M Le Brun & R Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Sydney: Law Book Company, 1994) 178-183.

33 Gibbs, *supra* note 46, at 4; quoted in S Kift, Lawyering Skills: Finding their Place in Legal Education (1997) 8 *Legal Education Review* 43, at 54.

34 See, generally, K Mack, Bringing Clinical Learning into a Conventional Classroom (1993) 4 *Legal Education Review* 89.

35 Amsterdam, *supra* note 15, at 616-617 (emphasis in original).

It was fairly clear that the traditional law school final examination did not have any of these characteristics, not least because of the time limitations inherent in the format, which make it almost impossible to present problem situations which are "concrete", "complex" and "unrefined". Even just in terms of admissibility, "spotting issues" in such an examination, while no doubt a difficult task, is very different from the task demanded of practising lawyers. Where a single examination problem might be crammed with an enormous number of issues – and the students will know from experience that this is going to be the case – in a legal file the admissibility issues are likely to be spread over numerous, often lengthy, witness statements or other documentary material, and the lawyer will have no idea in advance of how numerous or complex the issues are likely to be. For the appellate lawyer, the task of finding an issue on which to base an appeal may be even more challenging, requiring the close scrutiny of an enormous number of pages of transcript.

So what kind of realistic task might the students be set? It is suggested that the main evidential tasks required of a lawyer fall into the following categories:

- fact investigation and the gathering of evidence;
- organisation and analysis of the evidence in preparation for trial;
- making arguments about the admissibility of evidence; and
- the adducing of evidence at the trial itself.

The first of these seemed too removed from the trial and the issues of admissibility to provide an appropriate assessment task; this left a choice between the other three tasks. Romero has suggested that it is the third and fourth tasks which should be assessed in an Evidence course which uses a clinical method:

> Instead of asking a student what [evidentiary] objection might be made, the clinical method requires the student to make the objection. Instead of asking what foundation is required to admit an item of evidence, the clinical method requires the student to lay the foundation by calling the necessary witness … and then asking the necessary questions.[36]

36 L Romero, Integration of Clinical Methods into an Evidence Course, distributed at Association of American Law Schools Annual Meeting January 1989; quoted in Mack, *supra* note 34, at 91.

Romero's description of what can actually be tested using this clinical approach, however, suggests a course still dominated by the law of evidence (what objections, what foundations for admission etc). Moreover, the highly performative nature of the fourth task in particular – the mechanics of actually adducing evidence – makes it difficult to teach and assess in a mass-enrolment subject (so therefore unsuitable for transfer to the LLB), and arguably means that it is better left for specialist advocacy courses. In any case, the quality of a student's trial presentation can only be as good as the quality of their pre-trial preparation: technical proficiency in the examination of witnesses, for example, is fairly empty if the student has not first identified, through detailed analysis of the case, the points that they need to make through their own witnesses and in the cross-examination of their opponent's.

This left the second task: analysing the evidence in preparation for trial. To assess this, students are provided with a brief of evidence as a take-home examination. The brief is based on a real brief (with any identifying details changed), and students are assigned a particular standpoint such as counsel for the prosecution or counsel for the defence. The proceedings are criminal for two reasons; first, because a brief in a civil proceeding would not test the students' ability to apply a number of important rules of evidence; and secondly, because the criminal law is in any case the only body of law which JD students have all been taught. As with most real life briefs, the brief provided to the students both contains a mass of irrelevant material, and fails to cover every point of significance.

Students are required to write an Advice on Evidence, which is essentially a counsel's analysis of the evidence in a case, and therefore a realistic task of the kind with which lawyers will be confronted in practice.[37] The instructions given to students are, however, fairly specific. In particular, students will be instructed to perform a combination of the following tasks (the precise combination will depend, inter alia, on the role assigned to students):

- Draft a statement (in narrative form, akin to an opening or closing address) of the case theory or theories likely to be relied on by either or both of the prosecution and defence;

37 For a description of what an Advice on Evidence should do, see J Glissan & S Tilmouth, *Advocacy in Practice* (Sydney: Butterworths, 1998) 11.

this statement should also include (where appropriate) the student's reasons for preferring one theory of the case over another. In doing this, students should also identify the real issues in the case.[38]

- Identify the evidence to be relied on, and articulate or represent the reasoning to be used, in attempting to persuade the court to accept the student's theory of the case.
- Analyse the strengths and weaknesses of the opposing cases.
- Indicate how the student intends to run the trial in order to advance his or her theory of the case; in doing this students would be expected to indicate how they would deal with any evidence which was inconsistent with their case, as well as to address issues such as their aims in the cross-examination of their opponent's witnesses, and whether they would be likely to call the accused to testify in his or her defence.
- Discuss the admissibility of any potentially inadmissible items of evidence likely to be relied on by either the prosecution or defence. It is here that the students' knowledge of, and ability to apply, the law of evidence is assessed; depending on the problem, between 40-60% of the marks for the examination might be allocated to this component.
- Indicate, in light of the above, the likelihood of conviction.
- Append a chronology of events.
- Append either a chart or an outline of either or both of the prosecution and defence cases.

Such a form of assessment obviously places a premium on factual analysis. The fact that the brief, like any brief, is unlikely to cover every possible issue of relevance also means that students are required to think creatively about what kind of evidence they might need to adduce in addition to that contained in the brief. In relation to admissibility, this form of assessment also provides, in many ways, a more challenging and realistic task than a traditional examination. Because students are provided with a large body of material, admissibility issues are simply not flagged in the way that they almost inevitably are in a three hour examination. Instead they really have to be spotted, and can easily be missed.

As already noted, as well as the final assessment described above, students are also required to complete an earlier

38 This first task obviously requires students to apply the narrative method.

piece of assessment (worth 25% of the marks for the subject). The main differences between the final assessment and the first assessment task are that the earlier assessment task does not require students to consider the admissibility of any of the evidence analysed; and that the earlier assessment task is usually done in "syndicates" of four, whereas the final assessment is done by students on their own.

Students taking this form of assessment have exhibited a high degree of sensitivity to factual issues, as well as a degree of savviness and sophistication. For example, asking the students to consider whether they would be likely to call the accused to testify requires them to take into account matters such as the extent of inconsistency between any prior statements made by the accused, the degree to which the conduct of the defence is likely to expose the accused to prejudicial cross-examination about prior criminality, and whether the defence is one which relies on facts about which only the accused could give evidence. The fact that such a question looks forward to the trial seems to lead students to a better understanding of the issues surrounding testimony from the accused than does a backward-looking question about whether the asking of particular questions or the giving of particular evidence had resulted in the "shield" being lost.

The LLB Evidence Course

Transferring the proof model to the mass-enrolment environment of the LLB proved far less difficult than had been anticipated. The course content described above was, with some simplification and reduction of reading material, replicated in the LLB. The same general teaching approach was also taken so that the classes comprised a similar mixture of mini-lectures and problems. The problems were also approached in the same way as on the JD; that is, the problem would first be expounded to students, who would then be given the opportunity to discuss it with whomsoever they happened to be sitting near, before being invited to contribute to the public discussion of the problem by the class as a whole. *Smith* was retained as the vehicle for teaching the same three units on proof that had been taught in the JD. A slightly simpler methodology for analysing the brief was, however, developed. This involved the following main steps:

- Reading the brief.
- Preparing a chronology.

- Drafting a narrative statement of the prosecution theory of the case, in the form of a closing address.
- Identifying all the facts in issue which needed to be proved.
- Broadly identifying the evidence which would be used to prove each of these facts in issue.
- Analysing as much of this evidence as class time allowed in greater detail, including identifying all necessary generalisations and inferences from the evidence to the facts in issue.

In effect, this involved teaching the second and third units in a slightly different order, although the end "product" was essentially the same. The assessment used in the JD was also transferred, with some significant modifications to the LLB. The new assessment, developed by my co-teacher, Dr Andrew Kenyon, involves the online presentation of a brief in a criminal proceeding, under the name "Evidence Briefcase". The material includes statements from potential witnesses, transcripts of police interviews, photographs of an alleged crime scene, and audio and video files, such as a videotape of a police interview with the accused person. The web-based format aims to create a learning environment which simulates legal practice. Students are able to make and store their own notes about the potential evidence, and to communicate with each other and with the teachers through an online forum (which has been used extensively). Students are given a set period (for example, a week) to complete an Advice on Evidence of the kind described above in relation to the JD assessment. During this period, the Briefcase software also captures a certain amount of data in relation to each student's use of and interaction with the brief, which provides some measure of protection against cheating.

There was an extensive evaluation program of the introduction of the project. The evaluation included an online survey of students, which achieved an 80% response rate and provided detailed quantitative and qualitative data. This evaluation will be developed by Andrew Kenyon into an academic article, but it is notable that 89% of students replied "yes" or "to some extent" to the question: "Evidence Briefcase better assessed my learning to date in this subject than a problem or essay-style question in a traditional law exam". Only 11% replied "no" to this question. The overall response was consistent with the views of the examiners that the analysis of a brief of evidence and the requirement to

complete an advice on evidence were a better method of assessing Evidence than a traditional three hour examination.

While Briefcase was being trialled, however, and then awaiting approval as the sole assessment for students in Evidence, students were also required to complete a final examination. The examination took the format of what might be called a "mini-brief", or perhaps more accurately, a summary of a brief. As with the other forms of assessment, a substantial proportion of the marks for the examination were allocated to factual analysis. Nevertheless, none of the evidence teachers involved regarded this as the ideal form of assessment for the subject, given the difficulty of digesting, and then analysing, such a large amount of information in so short a space of time. Although, the answers produced were generally of a good standard given the difficulty of the task – so that the marks awarded suffered no drop in comparison to previous years – there was a degree of student dissatisfaction with the form of assessment. Indeed, the corollary of the results of the Briefcase evaluation reported above, are that an examination in this form would not have been regarded by students as an equally satisfactory form of assessment to the kind of assessment represented by the Briefcase project.

Two Objections to a Proof-oriented Model of Teaching Evidence

While numerous objections could no doubt be made to the teaching model described above, I intend to deal with just two of them: that there is no room in an Evidence course for factual analysis, and that the development of skills in factual analysis is appropriately left to specialist courses.

There is No Room for Factual Analysis

Like most other subjects, Evidence often feels overcrowded: too many topics, not enough time. This is particularly true when Evidence is taught over one semester – as it is at Melbourne – or is incorporated into a larger subject such as Litigation. With so many topics already crammed in, and so many important ones possibly already left out, how can room be made for additional material? The answer to this objection – if there is one – is perhaps that it is never possible to teach students *all* of the rules of evidence anyway, and that the drawing of any line between the essential and the inessential is a fairly arbitrary process, determined as

much by the number of teaching weeks available as anything else.[39] Although the Council of Legal Education's list of the topics which have to be taught in a university Evidence course in order for it to be recognised for the purposes of professional admission[40] might appear to impose breadth of coverage requirements on a course, it is perhaps worth pointing out that this list says nothing about the amount of class time which has to be devoted to each topic. Teachers are, in any case, given the option of abandoning the list and teaching "topics of substantial equivalence in breadth and depth";[41] this flexible alternative requirement clearly leaves a great deal of discretion in the hands of individual teachers.

With these thoughts in mind, Evidence teachers might feel sufficiently emboldened "to slaughter the dragon 'coverage'",[42] and to so reduce the depth and/or breadth of their coverage of currently taught topics in order to make room for material on factual analysis.[43] But the fact that coverage *can* be reduced is not in itself sufficient reason to do so: the case for the inclusion of material on factual analysis within an Evidence course must still be made.

Factual Analysis belongs in Specialist Courses

A second objection to a proof-oriented model of teaching evidence is that factual analysis is already, and adequately, and indeed appropriately, dealt with in specialist subjects such as advocacy, trial practice, or other clinical courses:

---

39 In the BCL in Oxford, for example, the eight topics in Evidence correspond to the eight teaching weeks; at the University of Melbourne there are twelve topics for twelve weeks; where Evidence is taught over a full year, there will no doubt turn out to be even more topics which need to be covered.

40 Namely, "1. Introduction. 2. Competence and compellability. 3. Privilege. 4. The examination of witnesses. 5. Disposition and character. 6. Similar fact evidence. 7. The accused as a witness. 8. Burden and standard of proof. 9. Documentary evidence. 10. Opinion evidence and prior determination. 11. Hearsay: -the exclusionary rule; - the common law and statutory exceptions. 12. Admissions and confessions in criminal cases. 13. Illegally obtained evidence and confirmation by subsequent fact. 14. Res gestae. 15. Corroboration."

41 Although the topics must also satisfy the following guideline: "The topics should include examination of both the sources and acceptability of evidence, including rules concerning the burden and standard of proof and technical rules concerning such matters as hearsay, admissions and confessions, illegally obtained evidence and res gestae."

42 Cf W Twining, Legal Skills and Legal Education (1988) 22 *Law Teacher* 4, at 12.

43 See *supra* note 19, for a list of the topics currently taught at Melbourne.

that being so, there is no need to include factual analysis in Evidence. What follows are some reasons for believing that factual analysis might well be sufficiently important to warrant a place in the compulsory and quasi-compulsory core of subjects which all students are required to complete,[44] and for believing that the appropriate place for it in that core is in an Evidence course.

First, any list of the skills required of lawyers is bound to include skills in factual analysis.[45] These skills are generally rated by the legal profession as very important to the practice of law.[46] Given that Evidence is a subject required for admission to practice (but not, generally, for the award of a law degree), it does not seem unreasonable that an Evidence course might make some attempt to provide students with the skills they will need in practice. Furthermore, whereas the *law* of evidence has a limited sphere of operation – applying only in courts, and in practice, not even in all of them – the skills of factual analysis are equally applicable in jurisdictions where the rules of evidence do not apply at all (such as administrative tribunals), or are rarely, or only partially, applied in practice (such as most civil proceedings or the Magistrates' Court). Restricting the contents of "Evidence" to the law of evidence does nothing to prepare students for practice in jurisdictions such as these.

Factual analysis is not only central to litigation, however; it is also an important component of any career which requires the marshalling and evaluation of the evidence and arguments for competing claims. Factual analysis thus fits the definition of a "transferable skill", of relevance in a wide variety of employment situations. The checklist of transferable skills compiled by Gibbs et al, for example, includes "information gathering", which consists of skills such as

---

44 By "quasi-compulsory" I mean those subjects which, while not compulsory for award of a law degree, must be completed if a student is to be admitted to practice.

45 See, for example, N Gold, Are Skills Really Frills? (1993) 11 *Journal of Professional Legal Education* 1, at 6 which describes ten necessary lawyering skills, including both "fact analysis" and "fact management". See also N Duncan, Why Legal Skills – Whither Legal Education? (1991) 25 *Law Teacher* 142, at 144, which refers to "casework skills".

46 See, for example, J de Groot, Acquiring Basic Legal Skills and Knowledge: What and Where? (1994) 12 *Journal of Professional Legal Education* 1, which compares the results of a survey of senior members of the solicitors branch of the Queensland profession, with surveys conducted in Chicago and Montana. See also T Anderson & W Twining, Analysis of Evidence, in N Gold, K Mackie & William Twining eds, *Learning Lawyers' Skills* (London: Butterworths, 1989) 216.

"locating information sources, evaluating sources and data, extracting relevant information, interpretation of data, presentation of data";[47] in short, factual analysis. That factual analysis is a transferable skill is significant, given the high proportion of law graduates who will ultimately pursue a career outside the legal profession.

A second reason for including factual analysis in Evidence is that if a course in "Evidence" is to live up to its label, then it should include a consideration of evidence as evidence, and not just an analysis of that evidence from the point of view of admissibility.[48] This is because the question of admissibility is only one aspect of the evidential analysis required as part of trial preparation, and it is most certainly *not* the most important aspect. Before the question of admissibility even arises, a lawyer must carry out a number of tasks which require some analysis of the evidence currently available to him or her. In the early stages of litigation, a lawyer may be required to develop investigative strategies based on the information presented to him or her by a client.[49] At subsequent stages the lawyer might be required to draft pleadings or other documents containing factual allegations.[50] Closer to, and during a trial, the lawyer will have to prepare opening and closing addresses and plan the examination and cross-examination of witnesses.

All of these tasks require the development of a theory of the case, and they require a detailed analysis of all of the evidence available, or potentially available, to the lawyer. Part of that process of preparing for trial – but most decidedly only *part* of the process – is a consideration of the admissibility of the items of evidence which the lawyer or his or her

---

47 G Gibbs et al, *Developing Students' Transferable Skills* (Oxford: Oxford Centre for Staff Development, 1994) 9.

48 But see F Martin, The Integration of Legal Skills into the Curriculum of the Undergraduate Law Degree: The Queenland University of Technology Perspective (1995) 13 *Journal of Professional Legal Education* 45, at 54-55, where factual analysis is treated as an element of several other skills such as mooting, ADR, communication and fact gathering, all of which are taught progressively through the degree.

49 See, inter alia, Binder and Bergman, *supra* note 21; F Vincent, 'Preparation of a Criminal Trial' in G Eames ed, *Criminal Law Advocacy* (Adelaide: Legal Services Commission of South Australia, 1984); and P Tillers & D Schum, 'A Theory of Preliminary Fact Investigation' (1991) 24 *University of California, Davis Law Review* 931.

50 Such as, for example, the summary of prosecution opening and defence response required by the *Crimes (Criminal Trials) Act* 1999 (Vic), or Crown Case Statement, required by the practice directions for Supreme Court Criminal Trials in New South Wales: see Hunter & Cronin, *supra* note 9, 418-9.

opponent is likely to attempt to lead. But a lawyer can only carry out this analysis if he or she has first identified this evidence, and this evidence can only be identified when the lawyer's case theory has been developed, and the likely case theory of the opponent considered.[51]

A third reason for including factual analysis in an Evidence course is that, in this author's experience at least, it can be difficult for students to understand the purpose and operation of the rules of evidence when they are divorced from the process of proof. Indeed, teaching admissibility without teaching proof can arguably be likened to teaching someone the road rules without also teaching them how to drive. Like the road rules, the question of admissibility only has meaning when one bears in mind the underlying objective: that one is attempting to get from point A to point B. In the case of evidence, the journey from A to B is obviously the aim of proving one's case by means of evidence; like driving, this too is subject to certain restrictions and obstacles, and like driving those restrictions and obstacles only have meaning as a component of a larger process with its own objectives.

Moreover, there are a number of exclusionary rules whose scope and operation depend on the purpose for or manner in which the evidence is being used. These rules do not prohibit categories of information, but specific uses of information.[52] This is most obviously true of the hearsay and tendency and coincidence rules, but it is also true of the rules regulating the use of opinion and credibility evidence. Unless students are able to analyse the way in which these kinds of evidence are being used – which depends on their skills in factual analysis – they will be unable to determine whether or not the evidence is admissible. In other words, a greater emphasis on factual analysis will develop an improved capacity to deal with questions of admissibility.

A fourth reason for including factual analysis in an evidence course, is that just as an emphasis on factual analysis can enhance students' ability to apply the rules of evidence, so can it open the door to the introduction of critical insights.

---

51 The argument that admissibility is only one component of evidential analysis was persuasively put by Wigmore in the opening paragraphs of *The Science of Judicial Proof*, *supra* note 11; these words were first published in Wigmore, The Problem of Proof (1913) 8 *Illinois Law Review* 77

52 See P McNamara, 'The Canons of Evidence - Rules of Exclusion or Rules of Use?' (1986) 10 *Adelaide Law Review* 341.

Kathy Mack has, for example, recently described an Evidence course in which a focus on the "fundamental evidentiary questions of relevance and the logic of proof" is used as a vehicle to explore issues of diversity and "to investigate how we think and why we think a certain way, and to expose unacknowledged assumptions, beliefs and idea".[53] Close attention to the way in which we reason about, and from, evidence is thus a powerful tool for exposing prejudices, biases and assumptions embedded in the way we think; to take a simple and obvious example, a defence of the relevance of sexual history evidence is likely to founder when the generalisations upon which the relevance of such evidence depend are exposed to view.

Conclusion

The shift towards a more proof-oriented model of teaching Evidence is now well entrenched. Its fundamental aim has been to increase students' skills in factual analysis, such skills being important to the practice of law, transferable, and essential to a proper application of many of the exclusionary rules of evidence. The change in approach has gone hand in hand with a change to the assessment, so that students are now presented with a task much more akin to that which they are likely to encounter in practice, namely the analysis of a brief of evidence in a criminal proceeding and the completion of an advice on evidence based on that analysis. Anecdotally, students have reported that the focus on factual analysis has improved their general thinking and arguing skills; more formal evaluation has confirmed that students are satisfied that the new assessment provides a better measure of their abilities than the assessment it replaced.

53 Mack, *supra* note 9, at 57-58.

An Integrated Approach to Information Literacy in Legal Education

Robyn Carroll & Helen Wallace***

Part A – Information Literacy and Legal Education

One of the many essential skills of a lawyer is the ability to research the law. It has been recognised for some time that the skills required to research the law should be taught at law school.[1] Greater emphasis in higher education on the importance of teaching generic skills has coincided with discussion of the need for skills education for lawyers generally.[2] The increasing interest of universities in the development of the "life long learner" has focused attention on methods of training students to be independent learners.[3]

* Senior Lecturer, Law School, The University of Western Australia.

** Law Librarian, The University of Western Australia.

The authors gratefully acknowledge the invaluable contribution to the program discussed in this paper by Penny Jones and Sheelagh Johnson, UWA Library; Deborah Ingram and Eileen Thompson, Instructional Designers in the Faculties of Economics, Commerce, Education and Law; and various members of the academic staff, UWA Law School.

 (2002) 13 *Legal Educ Rev* 133.

1 D Pearce, E Campbell & D Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commision: A Summary* (Canberra: AGPS, 1987) 30; C McInnis and S Marginson, *Australian Law Schools After the 1987 Pearce Report* (Canberra: AGPS, 1994) 25, 168-70, 251; P Kinder, Taught but not Trained: Bridging the Gap in Legal Research, in *Cross Currents: Internationalism, National Identity and the Law*, 50th Anniversary Conference of the Australasian Law Teachers Association (1995) 2 [referred to as Cross Currents], <www.austlii.edu.au/au/special/alta/alta95/kinder.html>

2 Australian Law Reform Commission, Managing Justice – *a Review of the Federal Civil Justice System*, ALRC Report No 89, Part 2 (Canberra: AGPS, 1999) <http://www.austlii.edu.au/au/other/alrc/publications/reports/89>; S Christensen & S Kift, Graduate Attributes and Legal Skills: Integration or Disintegration? (2000) 11 *Legal Educ Rev* 207; Rethink on Legal Education in Scotland, (2000) *CLE Newsl* (December) 2; Benchmark Standards for a Law Degree in England, Wales and Northern Ireland (2000), *CLE Newsl* (December) 4. (It is interesting to note that no mention is made of research skills in the accompanying item: New Australian Competency Standards for Entry Level Lawyers (2000) *CLE Newsl* (December) 3.

3 P Candy, G Crebert & J O'Leary, *Developing Lifelong Learners Through Undergraduate Education*, NTEB Commissioned Report No. 28 (Canberra,

Debate about the appropriateness of legal research skills training in the law degree has been part of the academic and professional library literature for decades but particularly during the 1980s.[4] A survey of legal research courses in Australia in 1991 revealed that most law schools were offering research skills as a subject or part of a subject:

> Overall, two faculties had no formal course, and two of the new faculties did not yet have settled curriculum. Of the remaining 17 law schools, nine were reported as having separate research subjects, seven said research training was a component of another subject and one was reported as being part of a skills workshop. Where research was taught as part of another course it was invariably a segment of the first year subject Introduction to Law or its equivalent.[5]

The classes generally followed the format of traditional bibliographic instruction which Murdock described as "short range, library centered, print-bound instruction",[6] with electronic resources being gradually introduced.

A comparison of Law graduates who completed their degrees in 1991 and 1995 showed that although overall use of legal research skills did not increase, the frequency of use did.[7]

AGPS, 1994) <http://www.detya.gov.au/nbeet/publications/pdf/94_21.pdf>; R Lee, From the Classroom to the Library and from the Library to the Workstation: Redefining Roles on Legal Education (1999) 30 *Law Libr J* 40-41.

4 A Morse, Research, Writing and Advocacy in the Law School Curriculum (1982) 75 *Law Libr J*, 232–64; S Kauffman, Advanced Legal Research Courses: a New Trend in American Legal Education (1986) 6 *Legal Reference Services Q* (No 3/4) 123–39; C & J Wren, The Teaching of Legal Research (1988) 80 *Law Libr J* 7–61; R Berring & K Vanden Heuval, Legal Research: Should Students Learn it or Wing it? (1989) 81 *Law Libr J* 431–449; J Howland & N Lewis, The Efectiveness of Law School Legal Research Training Programs (1990) 40 *J legal Educ* (No 3) 381–91; C & J Wren, Reviving Legal Research: a Reply to Berring and Vanden Heuval (1990) 82 *Law Libr J* 463–96.

5 T Hutchinson, Legal Research Courses: the 1991 Survey (1992) *ALLG Newsl* No 110 (June) 88.

6 J Murdock, Re-engineering Bibliographic Instruction: the Real Task of Information Literacy (1995) *Bull Am Soc'y Info Sci* (February-March) 26-27.

7 S Vignaendra, *Australian Law Graduates' Career Destinations* (Canberra: DEETYA, 1998) 39.

Table 1: Frequency of Use of Legal Research Skills by Law Graduates[8]

	Used frequently	Used sometimes	% of graduates who use legal research skills
1991	50%	34%	84%
1995	54%	29%	84%

During the 1990s the term "information literacy" entered education discourse and was taken up by educational institutions at all levels. One of the earliest exponents of information literacy in Australia is Christine Bruce, who has defined information literacy as "the ability to locate, evaluate, manage and use information from a range of sources for problem solving, decision making and research".[9] Information literacy is critical to lifelong, independent learning in an era of rapid expansion of information technology. During the last decade the concept of information literacy has become embedded in library programs across all disciplines because of the emphasis on the need for graduates to be skilled in the use of information resources.

At the same time, by the mid 1990s the teaching methodology in law had changed noticeably from bibliographic instruction to skills training and recognition of the "process of research".[10] This change was driven by the rapid development of information technology: hardware and software products were constantly being upgraded and new electronic information resources were keeping pace. It was no longer possible to "instruct" law students in the use of a particular product and expect it to be available in the same format after they had graduated. Students needed the skills to adapt to new electronic information products. They also needed the ability to transfer these skills from one application to another, across subject boundaries, and from their student environment to their career environment. The information literacy discourse has formed, not surprisingly, the basis for reassessment of legal research programs in Australian law schools.[11]

---

8 Adapted from Vignaendra, *Id* at 39.

9 C Bruce, Developing Information Literate Graduates: Prompts for Good Practice, in D. Booker ed, *The Learning Link: Information Literacy in Practice,* (Adelaide: Auslib Press, 1995) 245–52. Also available online:<www.fit.qut.edu.au/InfoSys/bruce/inflit/prompts.html>

10 Kinder, *supra* note 1, at 3.

11 E Barnett, Legal Research Skills Training in Australasian Law Faculties: A Basic Overview – the Issues, in *Cross Currents*, *supra* note 1.

The issues facing law schools have arisen from two directions. On the one hand the demand on universities to produce graduates with the generic skills to enter a profession, and on the other, the demand from the legal profession for the skills to keep pace with the burgeoning development of electronic legal information resources.[12]

Defining "skills" is no easy task and we will not attempt that here.[13] We are using the term broadly to equate with information literacy. The QUT classification of graduate attributes[14] is helpful to our understanding of the place of information literacy in legal education. These graduate attributes have been described as discipline knowledge, ethical attitude, communication, problem solving and reasoning, information literacy and interpersonal focus.[15]

Applying Bruce's definition of information literacy to the study and practice of Law, it is the ability to:

- locate legal materials (primary and secondary] using appropriate retrieval tools and techniques;
- evaluate the relevance, applicability, and value of the located materials to the task at hand. This will include assessing the relevance, precedent value and other factors affecting the authority of the material;
- manage the information, that is, to sort, categorise and rank the information; and
- use the information for the task at hand, such as advising on the law, formulating a policy argument or identifying theoretical perspectives presented in the materials.

Also available online: <www.austlii.edu.au/au/special/alta/alta95/barnett.html>; H Culshaw & A Leaver, Information Literacy and Lifelong Learning: Case Study – The Legal Profession, paper presented at the LETA 2000 Conference <http://www.leta2000.sa.edu.au/papers/html>.

12 G Gasteen & C O'Sullivan, Working Towards an Information Literate Law Firm, in C Bruce & P Candy eds, *Information Literacy Around the World: Advances in Programs and Research* (Wagga Wagga: Centre for Information Studies, Charles Sturt University, 2000) at 110-11.

13 For a useful discussion of the meaning of 'skills' and the historical 'waves of skills goals' of Australian law schools see J Wade, Legal Skills Training: Some Thoughts on the Terminology and Ongoing Challenges (1994) 5 *Legal Educ Rev*, 173. For further discussion, see S Kift, Lawyering Skills: Finding Their Place in Legal Education (1997) 8 *Legal Educ Rev* 43.

14 F Martin, The Integration of Legal Skills into the Curriculum of the Undergraduate Law Degree: The Queensland University of Technology Perspective (1995) 13 *J of Prof Legal Educ* 45; referred to by Christensen & Kift, *supra* note 2, at 215.

15 Christenson & Kift, *supra* note 2, at 216.

Information literacy is as much an attribute of the process of "lawyering" as are discipline knowledge and the ability to problem solve and engage in legal reasoning. Not surprisingly it will be difficult at times to draw a line between the information skills[16] involved in *locating and knowing how to use* the law (information literacy) and the mental skills[17] involved in *applying* the law (discipline knowledge, problem solving and reasoning). In each case there is an element of problem solving.[18] In practical terms, when we aim to train the "whole lawyer" we would expect there to be a high level of interface between these different attributes. Typically, the specialised nature of legal research tools has meant that reference librarians have become involved in the legal research aspect of legal education. The more we focus on the interface between the various graduate attributes, the more obvious becomes the need for close cooperation between law and library "teachers".

In 1994 a study commissioned by the National Board of Employment, Education and Training noted the benefits derived from librarians working closely with academic staff to develop information retrieval skills in students.[19] This Report refers to a number of submissions that explore the role of the library in developing lifelong learning skills. More generally with respect to legal education, Christensen and Kift have argued that we will produce better law graduates if we adopt programs that integrate both conceptual knowledge and transferable generic and legal skills.[20]

A number of programs have been developed in Australian Law Schools that aim to improve information literacy of law students through integration of legal research skills

16 R Carter, A Taxonomy of Objectives for Professional Education (1985) 10 *Stud Higher Educ*, at 135; reproduced by Kift, *supra* note 13, at 48.

17 *Id.*

18 Flynn argues that one way of identifying the legal research skills that we expect our graduates to possess is to reflect on the nature of the problem solving process. For his discussion of the skills needed to problem solve see M Flynn, Legal Research Skills: What are they? When Should They be Taught? How can they be Taught? And what About the Other 34 Skills that Law Graduates Frequently Use?, paper presented at the *Conference of the Australasian Law Teachers' Association* (Canberra: 2000) <http://www.law.ecel.uwa.edu.au/ab358/martin/alta.htm>

19 Candy, Crebert & O'Leary, *supra* note 3.

20 Christensen & Kift, *supra* note 2, at 213; C Bruce, *The Seven Faces of Information Literacy*, (Adelaide: Auslib Press, 1997) 41; Bruce & Candy, *supra* note 12, at 6-7; D Chalmers & R Fuller, *Teaching for Learning at University: Theory and Practice* (London: Kogan Page, 1996).

teaching into the law curriculum. One example[21] has been Monash University's integration of Legal Research and Methods (LRM) into alternate years of the undergraduate curriculum.[22] At Queensland University of Technology a range of generic skills have been integrated into the curriculum. Legal Research and Writing is a discrete first year unit rather than being placed in the context of the areas of law being studied.[23] At Flinders University a range of generic skills have also been incorporated into the curriculum. The foundations of legal research skills are taught in a compulsory first year unit, Legal Method. These skills are then reinforced at each level of the degree by identifying their application in conjunction with other skills such as interviewing and mooting.[24] In 1994 Bott reported on the Bond University program in which library research skills are taught as part of the "Introduction to Law" unit, with the Law Library staff playing a direct role in the planning and delivery of the library skills program.[25]

In Part B of this paper we describe a program recently introduced jointly by the Library and Law School at The University of Western Australia. In designing our program, we have drawn on the literature to identify the ideals, on which an integrated legal research skills program should be based. We have also identified the ideals evident in other law school programs and those that we set out to achieve in our own. These ideals include, that:

- programs should be designed so that graduates will be able to use current technologies and effective strategies for the retrieval, evaluation and creative use of relevant information as a lifelong learners;[26]
- an integrated legal research skills teaching program will draw on the knowledge of law held by the academic staff of the Law School and the knowledge of information resources and research skills held by librarians;
- legal research is recognised as an integral part of the process of solving legal problems;

21 The examples given here do not attempt to be a full account of similar programs at other universities. The authors would be interested to learn of initiatives in other law schools.

22 Kinder, *supra* note 1.

23 Christensen & Kift, *supra* note 2.

24 Culshaw & Leaver, *supra* note 11, at 9.

25 B Bott, Law Library Research Skills Instruction for Undergraduates at Bond University: The Development of a Programme (1994) *5 Legal Educ Rev* 118, at 119.

26 Christensen & Kift, *supra* note 2.

- information literacy is relational[27] to the discipline in which it exists and therefore legal research skills are best placed in the context of the areas of law being studied;
- as student learning largely is driven by assessment, the acquisition of research skills need to be assessed in some way; and
- research skills will be improved if they are developed, and reinforced, from a level of basic competency level in first year through to advanced skills at the point of graduation.

Other writers have commented on the difficulties commonly encountered in teaching skills in the law curriculum.[28] Wade identifies the following frustrations and challenges to teachers attempting to incorporate skills into law units:[29]

- the shortage of time available for students to undertake practical exercises;
- the lack of a systematic curriculum structure that provides for revision and reinforcement of skills acquired in one unit in subsequent units;
- the lack of commitment within and without the law school to skills teaching;
- insufficient resources to teach skills effectively, for example by the presence of experienced instructors to model skills and provide instant feedback;
- the superficiality of the experience of the majority of students in skills exercises (which he suggests may relate to lack of time and overcrowding in the curriculum[30]);
- students may not be motivated to learn unless they have opportunity to apply their skills to "real life" experiences, which is difficult to achieve in the absence of "real" clients;
- the form of snobbery that labels teachers who articulate *goals* of acquisition of skills and also incorporate adult education *methods* into the learning environment as engaged in "mere" training (original emphasis);
- the labour intensive nature of skills training;
- the teaching burnout that often results from the complex nature of teaching skills;

---

27 Bruce, *supra* note 19, at 39.

28 See, for example, J Wade, *supra* note 13.

29 *Id.* Although Wade refers to frustrations and challenges he identifies as existing for teachers attempting to incorporate 'third wave' skills into law units, they are also pertinent to integrating legal research skills into the curriculum.

30 *Id* at 185.

- the structural and institutional disincentives to choosing skills teaching as a career path;
- the frequent foundering of pilot programs due to lack of institutional foundations of resources, personnel, cultural acceptance and incentives once the dynamism of the program founder is gone;
- the interference of skills teaching with coverage of substantive topics;
- the lack of credibility of law academics to teach practical skills;
- the vagueness of the assessment criteria in assessment methods commonly used; and
- the lack of adequate teaching materials.

Wade's list is comprehensive, and paints a daunting picture for law schools seeking to incorporate skills training in their curriculum. In addition, a number of other challenges can be identified that have particular application to an integrated approach to teaching legal research skills. These include:

- As researching electronic legal information resources requires a level of information technology skills, disparities in student access to computers and their ability to use the technology has posed difficulties for library teachers. Library staff have observed, however, a significant increase in "starter skills" of students in recent years;
- As students begin their studies with different levels of research skills and experiences, there are inevitable difficulties in pitching the teaching at a level that engages all the students in the group;
- Avoiding overlap or gaps in the training in various law units;
- Measuring and evaluating improvements in student learning outcomes;
- Balancing the amount of online and face-to-face instruction;
- Supporting a culture shift from reference librarians being seen as bibliographic experts to being seen as process educators;
- Resourcing programs that increase the contact time for library staff teaching students;
- Identifying the specific aspects of information literacy that are essential to law students and which aspects need to be addressed in the law school curriculum;
- Facilitating and sustaining cooperation with numerous members of faculty;

- Creating enough room in the teaching program for more research activities; and
- Identifying assessable outcomes and the means to assess them.

In what follows we describe the program offered at UWA prior to 2000, the reasons for change, and the steps taken to create an integrated legal research skills program from 2000 in which we have endeavoured to capture the ideals set out above. In Part C of this article we review our experiences and the many challenges to integrating the teaching of legal research skills into the curriculum.

Part B – Integrating Legal Research Skills into the UWA Bachelor of Laws Courses

Background to the Research Skills Integration Program

Until 2000, our Law students received six hours of instruction in legal research methods by library staff during the first year of their course in the unit *Legal Process*. Library classes were given on Citation, Case law, Legislation and Secondary Sources. Attendance at these classes was compulsory and five percent of the assessment for *Legal Process* was allocated to a research journal prepared and presented by students with the major written paper they submitted for the unit. Prior to 2000 this was the only compulsory legal research skills instruction that students received during their law studies. Academic staff teaching in some compulsory and elective units increasingly were making arrangements for the reference librarians to provide instruction to students in their units to assist student with research papers for assessment.

Many of the students in a Bachelor of Laws degree are enrolled in five-year combined degrees. This has a number of implications. First, the level of instruction they are able to absorb in first year is unlikely to equip them for the more demanding research expectations placed on them in later years of the degree. This is possibly the most significant reason to spread research skills instruction across the degree. At UWA, approximately three quarters of the students entering into the degree are school leavers or non-graduates. Students study only two law units in their first year at university, the balance of their studies being in the other faculty in which they are enrolled. Consequently, students take two years to complete the four “first year” law units. There is then a further year in which second year units are taken

in which limited demands are made for independent library research.

Second, there are limited opportunities for students to use all the areas of competency in the first and second year law units. There is a limit to the amount of independent research for assessable work that can be expected of students during semester. There are also difficulties setting common research tasks for large groups of students because of the limited facilities of the library. Third, students who select electives where the assessment is largely examination based rather than based on independent research may evade anything other than rudimentary instruction in the first year of the degree. Fourth, the growth of computer based research resources has meant that what students learn about in first year will often need to be updated within a few years.

Indications that there was a wide range in the level of research skills of UWA LLB graduates, and the fact that some graduates apparently did not have essential research skills[31] prompted the Law School in late 1998 to review the ability of the current program to achieve an acceptable level of competency.[32] The library staff reported that it was impossible to achieve the necessary coverage of even basic research materials under the existing arrangement. A meeting of the staff concluded that greater emphasis should be placed in the curriculum on legal research skills. To this end, in May 1999, the Faculty appointed a member of academic staff as Research Skills Co-ordinator, to work with the library and academic staff to develop an expanded legal research skills program.

In October 1999 the Law School and the University Library were granted funds under the University of Western Australia Teaching and Learning Initiatives Scheme to "develop and implement a collaborative strategy for improving information literacy through integration of legal research skills instruction into law units at all levels of the LLB". The objectives were to:

- achieve a higher and more consistent level of student legal research skills competency;

---

31 These concerns were, in part, based on anecdotal information provided to the law librarians by law librarians in various law firms. Similar concerns were reflected in a survey conducted by the Monash Law School, see Kinder, *supra* note 1.

32 For earlier discussion of these concerns see Flynn, *supra* note 18.

- enhance existing and develop further collaborative practices relating to research skills instruction between the Law Faculty and the Library;
- develop instructional material that facilitates integration of legal research skills instruction into law units;
- improve legal research skills education of law students by:
  – increasing the amount of legal research skills instruction provided to law students
  – teinforcing the legal research skills taught in the first year of the degree
  – increasing the number of opportunities to practice legal research skills over the course of the degree
  – offering legal research instruction in a timely manner and at an appropriate stage of the LLB degree.

A Working Group comprised of the Research Skills Co-ordinator, the Law Librarian, two reference librarians and an Instructional Designer met on a regular basis between October 1999 and March 2000 during the design and planning phase, and have met since then during the implementation and evaluation phases.

Design and Implementation of the Research Skills Integration Program

During the early stages of the project, the Working Group identified five key strategies to achieve the project objectives.

Strategy 1 – To determine the areas and levels of skill competency that students should acquire during the degree and an outcome statement of those skill levels.

The areas of skills competency specific to legal research were identified as Citation, Case law, Legislation and Secondary Sources. The levels of skills competency were identified as Basic, Intermediate and Advanced. A Table of Core Competencies was developed by the library staff in consultation with members of the academic staff. This Table provides an outcome statement that students can use to monitor their level of skills and against which the effectiveness of the research skills program can be evaluated. A copy of the Table (updated for 2001) is included as Appendix A.

Strategy 2 – To identify the year levels and compulsory units in which research skills might be taught.

These units were selected by applying various criteria, including whether informal arrangements already existed, the assessment structure in the unit, and timing within the

degree structure. Six compulsory units were selected, (in addition to Legal Process where library classes have been held for many years). As a result of integrating legal research into seven compulsory units, the amount of instruction each student receives has increased from six hours to more than twelve hours.

Until 1999, classes in the compulsory units were aimed only at achieving basic and intermediate levels of competency. In 1999 an effort was made by the library staff to cover all levels of competency in the first year unit *Legal Process*. At the same time some *ad hoc* arrangements were made between the library staff and some academic staff to provide further research skills training in two other first year units, *Torts* and *Criminal Law*.

Table 2 shows the formal arrangements for legal research skills instruction in 1999. This can be contrasted with the formal arrangements put in place in 2000 as a result of the project.

Table 3 shows the areas of skills instruction, the skills level and the units in which the teaching program includes legal research skills learning activities from 2000.

The effect of the integration program is to postpone instruction at intermediate and advanced levels until later years of the degree. The benefit of this arrangement is that there can be greater certainty that students will have acquired and retain advanced research skills at the time they graduate.

Strategy 3 – To explore with co-ordinators of the compulsory units in which legal research skills would be taught the best ways to integrate that instruction into the unit.

To assist that process, a detailed planning checklist was created.

The reference librarians worked closely with the unit co-ordinators of the selected compulsory units to generate the instructional materials used in library classes and research activities. In this way it was possible for the law staff to provide the library staff with research tasks that are relevant to the materials being studied in the unit and that students are likely to encounter as graduates. The instruction methods adopted by the library staff in the various compulsory units ranged from

- a combination of lecture and activities in dedicated library classes with groups of 15 (*Legal Process*)

Table 2: Legal Research Skills Integration – 1999

	Legal Process 130						
Advanced							
Case Law							
Legislation							
Secondary Sources							
Intermediate							
Citation							
Case Law							
Legislation							
Secondary Sources							
Basic							
Citation							
Case Law							
Legislation							
Secondary Sources							

Table 3: Legal Reseasrch Skills Integration – From 2000

	Legal Process 130	Criminal Law 100	Torts 120	Equity 202	Admin Law 320	Con Law 2401	Procedure 020
Advanced							
Case Law							
Legislation							
Secondary Sources							
Intermediate							
Citation							
Case Law							
Legislation							
Secondary Sources							
Basic							
Citation							
Case Law							
Legislation							
Secondary Sources							

- lectures during scheduled class time in regular teaching venues with law staff present (*Criminal Law*, *Equity*, *Procedure*)
- lecture / demonstrations during scheduled tutorial times in the Law Library electronic training room (*Administrative law*)
- self paced exercises carried out in student's own time (with assistance from library staff as and when needed) (*Torts*, *Constitutional Law 2*).

The specific integration methods adopted in 2000 were as follows:

Legal Process

Classes on using the library and specific research tools for citation, case law, legislation and secondary sources were conducted by the library staff (as in previous years). The classes aimed at giving students a basic level of competence in these areas. Attendance was compulsory and students were required to complete a written exercise for each of the four classes. Failure to successfully complete each of the exercises would result in a fail grade.[33] Students were also required to submit a research Journal with their second semester *Legal Process* assignment, explaining the process undertaken when researching a nominated topic and drawing on what they had learnt in their library classes. Ten per cent of the marks for *Legal Process* were assigned to the Journal.

Criminal Law

Criminal Law classes consist of about 35 students. Library staff conducted a class for each group during the usual class time in first semester, just after students received their first *Criminal Law* assignment. The classes aimed to assist students to prepare their research assignment, due early in second semester. The materials presented were developed in consultation with the *Criminal Law* lecturers and focused on researching *Criminal Law* sources.

Torts

Students were given a self-paced exercise during first semester. The *Torts* lecturers provided the library staff with the information they wanted the students to locate. The

33 Students are given the opportunity to resubmit the written exercises if they fail it the first time around.

librarians devised a series of questions that required students to use sources specified by the *Torts* lecturers. The aim of the exercises was to provide students with practise using particular research tools before they commenced work on their research assignments. The material discovered during these exercises was part of the reading required for discussion in the following seminar class. Students might be asked to locate, for example, a recent unreported case, or the transcript of an application for special leave to appeal to the High Court.

In second semester students were required to submit a research journal as part of their research assignment, worth five per cent of the assessment for the unit. The journal required students to demonstrate that they had reflected on the process of research. Students were expected to document how they developed and executed their research strategy.

Equity

Two lectures were given to the class by the reference librarians during the scheduled class time in week ten of first semester. Although the lecture primarily focused on secondary sources relevant to the areas that students might be expected to research, some coverage of case law and legislation research was included at the unit co-ordinator's request. Students were given prepared handouts. Attendance at class was compulsory.[34]

The coverage in the lectures was linked to the 100 per cent examination at the end of semester. Prior to the library class, students were given a handout that detailed the areas that would be the subject of essay questions in the examination. Students were told that they must answer one essay question in the examination, that the questions would be based on the published essay areas and that marks would be given for demonstrated understanding of an area through materials other than those published on the unit reading list. Students in the unit were also provided with a one hour tutorial on what was expected of them in an essay question in an examination.

34 There were difficulties with compulsory attendance and enforcing the policy took up a lot of the lecturer's time in 2000. In 2001 she overcame this problem by creating a compulsory online exercise (using WebCT) which drew on the material covered in the lectures. Attendance at the lectures in 2001 was not noticeably reduced.

Administrative Law

Classes were held during the scheduled tutorial time at the beginning of semester two for groups of 15 students in the library electronic training room. The topic researched by the class was delegated legislation. The administrative law principles concerning delegated legislation had been covered and assessed in first semester. Attendance was voluntary and about 60 per cent of the class attended.

Constitutional Law 2

Students were encouraged to complete a worksheet in their own time in this second semester unit. The exercise was not compulsory and there was no formal contact with the library staff. There is no record of how many students completed the exercise, although a questionnaire circulated at the end of semester would suggest that it was not a high proportion. The content of the questions in the worksheet focused on researching legislation that was central to the case discussed in the first tutorial. The questions were compiled by the unit co-ordinator and the library staff added instructions to the worksheet on how to use electronic sources to answer the questions. The worksheet was not directly linked to the assessment in the unit.

Procedure

The library staff gave a 30 minute lecture to students following the scheduled class during week two of first semester. The content of the lecture was based on an interview with a recent graduate who had considerable experience with library work. The unit co-ordinator attended the class and interspersed the lecture with comments about the ways students would use the various research tools in their work in the unit.

Strategy 4 – Generation of teaching materials for each law unit

To prepare teaching materials for each new class by the library staff. The library staff consulted the Instructional Designer for the Faculties of Economics, Commerce, Education and Law for advice on the design of these written teaching materials. The planning also took into account how WebCT could be used in this area of teaching. A considerable amount of time was spent preparing the teaching materials necessary to extend the research skills classes into the additional law units. These materials provide a record for students of the legal research tools and problem solving methods used

during class and other research activities. Towards the end of 2000 the library staff developed and piloted the use of WebCT to teach Citation. Further use has been made of this software in 2001.

Strategy 5 – Creation of a Student Manual

To create a Student Manual. This strategy evolved as the planning progressed. It became clear that we needed some way for students to understand the ongoing nature of the integrated legal research skills program. The Working Group identified a number of objectives in creating the Student Manual. These included:

- raising the profile and reinforcing to students the importance of legal research as a key aspect of legal education and legal practice;
- providing students with a physical resource in which they could organize and retain relevant legal research skills documents;
- encouraging students to collect useful material over the duration of their degree;
- assisting students to take responsibility for their own information literacy;
- increasing student awareness of legal research skills as a life-long skill.

The Manual consisted of an A4 two-ring binder and was distributed to all first year students at the beginning of first semester 2000. The purpose of the Manual and the importance of legal research skills were explained to students at that stage. The Manual contained an introduction and overview of the integrated program of research skills instruction they would receive during their degree. A copy of a chapter on legal research from a leading text[35] in the area was included. The teaching material for the first library class in *Legal Process* was also included.

Evaluation of the Program

As the integration program will take effect over five years it will be difficult to evaluate its overall effectiveness until the students who entered the Law School in 2000 graduate, in 2003–2005. With this in mind, the Working Group identified

35 I Nemes & G Coss, *Effective Legal Research* (Sydney: Butterworths, 1998).

two levels of evaluation to form the basis of evaluation of the project in 2000 and on an ongoing basis.

Overall effectiveness of the program

The Working Group decided during the planning stage to find a way to measure whether this objective had been achieved. As the integration program will not be fully implemented until 2004, it was decided to devise a means of collecting data that measures the learning outcomes during the five years it will take to be fully operational. Consequently a 20 question "test" was devised by the reference librarians and administered to the students in *Legal Process*, *Torts*, *Equity* and *Procedure* in March 2000. A preliminary reading of these results indicates that, on average, second to fourth year students have a basic to intermediate level of competency in legal research skills. The "test" was administered again at the beginning of 2001 to students in the same units. This process will be repeated until 2004. We hope to observe an overall improvement in the average level of competency in later year units. (We would not expect any change to the result in *Legal Process*.)

Review of instructional material, teaching activities and student manuals

The evaluation at this level has taken into account the perceptions and comments of the three key groups involved in the integration program, namely students, library staff and academic staff. These perceptions and comments have been collected via:

- oral and written feedback from academic staff;
- biannual written reports prepared by the library staff for the Library;
- written student evaluation of library classes in *Legal Process*
- written student evaluation of the Student Manual;
- A questionnaire administered to students in *Constitutional Law II;*
- informal oral feedback from students; and
- a half day review and planning meeting conducted by the Working Group.

Evaluation by students

Student Manual. Student evaluation of the Legal Research Manual was very positive. Students completed a feedback sheet placed in the back of each Manual (*Appendix B*). A total

of 188 responses were received. (Approximately 80 per cent of students commented on Question 1. There was a dramatic decrease to about 30 per cent for Questions 2 to 5.) A summary of the results for Question 1 of the survey are outlined in Table 5 and presented in graph form in Table 6.

Table 5: Evaluation of
Student Legal Research Skills Manual – 2000

Question	Strongly Agree	Agree	Disagree	Strongly Disagree
Manual was a useful resource for my study	40	126	20	2
Content of Manual well structured / easy to follow	61	122	5	0
Materials supplied for inclusion appropriate	47	141	0	0
Manual helped me feel confident about finding information resources I need for my study	36	125	23	4

Written responses to Questions 2, 3, 4 and 5 provided useful feedback to the librarians about the materials contained in the Manual, and the length and timing of the library classes in *Legal Process*. A majority of respondents found the Manual to contain relevant and useful information and stated that they had no difficulty using it. A common suggestion for improvement was to reduce the physical size of the folder that contains the Manual. It was also suggested that students should have more "hands on" exercises to reinforce learning.

Unit activities. The librarians arranged for a Student Perception of Teaching (SPOT) survey of the library classes held in *Legal Process*. Comparison of the 1999 and 2000 SPOT results demonstrates a favourable increase in the students' perception on a range of matters. This improvement is attributed by the librarians to changes made between 1999 and 2000 as a result of the integration project. Table 7 provides a comparison of 1999 and 2000 SPOT results.

Table 6: Legal Research Skills Student Manual Feedback

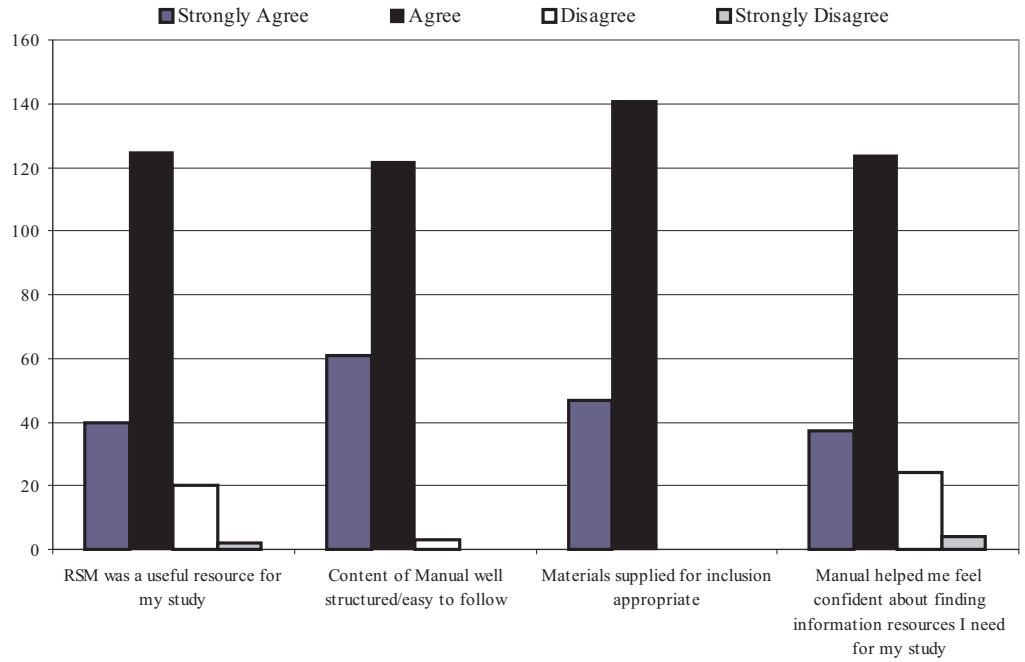


Table 7: Comparison of SPOT Survey Results – 1999 to 2000

Question	1999 mean	2000 mean	difference
I have improved my research skills in this field	4.01	4.06	0.05
The teacher seems to have been well informed on the material presented	4.48	4.43	-0.05
The teacher has been approachable	4.29	4.41	0.12
Material has been delivered at the right pace	3.65	3.75	0.10
Sufficient time has been given to complete work in class	3.50	4.09	0.59
Good use has been made of examples and illustrations	3.99	4.08	0.09
There has been a good balance between theory and application	3.83	4.01	0.18
The amount of material covered has been reasonable	3.64	4.04	0.40
These classes have been a valuable part of this unit	3.89	3.97	0.08
Handouts and notes have helped me understand the material	3.99	4.39	0.40

A review of the written comments on the SPOT survey by the librarians established that the comments were generally positive, with most students writing that they believed the classes were worthwhile and the exercises effective. Other comments included that the librarians conducting the classes were friendly, the handouts useful, the classes well organised and the coverage good.

A questionnaire was administered to students in *Constitutional Law II* evaluating the exercise set in that unit. The number of completed forms was low, although this can be attributed to the fact that the exercise was not compulsory and the questionnaire was not administered until the end of semester. (The exercise took place early in the semester.) The comments received have been useful though in reviewing the exercise in 2001. Of the 207 students enrolled in the unit there were 64 returns. Of these, 37 students answered

yes to the question whether they had completed the exercise. The general tenor of the comments from these students was that they found the exercise very useful because of what they learnt about researching legislation. Other comments included requests to make the instructions to follow easier to understand and that some credit be given for completing the exercise or at least some feedback on the exercise in class.

A number of students who attended the *Procedure* class commented that the presentation and written handouts were very useful. Some of the students reported that they were concerned about how difficult they found it to answer the questions in the "test" that was administered at the beginning of the class, and that this encouraged them to pay attention during the class. This suggests that the "test" may serve a dual purpose: as an evaluation tool and as a teaching device.

Evaluation by Library Staff

Student Manuals. The librarians found it helpful to be able to refer to the reference material in the Manual. It was observed that the students had some difficulty with the size of the folder and staff noted to use a slimmer folder in 2001 (which has been done).

Unit Activities. The library staff perceived their teaching in *Legal Process* in 2000 to have been far more effective than in previous years because they were not trying to cover as much in that unit as they had before. They no longer attempted to teach advanced level skills, as they had in 1999, knowing that instruction at this level will take place later in the degree course.

Evaluation by Academic Staff

Student Manual. Although no general survey of responses to the use of a Student Manual by members of the academic staff has been undertaken, favourable comments have been received by the Research Skills Co-ordinator from a number of staff members. Members of the academic staff involved in teaching first year units and the Law School Teaching and Learning Committee decided in February 2001 to expand the Student Manual to include materials on Legal Writing. This is an endorsement of the concept of a Manual that straddles the compulsory units of the degree.

Unit Activities. There is strong support by the academic staff teaching the compulsory units in the integration program for the teaching activities that have been developed

and the involvement of the reference librarians. Each of the unit co-ordinators involved in the integration program in 2000 has agreed to continue with the arrangements made last year. In some cases, for example *Equity*, there was extensive consultation in 2001 between the library staff and the unit co-ordinator to reduce the administrative burden associated with the initiative in that unit and, at the same time, to improve the learning outcomes for the students.

The *Legal Process* unit co-ordinator in 2000 commented favourably on the standard of the research journals completed by *Legal Process* students as part of their second semester assignment. The *Equity* unit co-ordinator reported that the quality of essays in the *Equity* end of semester examination far exceeded that in the previous year, there being clear evidence of independent research and analysis of the materials researched. She also commented that, disappointingly, the research did not seem to translate into a better quality of problem answer in the examination. The unit co-ordinator reported that the feedback obtained from the students in that unit on the library lectures was, by and large, very positive. She also reported that some comments were made about the level of sophistication of the first lecture given by the librarians, and suggestions made by students for possible ways to accommodate these comments.

The *Criminal Law* unit co-ordinator reported that students found the classes very useful for the preparation of their 2000 first semester assignment. The unit co-ordinator also reported a higher incidence of plagiarism in these assignments and suggested that greater efforts need to be made to instruct students how to use and cite the sources they research.

The *Administrative Law* and *Procedure* unit co-ordinators have reported that the classes in their units were timely and well presented to students. They each reported the materials presented to students to be at an appropriate level and relevant to the unit.

Arguably, the activity in *Constitutional Law II* was the most closely linked to a class activity and was the most difficult to structure. The aim of the unit co-ordinator was to combine learning and application of the search process with learning about and understanding the constitutional law issue. Consideration is still being given how to achieve this level of integration in a way that is workable, taking into account the student's desire for "reward for effort" if they complete the exercise, the small number of staff involved in teaching the unit, and the limited teaching time to cover the substantive topics.

New Developments and Future Directions

During the planning and implementation stages in 2000 a number of possibilities presented that would supplement or augment the program. These are described briefly below.

Use of WebCT

The most significant development in 2001 is the use of WebCT, a software program that enables students to complete self paced exercises online. These exercises can be repeated by a student as often as they wish until they submit their work for automatic assessment by the program. This will save the library staff manually marking the students tests as in previous years. The mark that is recorded is available to staff in a report in a spreadsheet generated automatically by the program. WebCT will be used this year in *Legal Process* and *Equity*. In *Equity*, compulsory completion of a WebCT exercise has replaced compulsory attendance at the library skills lectures. The staff involved in using this program for the unit *Equity* believe that is a good step, but there have been many time consuming "bugs" in the system.

Online publication of the Student Manual

The Working Party proposes to make the material in the Manual and library teaching materials available online later this year.

Legal Writing Skills materials included in the 2001 Student Manual

In 2001 a new section was inserted in the Student Manual on Legal Writing. This section was prepared in consultation with the co-ordinator of Legal Process, and other first year unit co-ordinators. Only a small amount of material on legal writing was included this year, but it is hoped that greater use will be made of this part of the Manual, now called the Legal Research and Writing Skills Manual, in future years.

Part C – Comments and Conclusions

Key Features of the UWA Program

The key features of the program we have introduced at UWA are:

- Legal research skills instruction is integrated into seven compulsory units at all year levels throughout the degree.

There is no dedicated legal research unit in the degree, but classes and exercises are integrated into the units. This enables us to refresh and reinforce the skills taught in earlier years and to emphasise the transferable nature of the skills.

- The legal research skills instruction is provided by library staff in close collaboration with the academic staff responsible for the compulsory units.

  The Library has deliberately been pursuing a policy of involving reference librarians in training rather than providing ad hoc assistance to students. This policy is consistent with a view that legal research is a *process* rather than a static knowledge base. The ultimate goal therefore, is for students to become independent researchers. The Student Manual is a key strategy to achieving this goal, with students being expected to refer to their previous training information to answer their research inquiries. Despite the primary emphasis on training, the reference staff remain available to assist students with research inquiries.

  Perhaps the most significant feature of the program is that it aims to address the fourth element of information literacy, namely the "use of information" which in law includes writing skills – "the lawyer's ultimate goal – the closure, the end of the research process?"[36] Hutchinson and Fong have pointed out that a narrow view of legal research predominates in the literature.[37] Arguably, the broader perspective of information literacy will break through this restrictive view.

  One of the most rewarding aspects of the program for all staff involved has been the opportunity for collaboration between library and academic staff. The library staff have appreciated the support provided by the academic staff, and believe it has had a significant impact on student attitudes about the importance of research skills to their legal education.

- The Student Manual is a resource that reinforces the integral nature of the skills training and the incremental nature of learning.

  The Student Manual was an innovation for the UWA Law School in that it is not directly associated with any particular unit in the degree. The Manual is progressively compiled following instruction by both academic and library staff, and through a combination of lecture, demonstration and practical classes over the course of the degree. The potential value of the Manual as a resource while at Law

School and in the workforce is explained to students at the beginning of their studies.

Difficulties and Challenges

Many of the difficulties outlined in Part A have been encountered at some stage and some of them continue to pose difficulties for the program. In our view, the most significant challenges we face are:

- Lack of resources to fund the program

  Additional teaching means additional salary costs. Whether the salary is funded by the Law School or the Library, competing demands for scarce funds means that there is constant pressure to reduce staff costs.

- Impact on other roles and initiatives by the Library

  Clearly there are implications for the library staff from the integration program. The nature of their role has changed from regularly advising on a one off basis to a training role. There are other implications too. Concentration of training in the compulsory units has reduced the availability of library staff to run research sessions in elective units. A number of academics had arranged in previous years for special classes to assist students with their research projects in areas like Comparative Law and Public International Law. It is a considerable challenge for the library staff to cover these areas within the compulsory units (even with the expanded training program) sufficiently to meet the research needs in specialized areas of law. As ever, the critical resources of staff and time mean that limits are imposed on what is covered (as in all areas of the curriculum). An important part of the evaluation of the program over time will be to determine whether the research skills acquired by students in the compulsory units is sufficient for the research tasks students encounter in their elective units.

- Availability of key personnel

  The nature of the program is that it requires a considerable amount of coordination. There has been a minimum of eight academics involved in the program and two reference librarians. While these staff members are committed to the program, not all of them will be involved in teaching every year and heavily stylised activities may not suit the staff who replace them. Essentially, maintaining the impetus and enthusiasm for a program so that it outlives the people who put it together is a major challenge.

We have sought to address this issue mainly by creating materials in the early stages of the program that make it easier for new staff to continue along similar lines.

Conclusions

The demand on universities to produce graduates with generic research skills applicable to print and electronic resources, and the demand from the legal profession for graduates with the skills to be able to keep pace with new electronic information resources, has in combination prompted many law schools to review their legal research teaching methods and programs. Influenced by this demand for information literate graduates, equipped as life long learners, there has been a discernible shift of emphasis in library classes from the traditional bibliographic instruction method to skills training and recognition of research as a process. At the same time, there has been a movement in many law schools to integrate skills training into the curriculum. In this paper we have presented a program recently developed at The University of Western Australia that aims to produce information literate law graduates through a program of research skills training that is integrated into all years of the curriculum and is taught collaboratively by library and academic staff. Early evaluation indicates that there will be positive outcomes from this program, but that there are many challenges to be met.

Appendix A: Legal Research Skills 2001

	Competency	Resources
BASIC	*Citation* • Student will be able to correctly identify the elements of a case citation • Students will be able to read a case citation – What do the abbreviations mean? – Is the citation for a reported or unreported case? – When is it appropriate to use square or round brackets? – Is the citation for an electronic or print version of the case? • Students will be able to locate a case citation when – only party names are given – the given citation is incorrect or incomplete – an alternative citation is needed	• Australian Case Citator – hard copy & CD-Rom • Donald Raistrick, *Index to Legal Citations and Abbreviations* 2nd ed • Colin Fong & Alan Edwards, *Australian and New Zealand Legal Abbreviations* 2nd ed • *Australian Guide to Legal Citation Melbourne University Law Review*
	Case Law • Students will know the differences between authorised and unauthorised reports • Students will be able to locate a State, Commonwealth or UK case in print using a reported case citation • Students will know the differences between reported and unreported cases • Students will be able to locate a State, Commonwealth or UK case in electronic form using an unreported or electronic case citation on ScalePLUS, AustLII, or Butterworths Online • Students will be able to find whether a case has been judicially considered using the Australian Case Citator • Students will be able to find cases by subject using Casebase	• State & Commonwealth Law Report series – hard copy • UK Law Report series • AustLII – WWW • ScalePLUS – WWW • Unreported Judgments – CD-ROM & Butterworths Online • Casebase – CD-Rom • Australian Case Citator Cont'd

	Competency	Resources
BASIC (cont'd)	*Legislation* • Students will be able to identify legislative material and their uses – Bills; Explanatory Memoranda; Hansard; Acts; Delegated Legislation. • Students will be able to identify the differences between Reprinted Acts, Numbered Acts and Consolidated Acts • Students will be able to correctly identify the main elements of an Act – Act Name; Act Number; Assent Date; Short Title, Commencement; Interpretation; Main Body; Tables. • Students will be able to successfully locate an Act in hard copy or electronic form – By Act Name – By Act Number – By Subject	• State & Commonwealth Legislation - print • AustLII - WWW • ScalePLUS - WWW • State Law Publisher - WWW • Wicks Subject Index - print • Index to WA Statutes - print and WWW
	Secondary Sources • Students will be able to locate journal articles on a particular topic of law – Identifying keywords and phrases – Searching electronic media • Students will be aware of and able to use basic sources of secondary material available for Legal Research – Legal Encyclopaedia; Text Books; Dictionaries • Students will be able to locate secondary material using the basic functions of the Library Catalogue – Author; Title; Keyword; • Students will be able to locate secondary material on the internet using selected web sites	• AGIS; APAIS; AFPD; CINCH; FAMILY - electronic databases • ILP - electronic database • Casebase - CD-Rom • Halsbury's Laws of Australia • CygNET - UWA Library Catalogue online • Various legal dictionaries • Information Toolbox via CygNET Online Cont'd

	Competency	Resources
INTERMEDIATE	*Case Law* • Students will be able to check if a State or Commonwealth case has been reported using the Australian Case Citator or Casebase – Students will be able to locate State or Commonwealth case law on a specific section of an Act using the Australian Digest or Australian Current Law Reporter • Students will be able to find reported and unreported State, Commonwealth and UK cases on a specific topic of law – Determining main keywords and phrases – Using Indexes effectively – Searching electronic media • Students will be able to locate High Court transcripts and special leave applications in electronic form using AustLII and ScalePLUS • Students will be able to locate UK cases in electronic form using the Court Service UK site • Students will know how to correctly cite any State, Commonwealth or UK case	• Australian Case Citator – hard copy & CD-Rom • Casebase - CD-Rom • Australian Guide to Legal Citation - print or WWW • Australian Digest & ALMD - print and CD-Rom • AustLII - WWW • ScalePLUS - WWW • Unreported Judgments - CD-Rom & Butterworths Online • Court Service UK - WWW Cont'd

	Competency	Resources
INTERMEDIATE (cont'd)	*Legislation* • Students will be able to determine whether an Act is in force. Determining – Commencement information – Date of Assent – Date of Proclamation • Students will be able to correctly update an Act – Latest Reprint – Amendments • Students will be able to trace the progress of a Bill through Parliament using – Weekly Digest of Bills (WA) - WWW – Bills Tables (Cwth) - print and WWW • Students will be able to locate a Second Reading Speech in Hansard – Parliamentary Debates - WA and Commonwealth – WWW Hansard sites - WA and Commonwealth	• Australian Current Law Legislation - hard copy & Butterworths Online • ALMD - hard copy & CD-Rom • Weekly Digest of Bills (WA) - WWW • Index to WA Statutes - hard copy & WWW • Commonwealth Statutes Annotations • WA Parliament site - WWW • Commonwealth Parliament site - WWW • Various Hard copy and electronic versions of Acts and Hansard Cont'd

	Competency	Resources
INTERMEDIATE (cont'd)	*Secondary Sources* • Students will be able to successfully search the WWW for Secondary Legal Material – Search Engines – Online Indexes • Students will be able to evaluate WWW resources for – Currency; Accuracy; Original Content; Informative or Promotional; Hosting site; Academic or Commercial • Students will be able to correctly cite electronic material – Internet document – CD-Rom • Students will be able to locate secondary material using advanced searching of the Library Catalogue – Subject Searching	• Alta Vista – WWW • Google – WWW • Information Toolbox via CygNET Online • CygNET - UWA Library Catalogue online • Colin Fong, *Australian Legal Citation: A Guide*, 1998

	Competency	Resources
ADVANCED	*Case Law* • Students will be able to check if a UK case has been reported using Current Law (UK) • Students will be able to locate cases from the US, New Zealand, Canada, Europe, South Africa, Asia / Pacific region in electronic for	• Current Law (UK) • Information Toolbox via CygNET Online • Various WWW sites
	Legislation • Students will be able to understand the difference between Acts and Delegated Legislation • Students will be able to identify the differences between Reprinted Regulations / Rules, Numbered Regulations / Rules, and Consolidated Rule / Regulations. • Students will be able to successfully locate a piece of Delegated Legislation in hardcopy or electronic form. – By Name – By Subject • Students will be able to correctly update a piece of Delegated Legislation. Determining – Commencement • Students will be able to locate legislation from US, Canada, Europe, South Africa, Asia / Pacific Region in electronic form	• WA Government Gazette • Various hard copy and electronic versions of Delegated Legislation. • AustLII - WWW • ScalePLUS - WWW • State Law Publisher - WWW • Index to WA Statutes - WWW and print Cont'd

	Competency	Resources
ADVANCED	*Secondary Sources* • Students will be able to identify and use advanced sources of secondary material available for Legal Research – Loose-leaf services; Reports; Conference & Other Papers; Reference Materials. – Material from other jurisdictions • Students will be able to locate journal articles on specific cases and legislation. • Students will be aware of and be able to use Form and Precedent resources available in print and electronic form. – Court Forms & Precedents – Other Forms & Precedents	• Various Loose-leaf services • Law Reform Commission papers • Annual Reports & Conference Papers • Law Society Papers • Halsbury's Laws of England • Corpus Juris Secundum • Casebase - CD-Rom • AGIS, ILP - electronic database • Information Toolbox via CygNET Online • Australian Encyclopedia of Forms and Precedents - print and Butterworths online • Seaman on Civil Procedure - print & online • Atkins Court forms - print

Appendix B
Legal Research Skills Student Manual
Feedback Form

We wish to make this Research Skills Manual as helpful as possible for future students, so we would appreciate your feedback about your experience with it. At the end of your library classes on Legislation you will be asked by the Law Librarians to complete this Feedback Form. Please take the time to complete the Form at that time and return it to them. Any informal feedback in the meantime would be appreciated and can be given to the Law Librarians.

SA = strongly agree **A** = agree **D** = disagree
SD = strongly disagree
Please place a ✓ in the appropriate column

		SA	A	D	SD
1	The Research Skills Manual was a useful resource for my study.				
2	The content of the Manual was well structured and easy to follow.				
3	The materials supplied for inclusion in the Manual were appropriate.				
4	Having the Manual has helped me feel confident about finding the information resources I need for my study.				

What part of the Manual do you feel was of **most** value for your own study/research this semester?

_____

_____

What part of the Manual was of **least** value for your own study/research this semester?

_____

_____

Comment on any difficulties you found in using the Manual.

_____

_____

What suggestions would you make for improving the Manual?

_____

_____

Any other comments?

_____

_____

Thank you for your time.

Training Needs for Law Teachers: Being Strategic

*Terry Hutchinson & Frances Hannah**

Abstract

The new teaching environment features flexible delivery, heavy use of technology, increased infusion of skills into the curriculum, large class sizes and overall, an increasing sophistication of the higher education teaching environment. Even in this environment, Erica McWilliams' "teaching tech(no)body",[1] the virtual instructor, needs some of the old-fashioned teaching skills so necessary for rounded delivery of knowledge and skills to the students. This article examines training needs and options for legal academics and points to effective ways of engendering excellence. The article argues that voluntary teaching improvement rather than accreditation is the more valuable. However, any up-skilling schemes should not become an institutional or personal barrier to personal diversity in teaching style in the university, and especially in the Law School.

The Context of Legal Education

All academics have traditionally treasured their intellectual freedom. This group has always quite rightly viewed any infringement with concern. However, reality suggests there has been a mammoth change in many aspects of university teaching culture.

These changes include firstly, an infusion of skills into the university curriculum. Law schools have always aimed to engender lawyering skills such as legal analysis and legal research into their courses, but modern agendas have driven this further. A larger number of skills are being taught,

---

* Terry Hutchinson and Frances Hannah are senior lecturers with the Law School, QUT. An earlier version of this article was presented to a Law Teaching Workshop, December 1999, Byron Bay.
 (2002) 13 *Legal Educ Rev* 169.

1 E McWilliam, No Body to Teach (with)? The Technological Makeover of the University Teacher (1997) 24 (1) *Australian Journal of Communication* 1.

assessed and developed over the course of the degrees. This emphasis places new demands on legal academics.

Secondly, the larger universities are enrolling unprecedented numbers of law undergraduates in their degrees. First year intakes of six and seven hundred students mean academics must be skilled in delivering to large groups. This reflects the shift from "an elite to a mass system of higher education".[2] Large student numbers have increased the diversity of the student body in terms of gender, ethnicity, age, disabilities, international status, and study status including external/part-time/full-time offerings,[3] and large numbers also include a greater range of students with varying capabilities and learning styles.[4] This means that if the standard of teaching is poor then the less able students will suffer the most. In addition, more students are studying law units when English is their Second Language. In this situation, poor communication from academics can affect student learning more than would otherwise be the case.

Thirdly, there is the increased use of technology and on-line teaching. Academics need to be skilled in electronic mediums to a much larger extent than in the past. They must become proficient in new skills in order to pass these skills on to their students. Connected to this is the increased use of flexible delivery, that is, delivery which will suit the students' learning patterns and lifestyles. A feature of this environment is, apart from on-line teaching, the other modes of flexible delivery such as print and tapes, the use of intensive teaching, video and CD Rom. Old ways of doing things can be unhelpful in this environment.[5] Three days of straight old-fashioned lectures for example may be totally inappropriate when the unit is being run in an intensive mode although it may have been quite appropriate in the past when the identical material was delivered for two hours a week over a 13 week period.

---

2 S Rowland and C Byron, Turning Academics into Teachers? (1998) 3 (2) *Teaching in Higher Education* 133.

3 Higher Education Research and Development Society of Australasia (Inc) HERDSA *The Accreditation of University Teachers: A HERDSA Discussion Document* July 1997, at 3.
http://www.herdsa.org.au/ (14/4/2000).

4 Sarasin, *Learning Style Perspectives:Impact in the Classroom* (Madison: Atwood Publishing, 1999). See also the ministerial discussion article, Commonwealth of Australia, Department of Education, Science and Training (DEST) *Higher Education at the Crossroads*, (April 2002) [hereafter, the Nelson Review], at 2.
http://www.dest.gov.au/crossroads (23/5/02).

5 *Id* at 3.

Fourthly, there is increased sophistication of the secondary school learning environment. Younger students are entering universities with different school experiences from their more mature colleagues. The secondary school environment has been placing less emphasis on rote learning and more emphasis on critical thinking skills and oral presentations. These skills need to be reflected and fostered further at tertiary level.

Fifthly, there are increased government expectations tied to university funding criteria. Governments are tending to push educational agendas and policy through their provision of funding to universities.[6] Grants and additional funds are being provided in areas where the government wants action, for example, links with industry, and instrumental research. This has meant that academics are being pushed into researching and teaching new areas outside their comfort zones. In addition, an extensive literature of teaching and the scholarship of teaching has now been developed. This wealth of information is available for academics to access in dealing with these new factors in their environments, but will it be accessed by those who need it?

University administrators have noted that the purse string holders are seeking accountability and quality assessment.[7] Peer review has been in place for some time. There are also standard measures such as university course review processes, and documentation required for course development. Teaching development activities have either been organised by the university teaching support units, individual schools or faculties, or combined universities teaching associations. The take-up on these courses has always been primarily at the individual teacher's discretion. Peter Coaldrake for

---

6 The Nelson Review, *supra* note 4, does not explicitly address the issue of teacher development or training. The ministerial discussion paper (April 2002) raises the question of how the status and quality of teaching in higher education can be improved (at Question a2), and there is some discussion of quality of academics in the subsequent paper, *Striving for Quality – learning, teaching and scholarship* (June 2002), but teaching skill development is again not directly addressed. See http://www.dest.gov.au/crossroads for all the relevant papers attached to the review process.

7 See for example, Commonwealth of Australia, Department of Education, Science and Training (DEST) *Learning for the Knowledge Society – An Educational and Training Action Plan for the Information Economy*, 2000 at 9/72. http://www.dest.gov.au/schools/Publications/2000/learning.html (20/3/02). This document states: "Professional development for teachers, trainers, content developers, researchers and all other workers in education and training is essential to allow them to be change agents to achieve the goals of the information economy".

example has warned that, "Those who provide funding for higher education, whether they be fee-paying students, business or government, are unlikely in the contemporary context to accept such a laissez-faire attitude as the basis for quality assurance".[8] The same article noted the move towards more emphasis on training and use of student evaluations to judge and quantify teaching effectiveness – "In recent years there has also been a trend towards the more systematic use of graduate certificates in teaching and the use of various forms of quality improvement, including student evaluation and feedback and peer review."[9]

Another commentator, Patricia Cross, has pointed to two main issues in regard to quality in higher education. Firstly, there is assessment, and in particular, "How do we know how much and how well students are learning?" The other quality-focussed issue revolves around faculty development. The latter issue raises the question as to "How we help college faculty become more effective teachers, especially in working with the new populations".[10] Cross was commenting on the North American scene and noted that many faculty members had not experienced any preparation for teaching through recognised training schemes or even through proof of prior experience.[11] However, she also noted that the trend to large numbers in tertiary institutions had changed things so that with greater access and increased numbers good teaching was becoming more important. As she said, "poor students need good teachers". Cross also noted that whereas the higher education rewards system has been geared towards rewarding research, things were slowly changing. Teaching awards were being instituted. Systems of student evaluations were becoming the norm. Universities were establishing central organisational sections to foster good teaching.[12] Quality in teaching is therefore becoming recognised as an important issue.

---

8 Coaldrake and L Stedman *Academic Work in the Twenty-first Century: Changing Roles and Policies* (99H Occasional Article Series Canberra: Higher Education Division Department of Education Training and Youth Affairs, September 1999) at 11.

9 P Coaldrake and L Stedman, *Id,* at 10.

10 Cross, Patricia 'An American Perspective on Transition: Issues of Quality and Access' (1994) 2 (3) *Curtin:A Newsletter of Curtin University Teaching Learning Group* 1.

11 Cross, Patricia 'An American Perspective on Transition: Issues of Quality and Access' (1994) 2 (3) *Curtin:A Newsletter of Curtin University Teaching Learning Group* 2.

12 *Id.*

A recent ministerial discussion article[13] states that the higher education sector in Australia needs to be value-adding, learner-centred, high quality, equitable, responsive, diverse, innovative, flexible, cost-effective, publicly accountable and socially responsible. Will teacher accreditation in universities contribute to these desired characteristics? The Draft QUT Response seems to be moving the debate in this direction:

> In terms of enhancing the status and quality of teaching in higher education, there is an extremely good argument for academic staff to be professionally prepared for their teaching role, which may include completing higher education teaching qualifications or equivalent. Such a requirement would demonstrate to staff, students and the wider community that teaching expertise was assessed to a professional standard.[14]

This issue is definitely being moved up the agenda. What is a strategic way forward?

This article examines training needs and options for legal academics and points to effective ways of engendering excellence. The article argues that voluntary teaching improvement rather than accreditation is the more valuable.

Defining the Term Accreditation

Most of the intense debate surrounding this issue uses the term 'accreditation'. What is accreditation? Dictionary meanings are fairly clear on the matter. It is a process of giving credit, of authorizing and recognising officially.[15] The Higher Education Research and Development Society of Australasia (Inc) (HERDSA) in their discussion article on this particular version of accreditation have used the term to mean "the formal acknowledgement of professional status achieved by individual university teachers". Inherent in this is an assumption that an organisation would be required to

---

13 Commonwealth of Australia, Department of Education Science and Training (DEST) *Higher Education at the Crossroads*, April 2002, at 2-3. http://www.dest.gov.au/crossroads (23/5/02).

14 Queensland University of Technology Draft Submission to the Review of Higher Education Ministerial Discussion Article *Higher Education at the Crossroads*, June 2002, at 5 of 43. http://www.qut. edu.au/pubs/vice_chan/vice_chan_home.html (10/6/02).

15 *Heinemann Australian Dictionary* 3rd ed, (Melbourne: Heinemann Australian Dictionary, 1987), at 7.

manage the programs and keep the register.[16] The term accreditation tends to inspire negative overtones in academic circles. A structured voluntary teaching improvement scheme may prove more acceptable to many academics. But will this be sufficient for university administrators?

Accreditation: Threat or challenge?

The arguments in favour of accreditation include:[17]

- Accreditation will ensure transferability. There are already some mandatory schemes in place internationally and an Australian equivalent would provide safeguards for those moving between jurisdictions.
- An accreditation scheme introduced gradually with the agreement of academics will pre-empt the inevitable. It seems more efficient to put in place some acceptable criteria than wait for an externally imposed and possibly discipline inappropriate scheme.
- Accreditation allows for the skilling up of university teachers to bring them up to date with the changing teaching environment, as well as aiding skills development to deal with the increasing complexity of academic work.
- Accreditation represents an easily quantifiable quality assurance scheme in an era when this is important for funding purposes.
- Accreditation will improve teaching standards.

Some of the arguments put forward against accreditation include:

- What proof is there that accreditation will improve teaching? Does the fact that secondary teachers are accredited in addition to their subject knowledge mean that all such teachers are effective at teaching? Recent moves for further accreditation in that sector suggest not.[18]
- Insufficient assessment has been done of the effect of accreditation in other jurisdictions, such as the UK, where it has been introduced. Would accreditation really improve the Course Evaluation Questionnaire results? There is inadequate evaluation available of the effects of the process

16 Higher Education Research and Development Society of Australasia (Inc) HERDSA *The Accreditation of University Teachers: A HERDSA Discussion* Document July 1997**,** at 2.

17 See generally the points canvassed *Id* at 4 of 10.

18 See the debates and columns in the *Courier Mail*: Editorial Making sure teachers measure up 21/3/02, at 16; M Fynes-Clinton Call for "open" teacher standards CM 20/3/02, at 5.

where it has already been implemented. Perhaps it would be best to wait for this to occur in those jurisdictions that have accreditation so that Australian academics can benefit from other experience. The Centre for Higher Education Practice at the Open University in the UK, for example, is undertaking a project to evaluate the effectiveness of a part-time training programme. The initial results seem favourable but involve methodological difficulties such as data being gathered from self-selected samples of teachers and results being collected from a self-selected sample of students.[19]

- Oppression resulting from increasing credentialism of the workforce will take away valuable time from more productive activities including research. Promotion barriers are rising with many law faculties now requiring a doctorate for promotion purposes. Teacher training could be viewed as just one more barrier to the workforce.
- An over-emphasis on teaching might lead to a trivialisation of academic work to emphasise the issue of teaching rather than research, and expansion of knowledge boundaries by students and teachers alike. This may restrict the meaning of the academic role. As John Gava has argued so strongly recently, "Instead of reading and thinking and discussing ideas with their colleagues, academics will be given another bureaucratic hurdle; they will be required to waste precious time and energy acquiring superfluous skills at the expense of doing what really will make them good university teachers."[20]
- Accreditation may therefore lead to the downgrading of the importance of subject knowledge and skills as the paramount concern of university teaching.
- It may also lead to further control mechanisms being put in place leading to additional encroachment on academic freedom.
- Generic teacher training is too general for most disciplines at the tertiary level. There may be a need for more specific help in some areas. Universities are very diverse and a general qualification is unlikely to help anyone in particular.

---

19 M Coffey and G Gibbs, Can academics benefit from training? Some preliminary evidence (2000) 5 (3) *Teaching in Higher Education* 385.

20 J Gava, Ideas better than skills *The Australian Higher Education Review* 21/8/02, at 41.

- Would teaching accreditation help research, or mean that more academics would be asked to join community bodies? What are the primary law school priorities? A credential only provides a snapshot of skills. Technology developments and contextual change require continuing updating and perhaps this is better dealt with by a continuing legal education process.

Therefore, the list of arguments against accreditation would seem to be longer than the list favouring implementation. However, it would also seem that university and government policy may drive the debate eventually and it is at that stage that the former arguments may be privileged.

Union Views on Formal Teaching Qualifications for Tertiary Level Teachers

In Australia, the National Tertiary Education Union (NTEU) negotiated a position classification standard (PCS) for each level (A-E) to ensure consistency across the country in regard to qualifications, duties and remuneration. However, the PCS has no "teaching" qualification/accreditation component, the only reference being to teaching experience. The NTEU in Australia has no formal policy on accreditation at present. They are very "supportive of institutions assisting staff to undertake training in teaching" but there is no support for teaching accreditation being made mandatory.[21] There is a concern that once a system of teacher accreditation is put into place then it will, "by default, become a requirement".

The New Zealand representative body, the Association of University Staff (AUS), has formulated a policy on professional development and the accreditation of university teaching.[22] The AUS supports "a culture of in-service, ongoing professional development of staff" in universities, assisted by the staff development units. However, the AUS opposes mandatory accreditation of university teachers, and "would regard with extreme caution any non-mandatory

21 Higher Education Research and Development Society of Australasia (Inc) *HERDSA The Accreditation of University Teachers: A HERDSA Discussion Document* July 1997, at 4 and email from Simon Kent Policy and Research Officer NTEU (21/3/02). As the NTEU has no formal policy on this issue, it can also be said that it does not oppose teaching accreditation being made mandatory.

22 See generally at http://www.aus.ac.nz. For the specific policy see http://library.psa.org.nz/. The policy was formulated at the AUS National Conference in 2000.

formal accreditation scheme" on the basis that "non-mandatory schemes could lead to mandatory accreditation".

Accreditation has not gone ahead in Canada. Moreover, Canadian faculty have not supported any move in that direction. The Canadian Association of University Teachers (CAUT) condones efforts to promote the value and quality of teaching, but flatly dismisses any overtures that imply mandatory certification.[23]

Accreditation has been introduced in the United Kingdom. The Association of University Teachers (AUT) in the United Kingdom has formed a view on their preferred model for accreditation. This model endorses "individuals completing approved courses successfully" being awarded "accredited status in teaching by the national accreditation body". The Union "will only endorse accreditation schemes which are properly staffed and resourced and which meet the requirements of our preferred model and accord with our professional standards."[24]

In addition, AUT's documentation states that "in so far as we are contemplating compulsory accreditation at all, it would only apply in relation to new entrants to the profession, perhaps linked in some way to probation. Participation in in-service accreditation schemes would be voluntary."[25] This view also acknowledges however that there must be "some relationship between career development and professional accreditation if staff and management are to take it seriously."[26]

The principles guiding the AUT Policy are similar to the views expressed by the CAUT, the NTEU and the AUS.[27] Unions of academics in this context are mainly concerned with the distinctiveness of university teaching and its interrelationship with research, the continuation of academic freedom, and the quality of any accreditation courses offered to academics.

---

23 Association of Universities and Colleges of Canada Pedagogy and the new article chase: today's instructors find credentials of their own (1999) June/July *University Affairs*, at 2. http://www.aucc.ca/en/uaoindex.html (8/4/02).

24 Association of University Teachers Accreditation of University Teaching : AUT Policy http://www.aut.org.uk/campaigns/accreditation.htm (18/3/02).

25 *Id.*

26 *Id.*

27 *Id.*

The Current Australian and International Environment

The West Committee[28] recommended in its final report that "the Government should entrust to the Committee for University Teaching and Staff Development (CUTSD) the task of promoting an enhanced teaching culture in higher education institutions to balance the established research culture".[29] In particular, the institutions should be encouraged "to appoint new academic staff on probation until they have completed a qualification in teacher training".[30] Responses to this recommendation have been varied. Some institutions have introduced short courses for new staff,[31] some have full teaching qualification on offer for all staff,[32] and some have no requirements at all.

In Canada, at least 37 universities have "administrative units dedicated to providing graduate students and faculty with resources to enhance their teaching skills. And as the responsibilities of these centres have expanded, at least eight of them have mounted a certificate program, with more preparing to do so next year."[33] The first Canadian certificate programs were offered by the University of New Brunswick and York University, both of which began awarding certificates in 1993. York now has 270 graduate students taking its program, reflecting the university's emphasis on reaching academics at this nascent stage of their careers. This is meant to offset the traditional imbalance where students used to be assessed exclusively on their skills and talents as prospective

---

28 R West, *The* Commonwealth of Australia, Department of Education, Science and Training (DEST) Rev*iew of Higher Education Financing and Policy* (Department of Education, Training and Youth Affairs, Commonwealth of Australia, 1998).

29 West Report, *Id*, Recommendation 24.

30 *Id.*

31 For example, the Australian National University, University of Western Australia, Queensland University of Technology.

32 For example, the University of Canberra, Northern Territory University, the University of Sydney, University of Wollongong, Macquarie University, the University of NSW, University of Technology Sydney, Griffith University (course accredited by SEDA), Queensland University of Technology (course accredited by SEDA), James Cook University, the University of Queensland, Swinburne University of Technology, Royal Melbourne Institute of Technology, Edith Cowan University , Curtin University of Technology.

33 Association of Universities and Colleges of Canada, Pedagogy and the new article chase: today's instructors find credentials of their own (1999) June/July *University Affairs*, at 1. http://www.aucc.ca/en/uaoindex.html (8/4/02).

researchers with no comparable assessment of their abilities as teachers. In addition, graduate students are beginning to report that certificates of teacher training can be instrumental in landing a job.[34]

In the UK, the Report of the National Committee of Inquiry into Higher Education (Dearing Report) was published in July 1997. The Executive Summary states in regard to training in teaching:[35]

> The main findings from the survey were:
>
> Just over half of academics had received some training in teaching methods, but the corresponding proportion fell to a third amongst research-grade staff who also taught.
>
> Two-thirds of those who had received any training had done so only at the beginning of their careers.
>
> Half of academics had heard of teaching accreditation, but those in '1992' universities were much more likely to have heard of it than those in 'pre-1992' universities.
>
> Of those who had heard of proposals for accreditation of teaching competence, just over half favoured it.

The Recommendations included:[36]

> 13 We recommend that institutions of higher education begin immediately to develop or seek access to programmes for teacher training of their staff, if they do not have them, and that all institutions seek national accreditation of such programmes from the Institute for Learning and Teaching in Higher Education.
>
> 14 We recommend that the representative bodies, in consultation with the Funding Bodies, should immediately establish a professional Institute for Learning and Teaching in Higher Education. The functions of the Institute would be to accredit programmes of training for higher education teachers; to commission research and development in learning and teaching practices; and to stimulate innovation.

---

34 *Id,*at 3.

35 *Report of the National Committee of Inquiry into Higher Education* (Dearing Report) 31/7/1997 http://www.leeds.ac.uk/educol/ncihe/ (18/3/02), Recommendation 13 and 14.

36 *Id.*

The Government's response to the recommendations was published the following year. The responses to Dearing recommendations 13 and 14 were, respectively:

> 8.1 The Government agrees with this recommendation, as noted in Chapter 3, para 3.3.[37]
>
> 8.2 Although this is primarily a matter for the institutions providing higher education, the Government supports this recommendation and would like to see the Institute offer a range of membership or associated membership possibilities, to which all who teach students can aspire. The Government's long-term aim is to see all teachers in higher education carry a professional qualification, achieved by meeting demanding standards of teaching and supervisory competence through accredited training or experience. It understands that the HE representative bodies are looking at ways of extending accreditation to existing staff which it welcomes.[38]

Thus, the Staff and Educational Development Association (SEDA) scheme has been developed in the UK. The SEDA rejects "a model of accreditation which is external, inspectorial and purely competency based."[39] Under its scheme, "a programme will be recognised if it requires teachers to demonstrate the achievement of each of eight objectives and outcomes, in a way which reflects the six underpinning principles and values,[40] involves an appropriate mix of self-, peer- and tutor-assessment, is externally examined and/or moderated, has a procedure for dealing with appeals against accreditation decisions, and has a procedure for regular review of the programme."[41]

---

37 *Higher Education in the 21st Century – government response*, 1/3/98. http://www.leeds.ac.uk/educol/ncihe/ (18/3/02).

38 *Id.*

39 Higher Education Research and Development Society of Australasia (Inc) *HERDSA supra* note 3, at 6.

40 *Id.* The six underpinning principles and values are an understanding of how students learn, a concern for students' development, a commitment to scholarship, a commitment to work with and learn from colleagues, the practising of equal opportunities, and continuing reflection on professional practice – see at http://www.seda.demon.co.uk/tapv.htm (28/3/02).

41 Staff and Educational Development Association (SEDA), *The SEDA Teacher Accreditation Scheme* http://www.seda.demon.co.uk/pdaf.html (18/3/02).

The eight objectives and outcomes which an accredited teacher must demonstrate are that they have:

- designed a teaching program or scheme of work from a course outline, document or syllabus,
- used a wide and appropriate range of teaching and learning methods effectively and efficiently in order to work with large groups, small groups and one-to-one,
- provided support to students on academic and pastoral issues in a way which is acceptable to a wide range of students,
- used a wide and appropriate range of assessment techniques to support student learning and to record achievement,
- evaluated their own work with a range of self, peer and student monitoring and evaluation techniques,
- performed effectively their teaching support and academic tasks,
- developed personal and professional strategies appropriate to the constraints and opportunities of their institutional setting, and
- reflected on their own personal and professional practice and development, assessed their own future needs and made a plan for their continuing professional development.[42]

Thus, it will be useful to watch the approach taken in the UK, bearing in mind that any model developed there may not be entirely suitable for a less centralised system such as exists in Canada or Australia.[43] The outcomes need to be measured against the effects on already measured success in the institutions. This is not simply a matter of additional skills training for academics. There are political and governmental education agendas driven by liberal philosophical theories steering the debate. Students (and parents) who are being forced to pay highly for their education tend to be more demanding than those in a laissez faire public funded sector. It is also a matter of overturning some basic ideas prevalent in the universities of their main purpose. Is it to teach students? Is it to provide cutting edge research? Will these fairly simplistic accreditation moves change the whole role of universities? Or has this role been changed in any case, especially in the new universities sector?

---

42 *Id.*

43 A Jenkins, Turning Academics into Teachers: A Response from a "Non-academic" Unit (1999) 4 (2) *Teaching in Higher Education* 281, at 3 of 4.

QUT Approaches in regard to Teaching and Learning

Some of the factors providing necessary context at QUT are the need for increased quality assurance, the developing Performance Planning and Review (PPR) process for academic staff, realistic academic workloads, and the developing importance of generic capabilities for students, and therefore by extension, for staff.

The Role of the QUT Teaching and Learning Unit

The QUT teaching and learning unit, Teaching and Learning Support Services (TALSS), is involved in developing seminars and short courses for academic staff. QUT also has an introduction to tertiary teaching course for new staff called ENTER, which is highly valued by commencing academics. In addition, TALSS conducts individual seminars on various topics which are designed to enhance teaching skills.[44] However, these programs, although valuable, are entirely voluntary, and attract relatively small numbers of attendees. This may be regarded as an argument for the introduction of some more formalised program of training for academics, but may equally represent the difficulty academics face in balancing the multiple demands on their time made by a modern university. Voluntary programs of teaching improvement can work, but only if fully supported, not just financially (as is already the case at QUT), but also with respect to time allowed to undertake the course, and workloads issues.

Links to Performance Planning and Review (PPR)

There is no overt linkage between PPR at QUT and improvement in teaching skills by a staff member. However, the PPR process is used to alert academic staff to the existence of the Graduate Certificate in Education (Higher Education) offered at QUT, and to encourage them to undertake this course. However, out of a current Law Faculty full-time academic staff of 68,[45] only 3 staff have completed the course,[46] and no staff are currently undertaking the course.

---

44 Topics covered in seminars and short programs include improvement in general assessment practices, flexible assessment in flexible delivery, effective presentation skills, effective use of PowerPoint, online teaching and use of other internet technologies, internationalisation of curriculum, use of learning contracts, and postgraduate research supervision.

45 As at 31/3/02.

46 One casual staff member has completed the course.

Role of Student evaluations

One of the operational targets of each Faculty at QUT is to complete a student evaluation of unit (SEU) for 20% of total units each year. The Law School (though not the Faculty as a whole) has consistently met this target since 1998. These evaluations are used to inform unit teaching teams, and are required to be commented on to students via each unit's study guide. Also available to staff, and very widely used, are student evaluations of teaching (SET). These evaluations are used for PPR, personal promotion applications, and for determining teaching awards each year.

Teaching Awards program in the Law Faculty

The Law Faculty has a teaching awards program which was instituted in 1998. Two awards are available for teaching innovation and excellence each year, one for full-time staff, and one for casual staff. These awards were developed as a means of recognising good teaching within the Faculty which staff had felt was not valued as an activity in itself or for any purpose, even personal promotion. The criteria for the award include SEU and SET results in the previous year, evidence of team leadership in teaching, developments in curriculum and unit design, efforts to improve teaching in the Faculty, evidence of scholarship in teaching, and innovation in online and flexible delivery. There is no explicit reference to the need to demonstrate improvement in teaching skills via courses or short programs of training.

Role of the Teaching Interest Group (TIG) in the Law Faculty

The Law Faculty has had a teaching interest group (TIG) operating for the last 12 years. This group has addressed many current issues in teaching and learning over that time, including issues in assessment, curriculum development and innovation, demonstrations of teaching technique, use of technology in teaching, skills development, incorporation of generic capabilities in the curriculum, and reflections from visiting academics about teaching and learning in their institutions. However, although the group is valued by staff, particularly as a means of disseminating interesting innovations from their own classrooms, and encouraging peer mentoring, it does not represent a structured response to the need for teaching improvement or training.

Development of Generic Capabilities for Staff

Generic capabilities are quite separate from good teaching characteristics.[47] However, student focus groups at QUT have indicated that the development of teaching skills for academic staff is seen as a priority which has linkages to the development of a set of generic capabilities for staff.[48] QUT is currently considering a set of generic capabilities for staff, and has commenced a project to investigate this issue. The staff capabilities which were at first considered included such aspects as knowledge and skills pertinent to a particular discipline or professional area, critical creative and analytical thinking, and effective problem solving in the teaching of the discipline as well as student learning, effective communication in a variety of contexts and modes, the capacity for life-long learning, the ability to work independently and collaboratively, social and ethical responsibility and an understanding of the indigenous and international perspectives, and characteristics of self-reliance and leadership.[49]

The issue of the connection, if any, between teacher accreditation for university teachers and the development of generic skills for university teachers is one beyond the scope of this article. QUT's own working documents on the issue certainly confuse the need to develop generic skills in students with what teachers need to be able to do themselves. Is teacher accreditation about good teaching and the specific skills that support good teaching, about generic (not just teaching) skills for teachers, about modelling generic skills for students, a combination of these things, or is it just a managerial tool to encourage conformity?

The Impact of Accreditation on Law Schools

The question must be asked as to whether the imposition of teaching accreditation will have an unduly detrimental effect

---

47 P Ramsden, *Learning toTeach in Higher Education*, (London: Routledge, 1992) 89; D Laurillard, *Rethinking University Teaching*, (London: Routledge, 1993) 29.

48 G Hart, T Stone, R Daniel, R King, *Student Perspectives on the Development of Generic Capabilities at QUT* (Draft Report, November 2001).

49 The current project, which will continue throughout 2003 is now gathering ideas for "generic skills for teachers" based on faculty focus group meetings. The framework supporting these meetings lists desirable groupings of teacher capabilities as: managing teaching and learning, designing teaching and learning, assessing teaching and learning, engaging learners, improving teaching strategies, and being engaged in teaching scholarship.

on academics in the law schools. One of the dangers of accreditation is that the schemes developed are trying to be a one size fits all approach. Different subjects need to be taught in different ways. Different teachers communicate differently, and different cohorts of students need to be treated differently. Mandatory accreditation runs the risk of simply being a generic qualification and another barrier to academia.

Lawyers have already received a professional accreditation, as well as attaining higher educational qualifications than might otherwise be the norm for those in the practising profession. The PhD/SJD moratorium has now been lifted for the purposes of personal promotion within many of the universities. This means that many law academics are being strongly encouraged to enrol in long-term research degrees. Most academics need to complete much of their research degree study part-time. Are more requirements to be foisted on this group to add to the already long credentialing period?

What do current law teachers think they need? The most pressing requirement for law teachers is the attainment of a doctoral qualification. This has now become the minimum requirement for promotion and the preferred requirement for appointment in law schools. Since this qualification demands total dedication to the writing of a thesis, there would seem to be little time left to complete a teaching qualification as well.

In addition, law teachers might specify that they require assistance with the following, pending changes in the curriculum to include more skills training and use of technology:

- training in technological skills that includes the pedagogical aspects of websites as well as the organisational and administrative aspects,
- assistance in determining the most meaningful use of teaching aids so that there is value adding through use of technology (eg PowerPoint), rather than simply another format for using overheads,
- help in dealing with teaching English as a Second Language students especially in regard to assessment and seminar participation,
- more guidance in respect of the increasing emphasis on contextualisation and the types of teaching styles conducive to cope with critique issues,
- guidance in the differences of approach and techniques needed for large and small group teaching,
- guidance in terms of Mooting and problem setting skills, and

- more expert level training on all the skills needing to be included in law degrees.

These are immediate on the job training requirements, some of which may be picked up in a teaching course but some of which are too specific to necessarily be caught in the generic higher education net.

How are all these requirements to be balanced? Let us not forget that this group also has workload research commitments that include some published annual research target. So, academics are working under the need for continuous research output and a timely PhD/SJD completion, as well as developing skills to enhance students' skills training. How will this be prioritised against the need for teaching accreditation? Many will ask whether (and when) academic salaries might begin to reflect these credentials? Will such unrealistic requirements prompt many academics to return to the practising profession, where they can command larger salaries, with a resulting loss to the legal teaching cohort?

Recommendations

The Nelson Review does not explicitly address this issue, although it queries how teaching could be enhanced in terms of quality and value. However, no discussion is advanced on teacher training or accreditation in the papers attached to the review.[50]The discussion of quality in education focuses on outcomes for students only, and on quality assurance processes for universities as institutions, but ignores the strategic value which could be added to the university sector as a whole by putting effort into skills development for university teachers.

However, it is clear from the topics explored in this article that all tertiary teachers, including those in law schools, would benefit from some teacher training. As Terry Smyth points out "who in all honesty, could argue that teaching and learning could not be improved …".[51] But how is this to

50 The ministerial discussion paper, *Higher Education at the Crossroads* (April 2002) raises the question of how the status and quality of teaching in higher education can be improved (at Question a2), and there is some discussion of quality of academics in the subsequent paper, *Striving for Quality – learning, teaching and scholarship* (June 2002), but teaching skill development is again not directly addressed. See http://www.dest.gov.au/crossroads for all the relevant papers attached to the review process.

51 S Rowland and C Byron, Turning academics into teachers? (1998) 3 (2) *Teaching in Higher Education* 133.

be achieved? How should the "monster of 'instructional idealism'" be contained?[52] The range of choices include:

- mandatory training and accreditation for all staff
- mandatory training and accreditation for new staff
- voluntary training and accreditation for all staff within a set time frame
- voluntary training (via an accredited program) when time allows
- ad hoc seminar / training programs
- no training in tertiary teaching.

Which of these options represents a viable outcome? The academic unions have a united position against mandatory programs of accreditation. The current climate in higher education does not seem conducive to releasing academics so that they could complete even a one-semester full time teaching course. Demanding that working academics take on additional part-time study is also burdening a group who are already stretched because of increasing student numbers and administrative workloads together with research requirements. However, a "no training" position represents no connection to reality. Ad hoc seminars, however well structured in themselves, do not attract large numbers of attendees, and do not address sufficiently the issues of refection and changing practice within a stipulated timeframe.

New staff are already offered training by some universities.[53] This course might constitute a threshold requirement for those staff. Subsequent courses might be allocated band levels. Those applying for personal promotion might be expected to have satisfactorily completed training courses to the appropriate level.[54]

Thus, a position of encouragement of voluntary training in a set time frame represents the best outcome, and one which may add the most value. But which form of voluntary training? Perhaps one answer might be training courses offered with continuing education points attached. The courses would need to be refereed and each academic staff member might be asked to accumulate a number of training points per year. Perhaps those courses which are more interactive and have some participation and assessable outcomes would

52 *Id.*

53 For example, the ENTER program at QUT offers some, very limited, training in this regard.

54 This could include a compulsory legal education component of a professional doctorate qualification.

constitute more points. These schemes would need to be included in initial workload schedules.

The Australasian Law Teachers Association already runs one week legal education workshops. These too could be segmented and offered in short courses throughout the year. These very focussed sessions would serve as adjuncts to courses run within individual universities.

The Association and the Committee of Law Deans would be well placed to advance this agenda so as to set in place a structured and pertinent education process. Good up-to-date teaching skills are essential. Mandatory higher education accreditation is already to some extent on the agenda.[55] It is time for action and leadership in ensuring that any outcomes are "fit for the purpose" as far as the law schools and law teachers are concerned. As a group we need to ascertain what skills and knowledge are needed and set about making certain we have structures in place for our members to attain those needs in a realistic framework, taking into consideration present workload expectations, and at a level commensurate with the (education) industry standards. This would certainly be strategic in the present higher education environment.

55 For example, QUT's response to Higher Education at the Crossroads mentions, in response to question a2 of the ministerial discussion paper of April 2002 that "there is an extremely good argument for academic staff to be professionally prepared for their teaching role".

TEACHING NOTE

Small Group Learning in Real Property Law

Adiva Sifris & Elspeth McNeil***

Introduction

In *Techniques for Teaching Law*, Hess and Friedland express their enthusiasm for "Seven Principles for Good Practice in Undergraduate Education" as valuable guidelines for legal educators.[1]

1 Encouraging student-staff contact;
2 Encouraging cooperation among students;
3 Encouraging active learning;
4 Giving prompt feedback;
5 Emphasising effective time management;
6 Communicating high expectations and
7 Respecting diverse talents and ways of learning.

As committed legal educators, the authors of this article are guided by these principles in their teaching practice and believe that "while traditional legal education emphasised the acquisition of knowledge or 'cognitive learning', today professional legal education must seek to achieve other goals".[2] If Law graduates are to be equipped with lifelong skills and attributes then these goals must include the growth of interpersonal and communication skills in context throughout the undergraduate degree.

The learning and teaching of real property law is a challenge for both student and teacher. In accordance with the requirements of the Victorian Council of Legal Education, it

* Lecturer in Law, Monash University.

** Assistant Lecturer in Law, Monash University.

This research was supported by a Monash Law Teaching Innovations Fund Grant, which is acknowledged gratefully. The authors also gratefully acknowledge the invaluable assistance provided by their research assistant, Jennifer Whincup in the collection and analysis of data for this article.

 (2002) 13 *Legal Educ Rev* 189.

1 GF Hess & S Friedland, *Techniques for Teaching Law* (Durham, North Carolina: Carolina Academic Press, 1999) 15-16.

2 A Greig, Student-Led Classes and Group Work A Methodology for Developing Generic Skills (2000) 11(1) *Legal Educ Rev* 81.

is a compulsory subject in the law degree. Students of Property Law, a core, full year subject at Monash University, are generally in the second or third year of their law degree and have completed a small number of law subjects.[3] It is the first conceptually difficult subject that students encounter in their undergraduate degree and, as a result, Property Law often has the highest annual failure rate in Monash Law. Anecdotally, students embark on the study of Property Law with a great deal of apprehension and trepidation.

Traditionally, Property Law has been taught by means of lectures, supported by tutorials. Students have also been encouraged to study in small groups as described below. Although the tutorials provide a forum for interaction, discussion and problem-solving in a medium-sized group, the enrolments in each lecture stream and the size of the lecture spaces needed to accommodate them are not conducive to encouraging students to engage actively with the class and with the subject matter. Assessment has traditionally been by examination or by examination and research assignment.

Against this background and in light of their respective experiences as teachers of Property Law, the authors sought to improve student attitudes to and the learning and teaching of Property Law as well as the profile of the subject. They decided to pilot a small group[4] learning project that would implement principles of good teaching practice and provide a team based, collaborative learning environment in which students of Property Law could gain confidence and learn among their peers, engage in active learning[5] and extend their interpersonal and communication skills.

---

3 Students have usually completed the core subjects of Legal Process and Criminal Law and Procedure and have either completed or are undertaking concurrently the core subjects of Contract and Torts.

4 Leveson, for example, notes that there is "no unambiguous definition of small group work" but that "there is general agreement that effective small group teaching and learning is student-centred". L Leveson Small Group Work in Accounting Education: an evaluation of a programme for first-year students (1999) 18 (3) *Higher Education Research & Development* 361, at 362. Gerlach states that "Collaborative learning is based on the idea that learning is a naturally social act in which participants talk among themselves. It is through the talk that learning occurs." JM Gerlach, Is This Collaboration?, in K Bosworth & S Hamilton eds, *Collaborative Learning: Underlying Processes and Effective Techniques* (1994) 59 *New Directions for Teaching and Learning* 5, at 8.

5 McInnis observes that "What makes a small group is the nature of the process of teaching and learning that takes place. Small group teaching is essentially a highly active learning experience for all participants, and assumes that students clarify their thoughts by talking." C McInnis, Small Group Discussions, at Centre for the Study

In this article the authors will describe the objectives of and methodology utilised during the "Small Group Learning in Real Property Law" project and report on the benefits and difficulties which both students and teachers encountered. The results of the authors' empirical study will be analysed and when necessary their own observations added. Case studies will be used to illustrate and support these findings. Finally the authors will reflect upon the implications flowing from the data and draw some conclusions regarding the efficacy of small group learning in legal education.

Objectives

Jaques asserts that:

> Teaching and learning in small groups has a valuable part to play in the all round education of students. It allows them to negotiate meanings, to express themselves in the language of the subject, and to establish a more intimate contact with academic staff than formal methods permit. It also develops the more instrumental skills of listening, presenting ideas and persuading.[6]

The authors viewed the small group as the ideal medium through which to achieve their goals in Property Law. It would provide the students with an opportunity to work and interact with one another in small teams and to provide mutual support. As it was envisaged that the group tasks would have an oral as well as a written component, provision would be made for different learning styles.

It was anticipated that administering and guiding the groups would be particularly challenging given that 435 students were enrolled in the course. However it was thought that the ultimate benefits for the students would far outweigh the daunting temporal demands.

The Project

The project was comprised of two components: Self-Learning Groups and Research Assignment Syndicates.

The tutorial group was used as the vehicle for the project. Tutorials in Property Law were conducted weekly.

---

of Higher Education, University of Melbourne, <http://www.cshe.unimelb.edu.au/teachlearn1.html> (last accessed 22/09/02) (copy on file with authors).

6 D Jaques, *Learning in Groups*, 2nd ed, (London: Kogan Page,1991) 9.

Each tutorial group was comprised of approximately 24 students. In previous years students had been encouraged to form small study groups voluntarily from within their tutorial groups. These groups, known as Self-Learning Groups ('SLGs"), met fortnightly and discussed problem-based material provided by the Property teachers. The authors formally divided each Property Law tutorial group into SLGs of four to six students. Students were required to register for an SLG and were given the opportunity either to form their own group or to be placed in a group with others they did not know. Prior to registering students were advised that the SLGs would take collective responsibility for 30 per cent of the assessment of each student in the SLG.

Self Learning Groups

A booklet was prepared with tutorial and SLG problems, similar to examination questions and divided into weekly segments. Topics corresponded to those in the subject reading guide issued to all Property Law students at the beginning of the year. Each SLG was expected to meet weekly at a time and place of its choosing to discuss the week's problems. As the problems were on the same topic as those covered in the weekly tutorials it was intended that the SLG material would supplement and reinforce the subject matter covered in that week's tutorial.

During the course of the year, each SLG was required to present two problems from the booklet to their tutorial group, one in each semester. The authors allocated the problems and each member of the SLG was expected to contribute to both the preparation and discussion of the designated problem. Presentations were of approximately 15 minutes' duration.

Assessment took into account each student's tutorial attendance (one per cent) and contribution to class discussion (one per cent) as well as preparation for and presentation of the two problems (three per cent), a total of five per cent. Given the number of components that made up this five per cent assessment, it was highly unlikely that each member of the SLG would receive an identical mark. The minimal mark allocation for each component was seen as an educational tool, encouraging students to attend tutorials and to participate in class discussion. Attendance at tutorials was not compulsory, but a record of attendance was kept for each tutorial group. This record indicated a marked increase in student attendance at tutorials compared to previous years.

Research Assignment Syndicates

It was intended that the SLGs would form the basis of Research Assignment Syndicates ("RAS") of four students. A number of those SLGs with four members automatically formed an RAS. Those students who particularly requested to work with others who were not in their SLG were accommodated, provided that any "spare" members of the SLG were accounted for. In the interests of a harmonious working relationship between members, in some cases the RAS were comprised of students across tutorial groups.

In another extensive administrative exercise, the authors regrouped the "spare" members as well as the SLGs with more than four members into syndicates[7] of four for the purpose of completing the research assignment. In a small number of cases, having regard to group dynamics or to preserve an SLG, syndicates of three or five were formed and on two occasions special permission was granted for syndicates with only two members.[8]

There were two components to the research assignment: a research strategy report, worth five per cent, describing research methodology and skills and a 2,000–2,500 word written assignment worth 20 per cent. The criteria for assessment of the written assignment were content, presentation, analysis and other legal skills. The students were required to undertake the research work in their syndicates of four, but were permitted to write and submit the assignment either as a group of four or in pairs.

Learning objectives

One of the main motivational factors for introducing small groups was the recognition of the importance of cooperative working among peers with the resultant enhanced communication skills and tolerance of divergent points of view. While these skills and attributes are not specific to Property Law and are important throughout the Law course, the authors saw the project as an opportunity for the creation of invaluable

---

7 Le Brun & Johnstone describe syndicates as "small, teacherless groups of four to six students. Students are set a clear task, topic, or problem, and then left to analyse and synthesise the relevant material or solve the problem on their own but within a supportive group environment." M Le Brun & R Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Sydney: The Law Book Company Ltd, 1994) 294.

8 In one instance the two students wished to complete the research assignment early due to overseas travel plans and in the other instance the two students had special study needs.

qualities and skills that would help to equip students for life in addition to enhancing their studies of Property Law.

Some students may be intimidated by the prospect of speaking in front of a large group but feel more confident about offering their thoughts to a small group. Such an environment can also fulfil a desire for social belonging, fostering motivation and learning.[9]

Students' ability to "feed off" one another has both positive and negative connotations. It encourages the sharing of ideas and drawing of inspiration from one another. The authors envisaged that the convivial environment of the SLG would create the appropriate forum for an exchange of ideas and reflection on the problematic areas of Property Law. This would in turn assist students in their comprehension and appreciation of this particularly difficult area of law. Those students who preferred working on their own could use the group setting to ventilate ideas and then consolidate their views individually. A task might be divided into a number of components: for example, research, writing, proof reading and consolidation of the final product. Each step can draw on the particular skills of different members and the end result is vastly superior to that which the individual member could produce in isolation.

On the negative side, the authors envisaged a potential problem with "freeloaders"[10] and the "outsider". The code of ethics and work program were intended largely to circumvent this issue.

Code of Ethics

Once assignment topics became available RAS members were expected to conduct a preliminary meeting and design a code of ethics and work program. This document was to be submitted to the Faculty by a specific date. Students were encouraged to discuss difficulties within the group with the authors. A procedure was designed for use by syndicates experiencing problems with a member who did not comply with the RAS' code of ethics or work plan. The participating

---

9 Le Brun & Johnstone, *supra* note 7, at 292

10 Slavin emphasises that, while co-operative learning has potential benefits, it "can allow for the 'free rider' effect, in which some group members do all or most of the work (and learning) while others go along for the ride. The free rider effect is most likely to occur when the group has a single task, as when they are asked to hand in a single report …". RE Slavin, *Cooperative Learning: Theory, Research and Practice* 2nd ed (Massachussetts: Allyn & Bacon, 1995) 19.

members would be required to complete and sign a standard letter setting out the breach and advising the non-participating member of expulsion. The letter would then be posted to the non-participating member and a copy given to the authors. Subject to compliance with that procedure by a specified date, an RAS would be authorised to regard the non-participating student as no longer being a member of the syndicate. That student would be required to submit a separate assignment on the same topic independently and the expulsion itself would not constitute grounds for special consideration or an extension of time.

Each member of the RAS was required to sign a written declaration certifying that they either had or had not made a relatively equal contribution to the preparation and writing of the assignment and that they would accept an identical mark. In the case of those who certified that an equal contribution had not been made an explanatory letter would be required to accompany the declaration.

Interestingly no students availed themselves of this procedure although the research indicates (see RAS difficulties below) that 10 per cent of the students who responded to the questionnaire perceived that there had been an unequal contribution from their syndicate members. This is supported anecdotally as a few students complained informally after having submitted their assignment that some group members had not contributed equally to the work and asked for this to be taken into account in the assessment of the assignment. Apart from pointing out to students the important ethical lesson[11] that they should not sign a declaration unless they believed in its truth, there was nothing that could be done at that stage.

It seems from this anecdotal information that the students in question were not prepared to compromise 25 per cent of their assessment by raising the issue before submitting their assignment but were prepared instead to make a moral compromise in making the declaration. Other students may have had different reasons for deciding not to declare and explain an unequal contribution, but this information did not emerge from the project.

---

11 Le Brun & Johnstone contend that "If we do not emphasise the ethical aspects of law to our students, they may fail to see the parameters of moral action in the practice of law. The more aware our students are of the moral content of the law, the more likely they will behave more appropriately." Le Brun & Johnstone, *supra* note 7, at 397.

Methodology

Throughout the project, it was intended that the authors would evaluate the ongoing progress of the SLGs and RAS. After all groups had completed both tutorial presentations and the research assignment, a detailed questionnaire was designed with the help of Monash University's then Centre for Higher Education Development (CHED)[12] and administered to Property Law students. 268 of the 435 students enrolled in the subject, that is approximately 62 per cent, attempted the questionnaire which had separate sections relating to SLGs and RAS. The questionnaire was voluntary and anonymous.[13]

The questionnaires were administered with a view to improving student learning and the authors' teaching as well as generating ideas for alternative course presentation and different teaching methods that would aid and enthuse students in their study of Property Law. The main aims of the questionnaire were to ascertain whether:

- law students prefer, enjoy and perceive a benefit from learning in small groups;
- law students benefit from teamwork and interaction with other students and
- specific strategies should be developed to assist with small group/team based learning to cater for different learning styles.

The questionnaire consisted of 17 straightforward questions divided into the two sections, relating to SLGs and RAS respectively, intended to ascertain student attitudes towards small group learning in the two contexts.

Unfortunately, resources did not extend to allowing the authors to obtain further qualitative research from student focus groups.

Research Findings

When canvassed informally in tutorials prior to experiencing small group learning in Property Law, many of the students seemed to have a positive view of working in small groups for tutorial presentations. However, fewer students seemed to feel positive about completing the research assignment in groups.

---

12 CHED is now the Higher Education Development Unit (HEDU) of Monash University's Centre for Learning and Teaching Support (CeLTS).

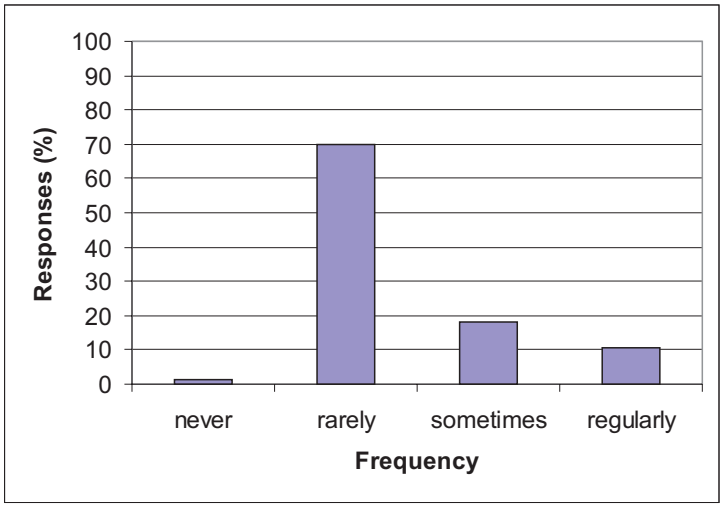
13 As the questionnaire was voluntary and anonymous, it is not possible to determine how many SLGs and RAS were represented by the individual respondents. It should also be noted that not all respondents provided an answer to every question.

Following completion of the formal questionnaire the responses were analysed and produced some interesting results.

Self Learning Groups

The success of the self-learning group / tutorial project depended to a large degree on the frequency with which the groups met. Of the 252 students who responded to this question, only 27 (10.71 per cent) stated that they met regularly, on average once a fortnight. Of those who met more than twice during the academic year all group members attended meetings in only 56.76 per cent of cases. This figure would seem to be indicative of the logistic difficulties that students encountered and may serve to explain why generally the SLGs met infrequently. The benefits and difficulties encountered by the students are examined in further detail below.

Chart 1: Frequency of SLG Meetings



As shown in Chart 1, 70 per cent of the students responding to this question met only rarely, that is one to four times during the year, which suggests that a number of SLGs may have met only to prepare their two tutorial presentations. If so, this would seem to reinforce the importance of assessment as a motivating factor in the success of group working.[14]

14 "Assessment is the most power ful lever teachers have to influence the way students respond to courses and behave as learners." G Gibbs, Using Assessment Strategically to Change the Way Students Learn, in S Brown & A Glasner eds, *Assessment Matters in Higher Education* (Buckingham: Open UP, 1999) 41.

However, it is interesting to note that 79 per cent of the respondents thought that each member of the SLG should receive an identical mark for the tutorial presentation. The most striking reasons for this conviction were:

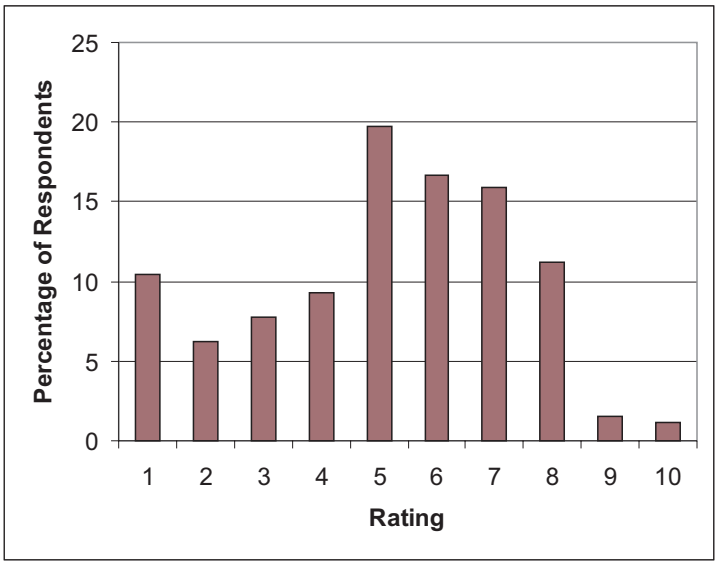
- Group effort: 27 per cent believed that as the group had worked as a team, a group mark was required. If marks were not identical it would defeat the purpose of the SLG or the SLG would not work well. There was overall recognition that portion of what is assessed is the ability to work as a team.
- Equality: 19.5 per cent considered that each SLG member had contributed equally and thus it was essential that all should receive identical marks, even if they had completed their work individually. "Freeloading" was regarded as having played an insignificant part in the workings of the group and if it existed was insufficient reason for members to be allocated different marks.
- Differing contributions: By way of contrast, there seemed to be a significant concern among respondents (17.5 per cent) that as the tutor/assessor was unable to determine how much work each individual member had done behind the scenes, it was only fair that all members of the group should receive the same mark. Conversely, 12.5 per cent of respondents indicated that the only way to resolve differing contributions was for students to receive separate marks.

When asked how they rated working in SLGs on a scale of one to ten, ranging from not helpful to extremely helpful, 10.5 per cent of respondents had strongly negative feelings about working in SLGs and only 2.7 per cent found the groups extremely helpful. However, a majority of students indicated that they found SLGs helpful: 73 per cent designated a rating between four and eight on the scale, with a noticeable concentration between five and eight. (See Chart 2 on next page.)

Division of work and co-ordination of the presentation

The students were asked to describe the method that their SLG adopted for the allocation of work and co-ordination of the oral presentations. All students had been required to participate actively in the presentation, but each group had been able to decide the basis on which work would be allocated to its members. Of those who provided information in response to this question, some indicated the frequency with which work was divided, varying from 35.5 per cent who said that work was always divided

Chart 2: Rating for SLGs



among the SLG members to 6.5 per cent who stated that work was never divided up but was undertaken individually. Other respondents described the basis on which work was divided, for example to ensure equality of division, to accommodate group members' "comfort zones" or according to the issues identified in the problem. Yet others described both the frequency with which and the basis on which work was allocated. Observation of the presentations themselves suggested that some SLGs had divided the preparation and presentation according to the different skills and learning styles of the group members.

While it was disappointing that 12.3 per cent of the respondents allocated the work haphazardly according to which SLG members were present at the meeting at which the division was made, it was pleasing to note the degree to which the students were concerned to ensure equality and satisfaction for all members of their SLG.

Benefits

Respondents indicated that they derived a number of benefits from the experience of working in SLGs, 87 per cent finding at least one benefit associated with SLGs. Nine per cent of respondents left the question blank and only four per cent found no benefit.

The significant benefits were:

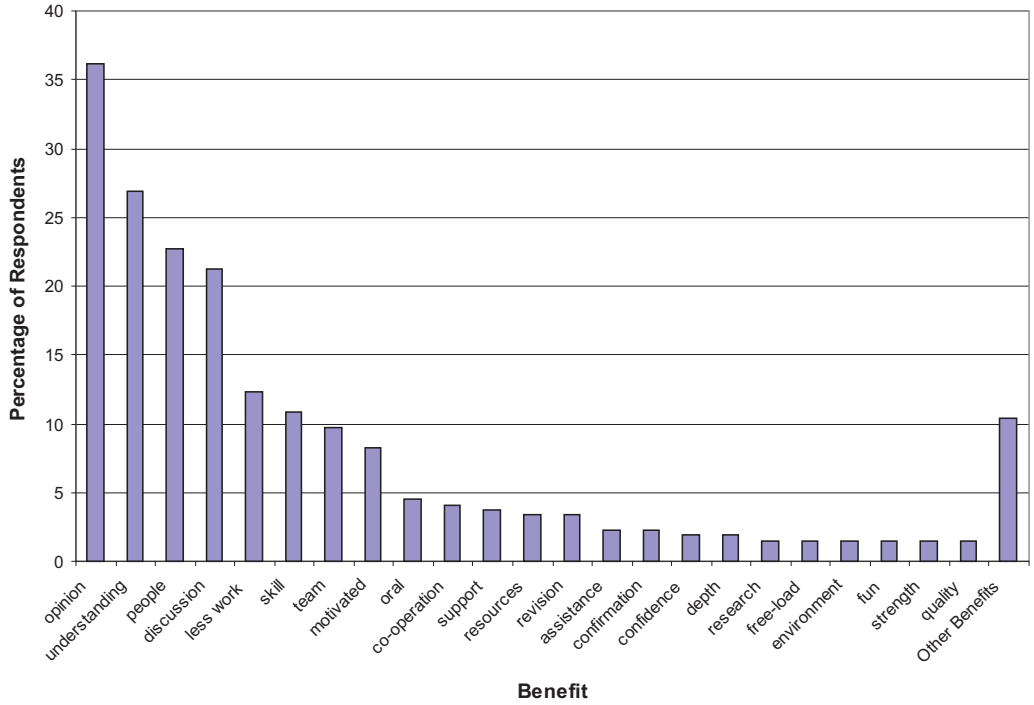
- Sharing of opinions/information and understanding: A clear majority (62 per cent) of respondents benefited from the sharing of opinions and information, listening to fellow students, pooling resources and group discussion.[15] Their understanding of the material increased as a result of exchange of ideas and depth of discussion. Certain parts of the course were reinforced and revised and tutorials were more meaningful.
- Skills: Some students noted an increase in their level of confidence and 34 per cent of the respondents reported that they had acquired one or more new skills including:
  - Interpersonal skills including the ability to communicate, compromise and co-operate with other group members. Recognition of different learning styles and abilities in some cases resulted in frustration management.
  - Problem solving skills including the ability to analyse a question, synthesise material and solve a legal problem.
  - Enhanced study techniques such as work method, organisation and self-discipline.
  - Improved oral communication skills, including listening.
  - Teamwork, including co-operative learning and collective thinking.
- Interaction: 24 per cent found group working a fun and enjoyable experience, benefiting from the social and academic interaction, meeting new people and the creation of a network of other Property Law students.
- Workload: 16 per cent appreciated the reduction in workload and responsibility as a result of sharing.
- Motivation: Realisation of the interdependence of group members resulted in increased motivation among eight per cent of respondents. This motivation inspired preparation, organisation and work that would otherwise not have been done.

Difficulties

Ninety two percent of the respondents experienced at least one difficulty while working in an SLG. Difficulties ranged from "A greater risk of getting the answer wrong because

15 Leveson notes that "Discussion facilitates learning, not only because it is an inherently motivating activity but also because the very process of helping others is one of the best ways of learning." L Leveson, *supra* note 4, at 363.

Chart 3: SLG Benefits

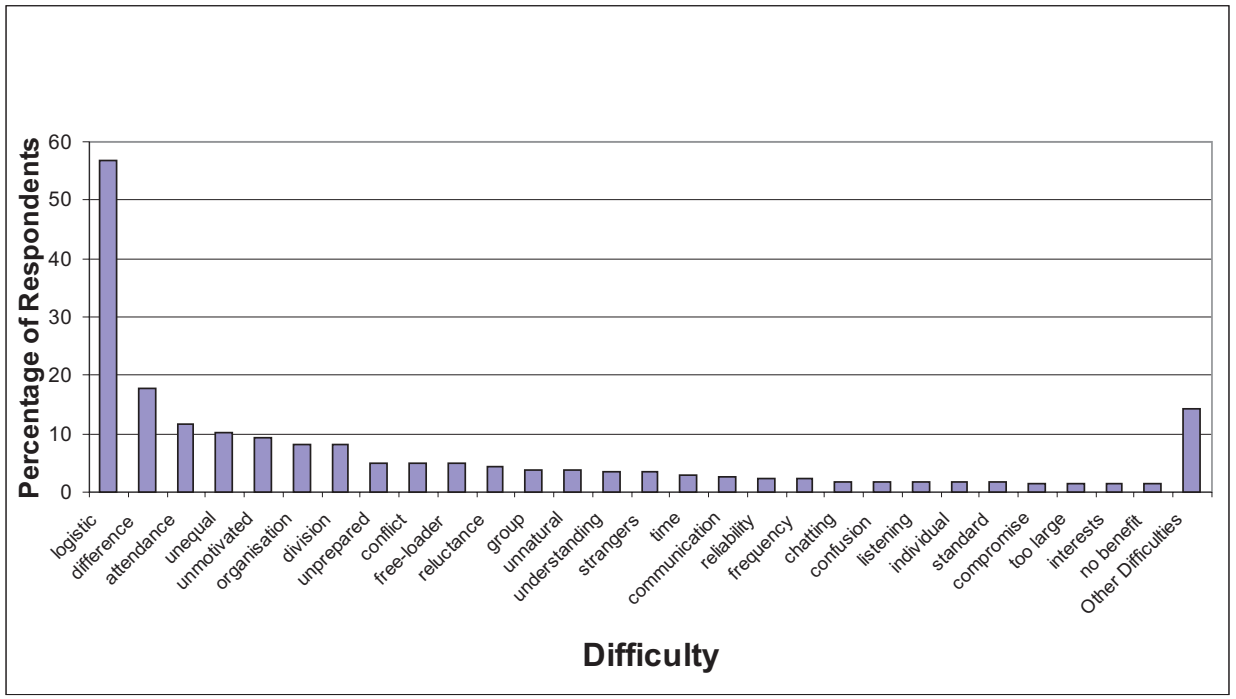


there was no supervision" to "having to work at a group pace eg earlier or slower than would normally do work". On analysis of the data the most frequently recurring difficulties fell into a number of categories in the following descending order:

- Logistics, including finding meeting times, getting the group together and juggling timetables and other commitments, were problematic for 56.7 per cent of respondents.
- Attendance, including lack of motivation, was an issue for 21 per cent of respondents. Not all group members attended SLG meetings or the tutorial presentations or, if they attended, were very late. This suggested that group members had different levels of commitment that permeated throughout the meetings and tasks.
- Differences, including differences of opinion, disagreements about the approach to be taken and an inability to reach a consensus, troubled 18 per cent.
- Unequal contributions to the work of the group were also mentioned. However, given the potential for inequality, this is particularly interesting as it ranked fourth in the list of difficulties and was mentioned by only some 10 per cent of respondents.[16] In fact 'freeloaders' received criticism by only 4.85 per cent.
- Organisation and division of work were a challenge for some nine per cent of respondents. Some of the SLG problems allocated were considered to be of insufficient magnitude to allow each member of larger SLGs to participate equally and some students found difficulty in co-ordinating their presentations, resulting in time wasting and lack of efficiency.

16 This contrasts with the finding by Zariski in a survey of Law students undertaking group work that 83 per cent of respondents stated that all group members had not contributed equally to the project. A Zariski, Lessons for Teaching Using Group Work from a Survey of Law Students, in R Pospisil & L Willcoxson eds, *Learning Through Teaching* 361-66, Proceedings of the 6th Annual Teaching Learning Forum 1997 (Perth: Murdoch University, 1997). However, Zariski's survey asked the students directly in question 27 to tick "yes" or "no" in response to the statement that "My experience of group work has been that all group members contribute equally to the project" whereas the questionnaire in this study asked students more generally in question 3(b) to list three difficulties experienced while working in an SLG.

Chart 4: SLG Difficulties



Research Assignment Syndicates

One hundred and ten syndicates were formed for the research assignment. Interestingly, even though students were able to choose the members of their RAS, only 51 per cent of respondents indicated that they chose all RAS members with a further seven per cent choosing some members. The remaining 42 per cent were allocated to an RAS with other students in their tutorial group.

Separately, students were asked whether all members of their RAS and SLG were identical. Notably, 48 per cent of respondents reported that they were not and that students from different SLGs made up the RAS. Of those, 34 per cent would have preferred to be in an RAS with members of their SLG whereas 54 per cent would not and 12 per cent were undecided. Of those undecided students, the majority (62 per cent) were of the opinion that the composition of the group made little difference.

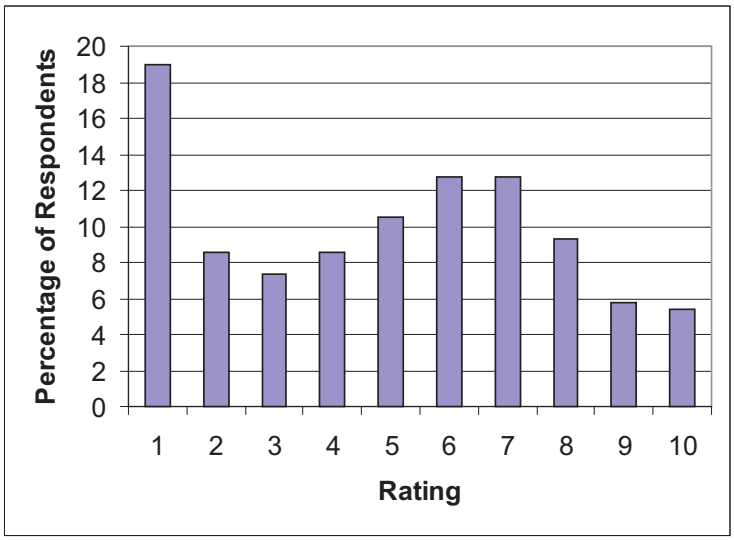
Of those respondents who indicated a preference for a syndicate comprised of their SLG members the main reasons given were familiarity with members and logistic arrangements.

The students were also asked how they rated working in a RAS, again on a scale of one to ten ranging from not helpful to extremely helpful. It is interesting to note that the distribution of ratings for RAS was significantly different from that for SLGs. A smaller majority indicated that they found the RAS helpful: 11 per cent of respondents found RAS extremely helpful while at the other end of the scale 19 per cent exhibited extreme dissatisfaction with group work in this form. The other 70 per cent were spread more evenly along the scale between two and nine. The mean of 4.92 indicates that the student respondents had a negative reaction to the RAS and did not regard them favourably (see Chart 5.)

Division of Research and the Writing of the Assignment

Only eight per cent of respondents stated that they worked as a group for both the research and the writing of the assignment and read all the material and understood all aspects through collaborative discussion. Greater numbers worked in groups either for the research or the written components separately. Nineteen per cent of respondents combined in their RAS for researching the assignment whereas notably 37 per cent wrote the assignment in groups. Fifty nine per cent of respondents researched individually and

Chart 5: Rating for RAS



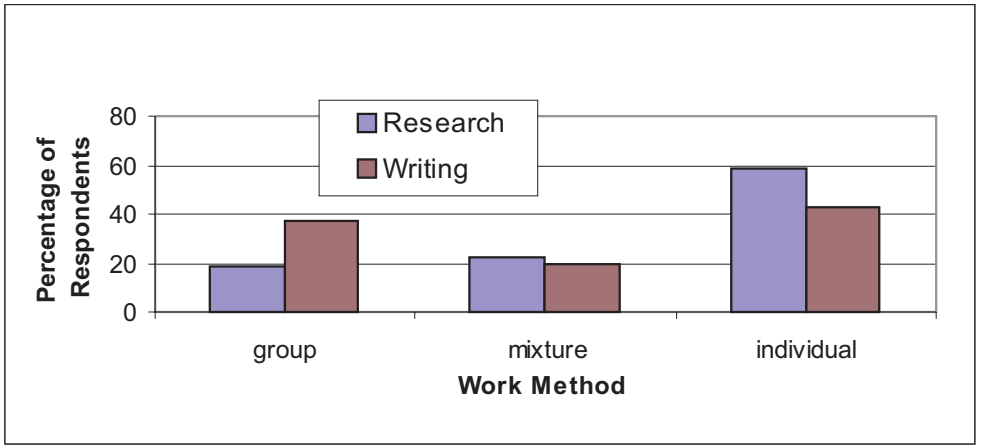
43 per cent wrote up the assignment on their own: in some cases one person alone reported having written the whole assignment and in others all members wrote separate sections that were then merged together. The balance of the respondents combined group and individual work throughout (Chart 6).

The student respondents described five main criteria for the division of assignment responsibilities and work:

- Issue: 34.6 per cent made the division on the basis of the issues identified in the assignment question, including jurisdiction, or according to primary and secondary source material.
- Comfort: 21.5 per cent based their allocation on what they felt most comfortable doing, personal preferences, the demands of their other commitments or the perceived strengths or competencies of the group members.
- Equality: 15 per cent endeavoured to ensure an equal division of labour.
- Task: 15.4 per cent allocated different tasks to different group members. In some instances the allocation was made according to the nature of the task.[17] In other instances task allocation was driven by other commitments such as work, overseas travel and assessment requirements in other subjects.

17 For example, in one group two members did the research, one wrote a draft and the remaining member edited the assignment.

Chart 6: Research / Writing



- None: a disturbing 12.3 per cent again haphazardly divided the work with no organisation and according to which group members were present at the initial RAS meeting.

Code of Ethics

Students were asked whether their RAS had adhered to its code of ethics: 69 per cent of respondents stated that they did while 31 per cent stated that they did not. Those who did not adhere to the code gave the following main reasons:

- Irresponsibility: 25 per cent said that despite the code, some members of their group refused to be accountable and responsible to the group;
- Priorities: 17 per cent noted that some RAS members gave the research assignment a lower priority than other activities, for example other assessment, work and travel, which made it impossible to enforce the code;
- Other reasons included initial expectations being unrealistic and the complaint procedure being perceived as ineffective.

Of those respondents who did adhere to their code of ethics, 38 per cent found it to be a useful tool in group dynamics. The reasons offered for the utility of the code overlapped to some extent with the reasons given in relation to adherence. The main reasons articulated were:

- Incentive (16 per cent): The code ensured that all group members did equal work, refrained from "slacking off" and made members consider their responsibilities to the group and give thought to potential problems before commencing the project;
- Guideline (12 per cent): The code provided a guideline to which members could adhere and they knew and understood what was expected of them. It could, and in some cases was, used as a tool to resolve disputes between members. The preparation of the code also provided an introductory session in working together as a group for those RAS that were not from the same SLG.
- Moral obligation (two per cent): All members had contributed to and had agreed with the code and so felt obliged to follow it and were made accountable for their performance;
- Efficiency (one per cent): As a result of group working, division of labour and collaborative discussion as agreed in the code, the project was completed more efficiently and effectively.

Conversely, 62 per cent of the respondents who adhered to the code found that it was not useful.[18] The main reasons for this conclusion were:

- Irrelevant and unnecessary (32 per cent): Some students considered the code to be a formality and submitted one only because it was compulsory. The tenor of the responses indicated that the students would have acted or reacted in exactly the same way with or without a code of ethics.
- Not adaptable or unworkable: The code was found to be easy to write before the project but difficult to adhere to in practice. It was too general for the specific type of problems encountered. New circumstances that arose during the project meant that part or all of the code was irrelevant.

Benefits

The majority of respondents found at least one benefit in working in an RAS. Eight per cent could find no benefits and were left with only negative feelings towards group working and a further 15 per cent failed to give any response. For the 77 per cent who responded positively, the main benefits of collaborative working included:

- Group:[19] 38 per cent benefited from a number of aspects of working with other people including discussion, support, teamwork, group responsibility and co-operation.
- Resources: 34 per cent found that the group had more resources available to them combined than individually in terms of ideas, opinions, perspectives, research ability and writing ability.
- Future: 27 per cent gained something from the group work that would benefit them in the future, including interpersonal; academic, working and organisational skills and confidence.
- Workload: 24 per cent appreciated the reduction in workload as a result of sharing.
- Quality: 18 per cent considered that the quality of their group assignment was better than an individual assignment would have been.

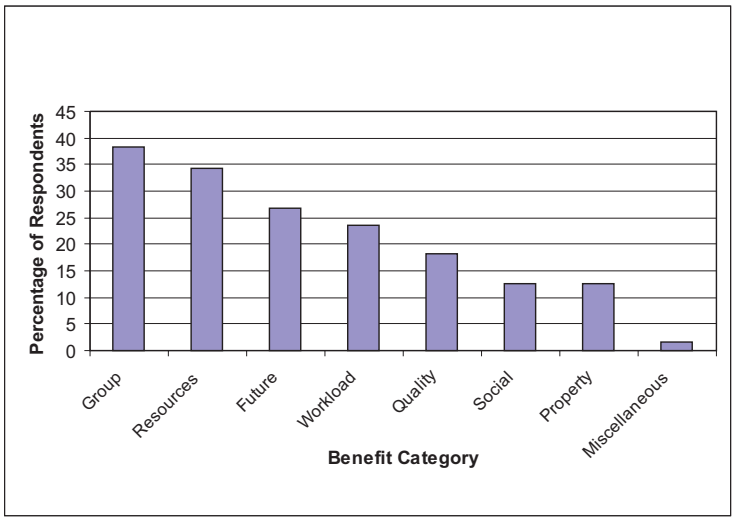
---

18 This suggests that there may be a need for guidelines or examples to assist students in understanding the purpose of and then drawing up a code of ethics.

19 Zariski also found that, of the objectives of the course co-ordinators in setting group work, the three that the student respondents regarded as most relevant to them were co-operation, dispute resolution skills and organising. Zariski, *supra* note 16, at 364.

- Social: 13 per cent found the experience to have a social element. They got to know new people, met other students and made new friends. Working in syndicates was an enjoyable experience for them.
- Property: 13 per cent considered that the experience had increased their understanding of Property Law. They learned from other members, a broader knowledge base was created and they realised their weaknesses in the subject. An additional bonus for some was the good mark they received in the subject.

Chart 7: Benefits of RAS

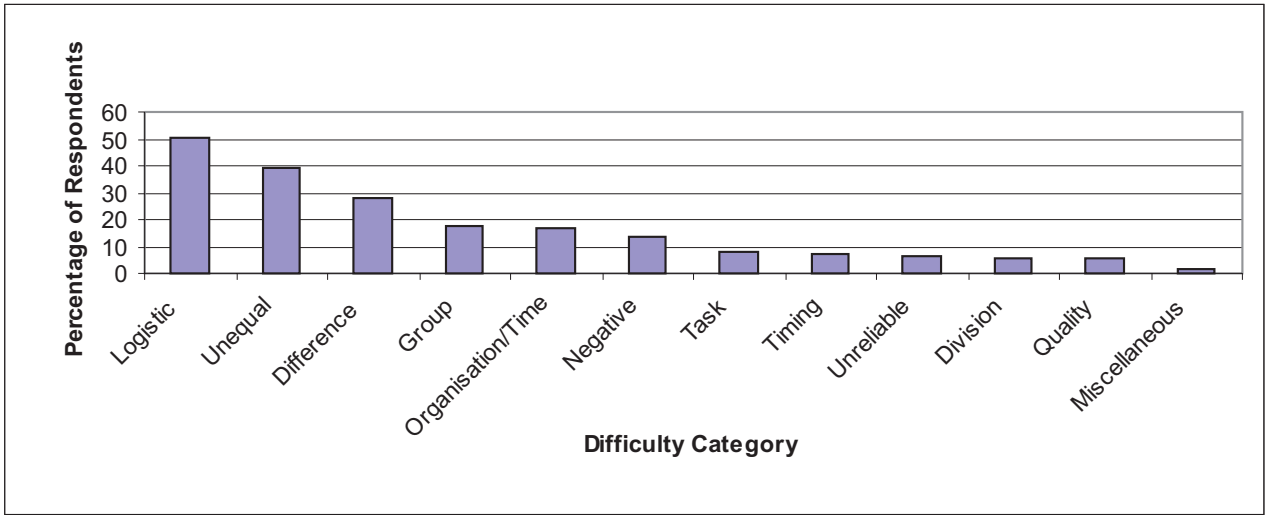


Difficulties

Disappointingly only one per cent of respondents expressly stated that there were no difficulties associated with working in an RAS whereas 91 per cent listed at least one difficulty. The six most prevalent difficulties were:

- Logistics: As with SLGs logistic obstacles headed the list of problems. Fifty-one per cent of respondents encountered difficulty finding suitable meeting times and venues and co-ordinating all the members of the group. Inability to communicate was a major difficulty, as some students did not have email access.
- Group Dynamics: 46 per cent of respondents found difficulty working harmoniously and as one unit rather than as individuals. A number of reasons were offered for this high figure:

Chart 8: RAS Difficulties



  - Students were unable to work at their own pace and at times that suited the individual. Group working slowed down the pace and they found they had to spend more time than they would have on an individual project.
  - The differences of opinion, writing styles and approaches caused severe constraints in delivering what some students considered a decent end product. Individual work resulted in a fragmented assignment.
  - In some instances where the RAS was not the same as the SLG, to begin with the members did not know each other and found difficulty working with relative strangers.
  - The interaction between members was at times strained as there was an expectation that members would be polite to one another and diplomatic in their criticisms so as not to offend a fellow member.
  - The inability of the group to accept the views of one member and having to compromise with the group on an issue about which a member felt strongly created negative feelings, stress, migraines, loss of self esteem, personality clashes and regrettably loss of friendships.
- Inequality: An interesting result, and more in accordance with expectations (unlike the SLG response), was that 40 per cent of respondents found difficulty in motivating all the members to contribute equally and at the same standard. The problems encountered included:
  - Some members of the group were described as lazy and unmotivated. There were different perceptions of the amount of work involved and the standard of work required.
  - Some students had a clash of commitments and were not always prepared to put the RAS first.
  - The absence of individual assessment meant that some students did the work of others and all members received identical marks whether they deserved it or not.
  - Some students realised they had not contributed equally, resulting in feelings of guilt.

Case Studies

The following case studies illustrate some of the different group dynamics, attitudes and challenges that were evident among the RAS during the project.[20]

Case Study 1

Anh, Bella and Charlie are three students who all embarked on their Law studies as school leavers and are also friends. They attended the same Property Law tutorial group and formed an SLG. Digby, a mature age student with other responsibilities in addition to study, was added by the project co-ordinators as the fourth member of the SLG. The members of the SLG also constituted an RAS. The members of the group worked well together for their first oral presentation but encountered difficulties with the research assignment. Prior to commencing work on the assignment, the students had completed a code of ethics setting out their work plan and ethics.

However, once work started, the younger students expressed concern about Digby's participation, claiming that he did not attend group meetings or arrived late and that if he did complete his share of the work, it was not of an acceptable standard. In turn, they found him to be critical of their contributions. The three younger students seemed anxious that Digby's perceived lack of commitment would affect the final product and assignment result.

An attempt was made by Property teachers to mediate between the parties and they were encouraged to discuss the perceived difficulties. However, unfortunately the situation deteriorated and it became obvious that the other three students no longer wanted Digby as a member of the RAS. These feelings were not mutual and he wanted to remain in the RAS. Co-operative work became impossible and the expulsion procedures were utilised. Digby was offended when he received

(continued)

20 The names and some personal details have been altered to preserve anonymity.

> the expulsion notice and thought that the other group members could have been more understanding of the other demands on his time. He considered it to be unfair that he was then obliged to submit an assignment on his own. However, it had not been possible to resolve the matter amicably within the time constraints for submission of the assignment.
>
> The final tutorial presentation was made as a "group" but it was apparent that there were tensions and the group was fragmented three:one.

Comment

This example of some of the challenges of group work illustrates the fact that, while "group work can have a positive impact on students in a variety of ways",[21] it can lead to conflict between members and can have a negative impact on some students.[22] While their concerns may have been legitimate, it is also possible that the younger students were abusing the expulsion procedure and that the mature age student was treated unfairly.

Was there a better way to handle the situation? Could the authors have supervised the implementation of the work plan and group meetings and overseen the work to make sure everyone was contributing fairly? This was considered to be too intrusive and as defeating the purpose of team work and group learning. The authors were also conscious of the importance of the students taking responsibility for their own learning. Another consideration was the "domino effect" and how other syndicates having difficulties would respond to this intervention. Furthermore, it was considered that it would be resource intensive and time consuming; the time could be spent more productively in other ways.[23]

---

21 A Zariski, Positive and Negative Impacts of Group Work from the Student Perspective in Murray-Harvey and Silins eds, *Advancing International Perspectives*, Proceedings of the Higher Education Research and Development Society, Volume 20 (Adelaide: Higher Education Research and Development Society, 1997) 778, at 780

22 *Id* at 779.

23 Chang asserts that "conflict must be effectively handled if it is not to be a barrier to progress" and that "conflict is best handled by managing it and adopting appropriate strategies to bring about a desired end". V Chang, How Can Conflict within a Group be Managed?, in K Martin, N Stanley & N Davison eds Teaching in the Disciplines/ Learning in Context, *Proceedings of the 8th Annual Teaching Learning Forum*, (Perth: UWA, 1999) 59-66. Joughin & Gardiner observe that

Case Study 2

Emilia and Fergus were friends but, due to timetabling, were in different tutorial groups. They requested that they be in the same RAS but had no preference for the other two syndicate members. Gilda, a full-time student, and Hans, a mature aged, part-time student, were added to complete the syndicate.

Shortly after the group's code of ethics had been finalised, work commitments sent Hans out of the metropolitan area. While the authors were made aware of the situation, the other members of the RAS decided they could communicate with Hans by telephone, email and facsimile transmissions to complete the assignment.

Unfortunately, however, Gilda suffered a succession of health problems and was unable to keep pace with group commitments. The syndicate made every effort to include her but eventually approached Property teachers with the problem. In the circumstances it was decided not to use the formal expulsion procedures. Gilda was given permission to submit a separate assignment and was also granted special consideration. The long distance arrangement worked for the remaining syndicate members and Emilia, Fergus and Hans submitted a combined assignment.

Comment

Again there were challenges, but this RAS should be viewed as a success. The fact that the long distance working relationship succeeded is a tribute to the determination and commitment of the three remaining RAS members. One must question, what was the bonding factor? The two initial group members were friends, but apart from the code of ethics and work plan and the fact of having been placed

---

"Facilitating independent learning involves increasing students' responsibility for and control of their own learning…'Independent learning' refers to learning which seeks to substantially increase student control of learning and which is substantially independent of the presence of a teacher. The teacher sets the parameters for learning and provides required resources while the student, or groups of students, controls the time, place and pace of their learning." G Joughin & D Gardiner, *A Framework for Teaching and Learning Law* (Sydney: Centre for Legal Education, 1996) 60. However, they observe also that "Staff training in small group skills is often beneficial". *Id* at 58.

with Gilda and Hans they owed the other two RAS members no allegiance. Arguably it would have been easier for them to break away and submit their own assignment. However they chose not to and they worked to complete the assignment under difficult conditions.

Gilda's situation was handled with as much sensitivity as possible. With the additional time and special consideration, she was able to complete not only the assignment but also the subject Property Law that year. Were it not for the other group members, staff may not have been aware of the difficulties and she may simply have "dropped out" of law school.

Case Study 3

Imran, Jasmine, Katerina and Lee were long-standing friends in the same tutorial group who formed an SLG and RAS. While the students were in the throes of their research assignment, a member of Imran's family became critically ill. It was difficult for him to concentrate effectively on the task at hand and he foreshadowed a possible request for an extension of time. The other members of the group made a joint decision to support Imran unconditionally. They provided him with both practical and moral support and the assignment was submitted on time.

This syndicate received a high mark for their work. The assessor had no idea of the history behind the assignment. The group members remain friends.

Comment

This is an example of group work at its best. Left to his own devices Imran may not have submitted an assignment on time, if at all, and it is unlikely that the work would have been of the same quality. However, with the support and assistance of his friends and fellow RAS members, the assignment was completed to a high standard and all were very happy with the result.

Does this mean that a foundation of existing friendship is necessary for a successful small group or can group members who did not know each other previously develop the necessary skills to cope in such a situation? While friendship was apparently an important factor in Case Study 3, Case Study 2 suggests that a small group can operate successfully

in other circumstances. The team environment allows for the development of peer support, cooperation and collaboration, providing reciprocal and mutual benefits for all members.

Reflections

Expectations

When the idea of small group learning was introduced to students, the information provided was sparing and in general terms.[24] With hindsight, and with the benefit of the insight provided by the case studies,[25] it would have been preferable for additional and more specific information to be available to students to provide them with a firmer foundation for drafting of a more detailed code of ethics and for better mental preparation for the tasks ahead.

Apart from division of the tutorial groups into SLGs and RAS as described above, minimal structure and direction was provided for the students. The students were given the independence, responsibility and flexibility to co-ordinate the frequency and modus operandi of their own group meetings.

Feedback was provided to students about the content of their research assignments and group presentations. However, the authors offered little input about or evaluation of the groups' working as a team or the division of tasks. Students were thus offered little guidance on how to operate within the group rather than as an individual, but generally seemed to develop the teamwork skills required.

Interaction

The authors believed from the outset that in order for groups to work effectively a "bonding factor" is required. Generally, one cannot group four strangers and expect them immediately to bond and work together.[26] The students "must connect to

---

24 At this early stage the authors were themselves to some extent unaware of the potential benefits and difficulties.

25 See in particular Case Study 1.

26 Miller, Trimbur & Wilkes note that "The personal and working relationships within the small groups can either make or break the course experience for many students." J Miller J Trimbur & J Wilkes, Group Dynamics: Understanding Group Success and Failure in Collaborative Learning in K Bosworth & S Hamilton eds, *Collaborative Learning: Underlying Processes and Effective Techniques* (1994) 59 *New Directions for Teaching and Learning* 33, at 34.

form an effective working group".[27] Therefore the SLGs were formed to allow the students to become acquainted and develop a working relationship in preparation for their tutorial presentations and especially for their research assignments. Unfortunately, however, some of the SLGs met on only one occasion prior to combining for an RAS and in other cases students were in an SLG and RAS comprised of different members. The number of SLGs that did not team up as an RAS but elected instead to undertake the research assignment with other students surprised the authors.

Case Study 3 illustrates that years of friendship can be one of the bonds that holds a group together, both as an SLG and as an RAS. Case Study 2 is more puzzling: perhaps one can attribute the cohesiveness of the group to a moral bonding founded on the code of ethics in addition to the development of interpersonal and communication skills.

Apart from those few groups in which the expulsion procedure was utilised, having completed the research work as a whole group the vast majority of RAS chose to continue with the writing and submission of the assignment also as a whole group. Notably only three syndicates elected to divide into pairs for the writing and submission of the assignment.

In addition to the interaction that the students described in their responses to the questionnaire, the authors also observed other features. In particular, it was noticeable that some of the SLGs sat and socialised together in tutorials, either as a whole group or as part of a group. This occurred regularly for some groups and occasionally for others. In some instances this started from the beginning of the year as the students were already on friendly terms and had formed their own SLG, but in other instances this was a phenomenon that developed as the year progressed and the students became better acquainted and developed their interpersonal skills. The social aspect of small groups is recognised as an important factor in enhancing learning.[28]

Similarly, the authors also observed some apparent difficulties that were not mentioned in the responses to the questionnaire. Students were allocated to SLGs (and RAS) without regard to gender or age, with the result that there were different proportions of male and female or mature-age and younger students in different groups. Generally this did not

27 *Id*, at 40.

28 McInnis, *supra*, note 5, at 2.

cause any problems, but Case Study 1 illustrates some of the tensions that arose when expectations and other commitments differed between a mature-age student and the other group members who were younger. In one group[29] of three female students and one male student tension developed along gender lines during the preparation and writing of the assignment and this carried over into the SLG and was apparent in tutorials. In other examples, students requested tutorial changes on the basis of alleged timetable changes, but it appeared that the real basis was difficulties within their SLG.

Learning

Pedagogically the small group, team based approach is a sound one. As the respondents reported, it provides students with an opportunity to share information, opinions and ideas through in depth discussion as well as to interact and communicate with one another in an environment of mutual support. This co-operation and pooling of resources in turn can lead to a greater understanding of the subject matter and improved study techniques and problem solving skills. Students can also acquire or develop interpersonal skills including the ability to communicate, compromise and co-operate in a group.

Self Learning Groups and Research Assignment Syndicates: Comparisons and Contrasts

There was some commonality between the top SLG and RAS benefits identified by the students: sharing of opinions and discussion; sharing of workload; acquisition of interpersonal and academic skills; social interaction; and increased understanding of Property Law. The difficulty that stands out for both forms of small group work is logistics and is one of the variables encountered in group work that are generally beyond the control of the teacher.[30]

However, overall students had a more positive view of SLGs than the RAS. Perhaps the relative weighting of these two components of the year's assessment was significant. While only five per cent was attributable to tutorial participation

29 Used here as an anecdotal example and not as a case study.

30 Miller Trimbur & Wilkes identify variables including institutional or situational constraints such as timetabling, social calendar and physical space as being beyond a teacher's control. Miller Trimbur & Wilkes, *supra*, note 26, at 40.

and the SLG oral presentations, it was apparently enough to induce the students to participate in their SLG at least twice throughout the year. The more motivated students, perhaps in more successful groups, met more frequently and arguably experienced more of the benefits of small group learning.

The RAS were a different matter and elicited more extreme reactions from the students. The authors believe that an important factor in this was the relatively large proportion of the year's assessment that depended on the performance of the RAS. As the case studies show, this brought out both the worst and best in syndicate members.

Some Concluding Comments

Le Brun and Johnstone describe "[t]he consequences of commodifying education" and the potential drawbacks to which this exposes the university system.[31] A delicate balance is thus required between pedagogical considerations and catering to student demands.

After considering the research findings and student reactions and affirming the "Seven Principles for Good Practice in Undergraduate Education" with which this article commenced, the authors are of the opinion that it is worth continuing with and promoting SLGs but not RAS.

Notwithstanding the benefits of the RAS identified by respondents, in light of the nature of the difficulties experienced and the relatively high proportion of the students' annual assessment attributable to this component and given that the average reaction was negative, it is hard to justify the continued use of the RAS. Conversely, despite the range of difficulties associated with the SLGs, in light of the nature of the benefits gained and given that the average reaction was more positive, the authors believe that SLGs should continue.

However, given that administering SLGs and oral presentations is also extremely time consuming and resource intensive, it may not be feasible to maintain small group learning in the form described. Even if it is not possible to continue with SLGs on a formal basis, students of Property

---

31 For example, the increasing student demands on academic and administrative staff which, if ignored, may affect students numbers or standards of excellence. Le Brun & Johnstone, *supra*, note 7, at 25.

Law are still encouraged to form and work in SLGs informally as before.

The authors remain committed to promoting the benefits of small group learning and fostering an environment in which co-operative and collaborative learning[32] are encouraged.[33]

32 Tang distinguishes between co-operative learning, initiated by teachers and collaborative learning, initiated by the students themselves. C Tang, Effects of Collaborative Learning on the Quality of Assignments, in B Dart and G Boulton-Lewis eds, *Teaching and Learning in Higher Education* (Melbourne: Australian Council for Educational Research Ltd, 1998) 102.

33 "To maximise the effects of collaborative learning, teaching should provide support and create a context to facilitate group learning." Tang, *id* at 120.

TEACHING NOTE

Developing Student Self-reflection Skills through Interviewing and Negotiation Exercises in Legal Education

Kathy Mack, Gerry Mullins,# Jan Sidford* & David Bamford**

Introduction

The philosophy of education at Flinders Law School emphasises the acquisition of foundation legal skills, including interpersonal communication such as interviewing and negotiation, in a program which is designed to foster independent learning. As part of this commitment, Flinders has initiated and maintained a project to incorporate self-reflection as an explicit goal of teaching. Developing a capacity for informed reflection on their own work will directly enhance students' learning and enable them to monitor and improve their performance after graduating and entering the workforce.

In this paper, we generally use the term "self-reflection" rather than the more widely used term "self-assessment", though both are often used interchangeably. Self-assessment may (though not necessarily) imply a student actually indicating a specific mark for their work, which may or may not be incorporated into the grade given by the teacher. The concept of self-reflection emphasises the student undertaking an informed, supported and explicit critical analysis of their own experience in interviewing and negotiation, examining their planning and performance in light of professional and personal goals and values, and formulating concrete strategies for improvement. Such self-reflection will include an evaluative or self-assessment aspect, in a broad sense, and both terms were used in the teaching program.

At Flinders, structured self-reflection, as an explicit part of the teaching process, has been incorporated into interviewing

* School of Law, Flinders University of South Australia
# Advisory Centre for University Education, University of Adelaide, South Australia
 (2002) 13 *Legal Educ Rev* 221.

and negotiation programs as part of the undergraduate law degree. These programs have been especially designed to take advantage of the particular opportunity for self-reflection created by clinical or skills training, as discussed further below.[1]

Self-reflection in Higher Education

Increasingly over the past decade or more, educators have recognised the importance of providing students with the ability to monitor their own progress, both during the time they are taking part in formal training and afterwards when it is hoped they will become "life-long learners".[2] Boud argues that self-reflection can be incorporated into a wide variety of academic courses and programmes, and many disciplines now seek to develop the skill of self-reflection in students. This has produced a considerable literature in areas such as nursing,[3] teacher education[4] and social work.[5] Monographs and articles also provide examples

1 S Kift, Lawyering Skills: Finding their Place in Legal Education (1997) 8 *Legal Education Review* 43, 67-71. See text at footnotes 17-20. While there has been considerable discussion about the proper role of "skills" in law schools, this article is not about skills learning per se, but about developing a student's self-reflective capacity in the context of a particular skills program, and so does not review the general debate about skills teaching in law schools. For a recent discussion of the role of professional skills training as part of university education, see S Christensen and S Kift, Graduate Attributes and Legal Skills: Integration or Disintegration? (2000) 11 *Legal Education Review* 207 at 211-214.

2 D Boud, *Enhancing Learning Through Self Assessment* (London: Kogan Page, 1995); D Boud, *Problem-based learning in education for the professions* (Sydney: HERDSA, 1985); D Boud, R Keogh & D Walker eds, *Reflection: Turning Experience into Learning* (London: Kogan Page, 1985); D Boud, *Implementing student self-assessment* (Kensington, NSW: HERDSA, 1986).

3 AM Palmer, S Burns & C Bulman eds, *Reflective practice in nursing: the growth of the professional practitioner* (Oxford: Blackwell Scientific Publications, 1994); BL Paterson, Developing and maintaining reflection in clinical journals, (1995) 15 *Nurse Education Today* 211; J Owens, D Francis, K Usher & J Tollefson eds, *Images of Change: A Collection of Reflective Writings* (Townsville: School of Nursing, James Cook University of North Queensland, 1997); M Mallik, The role of nurse educators in the development of reflective practitioners: a selective case study of the Australian and UK experience (1998) 18 *Nurse Education Today* 52.

4 EG Pultorak, Facilitating Reflective Thought in Novice Teachers (1993) 44(4) *Journal of Teacher Education* 288; R Tremmel, Zen and the Art of Reflective Practice in Teacher Education (1993) 63(4) *Harvard Educational Review* 434.

5 K Hinett, C Maughan, B Lee & K Stanton, Managing Change in Assessment and Learning in Legal Education: A Tale of Two Cities (1999) 33 *Law Teacher* 135, nn 33

from medicine,[6] dentistry[7] and mathematics.[8] While this work includes detailed descriptions of particular forms of self-reflection which are not necessarily suited to the teaching of legal skills, it nevertheless provides a useful starting-point for thinking about ways of encouraging law students to monitor their own learning.[9]

In the United Kingdom, The Society for Research in Higher Education has published several monographs on the subject of reflective practice in university, discussing the "nuts and bolts" of facilitating reflective dialogues with students,[10] but there is surprisingly little dealing specifically with legal training.[11]

In legal education in Australia, there is a growing literature on the teaching of skills[12] as part of wider research on

6 S Clark, 2000 On: Equipping Medical Students to Communicate with Patients of Tomorrow, in R Ballantyne, J Bain & J Packer, *Reflecting on University Teaching: Academics' Stories* (Canberra: Committee for University Teaching and Staff Development, DEETYA, 1997) 347.

7 J Wetherell, G Mullins & R Hirsch, Self-assessment in a problem-based learning curriculum in dentistry (1999) 3 *European Journal of Dentistry* 97.

8 J Cowan, *On Becoming an Innovative University Teacher: Reflection in Action* (Buckingham: Society for Research into Higher Education & Open University Press, 1998) 54-6.

9 For a sceptical response to the question whether developing the ability to reflect on one's work is as crucial to students, as it may be to teachers, see L Morton, J Weinstein & M Weinstein, Not Quite Grown Up: The difficulty of applying an adult education model to legal externs (1999) 5 *Clinical Law Review* 469, especially 521-2.

10 For example, J Cowan, *On Becoming an Innovative University Teacher: Reflection in Action*, (Buckingham: Society for Research into Higher Education & Open University Press, 1998); A Brockbank & I McGill, *Facilitating Reflective Learning in Higher Education*, (Buckingham: Society for Research into Higher Education & Open University Press, 1998); selected works in S Brown & A Glasner eds, *Assessment Matters in Higher Education: Choosing and Using Diverse Approaches*, (Buckingham: Society for Research into Higher Education & Open University Press, 1999).

11 It seems reasonable to expect that more literature dealing with legal training will emerge in the wake of a three-year project, funded by the Higher Education Funding Council for England and conducted from 1996 to 1999, known as the SAPHE project. SAPHE stands for Self Assessment in Professional and Higher Education. A summary and evaluation of the project, which concerned three Law Schools in the United Kingdom, appeared in K Hinett, C Maughan, B Lee & K Stanton, Managing Change in Assessment and Learning in Legal Education: A Tale of Two Cities (1999) 33 *Law Teacher* 135.

12 For example, S Christensen and S Kift, Graduate Attributes and Legal Skills: Integration or Disintegration? (2000) 11 *Legal Educ Rev* 206; JS Gilchrist, Reform of Skills Teaching in the University of Canberra School of Law (1998) 5 *Canberra Law Review* 233; R Hyams, S Campbell & A Evans, *Practical Legal Skills* (Melbourne: Oxford University Press, 1998).

methods to improve student learning.[13] Also, law schools are increasingly focusing attention on students graduating with generic skills and attributes.[14] In the US as well as in Australia, there has been significant emphasis on a particular model of experiential learning, especially of legal skills, which incorporates an element of reflection.

Work by Kolb[15] and others emphasises the role which experience plays in learning. According to this theory, learning takes place when students progress through a cycle of tasks, consisting of direct experience, reflective observation, abstract thinking and active experimentation.[16] This cycle is also described in the US MacCrate report on legal education as "theory instruction, performance, critique"[17] and in other legal education literature on skills teaching.[18] In simple terms, this means that students are required to undertake real or simulated exercises which involve the application of specific skills, and following this, to reflect orally and/or in writing on what happened. This method of teaching and learning has been linked to the influential concept of "reflective practice".[19]

---

13 M LeBrun & R Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Sydney: Law Book Co, 1994); R Johnstone, J Patterson & K Rubenstein, Improving Criteria & Feedback in Student Assessment in Law (Sydney, Cavendish Publishing, 1998).

14 JS Gilchrist, Reform of Skills Teaching in the University of Canberra School of Law (1998) 5 *Canberra Law Review* 233, 234.

15 DA Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Eaglewood Cliffs, NJ: Prentice-Hall, 1984).

16 G Gibbs, C Rust, A Jenkins & D Jaques, *Developing Students' Transferable Skills* (Oxford: Oxford Centre for Staff Development, 1994) 13 simplify this as "form-plan-do-reflect." Note that most advocates of this kind of experiential learning agree that there is no hard and fast rule about the point at which learners should enter the cycle; rather, they point out that learners may enter the cycle at any point, but should then progress in the sequence described by Kolb's model. See Kift, *supra* note 1, 63.

17 American Bar Association, *Legal Education and Professional Development—An Educational Continuum: Report of the Taskforce on Law Schools and the Profession: Narrowing the Gap* (MacCrate Report) (Chicago: American Bar Association, 1992) 254 as quoted in D Peters, Mapping, Modelling, and Critiquing: Facilitating Learning Negotiation, Mediation, Interviewing, and Counseling (1996) 48 *Florida Law Review* 875, nn 22.

18 For example, AG Amsterdam, Clinical Legal Education - A 21st Century Perspective (1984) 34 *Journal of Legal Education* 612, at 616-7; Winser, Toe in the Bathwater: Testing the Temperature with Problem-based Learning (1989) 7 *Journal of Professional Legal Education* 1; Peters id.

19 This is particularly true since the publication of Schön's work: DA Schön, *The Reflective Practitioner: How Professionals Think in Action*

However, while experiential learning has become a more frequent feature of legal education,[20] there has been little written on specific steps that should be taken in order to enable students to learn from their professional and personal experiences, and to develop self-reflection as an essential learning and professional skill.[21]

> Most of the literature focuses on the goals, not the methodology of clinical teaching. Generally, it categorizes clinical legal education as a 'skills' supplement to the broader curriculum, as a method of teaching professional ethics, or as an experience-based approach to examining the role of law in society. Less well-documented are approaches to evaluation in clinical legal teaching.[22]

Attempts have been made to provide more detail on the reflective or evaluative phase of the experiential learning cycle, notably by Ziegler.[23] It is still common, however, for authors to focus on the teacher's skills needed, rather than on the processes which students require to develop as reflective learners and practitioners.[24] Kift points out that "…in analysing the literature on experiential methods in law school teaching, little regard is generally had to the mechanics…."[25]

This paper is an attempt to fill this gap, by giving greater emphasis to what the students do, and what they identify as the elements of the teaching methodology which they find most helpful in developing their capacity for self-reflection.

(New York: Basic Books, 1983); DA Schön, *Educating the Reflective Practitioner* (San Francisco: Jossey-Bass, 1987) and an article which he wrote specifically with legal educators in mind: DA Schön, Educating the Reflective Practitioner (1995) 2 *Clinical Law Review* 231.

20 For example, see M Meltsner, Writing, Reflecting and Professionalism (1999) 5 *Clinical Law Review* 455.

21 AL Tyree & DJ Boud, Self and Peer Assessment in Professional Education: A Preliminary Study in Law (1980) 15 *Journal of the Society of Public Teachers of Law* 65 and S. Rawson and AL Tyree, Self and Peer Assessment in Legal Education (1989) 1 *Legal Educ Rev* 135 discuss the use of self-assessment of student essays.

22 AL Zeigler, Developing a System of Evaluation in Clinical Legal Teaching (1992) 42 *Journal of Legal Education* 575, at 575-6.

23 Id, at 586, nn 68.

24 For example, Tarr uses the process followed by experienced teachers in critiquing their students' performances as the model for teaching evaluation skills. As she points out, "teachers are continuously called upon to act as role models who have mastered the art of evaluation." NW Tarr, The Skill of Evaluation as an Explicit Goal of Clinical Training (1990) 21 *Pacific Law Journal* 967, at 989. Tarr stresses the need to apply these skills regularly throughout teaching programmes.

25 Kift, *supra* note 1, at 71.

Self-reflection and Skills in the Flinders Law Degree

The curricular structure we have developed at Flinders Law School introduces students to skills in the first year, then integrates skills teaching with substantive law topics, with more elaborate and demanding skills programs in later year topics:

- In the first year topic Lawyering: Procedures and Ethics, exercises in listening, interviewing, drafting, negotiation and oral advocacy are conducted informally as part of regular tutorial groups.
- In the second year, students undertake a more elaborate exercise in oral advocacy or mooting as part of the Contracts topic.
- In the second or third year, students undertake a more elaborate exercise in legal interviewing.
- A drafting exercise is part of Corporate Law in the third year.
- In the final or penultimate year, students do a further exercise in legal negotiation in Resolving Civil Disputes.[26]

In this paper, we will focus on the interviewing and negotiation exercises in 1999 in the first year topic, Lawyering: Procedures and Ethics, and the negotiation exercise in the final year topic, Resolving Civil Disputes, also in 1999. By 1999, these programs were no longer new; many of the elements of the program had been in operation in the first year since 1997 and in the final year since 1996, and a number of different staff members have been involved. In 1998, Kathy Mack was awarded a teaching development grant[27] to develop students' self-reflective capacity in the context of interviewing and negotiation programs and to develop ways that self-evaluation, when linked to planning, reporting or discussion, could become part of formal assessment. The grant enabled us to expand some elements, to refine the programs

26 The first year topic was previously called Introduction to Law. In 1999, as part of a larger curricular change, the topic was renamed Lawyering: Procedures and Ethics. Before 1999, the advanced interviewing exercise was part of Criminal Law; now, it is part of Administrative Law. Corporate Law in the third year was previously named Company Law, and Resolving Civil Disputes was previously entitled Litigation.

27 The grant was awarded by the Committee for University Teaching and Staff Development (CUTSD). The CUTSD scheme was, until 1999, a funding initiative of the Australian Federal government to support innovative teaching and learning practices.

in light of a wider literature on reflective learning and practice, and to undertake student surveys to determine what aspects students found most helpful in developing their self-reflective capacity.

In these interviewing and negotiation exercises, we explicitly implemented the basic experiential learning cycle of *preparation, action, and reflection*,[28] with an especially strong emphasis on the preparation and reflection phases. This model of experiential learning requires students to engage in active self-reflection: to think critically about the ways in which they learn, the ways in which they might improve their skill levels, and the values which they intend to carry into professional practice. This reflection on their own actions and attitudes is made explicit in classroom discussions and in written reflective reports.

Preparation

The preparation phase includes several components aimed at introducing the specific skill of interviewing or negotiation and the "metacognitive" skill of reflection.[29]

- First, students are assigned readings which include material about experiential skills learning generally as well as specific information about the particular skills of interviewing or negotiation, including planning and evaluation.[30]
- Next, there is a lecture which includes a video of a simulated interview or negotiation. While showing the video, instructor comments model the evaluational questions students should consider in planning, performing and reflecting on their own activity. In 1999, in the first year interviewing program, students were shown interviews conducted by other students; in the first year negotiation program, short excerpts from a professional legal training video were shown; in the later year negotiation exercise, a different professional negotiation training video was shown in its entirety.
- Students then prepare a written plan for the activity, in the form of a brief outline. This plan is based on guidance

28 Kolb, *supra* note 16; LeBrun & Johnstone, *supra* note 14, at 77-8; Kift, supra note 1, at 67 "…input or preparation…actual engagement….processing of what has been learned…".

29 Kift, *supra* note 1, at 68.

30 See Appendix 1 for examples of reading materials assigned, which are provided in a course reader.

from the readings about planning for the specific activity[31] as well as on materials giving information about the client to be interviewed or the dispute to be negotiated. For example, the preliminary interview information in the first year topic is quite brief: students may be told that they are to interview a potential client about an accident in a shop. Their plan should include the goals for the interview and concrete actions to achieve these goals, possibly including a specific questions on key points. For the negotiation exercises, more detailed facts are provided, including client instructions and other documents or information. Negotiation plans may contain notes on the goals of each party, and the strengths and weaknesses of each sides' case, possible settlement options, etc.

Action: The Interview or Negotiation Role Play

All the interview and negotiation exercises are conducted as simulations at the law school, with the students acting in role as legal practitioners. The interview exercises involve other students playing the role of clients to be interviewed. Negotiations are conducted one on one, with a student acting as the legal representative for each party. The first year Lawyering students conduct their interviews and negotiations in the classroom as part of their tutorial classes. (Tutorial classes contain 12-14 students.) The negotiation exercise for the final year students in Resolving Civil Disputes are conducted in specially designed premises in the law school, which enable observation and video recording of the negotiation.

Performance in the exercise itself is not marked as part of the assessment scheme. There are several reasons for this decision. The central aim of the project is to encourage students to form their own evaluative tools, and to find their own "voices", rather than to depend on teachers as authoritative judges of their performance and progress. Another is practical constraints on staff and student time, and on availability of space for the conduct of exercises. As the number of students participating in each exercise is very large, there would have to be several different observers, which would create difficulties in terms of (apparent) subjectivity in marking. One way to address these concerns might be to award only a "pass" or "fail" grade to students, but this is

31 See Appendix 1 for examples of reading materials assigned, which are provided in a course reader.

somewhat meaningless, as virtually all students would pass and it is generally believed that students may put in less effort and/or do not perform as well when graded on a pass/fail basis.[32]

Reflection

The reflective aspect of the exercise involves several components:

- After the interview or negotiation, each student provides short written responses to two sets of questions.[33]
  - One set of questions, called the "Self-Assessment Guide", stimulates the student's own self-reflection. Students are asked specific questions about their own performance and the student must explicitly link the student's perception of his or her own performance to the planning before the exercise. The student must also identify concrete strategies for future improvement.
  - The other questions, called "Feedback from Partner", elicit written feedback to the other student interviewer or negotiator. Giving feedback requires each student to recall, analyse and reflect on the process from the perspective of the other participant. Receiving the feedback enhances self-reflection by giving a basis for confirmation, comparison or moderation of the student's perceptions of their own performance.[34]
- In the negotiation exercise in Resolving Civil Disputes, students are videoed during their exercises and have a short meeting with an instructor/observer who provides some feedback. Students complete their self-reflective guide before hearing feedback from another student or an instructor.
- Students then write a report on the exercise which requires explicit self-reflection on their planning and their performance in the exercise. The reflective reports should evaluate their plans, the process and outcome of the interview or negotiation and consider any feedback from

---

32 M-L Fisher and AI Siegal, Evaluating Negotiation Behavior and Results: Can We Identify What We Say We Know? (1987) 36 C*atholic U Law Review* 395, at 396, 405 cited in C Craver and D Barnes, Gender, Risk Taking and Negotiation Performance (1999) 5 *Michigan Journal of Gender and Law* 299, at 308.

33 Examples of these questions for the Lawyering interview exercise are listed in Appendix 2 and 3. The questions for negotiation in Lawyering and in Resolving Civil Disputes are similar.

34 Boud, *supra* note 3 at 15.

others as well as ideas from the assigned readings. Later year students review the video of their exercise as part of preparing the reflective report. As this is a new and relatively unusual assignment, especially for the first year students, the readings include guidance on evaluation and reflection[35] and there is a lecture in which expectations for the report are discussed. The written plan and the reflective report are handed in and marked as part of the formal assessment scheme in the topic.[36]

We expected that these structured self-reflective elements, especially when linked to written planning and reporting requirements as part of formal assessment, would make the goal of teaching students how to learn from their own experience more explicit, and create a direct link between the activity and the self-reflective learning objectives.

Student Perceptions

As part of developing and improving the program, we conducted surveys to learn more about the students' response to the focus on self-reflection. Two questionnaires were administered in Lawyering, one after the interviewing reflective report was submitted, and another after the negotiation report was submitted. In Resolving Disputes, one questionnaire was administered after the negotiation report.

Purposes of the questionnaires included:

- to elicit students' views of the usefulness of some elements of our implementation of the experiential learning cycle in promoting both skills learning and self-reflection; and
- to investigate whether students saw self-reflection as an ability which could be applied to other learning in law school and beyond.

---

35 See Appendix 1 for examples of reading materials assigned, which are provided in a course reader.

36 This approach is similar to a method used in the Housing Law clinic at Saint Louis University Law School which requires students to present two written documents, a 'pre-task report' and a self-evaluation. See Zeigler, *supra* note 23, at 586-8, nn 68, based on the work of M Meltsner, JV Rowan & DJ Givelber, The Bike Tour Leader's Dilemma: Talking About Supervision (1989) 13 *Vermont Law Review* 399; KR Kreiling, Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision (1981) 40 *Maryland Law Review* 284; and RK Neumann, A Preliminary Inquiry into the Art of Critique (1989) 40 *Hastings Law Journal* 725, 748 nn 70.

The questionnaires mainly included closed ended questions on the usefulness of the different teaching and learning strategies, both for learning the specific skill and for self-reflection. Answer choices were "Very helpful, helpful, I'm not sure, not helpful, very unhelpful". Open ended questions included asking for any other comments on preparation for the exercise and on the exercise itself; asking about recommended changes, and asking "What advice about [the exercise] would you give to a student beginning [the topic]?" Students were also asked if they had "used the self reflective skills [in this topic] in other law school subjects, in other areas of learning, and in subsequent work or other activities outside Law School". If they answered yes to any of these questions, they were asked to give examples.

To enhance the independence of the survey and to emphasise the voluntariness and anonymity of the survey, Dr Gerry Mullins of the Advisory Centre for University Education (ACUE), Adelaide University was responsible for the survey. Students were given a letter from Dr Mullins explaining that they were under no obligation to respond to any questionnaire; that participation [or non-participation] would have no impact on assessment or grades at all; that information the ACUE gained was strictly confidential and would not identify any individual student and that only general information and statistical summaries were provided to the Law School. This information was reiterated in lectures and tutorials. The questionnaires were administered during a regularly scheduled lecture time, when no teaching staff were present and the completed questionnaires were delivered directly to the ACUE for analysis.

The Sample

In Lawyering, the first year class in which interviewing and negotiation were held, total enrolment was about 165 students. The 92 students who responded to the Lawyering interview exercise questionnaire and the 90 who responded to the Lawyering negotiation exercise questionnaire represent about 60% of the total students in Lawyering.[37]

37 Not all students in Lawyering wrote reflective reports on both the interviewing and negotiation exercises. All students had access to the readings and to the lectures in which the videos were presented, all were expected to hand in a plan and to participate in the exercise itself, and virtually all students did so. However, students could substitute another writing assignment for one of the reflective reports. The interview exercise was held quite early in the semester; about 120

In Resolving Civil Disputes, the final year class with a negotiation exercise, total enrolment was about 175, and all students were required to participate in the negotiation exercise and to write a report. The 96 students who responded to the 1999 survey represent about 55% of the total enrolment in this topic.

Female students constitute about 63-68% of the respondents, which is slightly greater than the overall enrolment of women (about 60%). However, tests for a gender difference in the data reported in this paper showed no significant effect. Nearly half of the Lawyering students had been out of school for no more than one year, and more than half of the students in Resolving Civil Disputes had only been out of school for five years, suggesting that mature age students may be slightly overrepresented in the respondents. Over 94% of respondents are "full-time" in the sense that they are undertaking at least a full academic load.

Helpfulness of Preliminary Activities for Conducting the Interview or Negotiation

Students were asked "how helpful" they found the video and writing a plan for their conduct of the actual interviewing or negotiation activity. Their responses (Table 1) indicated that they found preparing the written plan helpful, and somewhat more helpful for their performance of the task, in comparison to viewing a video. This positive response to the plan suggests that students' own experience confirms the link, discussed in the literature, between active planning, such as writing a plan, and skills learning. More first year students found the interview video (which showed student interviews) useful compared to the negotiation video (excerpts from professional video). In 2000, when we used excerpts from student negotiation videos in Lawyering, the percentage of students who found the video helpful or very helpful increased to 70%, suggesting that first year students,

---

students submitted written reports. The negotiation exercise was held a few weeks later, and about 90 students did a written report. However, because of the voluntary and confidential nature of the survey, it is impossible to know whether these are the same or different subsets of students, as there were two different surveys, each distributed shortly after the exercise was completed. It is also impossible to know whether all the students responding to each questionnaire wrote a reflective report, though we believe that students were more likely to respond to a questionnaire about an exercise in which they had participated more fully.

at least, found that observation of another student's work was more useful in developing their own skills.

Table 1: Helpfulness for Conducting the Interview
(Percentage of students responding "Helpful" or "Very Helpful")

	Lawyering / Interview [N = 92]	Lawyering / Negotiation [N = 90]	Resolving Civil Disputes / Negotiation [N = 96]
Video	68	50	56
Writing a plan	86	73	73

Helpfulness of Preliminary Activities for Self-assessment or Self-reflection

Students were also asked specifically about the extent to which the video, writing a plan, and the readings helped them in the process of self-reflection. Their overall responses suggested that these elements were less helpful in self-reflection (Table 2) than in developing the specific skill itself (Table 1). However, writing a plan was still seen as helpful for self-reflection by a very high proportion of students, especially first year students.

Even more helpful for first year students were several of the readings. For them, the interview readings which were most frequently rated as helpful or very helpful were those about planning (A), about skills learning generally (B) and conducting the interview (C), and the most helpful negotiation readings were those about conducting the negotiation (E), skills generally (B) and planning (D). For the later year students, readings were regarded as less helpful than writing a plan or watching a video. The readings which were most frequently rated as helpful or very helpful by later year students were about planning (E), approaches to negotiation (F), and evaluating the process and outcome (G). (The letters in parentheses above in the table refer to readings listed in Appendix 1.) It is not surprising that first year students found the readings about skills learning especially valuable, as this was their first exposure in law school to structured interactive skills development, whereas the final

year students would have completed other skills programs during their degree.

The final year students found the video particularly useful. This may reflect the specific material shown since, as noted above, different videos were used with the different groups. Final year students were shown a professional training video, which may have reinforced their perception of themselves as entering professional practice.

Table 2: Helpfulness for Self-reflection: Preliminary Activities (Percentage of Students Responding "Helpful" or "Very Helpful")

	Lawyering / Interview [N = 92]	Lawyering / Negotiation [N = 90]	Resolving Civil Disputes / Negotiation [N = 96]
Video	40	28	68
Writing a plan	76	71	63
Reading most frequently ranked "Helpful" or "Very Helpful"	88 (A)	79 (D)	62 (E)
2nd most frequently ranked reading	78 (B)	74 (B)	54 (F)
3rd most frequently ranked reading	75 (C)	62 (E)	48 (G)

Note: The letters in parenthesis refer to the readings listed in Appendix 1.

Helpfulness of Activities After the Exercise

The students were asked about the helpfulness of various activities following the specific interview or negotiation task: the two sets of questions answered immediately after the exercise [the "Self-Assessment Guide" and the "Feedback from Partner"]; feedback from an observer or a follow up lecture [where applicable] and the experience of writing a reflective report (Table 3).

The importance first year students put on feedback from their partner suggests that this could be emphasised more

for the later year students. However, later year students may have been less attentive to giving and receiving this feedback, as they knew an instructor/observer would comment. These feedback questions are designed to be answered, in writing, immediately after the exercise is completed, within the overall time available for the tutorial class or negotiation session. This imposed time constraints for all students in preparing the self-assessment and peer feedback forms. Also, the students feel considerable urgency to begin discussing the simulation out of role immediately. These factors mean that written feedback and self-reflection forms were not always prepared as fully or thoughtfully as we might have hoped.

The preference among first year students for feedback, even from peers, over self-reflective instruments, suggests that these students are still fairly dependent learners. The later year students appeared to find writing a self-reflective report more helpful than feedback from other sources, which would be consistent with the more independent learning style one would hope for in final year students, many of whom are already undertaking legal work.

Table 3: Helpfulness for Self-reflection: Subsequent Activites (Percentage of Students Responding "Helpful" or "Very Helpful")

	Lawyering/ Interview [N = 92]	Lawyering/ Negotiation [N = 90]	Resolving Civil Disputes/ Negotiation [N = 96]
Self-Assessment Guide	67	69	62
Feedback from partner	90	81	57
Feedback from observer	Not applicable	Not applicable	58
Follow-up lecture	Not applicable	Not applicable	54
Writing a report	74	75	76

Self-assessment of Performance

Students were asked "How would you rate your performance" in the interview or negotiation itself, with response

choices of "Excellent, Good, Satisfactory, Poor, Very Poor". Almost all students assessed their performance in the task as at least satisfactory (Table 4). The first year students in Lawyering tended to give themselves a better rating than the later year students in Resolving Civil Disputes. This may reflect the first year students' less well developed expectations of what is required in a Law course, or the more demanding nature of the task assigned in the later year class.

The students' evaluation of their performance was generally consistent with the overall view of instructors and observers. Had we been assessing performance on a satisfactory/unsatisfactory basis, very few students would have been rated as unsatisfactory. What is impossible to know, of course, in light of the anonymity of the survey, is whether any particular student's self-assessment would be matched by the instructor's evaluation. However, the student's reflective reports were marked by the instructor who had observed the exercise. A student whose own reflections were signficantly out of line with the views of the observer would have been given some feedback to that effect, but this was rare.

Table 4: Self-assessment of Performance

% of students responding:	Lawyering/ Interview [N = 92]	Lawyering/ Negotiation [N = 90]	Resolving Civil Disputes/ Negotiation [N = 96]
"Excellent" or "Very good"	68.4	57.4	52.1
"Satisfactory"	28.3	39.1	41.7
"Poor" or "Very poor"	3.3	3.5	6.2

Confidence Measures

In the questionnaire, which was administered after the exercise and after the reflective reports were completed, students were asked to rate their confidence before and after the specific exercise, with five response choices: "Excellent, Good, Satisfactory, Poor, Very Poor". (Their rating of

confidence before is a recollection three to four weeks after the event.)

A striking feature of their responses is the rise in students' confidence following their interview and negotiation exercises (Table 5). The rise is greater in the first year students, presumably reflecting their lower starting level and the fact that they have less experience with interviewing and negotiation tasks, especially in role as a legal practitioner. Most gratifying of all is the rise in confidence of those students, especially in the first year, who indicated very low levels of confidence before the task.

Table 5: Student Confidence

	Lawyering / Interview [N = 92]		Lawyering / Negotiation [N = 90]		Resolving Civil Disputes / Negotiation [N = 96]	
	Before	After	Before	After	Before	After
% of students responding "Good" or "Excellent"	32	75	37	70	45	68
% of students responding "Poor" or "Very poor"	23	2	22	3	18	10

Extension of Self-reflection to Other Activities

Finally, the students were asked to indicate whether they had used their self-reflection skills in contexts outside the subject. As we might expect, those who were least likely to report wider use of self-reflection skills were first year students, immediately after their first exercise, for whom the requirements of explicit reflection on experiential learning are likely to be quite novel. The proportion is greater after the negotiation exercise in the first year, and slightly greater for the final year students (Table 6).

Students who used their skills in an extended context tended to use those skills in various contexts. For example, of the students responding positively to this question in the

Lawyering/Negotiation questionnaire, 13 students responded positively regarding all three areas, and 20 used self-reflection skills in at least two areas.

Several students gave examples of using self-reflection to improve written assignments in other academic work. Workplace applications included a student learning from his/her own dealings with customers as a way to improve performance or reflecting on coping with training for a new job as a way to identify "what I know and what I needed to ask about". An example of a personal development insight is a student indicating self-reflection as a means of identifying a need to be more assertive in social situations as well as in tutorials.

Overall, it appears that just over 25% of first year students and nearly 30% of final year students use their self-reflection skills in at least one other context, with some increase in the ability to do so after greater experience with the emphasis on self-reflection in these programs. While this is not a high percentage, the level of self-awareness and the insights required are quite demanding. A student who was able to generalise the self-reflection skill, as elicited in these exercises, to other contexts, would be displaying a very high degree of cognitive and ethical development, as reflected in a the widely used scheme articulated by Perry.[38]

Table 6: Generalising Self-reflection

% of students who used self-reflection skills in:	Lawyering/ Interview [N = 92]	Lawyering/ Negotiation [N = 90]	Resolving Civil Disputes/ Negotiation [N = 96]
Other Law School subjects	17	26	28
Other areas of learning	23	28	31
Work & activities outside Law School	Not asked	25	28

38 WG Perry *Cognitive and Ethical Growth: The Making of Meaning* in LeBrun and Johnstone, *supra* note 14 at 84-85.

Conclusion

The survey of students has identified some strengths in our current teaching strategies, underscored links between our approaches and the wider literature on reflective practice, and indicated some important areas where we can improve our approach to assisting students to develop the self-reflective skills necessary to become a life-long learner, especially one who exercises professional judgment in an unsupervised setting.

Strategies which students regard as especially effective in eliciting self-reflection include writing a report and, especially, requiring students to prepare and submit a plan for each exercise. First year students found peer feedback and preliminary readings especially valuable, while later year students found the video more valuable. The significance of a written plan and a written reflective report is shown by the large number of students at all levels who found these elements helpful.

Answers to open ended questions in the survey confirm the importance of these factors. When asked to give advice to future students doing these exercises, students strongly emphasised preparing, and the importance of the written plan, as well as doing the readings (the specific advice most frequently given). In the class discussions, students often recognised that the process of developing the plan, and the discipline imposed by writing it, was valuable, even if the document itself was not used very much in the actual interview or negotiation. This is consistent with the statistical findings above, which confirm that students clearly recognise the value of writing a plan, and preparation more generally, both to performing a task and to reflecting on it afterwards.

One area requiring further improvement is the selection and use of appropriate videos to be shown to first year students before the exercises. Though most students found the videos useful for conducting the exercise, only 40% regarded the interviewing video as helpful or very helpful for self-reflection, and only 28% regarded the negotiation video as helpful or very helpful.

When asked what, if any, changes they would recommend for future exercises, a small number of students suggested that the exercises themselves should be assessed, while other students wished for more guidance in lectures, and some mentioned the need for clearer criteria on what

was expected in the report. We have responded to these comments by explaining why performance is not directly assessed and developing written criteria for the reflective report.

Of course, some things are still unclear. As with any methodology, the survey has its limitations. Because we were unable to survey students who had undertaken the more elaborate interviewing exercise in the later year subject, for example, it was not possible to obtain data that might tell us whether students had gained a sense of their skills accumulating (or whether they failed to make the link between the various skills exercises offered throughout the degree).

Thus, although students, especially those in their first year, still desire direct instruction, guidance and evaluation from others, there was also good acceptance of self-reflection, even among the first year students. A significant proportion of students reported extending self-reflection to other activities This suggests that once students grasp the concept and method of self-reflection, they are able to generalise it.

Appendix 1: Assigned Readings

(The letters in parentheses link to Table 2)

INTRODUCTION: LEARNING SKILLS

(B) Susan Campbell, Ross Hyams and Adrian Evans, *Practical Legal Skills* (1998) Chapter 1.

Vanessa Merton, The Work of a CUNY Law Student: Simulation and the Experiential Learning Process in Lesnick, Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum' (1990) 37 *UCLA Law Review* 1157.

Sally Kift, Lawyering Skills: Finding Their Place in Legal Education (1997) 8 *Legal Education Review* 43, 62-63.

David Boud, *Enhancing Learning Through Self-Assessment* (London: Kogan Page, 1995) 13-15.

Skills Performance Standards, from Don Peters, Mapping, Modelling and Critiquing: Facilitating Learning Negotiation, Mediation, Interviewing and Counselling (1996) 48 *Florida Law Review* 875.

INTERVIEWING

(A) Susan Campbell, Ross Hyams and Adrian Evans, *Practical Legal Skills* (1998) Chapters 2 and 3.

Planning

(C) Jenny Chapman, *Interviewing and Counselling* (Cavendish, London, 1993) 25-30*

Kay Lauchland & Marlene Le Brun, *Legal Interviewing: Theory, Tactics and Techniques* (Butterworths, Sydney, 1996) 70.

The Interview: Structure, Skills, Ethics

(C) Jenny Chapman, *Interviewing and Counselling* (Cavendish, London, 1993) 46-7, 49-57.

Kay Lauchland & Marlene Le Brun, *Legal Interviewing: Theory, Tactics and Techniques* (Butterworths, Sydney, 1996) 48, 50-58, 81-86, 101, 129-132.

Reflecting on the Interview

Kay Lauchland & Marlene Le Brun, *Legal Interviewing: Theory, Tactics and Techniques* (Butterworths, Sydney, 1996) 12-14, 178-180.

NEGOTIATION

(D) Susan Campbell, Ross Hyams and Adrian Evans, *Practical Legal Skills* (OUP, Sydney, 1998) Chapter 5

(E) *Planning*

H Astor & C Chinkin, Dispute Resolution in Australia (Butterworths, Sydney, 1992) 87 ("Preparation for Negotiation").

H Raiffa, The Art and Science of Negotiation (1982) 126-30, in L Riskin & J Westbrook, *Dispute Resolution and Lawyers* (West Publishing Co: St Paul, Minnesota, 1987) 158-9.

Inns of Court School of Law, Advocacy, Negotiation and Conference Skills (Blackstone Press, London, 1994) 147-52, 186-8.

(F) *Approaches to Negotiation:*

Competitive, Cooperative, Positional, Problem-Solving

Mediation and Approaches to Negotiation, from L Boulle, *Mediation: Principles, Process Practice* (Butterworths, Sydney, 1996) 46-53.

C Menkel-Meadow, Toward Another View of Legal Negotiation: The Structure of Problem-Solving (1984) 31 *UCLA Law Review* 754 at 755-61, 795-801 in Riskin & Westbrook, *Dispute Resolution and Lawyers* (1987) 121-9, 173.

L Riskin & J Westbrook, *Dispute Resolution and Lawyers: 1993 Supplement to Hardcover Edition* (West Publishing Co, St Paul, Minnesota, 1993) 13-15.

(G) *Evaluating the Process and the Outcome*

Problems in the Negotiation Process, in N Gold, K Mackie & W Twining, *Learning Lawyers' Skills* (London: Butterworths, 1989) 182.

Common Weaknesses…, in Inns of Court School of Law, *Advocacy, Negotiation and Conference Skills* (London: Blackstone Press, 1994) 147-52, 186-8.

G Williams, *Legal Negotiation and Settlement* (St Paul, Minn: West Publishing, 1983) 9-10.

C Menkel-Meadow, Toward Another View of Legal Negotiation: The Structure of Problem-Solving, in L Riskin & J Westbrook, *Dispute Resolution and Lawyers* (West Publishing Co, St Paul, Minnesota, 1987), 123.

Partial List of Factors…, in P Schrag, Terry White: A Two-Front Negotiation Exercise (1986) 88 *West Virginia Law Review* 729, 759-61.

Appendix 2: Lawyering Interview Peer Feedback Questions

- Did the interviewer open the interview effectively? How was this done?
- Did you feel comfortable/uncomfortable talking about yourself or your situation during the interview? Why? Did the interviewer do anything which made you more or less comfortable?
- Did the interviewer obtain most of the relevant information from you?
- Was there anything you wished to express, but did not? What was that?
- Did the interviewer do anything to inhibit you from expressing yourself as you wished?
- Was the interview different in any way than you expected?
- What was the most effective thing the interviewer did?
- What was the least effective thing the interviewer did?
- Did the interviewer appear to have any particular difficulty with any aspect of the interview? What difficulty, with what aspect of the interview?
- Did the interviewer close the interview effectively? How was this done?
- What words would you use to describe the tone or atmosphere of the interview?

Appendix 3: Lawyering Interview Self-assessment Questions

- What were your main objectives for the interview?
- To what extent were your objectives achieved?
- Describe your interviewing style (eg relaxed? formal?). Why did you choose this approach?
- What questioning techniques did you use? Which were most helpful and when?
- Did anything happen during the interview that you did not expect? What?
- Was the interview easier or harder than you expected? In what way(s)?
- Identify three things you did well in the interview:
- I think that I performed well in the interview because....
- Identify three areas in which you need to improve
- I can improve in these areas if I …

These peer and self-assessment questions are based, in part, on material from M LeBrun and R Johnstone, *The Quiet Revolution* p 190-193; from AG Amsterdam, D Lunde & KM Mack, Lawyering Process course materials (unpublished, 1976); Neumann, A Preliminary Inquiry into the Art of Critique (1989) 40 *Hastings LJ* 725; and D Tribe *Negotiation* (Cavendish, 1993).