

## ASSESSMENT METHODS

### Virtual reality testing: the use of video for evaluation in legal education

K K Kovach

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Traditional law school curriculum and teaching methods have come under fire over the years resulting in, amongst other methods, an increasing emphasis on clinical methodology. However, the literature advocating practical legal education, including the MacCrate Report, stresses methods of teaching rather than methods of testing and evaluation.

With the skills focus in legal education has come a realisation of the need for new methods of evaluation. If evaluation is to help students learn, it must go beyond testing their memorisation of rules and assess their development and application of specific skills. Until assessment methods reach the sophistication of the teaching methods, it will be difficult to determine whether educational goals are being met. The end-of-semester multi-hour exam still reigns, even though it has only a tenuous connection to the classroom experience or to law practice.

The author explores the use of video for testing to make the final exam as near to practice as possible, a kind of virtual reality. He describes two uses for video: to develop a more reflective practitioner through self-observation and the provision of a more realistic final exam problem.

The video as a teaching tool conveys more information, such as non-verbal communication and aspects of the general conduct of tribunals, which might go unnoticed

or unmentioned. Interest, retention and learning are increased with audio visual aids.

In using the video for self reflection and evaluation, the author has three goals: to provide the student with an opportunity for self-evaluation; to give the assessor a means of assessing the student; and to provide a basis for one-on-one feedback. Each student has two opportunities to be video-taped. The first is a practice video for reflection before the final assessment video. Students must complete a written self-assessment which will be taken into account in determining their grade. Private meetings with each student are scheduled where the student's performance and their critique of their performance are assessed. In grading the student's performance, the goal is to determine the student's ability to extract knowledge from the course and apply it.

A lawyer's reaction in many situations must be immediate and the information that the lawyer is responding to is seldom written in paragraphs but presented through interpersonal interaction. With a video these aspects can be recreated and the student's ability assessed. The student views the interview rather than reads the transcript. In using the video as an examination tool to present the situation giving rise to the examination task, it is necessary to ensure that it is valid, reliable and fair: valid in that it measures what it set out to measure; reliable in that the assessment must be uniform and grades should not be affected by chance or an item the exam was not aimed at measuring; and fair in that it includes an assurance that there is equal access to all relevant information.

The exam relies on a videotaped trial or interview. As the tape plays, the video stops at certain points and asks the student a question on the material just seen. Students are given a short time to answer the question and then the tape continues. Like life the video is not replayed. The result from the exam is only part of a student's grade. The answers are graded as any short answer questions would be graded, that is the students are expected to identify the issues and discuss the application of them to the course material.

Clinical and skills based courses are prime candidates for video testing and assessment. For example, the video problem is particularly useful in measuring a student's expertise in making immediate decisions.

There are impediments to innovations such as the use of video. Law professors are rarely eager to implement change and usually happy with the status quo. However, with the shift in emphasis to skills and values in legal education, law schools are being urged to change to meet the demands of creating competent lawyers. The time constraints involved in creating a video problem-based exam do not differ greatly from those involved in producing a normal exam. There are administrative difficulties that do not arise in normal assessment, such as scheduling, using other students in client role plays and combining scores to determine final grades. Bias and subjectivity may arise in the self-assessment and in grading the students' performance due to the co-operation of the 'clients' and other participants. The cost of video testing is not crippling, as most law schools or universities have the necessary equipment, but the program may stretch the audio

visual resources of the law school. Student reaction is on the whole positive.

## CLINICAL LEGAL EDUCATION

### On the future of integration between skills and ethics teaching: clinical legal education in the year 2010

J E Moliterno

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In 1984 Amsterdam predicted what clinical legal education would be like in the 21st century. This author engages in a similar exercise with the advantage of the passage of time, looking at clinical legal education from the vantage point of the year 2010.

By this time experiential learning has become one of the commonly accepted goals of most law schools. However, live client in-house clinics are almost non-existent. Professional ethics and clinical legal education are regularly taught together and reference to one includes the other, reflecting a conclusion of the late 1990s that ethics is better taught as a skill rather than as part of substantive law teaching. These connections have improved the teaching of both professional skills and professional responsibility. Professional responsibility courses, which were not generally well received by students in the 80s and 90s, have now been transformed into an interactive engaging subject of study which has become a highlight on the law school calendar.

The transformation has not been easy. The increased student/staff contact that teaching calls for has matched badly with some teachers'

interpersonal skills. Also there have been problems relating to the additional costs associated with reduced student/faculty ratio. However, redirection of resources, contributions from the organised bar and improved efficiency have overcome the funding crisis. On the job training of the late 1990s became unworkable as the mobility of lawyers increased and it became uneconomic for senior staff to spend time training new lawyers.

In the 1980s and 1990s law schools grappled with the problem of how best to integrate ethics teaching with role-sensitive teaching methodologies, while also accomplishing a more limited integration of ethics teaching with the other areas of substantive law. The result is a long-term experiential program, based in substantive law, combining ethics, skills and substantive law. This format most closely resembles what lawyers do.

Externship are also common. They are used to enhance the simulations which now dominate experiential learning and to provide a realistic forum for critique of the profession. Technological advances, such as email and video-conferencing, have assisted with faculty monitoring. Externships also serve one of the most important goals of clinical legal education by providing a service to the community.

Whilst faculty are still resistant to intrusion into their courses, they now work in teams, having come to the realisation, as did the legal profession in the 80s and 90s, that any one area of the law or legal education is too much for one person to manage. Similarly teachers began to require students to do team projects for grades. Sceptical teachers found that

simulations were not disruptive and that they enhanced their students' learning of substantive law. Students with a practice context for the area of substantive law being taught meant that the teacher could explore the area more deeply and from a wider variety of perspectives than had been possible before.

Live clinics disappeared as grants diminished and established legal offices and private firms began bidding for them. Simulated clinics were found to be easier to control than live client clinics. They enabled easier student supervision and assessment and produced better educational outcomes.

*As the law became more complex... the final remnants of the mid-20th century notion that law schools could somehow teach in three years all the law a lawyer would need to know were reduced to ash. The emphasis of legal education — clinical and role-sensitive education in particular — has finally and fully shifted to teaching fundamental legal principles and philosophies, perspectives on law's place in society and the thought processes and judgments inherent to lawyering. The intent is to graduate lawyers who will be capable and flexible learners and practitioners in a remarkably wide variety of settings.* pp77–78

## CURRICULUM

### Introduction to law for second-year law students?

A Watson

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Students in first year law are given a misleading picture of what law is and how it develops and relates to society. The picture is made too