

THE STUDENT AS APPRENTICE: BRIDGING THE GAP BETWEEN EDUCATION, SKILLS AND PRACTICE

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An endeavour to bridge the acknowledged gap between traditional legal education and legal practice, Mooting, Appellate Advocacy and Legal Practice (MAALP) was an exercise in ‘experiential education’.¹ Designed to develop students’ practical legal skills through a synthesis of academic inquiry and experience, the authors introduced and taught MAALP as a new course in the Faculty of Law at Bond University in 2007. The course aimed to replicate, as far as possible in a controlled learning environment, the conditions and demands of legal practice, focusing on the development of specific legal skills within a wider professional context. Students were expected to engage in processes that simulated what they would be expected to do in practice, and this experiential component was supplemented with theoretical and instruction-based lectures and seminars, individual practice sessions, and reflective learning. Effectively, students were ‘apprenticed’ to legal practice.

The authors argue that a mode of teaching involving exposure to emulated legal practice, combined with repetition, reflection and dedicated instruction, has a valid place in modern legal education. Through the experience of MAALP, the authors seek to demonstrate one way in which legal educators can meet the ‘increasingly urgent need to bridge the gap between analytical and practical knowledge’.² This paper outlines the background to this need, and analyses the course’s teaching aims and methodologies and the degree to which valid pedagogical outcomes were achieved, both from the perspective of the authors and students.

I. PURPOSE AND OBJECTIVES OF MAALP

A. MAALP in the Context of Traditional Teaching and the Skills Revolution

Most student learning in Australian law schools is facilitated through lectures and tutorials, and is assessed through examinations and essay-style assignments. This ‘doctrinal’ approach to education concentrates on imparting information about substantive law through the examination and analysis of legal principles in both common law and statute,³ usually via lectures and sometimes tutorials. The vast majority of content is purely substantive and concerns the examination of cases, principles and statutes and the legal theory and methods used to interpret cases, principles and statutes. Notably, the benchmark standard of Australian legal curricula, the ‘Priestley 11’, refers only to areas of substantive law.⁴

A resultant theme in the analysis of legal education has, for some time, been the criticism that doctrinal legal instruction fails to prepare students for legal practice and the consequent need to incorporate legal skills into the law school curriculum.⁵ Nearly a

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1 Roy Stuckey, ‘Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses’ (2006-7) 13 *Clinical Law Review* 807, 811.

2 William Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond and Lee Shulman, *Educating Lawyers: Preparation for the Profession of Law* (2007) (‘Carnegie Report’) 12.

3 Nickolas James, ‘Power-Knowledge in Australian Legal Education: Corporatism’s Reign’ (2004) 26 *Sydney Law Review* 40; Sullivan et al, above n 2, 47.

4 Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (1999) [2.21]; Steven Friedland, ‘How We Teach: A Survey of Teaching Techniques in American Law Schools’ (1996) 20 *Seattle University Law Review* 1, 28.

5 See eg, Cecil Walsh, ‘The Moot System’ (1899) 15 *Law Quarterly Review* 416; Hugh Bellot, ‘Teaching by Moots’ (1910-11) 36 *Law Magazine and Review: A Quarterly Review of Jurisprudence* 445. See more recently, Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth*

decade ago, the Australian Law Reform Commission argued that legal education must be reoriented ‘around what lawyers need to be able to do’ rather than remaining ‘anchored around outmoded notions of what lawyers need to know’.⁶ The doctrinal approach remains the dominant teaching mode in most law faculties in most law courses.⁷ Although many law schools have now integrated skills components into their traditional substantive law subjects and offer some skills-based electives, change is slow in developing. There remains ‘a powerful disconnection’ between legal curricula and ‘professional skills and approaches’ required by lawyers in practice.⁸

B. Learning Outcomes

In order to demonstrate a possible way in which to bridge this gap between analytical knowledge and practical know-how, MAALP was designed to achieve several tangible learning outcomes.

First, MAALP was designed to introduce students to the *way* in which lawyers encounter and use legal knowledge. As Paul Ramsden has noted, the teaching of any discipline ‘always involves attempts to alter students’ understanding so that they begin to conceptualise phenomena and ideas *in the way* scientists, mathematicians, historians, physicians [or lawyers] or other experts conceptualise them’.⁹ The authors are of the view that the delivery to students of decontextualised legal doctrine in traditional lecture format leads to a less developed understanding by students of how that doctrine relates to the actual practices and purposes of the profession. This is not to say that decontextualised instruction is not useful or has no place. However, where it is possible to contextualise such instruction with experience of the skills required to *use* legal doctrine, students’ understanding of that doctrine itself will be better developed.

Second, the course was designed to allow students to experience firsthand how the practice of law can give rise to physical, emotional and ethical issues. Paul Mahrag’s conception of learning is that it should properly be considered as a ‘transaction’, moving beyond the point where ‘mentality’ and ‘reality’ are separated.¹⁰ Thus, learning should be ‘the acquisition, coordination and practice of habits, impulses and dispositions towards action in the world’;¹¹ in the case of MAALP, the world of lawyering. MAALP aimed to move beyond the ‘mentality’ of legal doctrine by placing students in a physical, emotional and ethical ‘reality’ beyond that of the traditional classroom.

Third, MAALP aimed to develop student competence in a number of practical legal skills. By providing students with the opportunity to experiment with and rehearse legal skills and deal with information in the context of legal practice, MAALP aimed to facilitate the transmission of how to go about situating, processing and synthesising legal information. In legal practice, the ‘intricate relationship between theory and practice’ means that a legal expert with the capacity to contextualise theory ‘is more likely to perceive the features of the environment that are relevant to the profession’s core practices and purposes’.¹² This mirrors the goals of the integrated skills components in substantive law courses, including those at Bond University. However MAALP represented a more comprehensive experience of mock legal practice, which aimed to provide greater levels of

Tertiary Education Commission (1987) (*The Pearce Report*) ch 1-2. See comments and references provided by Marilyn Le Brun and Richard Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (1994), 12; Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (2007) 11.

6 Australian Law Reform Commission, above n 4, [2.21].

7 See Le Brun and Johnstone, above n 5; Pearce, Campbell and Harding, above n 5, 155; Celia Hammond, ‘Teaching Practical Legal Problem Solving Skills: Preparing Law Students for the Realities of Legal Life’ (1999) 10 *Legal Education Review* 191, 192; Sullivan et al, above n 2, 6-7, 11-12, 14, 23.

8 Rob Guthrie and Joseph Fernandez, ‘Law Schools in the 21st Century: Not Just Training Legal Practitioners’ (2004) 29 *Alternative Law Journal* 276, 270.

9 Paul Ramsden, *Learning to Teach in Higher Education* (2nd ed, 2005), 7 (emphasis added).

10 Paul Mahrag, *Transforming Legal Education: Learning and Teaching the Law in the Early 21st Century* (2007) 11.

11 *Ibid.*

12 Sullivan et al, above n 2, 10.

competence than achievable in the limited time devoted to skills in substantive law subjects.

Concurrently, the course aimed to furnish students with knowledge and understanding of a number of areas of ‘substantive’ law, through the medium of self-directed, contextual learning. MAALP sought to inculcate students with the habits, impulses and dispositions necessary to work *with* the substance of law in practice, and to begin to develop in them the impulses and patterns of action and thought that will be necessary for them to become, eventually, experts in the law.

II. COURSE CONSTRUCTION

Enrolment in MAALP was restricted to 24 undergraduate (LLB) and postgraduate (JD) students. There were no specific course prerequisites and no experience of particular skills or legal practice was assumed. However, it was considered that a basic knowledge of core legal concepts would be of significant benefit to students’ capacity to participate in the course and, as such, the course was limited — subject to waiver on application — to students who had completed at least two semesters of their law degree (up to eight subjects). Final marks evidenced that the few students who undertook the course early in their degrees were not empirically at a disadvantage. While some suggested that they may have gained more had they had a ‘knowledge-bank’ of more substantive law prior to taking the course, these students also predicted that MAALP would allow them to better contextualise the law in their future studies.¹³

A. Teaching Modes

The *Carnegie Report, Educating Lawyers: Preparation for the Profession of Law*, notes that ‘teaching to develop practical skill, particularly when it involves working with clients, frequently requires settings and pedagogies different from those used in the teaching of legal analysis.’¹⁴ To facilitate the learning outcomes outlined in this article (see I:B), MAALP employed two parallel teaching modes. First, students were placed in, and expected to react in a ‘real life’ manner to, situations that mimicked practice in a private law firm. Instructors took on the roles of solicitor-partner, tribunal member, arbitrator, court officer, judge or instructing client as appropriate, and students were required to remain in character as employed solicitors (we refer to this type of instruction as ‘in-character’). Second, in-character instruction was supplemented with comprehensive instruction on approaches to practice and skills methodologies and extensive and often individual feedback (we refer to this type of instruction as ‘out-of-character’).

B. Course Structure

Students were required to attend three hours per week of compulsory classes (a one-hour lecture and two-hour tutorial) as well as participate in additional skills exercises on a number of occasions throughout the semester.

Lectures involved one of three categories of instruction: first, explanation of methodologies for approaching, and at times demonstration of, various practical skills; second, instruction on theoretical aspects of legal practice; and third, the provision of comprehensive feedback on students’ work, skills performance, general behaviour and interaction. Lecture topics included, for example, the legal and practical process of approaching an appeal, filing documents, appropriate communication with clients and colleagues, methodologies for drafting written argument, practical legal ethics, and receiving, recording and following clients’ instructions in the context of legal practice. Due to the small class size, lectures could also be interactive in nature, especially where

¹³ All student comments in this article are taken from interviews with students, notes of which are on file with the authors.

¹⁴ Sullivan et al, above n 2, 14.

particular legal skills were being described, demonstrated or analysed. For example, one lecture involved an in-class deconstruction of an advocacy simulation video and pre-prepared written brief. Students reported that interactivity in lectures not only allowed them to actively explore their own ideas, preconceptions and experiences, but that this mode of learning often kept their attention more than traditional one-way lecturing.

Tutorials, each of six or fewer students, were flexible in their content and mode of delivery as required by the learning focus. At the start of the semester, students applied (with a written letter accompanied by a properly prepared CV), interviewed for, and accepted positions in their 'law firm' tutorial group. When students were required to attend tutorials in character, they played the role of solicitors employed by their particular tutorial firm (complete with firm history, intranet, client lists, stationery and precedents). In-character tutorials included tasks such as conferences with firm partners and analysis of client files. Out-of-character tutorials involved instruction on similar topics to those covered in lectures, with greater opportunity for interactivity, including participation in practical exercises calculated to improve performance in specific skills, and discussion and feedback on progress and development. Practical exercises were heavily weighted towards improving confidence and competence in oral communication.

After applying and interviewing for a solicitor's position, students signed a mock contract of employment with their tutorial firm, with an allocated 'starting salary' linked to the quality of their application and interview performance. Mid-semester 'performance reviews' gave instructors a formal medium through which to discuss students' progress and make suggestions for improvement across all areas of the course (including teamwork and interaction within their tutorial). Students' 'salary' was also reviewed on the basis of their performance in the course to date. Further, students were given some insight into, and appreciation of, the environment that they might expect in a graduate position, as lectures canvassed topics such as delegation, the politics of firm practice, and the management of ethical and firm obligations.

Out-of-hours time was devoted to in-character activities, including:

- an employment interview;
- client interviews and interaction for the purpose of receiving or clarifying instructions (via telephone);
- a conciliation before the Anti-Discrimination Tribunal;
- a directions hearing (Australian Industrial Relations Commission);
- hearings (Administrative Appeals Tribunal, Federal Court, Full Federal Court, High Court); and
- a guest lecture and mediation workshop with a visiting expert.

Students were responsible for timetabling their appearances for activities scheduled out-of-hours and often were required to liaise with a 'court registry' in order to do so.

The instructors made themselves available, both in person and via email, for students to contact and seek clarification and feedback (both in character where, in practice, junior solicitors might consult a partner, and out of character for other matters).

Students were assessed across all skills in the course, including oral and written components, with tasks towards the end of the semester weighted more heavily than those at the beginning. The core legal skills assessed comprised oral and written advocacy, oral and written communication (in the context of both legal advice and client communication and administration), general administrative skills (including file-keeping), teamwork, and professional skills and ethics. All marks were awarded to students by the instructors, based on students' performance assessed against a defined assessment criteria, which were delineated to students. Both peer- and self-assessment were used frequently and informally, but never counted towards marks or took the form of marks or grades. Most students felt that critiquing themselves and each other, and receiving verbal feedback from the instructors, was more useful to their overall development than being awarded a final mark for each item of assessment.

C. Material

In addition to the usual teaching material — lectures, handouts, class notes, etc — MAALP also featured the use of matter files distributed to students. These files either consisted of real material collected by the instructors or colleagues during time in legal practice or were created to appear as realistic as possible. Copies of original documentation (redacted where necessary) including correspondence, court documents and transcripts of interviews were provided. Students were required to ‘sift’ through this information to determine the issues of law and fact relevant to each particular matter and, afterwards, to clarify any gaps in their case understanding with clients.

Extensive instruction was not given on substantive legal doctrine. However, a high level of technical legal accuracy was expected and formed part of the assessment criteria for both written and oral work. Students were expected to engage in self-directed learning (with guidance provided by the instructors in weekly scheduled class time, supplemented by ad-hoc meetings with students as required) in order to acquaint themselves with the specific areas of law required for each matter. These areas included aspects of taxation, anti-discrimination, tort, criminal and industrial relations law.

D. Administrative Aspects

Each ‘firm’ had a intranet site which made available instructional materials, as well as providing additional communication tools for students and instructors. Most of the correspondence required (for example, letters to clients), was sent to the instructors via email, and other written material (for example, files and court documents) was required to be provided in hard copy. Formal court correspondence was lodged at the university law library enquiries desk, which acted as the relevant court ‘registry,’ receiving and stamping documents and receiving the appropriate filing fees. Service of documents was effected by a document exchange system also hosted at the law library desk.

III. ANALYSIS OF METHODOLOGY AND OUTCOMES

Employing the approaches outlined above, the course sought to provide practical experience in four key areas of the practice of lawyering: practice and professional skills, advocacy and court procedure, writing skills, and ethics and professional conduct.

Although practical skills were undoubtedly the focus of the course, MAALP was not simply an intensive skills subject. Individual skills components were integrated with each other as a continuous process of simulated practice, where considerations relating to the firm, court, colleagues, matter, client, procedure and substantive law had to be actively engaged with and managed, simultaneously and over time. The MAALP experience also differed from ‘clinic’ subjects which typically integrate work in a public-interest law clinic with self-reflective learning.¹⁵ In MAALP, clients and problems were fictitious, offering more pedagogical malleability: learning tasks could cover a broad range of issues and jurisdictions, and were not dependent on the regularity or compatibility of a particular clinic’s client base. Moreover, students had more flexibility to experiment with different skills techniques without the danger of adverse impact on a real client.

The combination of in-character experiential education through simulation, and instruction on approaches to practice, skills methodologies and personal feedback had visible (and sometimes surprising) educational outcomes and resonance with students. While the workload in MAALP was heavy in comparison to other law subjects (students estimated around 1½ to 2 times that of a normal course), (anonymous) student course evaluations bear out that the coursework was highly engaging for students. Throughout the

¹⁵ Popular in the US and increasingly in Australia — see Clinical Legal Education Association, *Handbook for New Clinical Teachers* (2007) <<http://cleaweb.org/>> at 4 December 2008; Debra Harris and Susan Susman, ‘Toward a More Perfect Union: Using Lawyering Pedagogy to Enhance Legal Writing Courses’ (1999) 49 *Journal of Legal Education* 167.

course, students were demonstrably keen to participate actively in the practical activities and maintain their in-character roles. Often students went the ‘extra mile’ in their role-plays, even where the additional activities offered no prospect of extra course credit. Several students commented that they considered the experience ‘fun’ and something they looked forward to engaging in on a day-to-day basis.

A. *Practice and Professional Skills*

One of the major purposes of MAALP was to foster in students the cultivation of the ‘practical wisdom’ of what it is to engage in legal practice, and to allow them to contextualise the substantive law that they received, both in this course and in others in the curriculum, in relation to ‘real-life’ clients’ problems.

MAALP provided a managed learning environment in which students were presented with ‘decontextualised’ information that they were required to contextualise as a process of learning to acquire a sort of practical wisdom. Usually, in conventional legal instruction, material is provided to students with pre-identified issues and one-dimensional solutions that are matters of legal theory only. By decontextualising material, and forcing students to determine what law should be applied, how it should be applied, and the different practice tools that would have to be deployed to solve a problem, students were encouraged to engage on a ‘deep’ (as opposed to ‘surface’) level with the learning material and assigned tasks.¹⁶ Deep learning requires moving beyond a rote-learned understanding of concepts or skills, to a critical examination of a concept or skill’s components, an ability to relate those components to other contexts, and an understanding of their place in the wider context of that discipline.

Initially, little emphasis was placed by students on client instructions as a guide for their actions. Instead of seeking carefully defined and clearly articulated instructions from clients, students decided themselves what was in their clients’ interests and acted accordingly, with often only a cursory reference to their (often assumed) clients’ instructions or objectives.

This is not surprising given most student learning consists of theoretical problem-solving in relation to legal theory extracted from the judgments of appellate courts. The student approach to problem-solving in the traditional law school environment consists of the requirement to find the ‘right’ answer to a legal question, abstracted from the interests of a client who has presented with a particular problem. This approach has led to problems in legal practice, as a recent article noted:

Unsurprisingly, some graduates and new lawyers approach matters in a much more academic, rather than a practical, manner ... This academic approach can create difficulties for new lawyers in terms of other essential legal skills such as time management and responsiveness, managing client expectations, commerciality and advising on the most appropriate strategy or tactics.¹⁷

The article quotes a senior practitioner who has ‘seen graduates who have been unwilling to budge or compromise during the course of a negotiation, simply because they feel the law is on their side’.¹⁸ The authors noted very similar attitudes from students in the early weeks of the course. However, the files submitted by the students at the end of the course, and the attitudes and approaches of students, revealed that their awareness of the lawyer-client relationship, and their willingness to engage (albeit in a simulated manner) with that relationship, had greatly increased.

¹⁶ Nickolas James, ‘The Good Law Teacher: The Propagation of Pedagogicalism in Australian Legal Education’ (2004) 27 *UNSW Law Journal* 147, 151, citing Ference Marton and Roger Saljo, ‘On Qualitative Differences in Learning-2: Outcomes as a Function of the Learner’s Conception of the Risk’ (1976) 46 *British Journal of Educational Psychology* 115.

¹⁷ Kate Gibbs, *Practical Training a Practical Reality?* Lawyers Weekly (25 July 2008), 31 <http://www.lawyersweekly.com.au/articles/Practical-training-a-practical-reality_z200245.htm> at 4 December 2008.

¹⁸ *Ibid.*

It has been noted that, '[u]ntil one practices the taking of instructions from a difficult client one has only a dry and sterile understanding of a lawyer's potentially conflicting ethical obligations to that client, to their employers and to the court'.¹⁹

Throughout the course, the importance of lawyer-client duty was emphasised — both in lectures as a matter of theory and through the actions that were required to be undertaken by students in their practice. Matter instructions were always styled as having originated from a client, and students made direct contact with clients in person, via email, letter and telephone in order to ascertain their objectives and instructions and keep them informed of a given matter's progress.

Students attended a conciliation on behalf of their client, and were instructed that prior to accepting any settlement proposal the client would need to be consulted via telephone. After some skilful negotiating, the students as 'reasonable' solicitors had arrived at a 'reasonable' solution, according to the legal strengths and weaknesses of each side. Upon contacting their clients, the students experienced the oft-felt tension between rational application of the law and clients' conception of their 'rights' and their desired outcomes. This led to a discussion of how the client could have been better prepared for possible outcomes for conciliation, and how to put a case to a client that a certain outcome may be in their best interests without 'railroading' the client or telling them what to do.

The instructors observed that students' ability to properly situate relevant legal information in its proper practice context developed over the semester. For instance, students' ability to recognise how a relevant fact could be utilised (according to the rules of procedure and evidence as well as in support of their case) in oral argument improved markedly in most students by the final oral hearings.

Students' ability to synthesise relevant factual information from irrelevant information was observed to significantly develop throughout the course. The time taken to filter information or to ascertain what information needed to be extracted from instructing clients, partners or the files themselves as necessary decreased over the semester. As expected, with continued exposure, students became more comfortable interacting in a practice-type environment.

A survey conducted by the University of Sydney ascertained that for employers, the most desirable skills for graduate employees were not specifically legal, but generic — for example, work ethic, proficiency in oral and written communication, interpersonal, document management and time management skills and computer skills.²⁰ As part of the simulated practice environment, students were required to submit timesheets to a secretary on a weekly basis, and keep orderly and comprehensive files, which were assessed for content and form. Time limitations, group work and time accountability were strictly emphasised.²¹ Further, MAALP sought to foster general competencies in both independent and team work, and specific interpersonal skills associated with interacting with colleagues in the context of the legal practice. It was necessary for students to spend a substantial amount of time outside of class preparing for practical exercises, often in teams of two. The instructors deliberately paired students with different skills, personalities or backgrounds for different appearances. Emphasis was placed on the need for professional courtesy when dealing with professional colleagues. In one instance, students' professionalism was tested when opposing counsel became over-enthusiastic in the filing and service of certain procedural motions that went beyond the prescribed scope (but not the spirit) of the course.

Several of the students had had prior experience with legal practice, through clerking in law firms. Those students who had undertaken clerkships with legal firms confirmed that the experience of MAALP was similar to their clerkship experiences. However, several

19 Paul O'Shea, 'The Complete Law School: Avoiding the Production of "Half-lawyers"' (2004) 29 *Alternative Law Journal* 272, 275.

20 Elisabeth Peden and Joellen Riley, 'Law Graduates' Skills — A Pilot Study into Employers' Perspectives (2005) 15 *Legal Education Review* 87; see also Sumitra Vignaendra, *Australian Law Graduates Career Destinations* (1998) 39.

21 Celia Hammond, above n 7, 193.

others took the course expressly to find out whether or not they wanted to pursue a career in legal practice. One student reported that she never thought she would apply for a clerkship until she did the course. Another reported that the knowledge of how the law was practiced made her more confident in seeking work in a law firm.

B. Advocacy and Court Process

The development of effective court and tribunal advocacy was one of the key focus areas of the course, and the most heavily weighted in terms of assessment. Often, mooting classes and competitions are criticised for placing ‘too much emphasis on the “moot” part of moot court and not nearly enough on the “court”.’²² With this in mind, advocacy practice in the course was, as far as possible, contextualised within the twin processes of matter management and court procedure. Students were required to manage all aspects of taking a matter to court: the court process (for example, filing documents in the prescribed manner within time limits, managing court timetables) managing clients expectations (for example, writing to their client to inform them of the outcome of a decision and to seek their instructions on what further steps to take); drafting written arguments and submitting them to court; and interpreting and using rules of court. Students were provided with a ‘MAALP Court Act,’ with accompanying ‘Rules’ and ‘Practice Directions’ (issued at regular intervals). The Act and Rules were adaptations of existing Court and Tribunal Acts and Rules; their main purpose being to educate students to anticipate this aspect of case management, and of the importance of court procedures as a process that shapes the form of a matter as it progresses. Specific exercises were also directed at familiarising students with the importance of document exchange with opponents, time limits and procedural court hearings. In a number of cases, students were given the opportunity not to be *instructed* on, but to discuss and brainstorm, legal issues and tactics prior to taking part in a practical exercise. Several students, particularly those earlier on in their degrees, found this process valuable, as in most skills classes, students are not given any guidance on the material they are presenting.

Advocacy techniques were taught through a process of performance, critique, directed elemental skills training and repetition. Appearances in some form were made nearly every week, as it was anticipated that students would become more comfortable, confident and competent the more frequently they appeared. In order to manage workload, appearances were often made in the same matter, either through repeated practice of one matter prior to formal hearing, or by taking the same matter through various levels of appeal. In these instances, appeals were made on the basis of judgments handed down in response to students’ court hearings. A variety of targeted exercises were used to improve students’ oral technique, question-answering ability, demeanour, and organisation and delivery of legal argument. For example, a common flaw of budding advocates is an over-reliance on poorly organised notes. After attempting various ways of organising their own submissions in several hearings, students were provided with an example of how a well-organised set of written advocate’s notes might look. They also watched a video of an advocate mooting with that set of notes, observing the advocate’s technique in combination with how the notes were used effectively. Students were encouraged to trial new techniques and analyse their own performances with a view to adjusting their technique.

It has been argued that in many university skills classes, students will only conduct one skills simulation before moving on, and in this way ‘they do not develop proficiency.’²³ Without exception, as a result of repeated practice, each MAALP student’s advocacy style and technique improved over the course of the semester. For some, the improvements were only slight (these tended to be students with substantial prior mooting experience). However, for most the difference between their first and their final hearing was substantial. As expected, certain students responded better to different exercises, depending upon what

²² Alex Kozinski, ‘In Praise of Moot Court — Not!’ (1997) 97 *Columbia Law Review* 178, 178.

²³ Roy Stuckey, above n 1, 826.

resonated with them personally and what areas of their advocacy needed improvement. The most useful aspect in a number of cases was encouragement to trial new techniques, especially in relation to voice projection and the utilisation of notes. Equally importantly, students engaged actively with the court process aspects of the advocacy training, and although students acknowledged that preparing court documentation according to the rules, meeting deadlines and actually dealing with their opponents' correspondence was time consuming and, at times, difficult, most felt that the experience had given them an appreciation of the 'real life' process beyond usual university advocacy training.

C. Writing

The effective communication of legal knowledge is an essential skill for practice. That communication varies greatly depending upon a particular communication's audience. In MAALP, students were required to draft written correspondence to clients and to submit written legal argument to court.

It is said that an effective law teacher will 'make the material of the subject matter genuinely interesting'.²⁴ While mooting as a performance-based skill is found by many students to be 'fun',²⁵ writing is generally thought less so. However, by integrating the writing as a part of each court matter that students were required to participate in, the interest of students was held, with students often drafting extra correspondence to clients or motions to court that were not mandatory for assessment.

Lectures and tutorial workshops were given on technical rules and methodologies for approaching legal argument in a written context. In one lecture, students had the opportunity to deconstruct two written briefs — one 'good' and the other 'better' — side by side, discovering for themselves what made the 'better' brief superior, and establishing their own frameworks and rules by which to improve their drafting.

In most written work forming part of the law school curriculum, assignments (including skills-style assignments such as letters of advice) are rarely submitted more than once. Notwithstanding the fact that markers often spend considerable time commenting upon students' work, the comments are somewhat of a dead-end process. Regardless of how diligent students are in reading such comments, there is not usually the impetus or to redraft and submit an improved item of work. The traditional system has valid administrative and assessment-based justifications. However, in MAALP, certain key written work was put through several cycles of marking and redrafting. Letters were draft marked in character as by a firm partner; written submissions were draft-marked out of character. This served the dual purposes of emulating the process of preparation of written work in legal practice and providing stepping-stone feedback that genuinely formed part of the learning process.

Students universally reported that the feedback they received was valuable to the development of legal skills and legal writing, and many of them commented that *more* extensive feedback could be given (even though the feedback given in this course was an almost constant process). When asked how, if at all, they felt their professional skills had developed, most students responded that they felt far more confident in their abilities as a result of repetition in practice.

D. Ethics and Professional Conduct

The Australian Law Reform Commission has recognised that professional skills training should be 'calculated to inculcate a sense of ethical propriety, and professional and social responsibility'.²⁶ The New South Wales Law Reform Commission has also recognised that developing a 'professional sensibility' must be undertaken using a problem-solving

24 Nickolas James, above n 16, 150.

25 See Alisdair Gillespie, 'Mooting for Learning' 5 *Journal of Commonwealth Legal Education* 19.

26 Australian Law Reform Commission, above n 4, [2.85]. See Sharon Christensen and Sally Kift, 'Graduate Attributes and Legal Skills: Integration or Disintegration?' (2000) 11 *Legal Education Review* 207, 209.

approach, and must be removed from the ‘large lecture’ in order to be effective.²⁷ Although by no means a comprehensive demonstration of all aspects of practical legal ethics, the course provided considerable instruction on ethical issues in legal practice and presented students with in-character situations requiring them to make ethical judgments. In MAALP, the various manifestations of lawyers’ duties to client, court and fellow practitioners were frequently interspersed throughout discussion of other topics in lectures and tutorials. Along with a consistent expectation of professionalism, emphasis on client instructions and observance of court procedure, several practical (and unannounced) ‘ethical dilemmas’ were set up within matters to allow students to experience firsthand the manifestation of ethics in practice.

The ethics problems that were set for the students were ‘unstructured’ — that is, they were not given in a context of an identified set of issues and problems. An important aspect of education in general is the development of students’ ability to think and act in uncertain situations.²⁸ In one instance, students were instructed to appear at a directions hearing, against a pre-existing client of the firm (as detailed on the firm intranet). Two students identified the conflict of interest and the remainder were duly remonstrated after they appeared in court. In another instance, the registry ‘accidentally’ provided confidential and privileged documentation to the wrong side. In this situation, the ethical course of action was unclear, which stimulated class discussion about the resolution of ethical dilemmas in practice. It was intended that students gain a valid appreciation for the disparity between the relative ease with which ethical dilemmas can be spotted in a purely academic context, and the relative ease with which they can be overlooked in practice. However, it is difficult to quantify whether the course achieved its objectives in relation to ethical and professional conduct, beyond exposing students to, and providing them with the opportunity to consider, ethical and professional issues in context.

IV. CONCLUSION

Several of the students who took MAALP had previously done legal work experience or clerkships with law firms. For others, MAALP was their first ‘practical’ experience of what it was like to work in a law firm. Of these, several have now participated in work experience or clerkships and reported that their MAALP experience made them more confident in working through their clerkships, as they had an understanding of the processes involved in the work they were doing and a similar understanding of what was expected of them to competently undertake their work. If for no other reason, this is an indication to the authors that MAALP fulfilled its purpose of ‘preparing students for legal practice.’

Students reported that MAALP prepared them well for the practical components of other law courses, but that MAALP was of more limited utility in translating to other (more traditionally taught) law subjects. A number of students commented that they were now aware of the disjunct between what they were taught in law school and how legal issues would be dealt with in the ‘real world.’ There seemed to be a general perception from students that the problems and issues posed to them in MAALP were more nuanced than the material presented to students in traditional substantive law courses, and that this additional complexity derived from the ‘real’ context in which the law was encountered in mock practice.

The MAALP experience demonstrates the value of orienting students as apprentices of legal practice. The environment created by situating learning in a largely practical context enhanced students’ capacity and willingness to learn theoretical precepts and processes essential to thinking and acting like a lawyer. While most professional learning occurs ‘on

²⁷ New South Wales Law Reform Commission, *Complaints Against Lawyers*, (Discussion Paper No 26 1992) [5.26 - 5.31], recommendation 63. See also Sullivan et al, above n 2, 154-160.

²⁸ Roy Stuckey, above n 1, 809.

the job',²⁹ the legal classroom can be a valid venue for providing the foundation for thinking like a lawyer — and developing processes, methodologies and tools that must be at students' disposal to begin their careers as lawyers.

It has been recognised that effective practical legal training is far more resource intensive than other modes of law school education.³⁰ MAALP was no exception, and this may prevent similar courses from being implemented as anything but limited-numbers electives. The MAALP classroom, involving the careful management and guidance of learning from both in-character and out-of-character aspects, practical and theoretical discourse, provided a unique pedagogical setting in which to teach practical skills, – even though it may be difficult to implement as a stand-alone course. To provide skills training in speaking, negotiating and argument is useful. However, in order to make those skills relevant to a dynamic legal profession, they must be contextualised so that students appreciate *why* they are doing what they are doing, and *how* what they are doing would relate to the wider context of their practice of the law.

²⁹ Andrew Goldsmith, 'Heroes or Technicians? The Moral Capacities of Tomorrow's Lawyers' (1996) 14 *Journal of Professional Legal Education* 1, 2.

³⁰ Paul O'Shea, above n 19, 275.

