Most, if not all, of the new universities have mission statements that are culturally, ethnically, socially and educationally inclusive, which are supported by law schools in the spirit of encouraging wider access to legal education and to the legal profession. The student cohort will be ethnically diverse and, although multiculturalism is a profoundly rich and positive context for legal education, both in terms of the curriculum and the student experience, it brings challenges around cross-cultural teaching and learning issues such as the curriculum, learning styles, the use of language, and to the dynamics of personal and tutorial relationships.

Many new law schools have sought to offer teaching and learning structures that support systems that are considered to be both flexible and appropriate. However, such developments have also to contend with the requirements of the Bar and the Law Society that the academic stage of legal education is completed within a restricted time frame.

Despite these initiatives, attendance at classes is often poor, failure rates are too high and retention is problematic. It is suggested that these three criteria are indicative of what might be termed 'engagement' or more accurately in the circumstances described, 'non-engagement'. The fact of non-engagement may be thought to be surprising given the personal financial investment now necessary for higher education.

Research into the likely causes of non-completion in higher education suggests multiple causes, including: poor quality of the student experience; inability to cope with the demands of the higher education program; unhappiness with the social environment; wrong choice of program; matters related to financial need; and dissatisfaction with aspects of institutional provision. The Paving the Way project suggests a range of central issues supporting the retention and progression of mature students: informative induction programs, early availability of timetabling and course choice information, continuity of teaching staff and better child care facilities. Despite these and other initiatives, and other good practice identified, the experience of many law teachers in the new universities is of first year students who are either not engaged or not fully engaged with the course they have joined. Given this experience, there is a need to establish whether there are other explanations that will help us to tackle the indicators of negative engagement — poor attendance, failure and retention.

It is suggested that there may be two important 'cultural clashes' in operation, with both having a negative impact on retention. The first clash is between the requirements and structures of the law school and the everyday life experience of our students. The second is between staff and student perceptions of higher education.

Focusing on the structures and quality of teaching and learning and on academic and pastoral support is central to the retention and dropout equation. We can improve the engagement of full-time law students by returning to some of the old styles and methods of teaching and tutoring, in particular the emphasis on weekly written assignments and regular tutorials, and by adopting new technology for those aspects of teaching and learning that are most suited to it. Such a focus may offer some ways forward in confronting the problems of attendance, failure and retention — of non-engagement.

In seeking engagement with out students it is necessary to take account of the 'outsideness' of many of them and understand how issues around class, race, gender and sexuality may make engagement with the dominant structures and deliveries of legal education so difficult for many of those entering the new law schools. The author provides 12 proposals as to how these problems can be addressed.

The variety of these propositions provides a flexibility of teaching and learning resources that should be able to take account of the diversity of the student cohort. These proposals are suggested as a strategy designed to tackle non-completion and improve retention by increasing engagement between our students and the courses we teach, between ourselves and our students and between students themselves.

TEACHING METHODS & MEDIA

Medical education again provides a model for law schools: the standardised patient becomes the standardised client

L Grosberg

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A teaching technique used in medical schools has proved to be quite valuable in a law school setting as well. Playing the part of a *standardised patient* (SP) an actor or other layperson is interviewed and examined by a medical student. Afterwards the SP provides written feedback to the student, using an evaluation checklist prepared by the medical faculty. The form assesses the student's clinical performance. This teaching tool has been a part of medical education, especially in the third and fourth years, for more than twenty years.

Notwithstanding its extensive use in the medical world, the SP concept has not been copied in law schools. The striking similarities between certain aspects of clinical education in medical and law schools suggests that we could learn something from our medical colleagues. In both professional schools a primary pedagogical objective is to teach students how to apply their medical

or legal knowledge in context, with the specific situation of each patient or client in mind.

In the context of shrinking law school resources, expansion of intensive one-on-one clinical instruction faces considerable resistance and competition. We have to ask whether there are alternative ways to teach and evaluate clinical lawyering skills that are effective but less expensive. The *standardised client* (SC) seems to be one answer. At New York Law School the SC has become an integral part of the first-year curriculum and a successful complement to live-client clinics and many other experiential teaching methods.

There are several key features in the design and use of the SP exercise. First, the case history of the patient is carefully designed by the medical faculty and then pretested. Second, a similar group of medical faculty, typically the committee, drafts and refines an evaluation checklist that addresses the components of clinical skills that the group deems necessary to a competently performed interview with the patient. Depending on the nature of the interview and the pedagogical objectives, there may also be a question (diagnosis and prescribed treatment, for example) and a self-critique of interpersonal skills used in the session.

What must we do if we are to contemplate using the legal analogue, the standardised client? Looking at the vast empirical work our medical colleagues have already completed is invaluable. Over the last twenty years, they have completed an extraordinary amount of empirical research on SPs. In terms of substantiating the value of the SP for learning purposes, the data are positive and reassuring. On the issue of reliability — in very simple terms, the consistency and stability of the measurements over repeated exercises — the data on SPs also are reasonably positive. The most fundamental question is whether the SP validly assesses the student's clinical skills through individual subjective evaluations by the faculty as to the clinical competence of each student. The conclusion is that the correlations between the SP checklists and the teachers' ratings were not as close as had been expected.

The lesson for legal education seems clear. If we want to emulate our medical colleagues, we must take much more seriously the need to verify instincts regarding various modes of evaluating lawyering performance.

In a class on negotiating and counselling an exercise was modified to include an SC who would be counselled by the students. The counselling exercise was the first of two graded simulations in which the student participated; the second was a negotiation the student conducted on behalf of the client previously counselled. In preparing the SC part of the exercise, an evaluation checklist was drafted for the SCs to complete after the counselling session. As part of the pilot study actors were then hired to play the client and these were trained by teachers to play the roles and, more importantly, to evaluate the students by completing the checklist.

Each student was videotaped while counselling the actor-client, so the teachers could view the tape, grade the performance in their customary manner, and then complete the checklist. This approximated the way in which each actor completed an identical checklist just after the counselling session. The checklists completed by the actors were then compared with those completed by the teachers for the same students. The degree to which the evaluations of the actors and the teachers were correlated was examined. The results, while limited, were encouraging. They suggested that on key aspects of the evaluations, there was some consistency between the assessments of the actors and those of the teachers.

An SC exercise was designed in which each student would interview a witness in the case in which they were immersed for the entire semester. The students were working their way through the litigation file in a breach-of-contract in which they were representing the party opposing a summary judgment option. Among other things in the course, the students observed videotapes of the initial interview of their client and a deposition of a witness in the court. Fourteen actors were hired to play the role of the two witnesses. Half the class interviewed one witness, and half the other. Working with the four teachers of the course, an evaluation checklist was prepared which — like the SC exercise itself — was much simpler than the one used for the counselling exercise. It had three categories: information elicited, communication skills, and additional comments.

While the experience was still fresh in their minds, the students were asked to compare how they saw their performance with how their interviewee saw it. Finally, we distributed a form to the students asking them to assess the exercise anonymously. The overall purpose of the assessment form was to gauge whether the students accepted the legitimacy of the exercise. The results were generally positive in every respect.

The goal of the third stage was to assess the cost and logistical and administrative hurdles if even larger numbers of students were involved. The potential value of using SCs, essentially, is an economic one: can a valid teaching objective be accomplished that would otherwise be unattainable because of prohibitive costs?

The results of the pilot seem to support the educational value of using an SC for the purpose of providing meaningful feedback to law students and perhaps even for the purpose of providing a pass/fail grade for a SC performance that is a small part of a

course grade. The SC exercise enables the student to apply the law in context.

How to engage students meaningfully in a large-class discussion of the law is a continuing challenge for most teachers. After conducting the SC interviews, the students struggled much more intensely with the pluses and minuses of the witness' potential value to our client's case. The collective discussion was much richer than it had been when they had not been engaged so directly and intimately with the witness.

The logic of including the SC as part of the process of being admitted to practise law seems theoretically unassailable. It is a way of ensuring competence in interviewing and counselling, two skills critical to competent lawyering.

Let's space out: rethinking the design of law book texts
K Kerper
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Lawyers pride themselves on clarity of expression and precision in the use of language. But lawyers and law teachers pay scant attention to the readability of legal texts. Law school casebooks, hornbooks, and many legal documents fail to take advantage of proven principles for improving the clarity and readability of text. Many of these principles not only are well understood, but may be implemented easily and cost-effectively using contemporary word-processing technology.

Law texts are dense and unstructured, with little use of white space, headings, bullets, or other typographic highlighting. The result is undifferentiated text that is difficult to read and understand — even for experts.

The lack of structure in legal texts is not merely an academic problem; it is a professional problem. The fact that even experienced lawyers have trouble reading cases is signalled by numerous professional devices — or crutches — designed to compensate for lack of textual structure. Most notable of these is the famous West keynote system, which uses both case synopses and structured headnotes to precede appellate opinions, and numerically keys portions of the opinion to match the headnotes. A lawyer using Westlaw benefits from coloured highlighting of passages that are most responsive to the particular search. In contrast, the casebooks assigned to beginning law students are stripped of even these convenient guides. Instead students are presented with pages of choppy edited opinions without headnotes, subtitles, white space, coloured print, or other textual highlights. They are expected somehow to glean from the few headings provided the substantive context of the case and why the author has chosen to include it in this particular section. Then they are expected to wade through the unstructured text and pick out the uncontroverted facts, the disputed legal and factual issues, the procedural history, the rules, holdings, rationales, and analysis of the opinion.

The problem of readability of law school texts grows more acute with each passing year. Contemporary education theory suggests that law students, especially in the first year, would be greatly helped by casebooks and legal texts that make better use of known principles concerning the visual display of textual information.

There is a considerable body of evidence linking text format to the comprehension of content. Modern research has shown that most readers tend to read selectively. Therefore, in order to process ideas effectively, they must be able to perceive the organisation of material and infer content from titles, headings and arrangements of text. Several experts have said that the way blocks of text are laid out on the page or screen serves as a way for the reader to organise the ideas that the text contains. Others have suggested that readers who can identify and use expository text structure and/or main ideas remember more of what they read.

Research has demonstrated that readers read hierarchically. Main points should be partitioned and placed in a more dominant position than subordinate points because main points are more easily remembered than supporting ones. When we present beginning students with unstructured text, we keep their minds occupied in basic level organisation and interpretation of text, leaving them fewer mental resources to devote to reflection and deep understanding. They are so busy trying to discern the basic structure of the information provided that they have no time for the adjunct mental processing required to assess the relevance, context, or implications of what they are reading.

Several changes in legal education could address the knowledge deficits of the beginning law student. Among the suggestions are oral previews, graphic organisers, concept maps and short courses explicitly describing the structure of legal texts and strategies of case analysis. Law teachers are recommended to provide explicit written guidelines for placing a case in context and reading it analytically. Why not also restructure legal texts, especially first-year law school casebooks, so as to make them more readable?

Some will inevitably object that generating more readable law texts is spoon-feeding the students. However, would it not be better for students, particularly in their first year of law school, to use texts that have been structured for them by professional educators instead of the anonymous writers of canned briefs and outlines? All the research strongly suggests that law students' learning could be enhanced simply by the editing of cases to include subheadings that describe the underlying structure of the opinion: established facts, legal issue, factual issue, rule of law, holding, application of law to facts, and so on.