REFLECTIVE WRITING WITH STUDENTS ON AN LLM FOR PRACTISING LAWYERS

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Refection in action is captured through a year-long litigation simulation exercise for experienced practising lawyers, in which they could experiment in a 'safe' space, followed by an ongoing reflective writing project which required them to reflect on action and on their practice.

Background and context

The context of this case study is that of a part-time LLM programme for mature students, of which the first year, 60 credits, was composed of a single wide-ranging litigation simulation. The simulation – of a complex case in an area of law deliberately chosen as unfamiliar to participants – occupied three long weekends, with the first weekend devoted to taking instructions from the client and analysing the case; the middle weekend to evidence; and the third to conducting advocacy at the trial. It was designed for mid-career and senior lawyers specialising in civil litigation. Consequently, students were solicitors, barristers, legal executives and occasionally lawyers qualified outside England and Wales.

Post-qualification education for practising lawyers in England and Wales at the time was normally confined to the specialist accreditations of individual professional bodies and largely input-based CPD schemes (Bar Standards Board, 2013; Solicitors Regulation Authority, 2013b; Webb et al, 2013a). Anecdotally, however, some solicitors are advised not to take academic LLMs, at the risk of being perceived as too intellectual. This course, derived from an initial series of masterclasses with practitioners, was designed to provide practitioners with a space to play, to explore theories in use, and to experiment. Because students were, to a large degree, already 'experts' in their field, and already possessed a wide repertoire of tactics and

> **Commented [N1]:** If the solicitors' rules are quoted, then the barristers' rules have to be quoted as well. Professional sensibility, I'm afraid ….

solutions to practice problems, part of the design challenge was to provide stimuli that would encourage students to experiment, rather than simply to replicate what they would do in the office. The wide-ranging simulation, in which students were asked to pursue a legal case, in an unfamiliar context, from first instructions through to trial, was envisaged as a practicum for such creativity.

The choice of reflective writing

Reflective writing was adopted as a mechanism to capture the experimentation, the reflection in action, to allow students to synthesise classroom activity with reading and workplace activity (Ching, 2010). Reflection in action promoted creativity and risk-taking in the 'safe environment' of the simulation. After the event, reflection on action operated as a bridge between the classroom and the workplace, enabling students to test out in practice, and then to evaluate, ideas presented during the course. Work on preparation of the case between weekend sessions provided opportunities for reflection for action.

Students were provided with a considerable degree of 'scaffolding' about reflective learning, including the academic literature on the subject (e.g., Schön, 1983, 1987, 1995; Kolb, 1984; Boud, Keogh and Walker, 1985; Honey and Mumford, 1992; Neumann, 2000) as well as, in later cohorts, examples of other students' reflective work. This was deliberate: not only to recruit students as active participants in their own learning, but also to reinforce the credibility of the approach. Some students indicated that they already practised a degree of reflection, but had not been able to label it or validate it. Others, some of them initially sceptics, reflected on reflective learning itself in their written work, and instigated reflective debriefs into their management of cases and of juniors in the office.

Because the students were already 'experts' with substantial practice experience, they were able to deploy a considerable degree of synthesis in their reflection on action, being invited to consider what they could 'adopt, adapt or improve' from the course and from their reading, to enhance their own practice. This consciously built on the breadth of their prior experience and encouraged students to develop skills in critical reflection and in double-loop learning (Argyris and Schön, 1974), oriented to the future. The fact that students were encouraged not only to make plans for future action but, time and work activity permitting, to use the results in practice, led in some cases to significant transformative learning.

Assessment of the reflective writing

Assessment of the simulation year was by submission of a learning portfolio which was formatively assessed on a regular basis, supplemented by a terminal reflective report. To avoid institutional requirements for pre-determined, tutor-set learning outcomes potentially hindering individualised learning, we articulated, as a learning outcome, concepts of reflective practice including an ability to be reflective, to take responsibility for one's own learning and to evaluate the concept of reflective practice itself. This enabled a balance to be maintained between assessing the extent of intellectual engagement and analysis at Master's level, and rewarding the distance the students had travelled, whatever their starting point.

A marking matrix, tied to the learning outcomes and to Bloom's taxonomy (Bloom, 1956), was provided to students from the outset and used to support formative and summative feedback. Although students were introduced to conceptual tools such as the Kolb learning cycle (Kolb, 1984), and some students used these to structure their writing, no single format was prescribed. When, as the course developed, exemplars from other students became available, care was taken to present examples using a range of styles, to avoid constraining students. Although the possibility of students creating their portfolio or report in an audio-visual format was anticipated, as being more in line with the oral, performance nature of some forms of legal practice, in fact no entirely audio-visual submissions were made.

Care needs to be taken in assessing reflective writing, for authenticity and as a humane response to the possibility of substantial emotional outlet (see e.g. Moon, 1999, 2004; Boud, 2010). The degree of rawness in some of the work submitted suggests that the comparative privacy of the reflective writing was treated with integrity, both by students and tutors.

Two additional complexities in using any form of portfolio work with students in the workplace, which are susceptible of being overlooked, were dealt with explicitly with this group of students and are caveats that might be more widely shared. First, professional obligations of confidentiality to clients (BSB, 2014; SRA, 2013a) dictate certain constraints on what can be written about. Second, a student may, in a portfolio, write about and reflect on an incident that amounts to professional malpractice, whether their own or that of colleagues. Assessors from the same

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profession may be obliged to report such misconduct to a professional body. Should the malpractice later come to court, the account in the portfolio has at least some evidential value, and is potentially a document disclosable to the opponent in the course of the litigation (Civil Procedure Rules, 1998, Part 31). The learning from the incident may be considerable for the individual; including it in the coursework substantially less valuable. This is not of itself a reason to avoid reflective writing, more a reason to explore carefully with students the parameters of what is discussed.

For these practitioner students, the requirement to reflect on their activity within the simulation and its implications for their own practice enabled them to engage in critical re-evaluation of their knowledge, skills, values, and of the tactics they adopt in the conduct of litigation. For some, reflection recorded examples of transformative learning and questioning of entrenched theories in use. For others, the process itself – continued into the second year of the course – was confidence building. Several students continue reflective journals and writings of various kinds, many years after graduation, as an adjunct to their own professional development. As a result of recent review, (Webb et al, 2013b) their CPD schemes are, at last, beginning to catch up.

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