

1-1-2006

## **Cross-disciplinary assessment: bringing law students and expert witnesses together**

Judith M. Marychurch  
*University of Wollongong*, [judithm@uow.edu.au](mailto:judithm@uow.edu.au)

Follow this and additional works at: <https://ro.uow.edu.au/lawpapers>



Part of the [Law Commons](#)

---

### **Recommended Citation**

Marychurch, Judith M.: Cross-disciplinary assessment: bringing law students and expert witnesses together 2006, 1-21.  
<https://ro.uow.edu.au/lawpapers/276>

Research Online is the open access institutional repository for the University of Wollongong. For further information contact the UOW Library: [research-pubs@uow.edu.au](mailto:research-pubs@uow.edu.au)

---

## **Cross-disciplinary assessment: bringing law students and expert witnesses together**

### **Abstract**

This paper will discuss the author's experience in instituting an innovative cross-disciplinary assessment task between undergraduate LLB Evidence students and postgraduate Master of Forensic Accounting (MFA) students, in which students participate in a mock witness examination. LLB students act as legal counsel, conducting examination and cross-examination of postgraduate students acting as expert forensic accounting witnesses.

### **Keywords**

Cross, disciplinary, assessment, bringing, law, students, expert, witnesses, together

### **Disciplines**

Law

### **Publication Details**

J. M. Marychurch, "Cross-disciplinary assessment: bringing law students and expert witnesses together" (Paper presented at the 61st Annual ALTA Conference - "Legal Knowledge: Learning, Communicating and Doing", Victoria University, Melbourne, Victoria, Australia, 4-7 July 2006).

# **CROSS-DISCIPLINARY ASSESSMENT: BRINGING LAW STUDENTS AND EXPERT WITNESSES TOGETHER**

**JUDITH MARYCHURCH\***

This paper will discuss the author's experience in instituting an innovative cross-disciplinary assessment task between undergraduate LLB Evidence students and postgraduate Master of Forensic Accounting (MFA) students, in which students participate in a mock witness examination. LLB students act as legal counsel, conducting examination and cross-examination of postgraduate students acting as expert forensic accounting witnesses.

Studies have demonstrated that accountants make poor expert witnesses. Difficulties experienced are due to a range of factors, including poor communication skills of the expert witness, the lack of financial knowledge of legal counsel, and the lack of consideration given to how expert evidence is best presented. Although evidence may be "given in the form of charts, summaries and other explanatory material if it appears to the court that the material would be likely to aid its comprehension of the other evidence that has been given or is to be given" (s 29(4) of the *Evidence Act 1995* (NSW)), little use of explanatory aids is made in giving expert opinion evidence.

This assessment task is designed to build on the communication skills developed by postgraduate MFA students, and to provide an opportunity for LLB students to apply their knowledge of evidence law in a practical way, consistent with an active learning pedagogical approach. Students gain experience in a simulated court environment, where they develop professional skills, receive constructive feedback, and reflect on their experiences. The long-term goal of this cross-disciplinary exercise is to improve expert accounting witnesses' ability to provide understandable evidence, while encouraging our future legal counsel to turn their minds beyond the theory of evidence law to critical evaluation of its practical operation in the courts and the impact evidence law has on the cases before them.

---

\*Senior Lecturer, Faculty of Law, University of Wollongong, Australia.

## I INTRODUCTION

In Spring 2005, 16 students participated in the first cross-disciplinary witness examination assessment task held between LLB students and Master of Forensic Accounting (MFA) students at the University of Wollongong (UOW). This initiative was part of the commitment of the MFA teaching team, comprising the author, Dr Kathie Cooper (Program Director) and Dr Annamaria Kurtovic, to the inclusion of practical, professional skills in the MFA curriculum, and, for the author, a furthering of the incorporation of skills training in the LLB Evidence subject which she has coordinated and taught since Spring 2003. For MFA students, this exercise represented the culmination of their studies in the program, and a cross-over into the forum where their investigative and interpretive skills are put to the test: the court room. For LLB students, this task enabled students to challenge themselves to put their knowledge of law into practice in a simulated court environment, and to work with accounting experts in determining what evidence to put to the court, and how it should be presented.

The MFA, offered by the Faculty of Commerce, was the world's first offering of a Masters level course in this field. This program seeks to train students to identify 'red flags' of corporate mismanagement even before they peruse the financial records of a business; and to hone the professional skills they need to detect misconduct, as well as the skills of collection, management and presentation of evidence of wrong-doing.<sup>1</sup> The program was developed in consultation with stakeholders, including the Association of Certified Practising Accountants of Australia.<sup>2</sup> The teaching team's focus is not just on the theory behind forensic accounting, but also its professional practice, enabling presentation of a unique program with an international profile.<sup>3</sup> Student response has been overwhelming, with enrolments increasing from 6 in Spring 2004 to approximately 45 in Spring 2006. Alongside this, LLB student interest in the cross-disciplinary assessment task in 2005 was also more than we could actually cater for, which is a positive sign for the future.<sup>4</sup>

---

<sup>1</sup> Dr Kathie Cooper, Program Director, was responsible for the overall design of the program.

<sup>2</sup> Dr Cooper also liaised with these stakeholders, including professional organisations.

<sup>3</sup> The first graduates of the MFA in December, 2005 included students from Australia, Canada and Poland. Current students include Indonesians and Malaysians, as well as students from every state in Australia.

<sup>4</sup> In September 2006, twenty-one LLB students and twenty-two MFA students participated in the mock witness examination, a three-fold increase from 2005.

This paper will address three issues: the rationale behind the joint, cross-disciplinary assessment task between the first students of *ACCY957 Independent Accounting Expert Reports*<sup>5</sup> and *LLB301 Evidence* students; the design of the exercise; and the outcomes of the task, including the way forward in a process of continual improvement. In addressing these issues, reference will be made to relevant literature on the expert evidence of accountants, and to active learning methodology in a tertiary environment.

## **II RATIONALE FOR INCORPORATING TRAINING AS AN EXPERT WITNESS IN THE MFA PROGRAM**

In 1999, Freckleton, Reddy & Selby released the findings of an empirical study on judicial perspectives on expert evidence,<sup>6</sup> followed by a similar study in 2001 on the perspectives of magistrates.<sup>7</sup> The first study demonstrated that accountants, like many professionals, make poor expert witnesses.<sup>8</sup> There are many possible reasons for this, including poor communication skills, particularly in relating discipline specific concepts to lay persons in the courtroom, be they judges or jurors. Indeed, judges have identified communication skills as the likely to be the most helpful in training experts in their forensic function of assisting a court of law.<sup>9</sup> Knowledge of the limitations of the role of experts came next, followed closely by the preparation, content and layout of written reports.<sup>10</sup>

In comparison, magistrates rated expert bias as the key problem,<sup>11</sup> followed by complex expert language and poor cross-examination.<sup>12</sup> Magistrates then rated expert non-responsiveness, failure to prove opinion bases and poor examination-in-chief equally below these other three problems.<sup>13</sup> These results suggest that expert witnesses need further training

---

<sup>5</sup> This subject would be the culmination of the student's MFA studies following the recommended sequence of study.

<sup>6</sup> Ian Freckleton, Prasuna Reddy and Hugh Selby, *Australian Judicial Perspectives on Expert Evidence: A Comparative Study*, Australian Institute of Judicial Administration, 1999.

<sup>7</sup> Ian Freckleton, Prasuna Reddy and Hugh Selby, *Australian Magistrates' Perspectives on Expert Evidence: A Comparative Study* Australian Institute of Judicial Administration, 2001.

<sup>8</sup> Freckleton, Reddy and Selby (1999), above n 6, 40.

<sup>9</sup> *Ibid.*, 59. Thirty-six per cent of judges (of the nearly seventy-five per cent of responding judges who rated training of expert witnesses as being desirable, necessary or essential) rated communication skills as the most likely to be helpful in the training of expert witnesses.

<sup>10</sup> *Ibid.* Twenty-five per cent and twenty-six per cent respectively.

<sup>11</sup> Freckleton, Reddy and Selby (2001), above n 7, 31: rating 30 per cent of responses..

<sup>12</sup> *Ibid.*: Rating equally at 19 per cent.

<sup>13</sup> *Ibid.*: Rating at 9 per cent each.

in relation to their role in court proceedings, as having a paramount duty to the court to assist that court impartially on matters relevant to their expertise, and not being an advocate for a party to the proceedings.<sup>14</sup> Complex expert language and skills in relation to the expert witness examination process, both examination and cross-examination, would likely assist in addressing other problems identified by magistrates. Sixty-six percent of magistrates surveyed saw expert training as being either ‘desirable’ or ‘necessary’.<sup>15</sup> As with the study of judicial perspectives referred to above, magistrates also identified communication skills as the most likely area of expert training to assist experts to better fulfil their role in the courtroom.<sup>16</sup> This was followed training of preparation, content and layout of reports,<sup>17</sup> and then training in relation to the limits of an expert’s role, knowledge of law relating to the field of expertise and knowledge of expert evidence law all ranking closely together.<sup>18</sup>

Bringing the results of these studies together, it is clear that there is a need for the training of expert witnesses in several key areas:

- Communications skills in the courtroom
- Preparation, content and layout of expert reports and
- Knowledge of the experts role in the courtroom generally, and as it pertains specifically to their area of expertise

In order to train experts in these areas and ultimately benefit judges, magistrates, and where used, juries, it is necessary to address the other side of the witness-examination equation: the lawyer or advocate. It is here that training of our future lawyers, LLB students can be addressed.

---

<sup>14</sup> *Uniform Civil Procedure Rules 2005* (NSW), sch 7 *Expert Witness Code of Conduct*, clause 2. See, eg, *ibid*, *Guidelines for Expert Witnesses in Proceedings in the Federal Court of Australia*, clause 1 <[http://www.fedcourt.gov.au/how/prac\\_direction\\_print.html](http://www.fedcourt.gov.au/how/prac_direction_print.html)> at 23 February 2007.

<sup>15</sup> Freckleton, Reddy and Selby (2001), above n 7, 49.

<sup>16</sup> 49.57 per cent of magistrates, *ibid*, 51; cf. 36 per cent of judges: Freckleton, Reddy and Selby (1999), above n 6, 59..

<sup>17</sup> *Ibid* 51.

<sup>18</sup> *Ibid*: at approximately 11, 10, and 9 per cent respectively:.

### III RATIONALE FOR INCORPORATING TRAINING OF LLB STUDENTS ALONGSIDE MFA STUDENTS

The Freckleton, Reddy and Selby study saw approximately ninety percent of judges rating the further training of advocates in calling and cross-examining experts as being either ‘desirable’ or ‘necessary’.<sup>19</sup> As Freckleton, Reddy and Selby comment, “[a] clearer message about the need for further advocacy training could not have been given by the Australian judiciary”.<sup>20</sup> Further detail as to the nature of this training is evident in the responses of the judiciary to the areas identified as most helpful in training advocates in calling and cross-examining experts. Specifically, ‘improved presentation skills’; ‘improved skills in cross-examination’ and ‘enhanced knowledge of technical areas’ were rated as the most helpful by a total of eighty-eight percent of judges.<sup>21</sup> Similar opinions were expressed by magistrates, again with ninety percent of magistrates rating advocate training about expert evidence as ‘desirable’ or ‘necessary’.<sup>22</sup> Again, ‘[a] clearer message about the need for further advocacy training could not have been given’.<sup>23</sup> ‘Improved preparation skills’, ‘improved skills in cross-examination’, ‘improved skills in examination-in-chief’ and ‘enhanced technical knowledge’ also rated similarly<sup>24</sup> to the opinions expressed by judges.

It very clear that advocates need to improve several key areas in relation to expert evidence in cases they are arguing:

- Preparation in relation to the use of expert evidence
- Cross-examination
- Examination-in-chief and
- Knowledge of the technical areas in relation to the expert’s field

Training in these roles cannot be done in isolation: advocates need to work with experts, and, as the previous section demonstrates, experts need to work with advocates. The author’s role as the legal expert in the MFA program and as the Subject Coordinator of *LLB301 Evidence*,

---

<sup>19</sup>Freckleton, Reddy and Selby (1999), above n 6, 61.

<sup>20</sup>Ibid.

<sup>21</sup>Ibid 63: forty-nine, twenty-five and fourteen per cent respectively.

<sup>22</sup>Ibid 52.

<sup>23</sup>Ibid.

<sup>24</sup>Ibid 53: preparation skills rated at nearly 42 per cent, followed by cross-examination skills at 26 per cent, and skills in examination in chief and enhanced technical knowledge closely at 16 and 15 per cent respectively.

placed her in a unique position to seek to address the difficulties arising in the specific context of accounting evidence in the courtroom. The difficulties of expert accounting evidence have been appreciated by judges, who ranked expert accounting evidence as the most difficult to understand out of eight disciplinary areas.<sup>25</sup> However, it should be noted that accounting expert evidence was rated fifth in the same category by magistrates,<sup>26</sup> so the difficulties of accounting evidence are less pronounced in the context of matters being heard at this level, likely due to the nature of financial and corporate matters heard at this level of our court system. However, MFA students may find themselves practising in a variety of roles, and at a variety of levels, so equipping them with an understanding of the law of evidence as it applies to them, and specifically educating them about their role in court and giving them an opportunity to put their learning into action, is critical to their studies.

#### **IV ADDRESSING TRAINING NEEDS OF ACCOUNTING EXPERTS AND LAW STUDENTS AT UNIVERSITY**

The above discussion suggests that both accounting and law students would benefit from a focussed task enabling them to develop their ability to give and facilitate the giving of evidence, as well as facilitating lawyer – expert communication, another area which is problematic. Without realising it, many professionals slip into discipline-specific terminology,<sup>27</sup> which may mean one thing to the person saying it and a completely different thing to the person hearing it. While this sounds completely obvious when put in this way, it is nevertheless a problem when it comes to communicating accounting evidence in court, and in preparing cases for presentation in court. In this situation, it is necessary to encourage better communication at an earlier point in preparation for trial, in order to overcome the barriers between the legal and other professions. Lawyers must be willing to ‘hear out’ the expert on what should be presented to the court and how the information may best be communicated. How to most appropriately present accounting evidence in as simple and

---

<sup>25</sup>Freckleton, Reddy and Selby (1999), above n 6, 40. It should be noted, however, that there was a relatively even spread between disciplinary areas. Accounting evidence was ranked by 17 per cent of judges as the most difficult to evaluate adequately, with psychiatry, engineering and science expert evidence ranking 16, 15 and 14 per cent respectively. The other disciplinary areas included in the survey were psychology, medicine, statistics and ‘other’.

<sup>26</sup>Freckleton, Reddy and Selby (2001), above n 7, 33. The only difference between the eight discipline areas in the two Freckleton, Reddy & Selby studies is the substitution of planning as the eighth area in the magistrates study, as opposed to ‘other’.

<sup>27</sup>As noted by magistrates particularly, see above n 11.



concise terms as possible, in light of the issues in the case, can then be focussed on in pre-trial preparation, with the ultimate benefit to the court.

Furthermore, engaging students in a task designed to prepare them for likely experiences in the professional world enhances student learning by placing them in an active role. In order to simulate a real-world, professional environment and maintain the integrity of the assessment process, it was necessary to design a task that would focus on the skills needed to properly prepare and present evidence to the court, both in the form of an independent expert report,<sup>28</sup> and in defending that report in court, and to do so within the practical constraints of student and teacher time and energy, and best assessment practice.

## V DESIGNING THE TASK

Communication skills are specifically addressed in the MFA. This is done in several different contexts, with tailored exercises on investigative interviewing, the writing of expert reports<sup>29</sup> and the presentation of expert evidence in court.<sup>30</sup> The focus of this paper is on the latter, with comments on the expert report exercise restricted to its role in the mock witness examination, and, to a lesser extent, preparation of an expert report in preparation for the giving of expert evidence. There is clearly a need to improve the skills of accounting and financial experts called upon to give testimony in court, and their knowledge of their role in the courtroom and its limitations, particularly in the context of complex commercial cases stemming from recent corporate collapses.<sup>31</sup>

A contributing factor to this problem is the concentration by barristers on the traditional question/answer format of witness examination, to the exclusion of alternative or additional communication methods.<sup>32</sup> The very nature of the evidence to be communicated in

---

<sup>28</sup> Assessed separately by Dr Kathie Cooper.

<sup>29</sup> Based on a case study provided by Dr Kathie Cooper, Program Director.

<sup>30</sup> Dr Annamaria Kurtovic specialises in interviewing skills, and teaches these in her two core subjects. In the more advanced subject, students undertake an investigation in which they interview two witnesses/ persons of interest and subsequently write their investigative report. Students are assessed on their interviewing skills and on their final report on the investigation.

<sup>31</sup> This is amply demonstrated by the numerous decisions taken in relation to the Carter Report in the ASIC v Rich matter, incl *ASIC v Rich* (2005) 23 ACLC 430, [2005] NSWSC 149; *ASIC v Rich* (2005) 23 ACLC 838, [2005] NSWSC 417; *ASIC v Rich & Ors* (2005) 23 ACLC 1,111, [2005] NSWSC 152.

<sup>32</sup> Russell Craig, and Prasuna Reddy, Assessments of the Expert Evidence of Accountants, (2004) 14(1) *Australian Accounting Review* 73, 78, where authors refer to comments made by an expert witnesses feeling

commercial fraud cases is not always best presented via questions and answers alone, and can be more adequately explained with the use of communication aids. Here, it is necessary to educate lawyers about the use of communication aids in court; hence, an appropriate starting point is with law students currently studying evidence law.

The witness-examination assessment task was designed to enable both cohorts of students to experience a courtroom witness examination from the perspective they would most likely practice, and to interact with the person on the other side of the witness examination. In order to achieve this in a manner compatible with the reality of tertiary life today, it was necessary to design the exercise to be sustainable in terms of student time and input, and that of staff. Time constraints had to be taken into account from both sides: MFA students are typically distance students, only on campus for the three-day intensive<sup>33</sup>, while Evidence students, being later year students, are typically on campus for classes and study during the week. Academic life places similar restrictions on staff, requiring administration of the task and actual assessment to be conducted within a reasonable time period. The background work required by students and staff also had to be realistic and manageable, particularly in light of knowledge that could be assumed. In addition, the witness examination had to be comparable in terms of commitment of LLB students to their counterparts engaging in the mooted assessment as part of their assessment in *LLB301 Evidence*.<sup>34</sup>

The competition rules used by the *Australasian Law Students' Association* (ALSA) were consulted as a base guide to structuring the examination process itself.<sup>35</sup> Parity with the moots already conducted for other Evidence students suggested that the process should be conducted over approximately 60 minutes, which was also consistent with the ALSA competition guidelines. Consideration had to be given to the fact that the witnesses were also

---

'disrespect' towards himself by the aggressive stance of a QC, which was described as 'disconcerting to the expert's performance in court'; and to comments by a judge to the effect that 'charts, overhead projectors and books and documents for the use of the judge/jury can simplify the entire process, but if some technique is not used, the judge and/or jury will soon find the evidence hard to follow'.

<sup>33</sup> Typically Friday – Sunday.

<sup>34</sup> Participation in an optional moot, in the form of a voir dire hearing on the admissibility of evidence has been used in assessing LLB301 Evidence students since 2003, while the author has coordinated and taught the subject, with the assistance of colleague Ms Elisa Arcioni. Moots are conducted over a period of 60 minutes, with defence and prosecution teams of two, being senior and junior counsel respectively. Each counsel has equal speaking time for the purposes of the moot.

<sup>35</sup> Australasian Law Students' Association (ALSA), *The 2006 ALSA Witness Examination Championship Rules* <<http://www.alsa.asn.au/?id=48>> at 23 February 2007, for confirmation of current address. The 2005 rules were consulted in preparation for this task.

being assessed, so adequate time had to be allowed for the entirety of the examination process, from both sides. After considerable reflection, the following structure was ultimately adopted, in line with ALSA competition guidelines:

- |                                             |            |
|---------------------------------------------|------------|
| 1. Opening by the Prosecution:              | 2 minutes  |
| 2. Examination in chief by the Prosecution: | 10 minutes |
| 3. Cross Examination by the Defence:        | 15 minutes |
| 4. Opening by the Defence:                  | 2 minutes  |
| 5. Examination in chief by the Defence:     | 10 minutes |
| 6. Cross examination by the Prosecution:    | 15 minutes |
| 7. Summation by the Defence:                | 3 minutes  |
| 8. Summation by the Prosecution:            | 3 minutes  |

Each ‘trial’ therefore takes one hour, with prosecution and defence examining their own witness and cross-examining the opposing witness, and judges intervening to rule on objections. While the artificial time limits imposed on each stage of the examination may detract from the authenticity of the simulation, they are necessary to impose appropriate constraints on the assessment process, while also encouraging participants to be brief and accurate in questions and answers.

In other respects, all efforts are made to ensure a realistic courtroom simulation, such as the administration of the oath or affirmation for witnesses. In 2005, a full day was devoted to the examinations, with all students asked to be present for one hour of consultation between counsel and their witness, the full hour of their ‘trial’, and a reflective session at the end of the day. The total formal time commitment for each student was two hours, plus approximately 30 minutes of group reflection. Alternative activities were provided for MFA students who had completed or were awaiting their moot in an adjacent room, as the assessment day was also part of their on-campus intensive. Future increases in enrolment numbers, and therefore increases in the time taken up in trial during the three-day intensive, will necessitate a ‘round robin’ teaching scheme for ACCY957 students.<sup>36</sup>

---

<sup>36</sup> Developed by the author, along with Dr Kathie Cooper and Dr Annamaria Kurtovic.

## VI THE STRUCTURE AND CRITERIA FOR ASSESSMENT FOR LLB STUDENTS

Assessment of LLB Evidence students was based on two components, together totalling 25 per cent of their assessment.<sup>37</sup> Students were required to submit a two-page written plan of their witness examination for a total of 10 percent, and were then marked on their actual witness examination for the final 15 percent.

Assessment criteria for the witness examination plan were as follows:

- Identification of the essential evidence to be obtained from the witness
- Structure of the proposed witness examination
- Articulation of the questions to be asked of the witness
- Identification of possible strategies to be implemented if the examination does not proceed as planned

The examination itself was assessed having regard to the following:

- Organisation of the examination
- Clarity and appropriateness of questions asked
- Avoidance of objectionable questions
- Ability to adjust questioning to address issues that arise during the examination
- Ability to engage with the witness and the witness' answers
- Ability to advance own case during the examination
- Clarity and thoroughness of opening and summation
- Speaking ability and delivery

---

<sup>37</sup> This total was selected in order to be consistent (and therefore interchangeable) with the mooting option already used in the subject. Student feedback suggests that a greater weight should be given to these tasks, although this must be balanced against the objective of encouraging students to opt for this form of assessment: too great a weighting may discourage students from 'having a go'. The alternative is to make either the moot or witness examination compulsory. However, this would require students who realistically have no intention of actually practising as a lawyer to engage in the task (not necessarily a bad idea from the point of view of encouraging students to discover skills they did not know they possessed) and would place an even greater burden on teaching staff in terms of the intensive face-to-face contact required.

Each student was ultimately provided with two feedback sheet, one in relation to each task, specifically identifying and ranking performance levels against each criterion, and overall comments on their performance for reflection and improvement. These were finalised prior to the reflections session and held in full view of students to assure them that any discussion in the 'de-briefing'/reflections session could in no way impact on their mark.

## **VII THE STRUCTURE AND CRITERIA FOR ASSESSMENT OF MFA STUDENTS**

MFA students were assessed on their expert report prepared prior to the intensive (20 percent) and 20 percent on their performance as a witness, followed by 10 percent on a reflective paper on their experiences based on observing their performance via videotape and their own thoughts on the process. Performance as a witness (the primary focus of this paper) was assessed based on the following criteria:

- Clarity and appropriateness of responses to questions
- Understanding of the case study and contents of the expert report
- Flexibility in adjusting prepared responses to suit the specific questions asked
- Ability to explain discipline-specific matters in terms able to be understood by the court
- Confidence, eg. in avoiding being 'thrown' by unexpected or difficult questions

Like the LLB students, each MFA student was provided with a feedback sheet specifically identifying and ranking performance levels against each criterion, and overall comments on their performance for reflection and improvement. Their expert reports were assessed separately.<sup>38</sup>

## **VIII LLB AND MFA STUDENTS WORKING TOGETHER**

In order to facilitate the flow of information between counsel and witness, both MFA students and Evidence students were provided with the case study on which the expert report

---

<sup>38</sup> As noted above n 27.

and trial was to be based early in the session.<sup>39</sup> Expert reports were submitted approximately two weeks prior to the ‘trial’, such that counsel had time to read the report and communicate with the witness<sup>40</sup> prior to preparing their plan. Unmarked copies of the report were provided to defence and prosecution counsel, with assessment of the report itself conducted separately.<sup>41</sup> Students were instructed that they may write on and highlight the reports, but were required to return these copies at the conclusion of the trial for reasons of privacy and confidentiality. The witness examination plan prepared by LLB students had to be submitted prior to the trial so that it could be assessed separately to the examination.

Students in both cohorts had been previously provided with resources and discussion on the use of explanatory materials in the process of obtaining evidence, MFA students through previous subjects and resources provided for *ACCY957*, and *LLB Evidence* students via classes previously conducted during the session, with accompanying reading.

Actual assessment of the witness examination took place during each trial, with each ‘judge’<sup>42</sup> maintaining a draft marking sheet for each participant (both counsel and witness), providing for a ranking from poor to excellent in respect of each criterion and general comments. Feedback and marks were finalised in consultation between the judges after each trial, and a final feedback sheet written for each participant. As noted above, these sheets were held in full view of the students during the final reflection session at the end of the day so that students could be confident that nothing they said during the reflection session would affect their results. The primary purpose of the reflection session was to enable students to ‘de-brief’ after the exercise, and to consolidate what they had learned from their different perspectives about communication issues and the trial process.

---

<sup>39</sup> The case study was prepared by Dr Kathie Cooper.

<sup>40</sup> Communication prior to the day of the trial/intensive could not be mandated due to privacy issues and consideration of off-campus students (the majority of MFA students). An informal get-together was held the afternoon prior to the trials for MFA and LLB students to meet one another, which was generally well-attended.

<sup>41</sup> By Dr Kathie Cooper.

<sup>42</sup> The author, who would also rule on objections and determine any legal issues that arose during each trial, and Dr Kathie Cooper.

## **IX REFLECTING ON THE EXPERIENCE: STUDENTS AND TEACHERS**

There are tremendous reflective learning opportunities for both cohorts of students in an exercise of this nature. As trials were videoed, and MFA students were required to write an assessable reflective paper as a third stage of their learning process, reflection is built into the learning experience. This is more difficult to accomplish in an assessable manner with LLB students as not all Evidence students participate in the witness examination. However, a structured reflection/ de-briefing session immediately following the trials reinforces the importance of reflection in the learning experience.

The majority of students felt that the counsel/ witness consultation session prior to the trials was extremely valuable. Improvements discussed included holding this session a day earlier, and extending the pre-trial consultation process to a joint meeting with opposing counsel and their witness. The benefits of this process would include clarification of the key facts in issue; agreement on non-contentious issues and a clearer focus on matters of contention in the examination; as well as reflection of a real world trend in light of the difficulties of expert evidence in court today. This session would need to be incorporated in a round robin session prior to conducting the 'trials' in the context of a larger group of participating students. As such, it is also preferable in terms of sustainability of the task in light of staff commitment, if this session were able to be self-directed by students. To facilitate this, guidelines were written for implement of this component in Spring 2006 offering of this assessment task.<sup>43</sup>

In terms of learning outcomes, student discussion indicated that students had benefited from the practical experience of having to communicate with their counsel/ witness in a professional setting, including the need to communicate more clearly, using appropriate terminology and avoiding professional jargon. Reflections also demonstrated greater awareness of communication issues, such as dealing with witnesses from a non-English speaking background; the need to be precise in the questions asked in order to obtain the required answer; and the importance of providing reciprocal guidance on discipline-specific matters, be they matters of clarification or definition, or substantive understanding of the issues in the case from each perspective.

---

<sup>43</sup> Available on request from the author.

Evidence students were able to put into practice their understanding of the process of witness examination, as well as identification of facts in issue, and the importance of planning an examination so as to preclude objections as to admissibility and to equip themselves to deal with such challenges, as well as to structure the examination in the most accessible way for the tribunal of fact. MFA students gained further insight into the legal process than they could have gained from class-based learning alone, and also gained valuable experience of being ‘put on the stand’ to defend their report, whilst remaining independent. Student reflections suggest that this learning extended the knowledge-based aspects of the experience to the emotions of being called upon to defend their work, an essential part of the learning experience for professionals considering entering this arena of practice.

Students were also positive about the time spent in preparing for and participating in this experience. This would indicate that students found the process to be worthwhile in comparison to the time spent. Students volunteered suggestions for enhancing the task that would in fact increase the time spent, but in their opinion enhance the learning experience, including the addition of the pre-trial conference referred to above and earlier consultation with the witness. These improvements were integrated into the exercise in Spring 2006, with further reflection and evaluation necessary to assess the impact on learning. Modifications to the weighting of assessment was trialled in Spring 2006, in response to comments of 2005 students.<sup>44</sup>

## **X FUTURE DIRECTIONS**

The active learning approach adopted via an on-going role play from the writing and receipt of an expert report through to participation in a courtroom simulation promotes students to learn from each other, as is evident in their reflections on the alternative perspectives gained from working with the other party involved in the examination process (witness from the counsel and vice versa). Integrating reflection, including in a group setting with both LLB and MFA students, also encourages the communication process that was the original focus of the design of the task. In terms of improving communication skills in the witness examination process, further emphasis will be devoted to the presentation of expert evidence

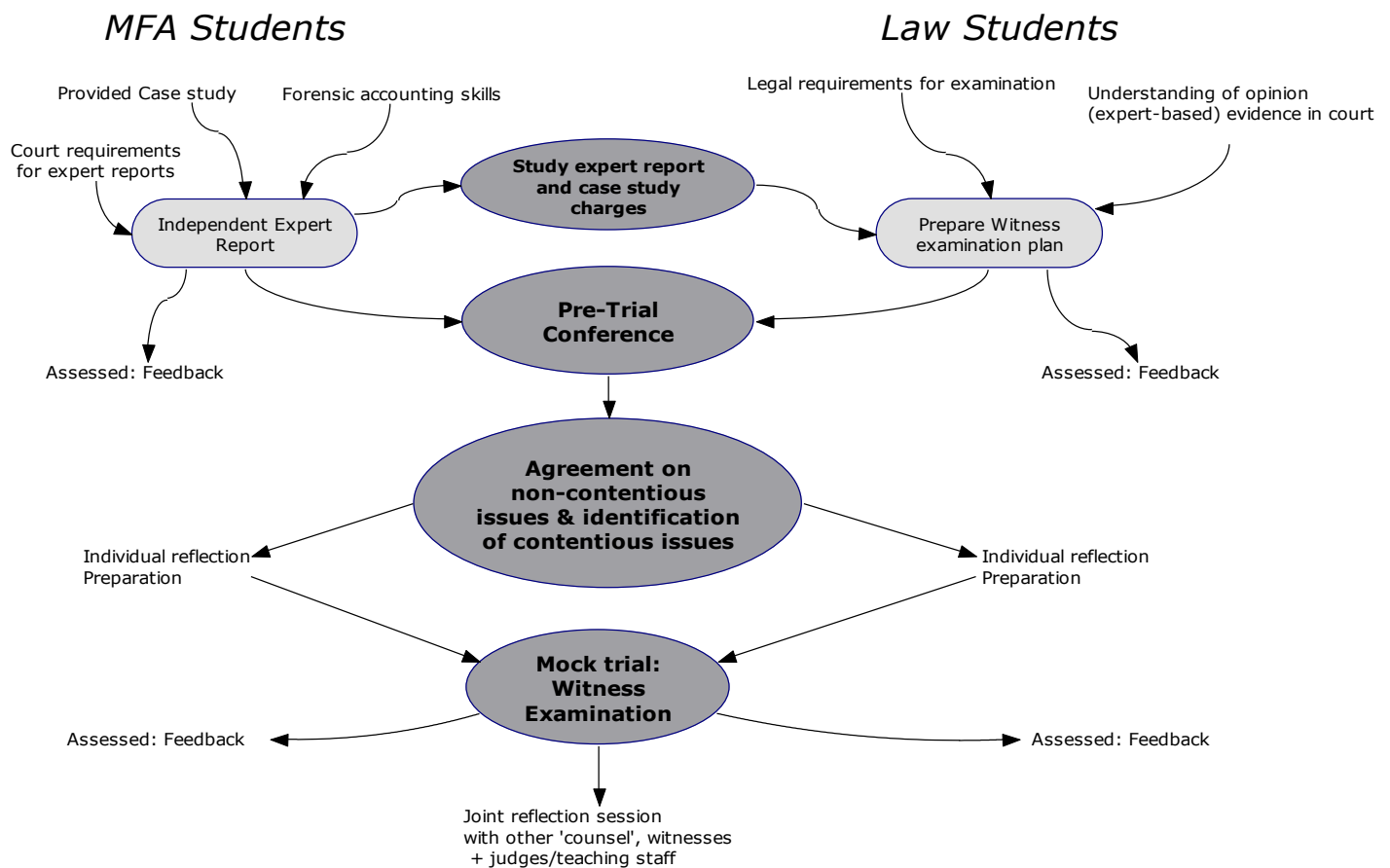
---

<sup>44</sup> Weighting of the examination component was increased to 20 marks, or 20 per cent of the student’s final grade. Similar adjustments were made to alternative tasks in *LLB301 Evidence* in order to maintain parity.



using explanatory materials. Students participating in the exercise in 2005 made use of charts and diagrams to present the evidence, but this was somewhat *ad hoc*, and the admissibility of such evidence was not always adequately addressed by counsel. Role playing exercises are currently being incorporated into learning exercises in the earlier MFA subjects to encourage accounting students to further consider how to best explain terminology and to communicate accounting concepts. More active encouragement of Evidence students to consider how witnesses can better communicate evidence to the court is also necessary, both in the curriculum itself and specifically in relation to this exercise.

The following diagram, incorporating the pre-trial conference, illustrates how the task draws on previous learning in each subject and prompts students to follow an independent learning path throughout the assessment task:



The improvements outlined above will feed into this learning path, and further enhance the learning experience of all students involved.

## XI CONCLUSION

This is the first cross-disciplinary assessment exercise of its type ever conducted within the Faculties of Law or Commerce at the University of Wollongong, and is likely unique in an Australian tertiary institution. While assessing different skills in the two subjects based on the roles they are playing, the task enables later year LLB students to interact with both mature-age and younger professionals, many of whom are already practising accountants in Australia or overseas, undertaking post-graduate study in a specialist field, and vice versa. This presents students with unique challenges for developing communication skills, due to discipline-specific language and terminology, and communication with persons whose first language is not English.

These challenges reflect the purpose of this assessment exercise, which in turn have stemmed from that of the MFA program itself. Anecdotal evidence suggests that corporate and commercial fraud cases have failed or did not proceed to trial because of the complexity of evidence involved, and difficulties in presenting this evidence in a communicable form to a judge and/or jury.<sup>45</sup> This could be tackled by making each party, legal counsel and expert witnesses, more aware of the communication difficulties and educating them in skills that enable them to combat these difficulties in the preparation of cases. It is at the level of tertiary education that these skills can be introduced, at undergraduate and postgraduate level, to the benefit of participating students, and, ultimately, the courts. This cross-disciplinary assessment exercise has taken the learning of LLB students to a newer level than the skills subjects that are an inherent part of an LLB program, by developing a broader context across discipline areas. In addition, experts and future lawyers have the opportunity to engage in a dialogue in a less-threatening or career-affecting context than the real-world.

---

<sup>45</sup> A full study would need to be instigated to confirm this statement. However, anecdotal evidence suggests that the complexity of expert evidence can 'make or break' a case. One LLB student related an example of having sat as a juror on a case relying primarily on complex accounting and financial information for approximately two weeks before the presiding judge dismissed the matter, declaring that the evidence was virtually impossible to understand and a verdict would not be possible.