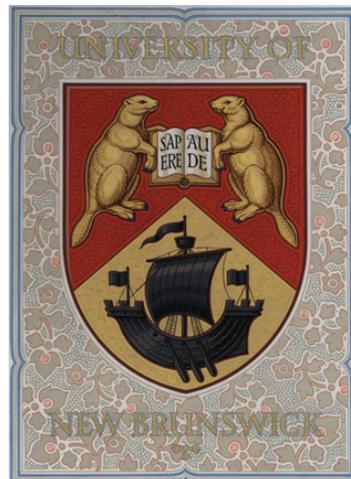


# **AN EXAMINATION OF THE EFFECTIVENESS OF READERS' THEATRE AS A TEACHING STRATEGY IN LEGAL EDUCATION**

*Association of Law Teachers 2017 Annual Conference,  
Portsmouth, United Kingdom*

2017-03-24

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The effectiveness of law school education as preparation for the practice of law has been questioned and criticized since the 1800s.<sup>1</sup> In response, it has been frequently argued that the reliance of law schools on the case method and Socratic teaching has developed students' strengths in analytical reasoning,<sup>2</sup> albeit reasoning founded in precedents rather than in principles.<sup>3</sup> Learning through the case method encourages students to conceive conflict in an abstract setting and, as such, they are encouraged to "...separate their personal sense of fairness and justice from their understanding of legal rules and principles."<sup>4</sup> A resulting criticism of the case method, then, is that it fails to adequately teach its students how to act "with ethical substance"<sup>5</sup> in the professional circumstances for which they are being prepared.<sup>6</sup> As a means of addressing this perceived gap, North American law schools have been increasing their use of experiential education methods.<sup>7</sup> In this paper, the utility of Readers' Theatre is examined as an experiential teaching strategy to expose law students to the interpersonal and ethical dynamics of legal problem-solving communications.

### **The role of legal education in the provision of justice**

For more than a century, the legal profession in North America has relied on university law schools to educate lawyers.<sup>8</sup> Yet, even early in the twentieth century it was observed that the struggle to fully adapt the ancient profession of law to modern social ideology had not ended, and that both Canada and the United States of America had failed to devise a structure to ensure "...that its lawyers shall be at once educated specialists and yet not too far removed from the common people...".<sup>9</sup> That desired public accessibility to the profession has precipitated numerous assessments of the roles of law schools and law societies in developing skills that lawyers require to effectively serve the public. In 1953, for example, the Association of American Law Schools issued a Statement on Pre-legal Education that advanced a need for the development of particular law practice skills and knowledge even prior to students' enrolment in law school, including comprehension, oral and written expression, critical understanding of human institutions and values that are impacted by the law and creative thinking.<sup>10</sup>

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<sup>1</sup> LaPiana, William P. *Logic and Experience: The Origin of Modern American Legal Education*. New York: Oxford University Press, 1994 at 132 et seq.

<sup>2</sup> Sandefur, Rebecca and Jeffrey Selbin. The clinic effect. *Clinical Law Review*. 16.1 (2009); Also Sullivan, William M. *Educating Lawyers: Preparation for the Profession of Law*. San Francisco: Jossey-Bass/Wiley, 2007 (the "Carnegie Report").

<sup>3</sup> See LaPiana, Note 1 at p.133; Also, Phelps, Edward J, William A. Keener, Christopher G. Tiedeman, and J C. Gray. "Methods of Legal Education." *The Yale Law Journal*. 1.4 (1892): 139-161.

<sup>4</sup> Yates, Mark. The Carnegie Effect: Elevating practical training over liberal education in curricular reform. *The Journal of Legal Writing Institute*. 17 (2011): 233-254 at 237; Also Sullivan, Note 2 at 57.

<sup>5</sup> Sullivan, Note 2 at p. 56-57.

<sup>6</sup> Sandefur and Selbin, Note 2.

<sup>7</sup> Sossin, Lorne. "Experience the Future of Legal Education." *Alberta Law Review*. 51.4 (2014): 849-870.

<sup>8</sup> MacCrate, Robert. *Legal Education and Professional Development: An Educational Continuum*. , 1992. Print.; Reed, Alfred Z. *Training for the Public Profession of the Law: Historical Development and Principal Contemporary Problems of Legal Education in the United States, with Some Account of Conditions in England and Canada*. New York City: Carnegie Foundation, 1921. Internet resource.

<sup>9</sup> See Reed, Note 8 at p. 28.

<sup>10</sup> See MacCrate, Note 8 at p. 231.

Since then, the profession in North America has continued to identify its declining professionalism and public reputation<sup>11</sup> as well as opportunities for law schools to contribute to a solution.<sup>12</sup>

During the past three decades, it has been suggested by the profession and by some members of the academy that professional responsibility instruction and training ought to be enhanced in law schools.<sup>13</sup> Amongst the observations made is an indication that:

...law students are uncomfortable with the [professional responsibility] material, in particular because discussions of ethics remain relatively infrequent in most other required law school courses and they do not feel that it is subject material that can be taught.<sup>14</sup>

Further, Granfield's study of Harvard law students suggested that the case method of legal education had the effect of generating significant cynicism amongst students regarding the law and legal practice, and discouraged them from careers in public interest law.<sup>15</sup> It has also been found that law school curricula have focused on the development of analytical skills at the expense of interpersonal competency<sup>16</sup> and focused on extrinsic over intrinsic values, potentially causing diminished wellbeing and life satisfaction.<sup>17</sup> The conclusion to be drawn from the literature and from the experiences of the profession is that North American law schools can and should continue to reform their curricula for improved instruction of professionalism and ethics.<sup>18</sup>

### **The need for ethics instruction and professional character development in legal education**

In 2009, the Federation of Law Societies of Canada (FLSC) Task Force on the Canadian Common Law Degree identified ethics and professionalism as the singular exception to its general view that the satisfaction of its competency requirements would be left to the determination of individual law schools.<sup>19</sup> Regarding ethics and professionalism, the Task Force recommended that each law student seeking entry into a bar admission program be mandated to complete a course in the subject.<sup>20</sup> In 2015, the FLSC adopted its National Requirement, which insists that students graduating from accredited law

<sup>11</sup> Goldberg, Steven H. "Bringing the Practice to the Classroom: An Approach to the Professionalism Problem." *Journal of Legal Education* 50.3 (2000): 414-430; Canadian Bar Association. *Crystal Clear: New Perspectives for the Canadian Bar Association*, 2005; Burger, Warren E. "The Decline of Professionalism." *Fordham Law Review*. 63 (1995): 949-958; Sullivan, Note 2.

<sup>12</sup> Task Force on the Canadian Common Law Degree, Final Report, October 2009 (Federation of Law Societies of Canada, 2009), online: The Federation of Law Societies of Canada. [http://www.flsc.ca/\\_documents/Common-Law-Degree-Report-C.pdf](http://www.flsc.ca/_documents/Common-Law-Degree-Report-C.pdf) at 31; Sullivan, Note 2; Rhode, Deborah L. "The Professional Responsibilities of Professional Schools." *Journal of Legal Education* 49.1 (1999): 24-40.

<sup>13</sup> See Task Force, Note 12; American Bar Association. *Standards and Rules of Procedure for Approval of Law Schools*, 2013-2014. [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2013\\_2014\\_final\\_aba\\_standards\\_and\\_rules\\_of\\_procedure\\_for\\_approval\\_of\\_law\\_schools\\_body.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_body.authcheckdam.pdf); see Rhode, Note 12; Devlin, Richard, Jocelyn Downie and Stephanie Lane. Taking responsibility: Mandatory legal ethics in Canadian law schools. *The Advocate*. 65.6 (2007): 761-778; Sullivan, Note 2.

<sup>14</sup> See Devlin et al., Note 13, p. 764.

<sup>15</sup> Granfield, Robert. "Cynicism and the Law: the Emergence of Legal Consciousness in Law School." *Journal of Social Philosophy*. 25 (1994): 188-208.

<sup>16</sup> Benjamin, G. Andrew H. et al. "The Role of Legal Education in Producing Psychological Distress among Law Students and Lawyers." *American Bar Foundation Research Journal*, vol. 11, no. 2, 1986, pp. 225-252.

<sup>17</sup> Krieger, Lawrence S. and Kannon M. Sheldon. Does Law School Change Law Students? Values, Motives, and Well-Being in a First Year Class (unpublished manuscript, 2001), as referenced in Daicoff, Susan S. *Lawyer, Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses*. Washington, D.C: American Psychological Association, 2004; see also Lerner, Alan M. "Using Our Brains: What Cognitive Science and Social Psychology Teach Us about Teaching Law Students to Make Ethical, Professionally Responsible, Choices." *Quinnipiac Law Review* 23.3 (2004): 643-706.

<sup>18</sup> Woolley, Alice. Legal education reform and the good lawyer. *Alberta Law Review*. 51.4 (2014): 801; Rhode, Note 12; Luban, David; Millemann, Michael. "Good Judgment: Ethics Teaching in Dark Times." *Georgetown Journal of Legal Ethics*. 9.1 (1995): 31-88.

<sup>19</sup> See Task Force, Note 12.

<sup>20</sup> See Task Force, Note 12; also, Sossin, Note 7.

schools must demonstrate knowledge and understanding of a range of ethical and professional concepts and obligations.<sup>21</sup> In the Carnegie Report,<sup>22</sup> it was similarly suggested that American legal education should be “humanized” through the use of clinical and professional responsibility courses in core curricula.<sup>23</sup> Specifically, the Carnegie Report asserts that teaching legal theory in a practice context will have the effect of better preparing students for the legal profession but, also, will facilitate a strongly developed sense of ethical and professional responsibility.<sup>24</sup> It was also noted in the Report that the case method, as legal education’s “signature pedagogy”,<sup>25</sup> is effective in teaching legal reasoning but “emphasizes the abstract and technical aspect of legal practice at the expense of a more holistic vision of the attorney as both private advocate and social regulator.”<sup>26</sup>

Some academics argue that doctrinal legal education underpins the development of ethical practitioners by emphasizing the essential role of the law in legal practice and by focusing on the crucial importance of knowledge and application of legal principles to fact scenarios.<sup>27</sup> Woolley makes the point that the content of lawyers’ ethical decisions demands adherence to an analytical process comparable to and involving legal analysis and reasoning.<sup>28</sup> This is, of course, true. In order to behave in an ethical and professional manner, a lawyer’s conduct must fall within the confines of the law, including the ethical codes of the profession.<sup>29</sup> However, it may be that the ethical and professional *application* of the law in challenging circumstances presents a level of difficulty beyond that which some law professors have considered<sup>30</sup> and for which some lawyers have been trained. As Woolley notes in discussing the well-publicized Enron lawyers’ misconduct case:

...the Enron lawyers did not so much fail to understand what the law required as that they failed to identify the proper legal significance of the things that their client was doing. That failure arose because of the sorts of cognitive biases and weaknesses that tend to make it harder for us to make the right choices about our own misconduct (in other words, ethical choices.)...<sup>31</sup>

The point for consideration is that, quite apart from a lawyer’s knowledge of the law is his or her ability to recognize and reinforce its application under the pressures of realistic influences, including the sometimes subjectively monumental effects of the law on the lawyer or a client. As Woolley aptly states, knowledge of a legal requirement is distinguishable from understanding the application of that requirement, and neither include the separate skill of being able to communicate that knowledge and understanding, particularly when the communication is difficult.<sup>32</sup> In that latter regard, Holloway has suggested that it is a “false dichotomy” to maintain a distinction between legal theory and the skills

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<sup>21</sup> Federation of Law Societies of Canada, National Requirement 2015. <http://docs.flsc.ca/NCANatReqNov2015.pdf>

<sup>22</sup> Sullivan, Note 2.

<sup>23</sup> *Ibid.*, at 115-122.

<sup>24</sup> Yates, Note 4 at 235. Also, Sullivan, Note 2 at 79-81.

<sup>25</sup> Sullivan, Note 2 at 50-51.

<sup>26</sup> Yates, Note 4 at 238.

<sup>27</sup> See, for example, Woolley, Note 16.

<sup>28</sup> Woolley, Note 16, p. 806.

<sup>29</sup> Woolley, Note 16, p. 806-807. Also, Luban, David. *Legal Ethics and Human Dignity*. Cambridge: Cambridge University Press, 2007.

<sup>30</sup> Luban and Milleman, Note 18.

<sup>31</sup> *Ibid.*, p. 813-814.

<sup>32</sup> *Ibid.*, p. 814.

required to apply it.<sup>33</sup> Particularly in respect of professional responsibility, Lerner has examined the psychological underpinning of emotion-based pedagogical strategies that differ from the instrumentalist approach of the case method such as live-client clinics and problem-based learning.<sup>34</sup>

The division and separation of two segments of legal education, academic and vocational, has attracted significant attention in the literature and has, in the view of some researchers, created tensions between the theory of law and its applications in reality.<sup>35</sup> In 1973, then United States Supreme Court Justice Warren E. Burger levelled a now famous critique of the American legal education system,<sup>36</sup> which bore similarities to its Canadian counterpart in its adherence to the case method. Arguing that American legal advocacy was inadequate, Burger placed some responsibility on law schools, which, in his view, "...fail to provide adequate and systematic programs by which students may focus on the elementary skills of trial advocacy."<sup>37</sup> In support of his claim, Burger compared the training and certification of American trial lawyers to that of both British barristers and to medical specialists, submitting that those other professionals are more cautious in their recognition that professional competence depends on a host of factors including experience.<sup>38</sup> While not attributing the shortcomings of the American system of training its lawyers solely on law schools, Burger asserted "Law schools fail to inculcate sufficiently the necessity of high standards of professional ethics, manners and etiquette as things basic to a lawyer's function."<sup>39</sup> More recently, studies conducted in both America<sup>40</sup> and Canada<sup>41</sup> have identified continuing concerns with the education of lawyers and suggesting a need for increased integration of theory-based teaching and experiential practice. The Canadian Bar Association report observes, as Burger did four decades earlier, that the medical profession is more effective than the legal profession in this synthesis.<sup>42</sup>

It has been suggested that the study of "professionalism" in the academic context has emphasized the learning of codes of conduct over the development of "moral character."<sup>43</sup> While professionalism and professional character are expansive subjects, it has been proposed that the development and application of integrity, initiative and emotional resilience are crucial to achievement of maximal professional development.<sup>44</sup> Literature examining law student and lawyer values and wellbeing supports this contention and, further, suggests the contributions of legal education in these regards can be improved.<sup>45</sup> In fact, data collected from American lawyers in the 1990s indicated that, in the lawyers' views, law schools had not provided them training in the skills and professional

<sup>33</sup> Holloway, Ian. "A Canadian Law School Curriculum for This Age." *Alberta Law Review* 51.4 (2014): 787-800.

<sup>34</sup> Lerner, Note 17 at 694 et seq..

<sup>35</sup> Barton, Karen and Fiona Westwood. "Developing professional character – Trust, values and learning." In Maharg, Paul and Caroline Maughan, eds., *Affect and Legal Education: Emotion in Learning and Teaching the Law*. (2011), Surrey: Ashgate Publishing Limited, 235-256.

<sup>36</sup> Burger, Warren E. "The special skills of advocacy: Are specialized training and certification of advocates essential to our system of justice?" *Fordham Law Review*. 42. (1973): 227-242.

<sup>37</sup> *Ibid.* at 232.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> Sullivan, William, Anne Colby, Judith Welch Wegner, Lloyd Bond and Lee S. Shulman. *Educating Lawyers: Preparation for the profession of law*. The Carnegie Foundation for the Advancement of Teaching. (2007).

<sup>41</sup> Canadian Bar Association. "The future of legal services in Canada: Trends and issues." June, 2013.

[http://www.cba.org/CBAMediaLibrary/cba\\_na/PDFs/CBA%20Legal%20Futures%20PDFS/trends-issues-eng.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/trends-issues-eng.pdf)

<sup>42</sup> *Ibid.* at 34.

<sup>43</sup> Nicholson, D. "Education, education, education: Legal, moral and clinical." *The Law Teacher*. 42. (2008): 145-173. See also Barton and Westwood, Note 34 at 235.

<sup>44</sup> See Barton and Westwood, Note 34 at 236. Also, Carter, R. "A taxonomy of objectives for professional education." *Studies in Higher Education*. 10. (1985): 135-149.

<sup>45</sup> See Granfield, Note 15; Benjamin et al., Note 16; and Benjamin, Note 17.

responsibilities that they considered to be most relevant.<sup>46</sup> In the United Kingdom, a report presented by Lord Neuberger in 2014 recommended that law schools should take a greater role in preparing students for the practice of law, including preparation for addressing ethical dilemmas that arise in the legal profession.<sup>47</sup>

Pedagogical approaches to the teaching of legal ethics and professionalism are varied. Barton and Westwood<sup>48</sup> have, in a number of studies, described their usage of virtual law firms as a teaching tool in a Diploma in Legal Practice course. It has been found that the virtual law firm learning experience extends beyond the application of legal principles to scenarios and the development of legal skills to teaching ethics principles and advancement of students' appreciation of the legal profession's ethics, values and attitudes.<sup>49</sup> A study of graduates of four comparable American law schools suggests that the experiential professional ethics program offered at William and Mary, which features a law firm-styled simulation construct that enables problem-based learning was viewed by its participants as a more effective vehicle for learning ethics than were the more traditional ethics courses offered by the remaining three schools.<sup>50</sup> Similarly, and referencing Hartwell's research demonstrating that simulation rather than paper or discussion-based approaches produces greater affective development, Duncan suggests that use of simulation in legal education may facilitate the development of students' empathy.<sup>51</sup>

What can be taken from the literature is that the use of a simulation-based pedagogy enhances the development of professional character in law students. The purpose of this study is to test Readers' Theatre, a teaching approach used in medical and nursing education, as a simulation format in a law school environment.

### **The use of Readers' Theatre in medical education**

In the medical education context, it has been noted "utopian classroom ideologies" may be overtaken by hidden curriculum (values informally related to students through communications with other students and stakeholders as well as by organizational, structural and cultural influences within training environments and, also, the pressures of the clinical environment).<sup>52</sup> For that reason, it has been suggested that medical schools are able to and should not only prepare students for ethical conflicts but should also provide opportunities to develop communication skills that allow for appropriate responses in respect of those incidents.<sup>53</sup>

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<sup>46</sup> See Sandefur and Selbin, Note 2 at 63, citing Garth, Bryant G. and Joanne Martin. Law schools and the construction of competence. *Journal of Legal Education*. 43 (1993):469 and Sonsteng, John and David Camarotto, Minnesota lawyers evaluate law schools, training and education. *William Mitchell Law Review*. 26 (2000): 327; see also Moliterno, James E. Professional Preparedness: A Comparative Study of Law Graduates' Perceived Readiness for Professional Ethics Issues. *Law and Contemporary Problems*. 58 (1995):259-286.

<sup>47</sup> Arthur, James, Kristian Kristjansson, Hywel Thomas, Michael Holdsworth, Luca Badini Confalonieri and Tian Qiu. *Virtuous character for the practice of law*. Jubilee Centre for Character and Virtues, University of Birmingham, U.K. (2014), presented by Lord Neuberger, President of the U.K. Supreme Court, November 25<sup>th</sup>, 2014.

<sup>48</sup> See Barton and Westwood, Note 34. Also, Barton, K. and F. Westwood. "From student to trainee practitioner – A study of team working as a learning experience. *Web Journal of Current Legal Issues*. 3. (2006).

<sup>49</sup> See Barton and Westwood, Note 34 at 240.

<sup>50</sup> Moliterno, Note 46. See also Duncan, Nigel. "Addressing emotions in preparing ethical lawyers." In Maharg, Paul and Caroline Maughan, eds., *Affect and Legal Education: Emotion in Learning and Teaching the Law*. (2011), Surrey: Ashgate Publishing Limited, 257-280.

<sup>51</sup> Duncan, Note 49.

<sup>52</sup> Bell, Sigall K, Matthew Wideroff, and Liz Gaufberg. "Student Voices in Readers' Theater: Exploring Communication in the Hidden Curriculum." *Patient Education and Counselling*. 80.3 (2010): 354-357; Also, Ozolins, I, H Hall, and R Peterson. "The Student Voice: Recognising the Hidden and Informal Curriculum in Medicine." *Medical Teacher*. 30.6 (2008): 606-11.

<sup>53</sup> See Bell et al., Note 48 at 356.

Readers' Theatre has been used as a pedagogical tool in medical education since the 1960s.<sup>54</sup> It has been asserted that Readers' Theatre is distinct from other learning methods, and particularly reading and lecturing, in that it "brings alive the characters in a story" and engages the participants.<sup>55</sup> A Readers' Theatre format involves scripts that are preferably derived from published literature rather than from practitioner accounts, so that the characters are more likely to have depth and dimensions that prompt post-performance participant dialogue.<sup>56</sup> In its basic usage, Readers' Theatre does not require memorization of lines, costumes or even extensive movement. Rather, the "actors" sit or stand in front of the "audience" with their scripts in hand and simply read their characters' lines, using facial expressions and voice inflection to convey messages.<sup>57</sup> At the conclusion of each performance, the actors and the audience discuss the story presented in the performance, including their reactions to certain characters and even specific lines.<sup>58</sup>

A number of benefits of the use of Readers' Theatre in medical education have been identified. These include: capturing audience interest and provoking discussion of issues raised in the performances;<sup>59</sup> development of practical communication skills;<sup>60</sup> introducing ethics principles and enhancing participants' ethical sensitivity;<sup>61</sup> and preparing students to face and deal with ethical conflicts in practice.<sup>62</sup> In their examination of a Readers' Theatre workshop for medical students, Bell et al. found that Readers' Theatre "...provides an opportunity to practice and receive feedback on the use of specific language in a safe and supportive environment. Together, these techniques stimulate rich discussion and thoughtful discovery...".<sup>63</sup> It has also been observed that engagement of student audiences both cognitively and emotionally by using verbal and non-verbal communication in a dramatic format "...has the potential to enhance health care practitioners' understanding of the complex emotional, interpersonal and psychological dynamics that arise in medical practice, many of which are difficult to fully convey in more traditional forms of dissemination (e.g., scientific articles)."<sup>64</sup>

Similar experiences with Reader's Theatre have been observed in an interdisciplinary medical teaching environment consisting of physician assistant, occupational therapy and nursing students.<sup>65</sup> The participants in that setting indicated that the format captured their interest, came to a greater appreciation for the perspectives of other stakeholders and facilitated communication leading to a comprehensive approach to patient care.<sup>66</sup> In another study, nursing students who participated in a Readers' Theatre exercises regarding the effects of personal belief systems in nursing, compassion, empathy and ethics strongly identified the teaching strategy as being beneficial to their learning, with

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<sup>54</sup> Shapiro, Joanna and Beverly Cho. "Medical readers' theater: Relevance to geriatrics medical education." *Gerontology & Geriatrics Education*. 32. (2011): 350-366.

<sup>55</sup> Savitt, Todd L. "Medical readers' theater as a teaching tool." *Cambridge Quarterly on Healthcare Ethics*. 19. (2010): 465-470.

<sup>56</sup> *Ibid*, at 466.

<sup>57</sup> *Ibid*, at 465.

<sup>58</sup> *Ibid*, at 466.

<sup>59</sup> *Ibid*, at 467.

<sup>60</sup> See Shapiro and Cho, Note 24 at 362.

<sup>61</sup> Arawi, Thalia. "Using medical drama to teach biomedical ethics to medical students." *Medical Teacher*. 32. (2010): e205-e210.

<sup>62</sup> See Bell et al., Note 48 at 356.

<sup>63</sup> *Ibid*, at 356.

<sup>64</sup> Rossiter, Kate, Pia Kontos, Angela Colantonio, Julie Gilbert, Julia Gray, and Michelle Keightley. "Staging Data: Theatre As a Tool for Analysis and Knowledge Transfer in Health Research." *Social Science & Medicine*. 66.1 (2008): 130-146.

<sup>65</sup> MacRae, N. and K.T. Pardue. "Use of readers theater to enhance interdisciplinary geriatric medicine." *Educational Gerontology*. 33 (2007): 529-536.

<sup>66</sup> MacRae and Pardue, Note 64 at 535.

themes of concern for person-centered care, opportunity for reflection and increased connection amongst the participant learners emerging.<sup>67</sup>

Essentially, Readers' Theatre has produced positive learning outcomes in medical and nursing ethics education and may be similarly useful in law school teaching. The practical benefits it offers include minimal theatrical production efforts and an opportunity to emotionally engage students with a range of dramatic abilities without the need for rehearsal or memorization of scripts. Conversely, the limitations of the strategy must be considered, as well. Given its minimalist production requirements, Readers' Theatre likely does not offer the same emotional dimensions traditional theatre does, as it fails to maximize the creative potential of its performances and also is self-limiting in respect of the use of metaphor and staging to enhance audience engagement.<sup>68</sup>

### This study

The primary objective of this study is to measure the perceptions of law school students regarding the effectiveness of Readers' Theatre as a teaching strategy. Secondly, the researcher's recorded observations of the participants' reactions to the Readers' Theatre exercise may offer useful insights into the utility of Readers' Theatre in legal education and, also, may identify issues for future exploration, such as questions concerning group dynamics amongst students of varying circumstances.

In order to test the utility of Readers' Theatre in a law school setting, 9 students in the University of New Brunswick's Faculty of Law volunteered to participate in a small, qualitative study. An effort was made to recruit at cross-section of participants from the Law Faculty's 3 years of J.D. degree program study (1L, 2L and 3L), each of which is comprised of approximately 90 students. The study volunteers were not provided with any reward for their participation, and they represented a variety of perspectives:

**Table 1: Participants by age, year of study and undergraduate degree**

Age	Year of Study	Undergraduate Degree
20-25 years = 5 (56%)	First year = 1 (11%)	Sciences = 1 (11%)
26-30 years = 3 (33%)	Second year = 2 (22%)	Business = 3 (33%)
36-40 years = 1 (11%)	Third year = 5 (56%)	Political Science = 1 (11%)
	Unknown = 1 (11%)	History = 2 (22%)
		Mathematics = 1 (11%)
		Arts = 1 (11%)

Prior to their attendance at a classroom designated for the conduct of the study, the participants were advised only that the purpose of the study was to examine a teaching strategy and that approximately 1.5 hours of their time would be required. The participants were provided with signed informed consent forms prior to their participation in the study exercise and confirmed their consent before completing an electronic questionnaire at the conclusion of the exercise. The exercise itself required participants to perform 2 Readers' Theatre vignettes, with the script for each involving a narrator, a senior lawyer, an associate lawyer and a law firm staff member (see Appendix 1). The first of

<sup>67</sup> Pardue, Karen T. "Introducing Readers Theater!: a Strategy to Foster Aesthetic Knowing in Nursing." *Nurse Educator*. 29.2 (2004): 58.

<sup>68</sup> Rossiter et al., Note 63.

the two scripts is based on *A Class Action*, a 1991 motion picture starring Gene Hackman and Mary Elizabeth Mastrantonio, while the second was derived from the third ethical dilemma studied by researchers at the University of Birmingham in the United Kingdom<sup>69</sup>, a billing increase issue. In each vignette, the associate lawyer faces an ethical dilemma and experiences pressure from the senior lawyer to carry out a particular action that raises an ethical dilemma. After each performance, the participants engaged in a semi-structured discussion of the scenario, initially prompted by the following questions posed by the researchers:

“Was there an ethical issue at play in the story?”

“If so, what was it?”

“What characters, if any of them, appeared to identify the issue?”

“Did they deal with the issue properly?”

“In your view, why did the characters react to the issue in the ways that they did?”

“Are you able to identify with each character?”

The participants’ group discussions that followed the performance of each vignette were enthusiastic and explored the ethical dilemmas presented from the perspectives of the characters involved. In respect of each of the scenarios the participants discussed the emotions that the characters would likely feel and that the participants themselves could feel in some measure simply by performing, or watching the performance of, the scripts. The researchers observed that the group discussions following the performance of each script were initiated immediately and with ease and, in both cases the researchers had to terminate the group discussions in order to comply with the scheduled conclusion of the exercises within the 1.5 hours allotted. Following the group discussions, the participants were asked to complete an electronic questionnaire that included a post then pre design of questions regarding the effectiveness of Readers’ Theatre in increasing the participants’ awareness of ethical issues in legal practice and in changing their perceptions of the difficulty of those ethical issues. The questionnaire also invited the participants to comment on the usefulness of the Readers’ Theatre exercise and to both compare and explain the effectiveness of Readers’ Theatre against classroom lectures and self-study.

### **Strengths and limitations of the retrospective post then pre questionnaire design**

Retrospective post then pre questionnaire design has been found to have particular strengths in the assessment of self-reported learning in a program of study. The design is generally time efficient and was formulated as a means of controlling the response shift bias, which is commonly encountered in traditional pre-post design.<sup>70</sup> As compared with pre-post design results, retrospective post then pre designed questionnaire results have been found to generate greater validity.<sup>71</sup>

While the retrospective post then pre design offers the benefits described above, it is acknowledged that it also presents limitations. For example, participant recall may negatively impact

<sup>69</sup> Arthur et al., Note 47 at p.2.

<sup>70</sup> Howard, G.S. “Response-shift bias: A problem in evaluating interventions with pre/post self-reports.” *Evaluation Review*. 4.1 (1980): 93-106.

<sup>71</sup> Howard, G.S., J. Millham, S. Slaten and L. O’Donnell. “Influence of subject response-style effects on retrospective measures.” *Applied Psychological Measurement*. 5 (1981): 144-150.

the reliability of the data, as may the vulnerability of its self-reporting structure to bias.<sup>72</sup> Nevertheless, the subjectivity of the study itself, being based on individual reactions to a Readers' Theatre exercise, and the preference for efficiency in respect of the participants' time favour a self-report design and, in that regard, use of the retrospective post then pre format is preferred over a pre-post model for measurement of the impact of the Readers' Theatre exercises on the participants' ratings of their awareness of ethical issues in legal practice, their perceptions regarding the difficulty of dealing with those issues and their awareness of the importance of sensitivity in lawyer-client interactions.

## Results

The post then pre questions in the survey focused on the participants' awareness, rather than depth of understanding, regarding legal practice ethical issues. The responses suggest that this awareness was not significantly impacted by participation in this exercise:

**Table 2: Rating of awareness of ethical issues in legal practice, post and pre RT exercise**

Now, after having participated in the Law School Readers' Theatre exercise, how would rate your awareness of ethical issues that arise in legal practice?		How would rate your awareness of ethical issues that arise in legal practice before you participated in the Law School Readers' Theatre exercise?	
Low	0.00%	Low	11.11%
Moderate	88.89%	Moderate	77.78%
High	11.11%	High	11.11%

**Table 3: Rating of awareness of importance of sensitivity in lawyer-client interactions, post and pre RT exercise**

Now, after having participated in the Law School Readers' Theatre exercise, how would you rate your awareness of the importance of sensitivity in lawyer-client interactions?		How would you have rate your awareness of the importance of sensitivity in lawyer-client interactions before you participated in the Law School Readers' Theatre exercise?	
Low	0.00%	Low	11.11%
Moderate	55.56%	Moderate	66.67%
High	44.44%	High	22.22%

<sup>72</sup> Nisbett, R.E. and T.D. Wilson. "Telling more than we can know: Verbal reports on mental processes. *Psychological Review*. 84.3 (1977):231-259.

**Table 4: Rating of difficulty of ethical issues facing lawyers, post and pre RT exercise**

<b>Now, after having participated in the Law School Readers' Theatre exercise, how would you rate the difficulty of ethical issues that lawyers have to face and deal with?</b>		<b>How would you have rated the difficulty of ethical issues that lawyers have to face and deal with before having participated in the Law School Readers' Theatre exercise?</b>	
Low	11.11%	Low	22.22%
Moderate	33.33%	Moderate	55.56%
High	55.56%	High	22.22%

The most significant change in the participants' post versus pre exercise attitudes about ethical issues in legal practice is observed in respect of the degree of difficulty that the participants ascribed to ethical issues that lawyers have to face and deal with. Here, the percentage of participants who rated the difficulty of lawyers' ethical issues as "high" increased from 22% before the Readers' Theatre exercise to almost 56% afterward. While the number of participants in the study do not allow for generalization of these results, they are useful for further consideration of the Readers' Theatre strategy in law schools.

Responses collected from the participants in the open-ended essay questions are particularly useful as qualitative data regarding experiences in Readers' Theatre. In respect of the first question reproduced below, concerning perceptions of the utility of the Readers' Theatre exercises, all of the participants expressed that it was useful, although for different reasons. For some participants, the exercise was productive because it highlighted substantive issues. Others identified the means by which the substantive issues were raised as being important, while still others focused on the provisions of beneficial opportunities for discussion and analysis of the substantive issues as key.

**Table 5: Participant views of the usefulness of the RT exercise**

<b>Has your participation in the Law School Readers' Theatre exercise been useful? Please explain why or why not.</b>
"It has been useful. It allows for discussion of ethical issues that may not be apparent in a fact scenario."
"Yes. Especially in an ethics situation like the ones we did today, it helps personalize the issue, rather than simply discussing it in the abstract. The sense of what's at stake in the situation is enhanced by thinking about the characters' motivations in the situations."
"Useful, because it is always productive to become familiarized with the type of issues we might encounter in practice."
"Having an example makes participating in a discussion much easier. If you have facts you can use them to illustrate your point and it makes you consider what changes to the fact scenario would make you change your opinion. It helps you pinpoint what is relevant to your position."
"My participation was useful. Having completed a course on professional obligations, I can firmly say that there is no substitute for acting out dilemmas in real time. The readers' theatre is a valuable tool that engages all of your faculties as a participant."
"Yes, gives real time examples of ethical issues playing out in front of you and gives an opportunity for discussion shortly after the skits have taken place. This is an activity I would like to see incorporated into the classrooms of law schools."
"Yes, I believe that my participation has been useful because it has enlightened me towards the ethical issues that lawyers face in the day-to-day operations of practicing law."
"I think it's useful. Similar to the case method of learning legal principles, I think that reader's theatre helps students understand how to apply principles and helps students recognize the situations in which legal issues may arise."
"Yes, playing out the scenarios promotes better critical thinking than reading abstractly or writing exams."

In comparing the effectiveness of Readers' Theatre to classroom lectures as an approach to learning, all but one of the participants rated Readers' Theatre as being more effective. The participant who perceived classroom lectures as more effective described a preference for being introduced to a doctrinal concept in an instructional manner than being introduced to it in a "real world example." This observation identifies a flaw in the study design, which failed to recognize that a Readers' Theatre exercise would likely be more effective if it were preceded by an introduction to the relevant learning outcomes, in this case legal ethics. It is also acknowledged that the comparison of Readers' Theatre to classroom lectures by the participants is contextual to the subject matter of legal ethics. In the researchers' views, some law school curriculum content would not be easily accommodated in a Readers' Theatre structure.

**Table 6: Participant views of the effectiveness of the RT exercise compared to classroom lectures**

<b>How would you compare the effectiveness of Readers' Theatre to classroom lectures as an approach to learning? Explain your answer.</b>
"The exercise is engaging. It allows for participation and conversation. Traditional classroom lectures often do not explore scenarios in which ethical issues arise. Traditional classroom lectures often inform you of the existence of ethical issues in the practice of law whilst forgoing application of the knowledge. Classroom interaction allows for an array of opinions and perspectives that may open you mind to consider a preconceived notion of what is and is not ethical. This is something that must be increased in traditional classroom lectures."
"I think in this type of situation, where you need to think about the way the material affects and individual and try to understand the different responses a person might have, the readers theatre approach gives the students a chance to assume the jeopardy faced by the character upon themselves, and struggle with the decision making process and other influences. It's very easy to say "Oh I'd never pad the bill dishonestly" in response to an abstract, but when put in that situation and facing the pressures, it prepares the participant more for the real world application of the ethical learning."
"Personally, I like to learn in a more linear fashion. I like to be introduced to a concept, have it explained, and then apply the principles learned to a real world example. I learn better this way than by beginning with a real world example from which the relevant principles needs to be extracted."
"If you are lecturing you can't really be responsive to feedback within the time you have to teach a subject that day. If you are asking people what they think and understand during the class, you know what is missing and you can adjust your methods as you go."
"Classroom lectures involve readings and a lecture. However, neither of these approaches have [sic] stimulated my interest and awareness of the legal and ethical dilemmas. By taking on an active part in ethical issues through role playing, the Readers' theatre captivates its audience and participants."
"No stress to copy down notes, not getting marked. Could just sit there and take everything in. Possibility with the reduced numbers in the class that it also make it more comfortable to act/speak about what our opinions were on the subject matter that was presented."
"I think readers' theatre is better than lectures because they are more engaging, which makes the material easier to absorb."
"Similar to my answer in 13, I believe that acting out fact scenarios helps students in understanding how to apply principles and helps students recognize the situations in which legal issues may arise."
"It is more tactile, enters the long-term memory better. Theatre should be used far more than it currently is in education. Has history taught us nothing? People learn well from narratives."

The comparison by the participants of the effectiveness of Readers' Theatre and self-study was also positive. However, and as was the case in the classroom lectures comparison, one participant viewed self-study as being more effective than Readers' Theatre, making the point that self-study is more forgiving in the sense that it allows for review of the data based on the student's attentiveness to and comprehension of the material. There was a strong perception amongst the participants, however, that the Readers' Theatre method is helpful in part because it facilitates discussion of the relevant concepts in ways that develop understanding.

**Table 7: Participant views of the effectiveness of the RT exercise compared to self-study**

<b>How would you compare the effectiveness of Readers' Theatre to self-study (reading) as an approach to learning? Please explain.</b>
The ability to talk through issues and consider different approaches is much effective than self-study. Especially amongst your peers. Seminar structure is needed in a law school system and this is a way to move away from a full lecture style course.
The acting/discussion model works better than just reading it because other people in the class raise their concerns about the situation and their perspectives to your attention, putting you in a position where you have to think of the issue from a perspective you would not have otherwise. Since the whole goal of this exercise seems to be to understand how different perspectives and pressures faced by individuals will affect their response to an ethical dilemma, it's good to get everyone's opinion and views in for a broader understanding.
I learn better by reading than by listening. This is because reading is much more forgiving when you have a moment's distraction. You will not miss any of the information, as you have it in front of you. In contrast, when listening, you can miss critical information.
If you are reading alone you may gloss over entire pages of text without realizing it. The piece of information that makes the reasoning from the case click might be in those pages. If that is the case, you have to go back and you have lost time. It also helps to see what other people view as important even if you disagree it forces you to think about why you disagree with their interpretation of the information.
When doing readings concerning ethical issues at home, I find that by reading about the problems other lawyers face, it is difficult to put oneself in their shoes. Reader's theater gives an experience that involves every one of your senses.
Similar to the answer to question 15 in the sense that, for myself anyways, when you're acting something out/watching someone act something out it makes a bigger impression. It is more engaging to watch people read/act than it is to simply read off a piece of paper. Again, this is an element I personally feel would contribute positively to the classroom environment in law school. This would help to "spice" things up as the day to day presentation from slides/lecturing off notes is more or less 100% of the class time. This could be seen as something to break up class lectures, get people to critically think about what scenario that they just witnessed and then have a collaborative discussion immediately after the skit is done. In the end, I would like to see this type of educational tool incorporated into law school classrooms.
Readers' Theatre seems to make it easier to understand the issues by talking about the scripts with your colleagues and professor, as opposed to studying on your own.
While the case method system of reading is similar in seeing an application of legal principles, I think that the reader's theater method benefits from the ability to hear classmates' views and their interpretation of how legal principles should be applied in addition to your own view. As such, I think that you gain a better understanding of how a principle may be applied than simply reading a majority judgment that may only delve into one viewpoint.
I think I may have covered it in the previous answer. But to elaborate, theatre is a way for the audience and the actors to engage with the content in a dynamic way. As it is delivered with emotion and story, we remember the content better and more easily reflect on it after.

## Conclusion

Faced with concerns of declining professionalism and low public confidence, regulators of the legal profession in Canada and America have imposed ethics education requirements on the law schools that seek their accreditation. In response, North American law schools, and particularly Canadian

institutions, are struggling to achieve an appropriate balance between doctrinal and experiential learning.<sup>73</sup>

In the implementation of teaching strategies that afford students experience-based opportunities to develop knowledge and skills crucial in professional practice, law schools should consider the potential of Readers' Theatre. The reported effectiveness of this tool in the health professions education contexts suggests it offers a blend of cognitive and emotional student engagement that activates learning in ways that traditional classroom teaching methods do not. While the results of the small-scale assessment of the Readers' Theatre format reported above are consistent with the literature regarding its use in medical and nursing schools, it is acknowledged that they are insufficient to confirm the utility and effects of the teaching strategy in the law school environment. However, support does exist for a larger investigation of Readers' Theatre as a model for teaching legal ethics, a subject that requires urgent attention in North America.

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<sup>73</sup> Regarding the use of clinical education as a form of experiential learning, it has been argued that Canadian law schools lag behind their American and Australian counterparts: Smyth, Gemma E. and Maggie Liddle. Lulling ourselves into a false sense of competence: Learning outcomes and clinical legal education in Canada, the United States and Australia. *Canadian Legal Education Annual Review*. (2013): 15-34 at 30.

## Appendix 1

### Script based loosely on the movie titled *Class Action* (Hackman):

N: Janice Middleton is a fifth-year associate in the firm of Abrahms Dixon, a leading insurance defence firm in New Brunswick. Janice had pursued employment with Abrahms Dixon from the time that she was admitted to law school – in part because Ron Dixon, QC, a senior partner in the firm, is a close friend of Janice’s father. Furthermore, Abrahms Dixon is highly regarded in the legal community, and it represents many of the insurance companies that do business in Atlantic Canada. Two years ago, after years of marketing efforts, Abrahms Dixon was retained by the Canadian Professional Insurance Company to defend a major automobile manufacturer. The manufacturer, Argo Motors, is the subject of a class action lawsuit in which more than a billion dollars is being claimed. Abrahms Dixon is not the lead defence firm; instead, Fasteau Martin of Toronto is leading the defence. However, Abrahms Dixon is playing a central role thanks to Ron Dixon’s longstanding relationship with Allan Martin. Janice has been selected by Ron Dixon to work with him on the file.

The pleadings in the case have been completed, extensive document discoveries have been concluded and the parties have proceeded to court on a number of procedural motions. Janice has been told by a paralegal at the firm that the Abrahms Dixon invoices in the case have alone already exceeded \$1 million. Fortunately, the defence for Argo is strong, and Ron Dixon is optimistic that Argo will be successful at trial. In fact, on a flight from Toronto to Fredericton following discoveries, Mr. Dixon told Janice that “Winning this case would be the biggest success of my career and, even better, would ensure that Abrahms Dixon will be a very solid force in the legal world for the rest of my practice years.”

On this day, Janice receives a call from Trudy Beckett, one of Abrahms Dixon’s long-time paralegals.

**Trudy [sounding shaken and upset]:** Hi, Jan. It’s me. Do you have a minute? I really need to talk.

**Janice:** Of course...what’s going on? Are you alright?

**Trudy:** Not really. It’s about Argo. I just don’t know what to do.

**Janice:** What’s there to do? We’re finishing up a few undertakings and then we’re going to wait for the Plaintiffs to set it down for trial... if they even do set it down!

**Trudy:** Yeah, but it’s about the undertakings. Remember how you got me to contact Maria Vespa at Argo for the old file boxes?

**Janice:** Yes, the boxes from product testing? Those were destroyed after 7 years, they said.

**Trudy:** Actually, Maria did find one that hadn’t been sent to the warehouse. So it survived the shredding. And there’s an engineering report in there that’s a huge problem.

**Janice [concerned]:** A problem? How so?

**Trudy:** Well, this report says that Argo should have adopted a redesign of the gas tank/injection line linkage because of a high flammability risk. So the problem is that the redesign was never done, and....

**Janice:** Does Ron know?

**Trudy:** I told him this morning. And this is my problem. He's told me that there's no way we can flag this thing because it will kill our case. So he told me to bury it in the Affidavit of Documents. He wants me to add a new entry titled "File of miscellaneous documents, 1998-2010" and to put every new document I can find in it. It's about 25,000 pages right now, and most of it is irrelevant. The report is buried in the middle of it.

**Janice:** Goldberg is not going to have the resources to go through that much paper. One of his associates just left for the government.

**Trudy:** I know. And Goldberg is in and out of the hospital himself right now. That's my point. This report is probably never going to see the light of day.

**Janice:** Well, that's Goldberg's problem, isn't it. Trudy, look: we have to win this trial. I'd feel differently if we weren't disclosing the report but if we are, I don't see the big deal.

**Trudy:** Are we really disclosing it if we're trying to hide it?

**Janice:** There's a lot riding on this for Argo, Trudy, and it's a huge case for the firm – for all of us. Now is not the time to be self-righteous!

#### **Script based on University of Birmingham study concerning billing practices:**

**N:** Lee Reid is a second year associate at a large Toronto based firm of Godfrey & Jones. The firm is renowned across Canada and even in the US for its expertise in civil litigation - particularly in representing large corporations in massive products liability defence.

Lee recognizes the good fortune of having the opportunity to work at Godfrey & Jones, especially since much of his 2014 law school class is unemployed, let alone working for such a prestigious firm. Further, Lee has had the incredible benefit of working directly with founding partner Melman C. Jones on the famous Worldwide medical supplies litigation, in which Godfrey & Jones is defending Worldwide against a \$250 million dollar legal claim. Today, Lee receives a call directly from Melman Jones:

**Lee:** Good morning, Lee Reid

**Mel:** Lee, Mel Jones.

**Lee:** Good morning Mr. Jones. How are you ....

**Mel, interrupting:** I've got a lot on my plate today, Lee. I don't have time for chit-chat. Look, Accounting is preparing the monthly invoices for Worldwide on that claim that we are defending. We are running into a bit of a glitch and I'm going to need you to fix it this morning.

**Lee:** Sure, Mr. Jones. What do you need me to do?

**Mel:** I need you to get a hold of Dave Broadbeck in Accounting. He's got the timesheets for the Worldwide files. I think what we need to do is take a second look at those timesheets and round up the time for each lawyer who worked on the file last month. You know, Lee, we got great results in those procedural motions and my concern is that our time is way too light, given the results that we achieved. Just ask Dave for the sheets and make sure that you add two hours per lawyer for each day that they worked on the file.

**Lee:** Okay..... but we must have worked on that file almost every day in December and there were four of us, if I remember correctly. That's going to increase the bill by a few thousand per day.

**Mel:** Well, whatever it is, it is. Look, Lee, Marty Davidson and I have been friends for a lot of years and he knows that Worldwide gets good value from us. In the computer litigation case, he told me a few times when we were fishing this summer that he thought my bills in the computer litigation back in 2014 were way too cheap. Anyway, do me a favour and just get this done before noon so I can put it out of my mind.

**N:** Lee hangs up and thinks about his next step. It is true that Mel Jones and the President of Worldwide seem to be pretty good friends. Plus, Mel Jones has been on the Law Society Council a few times in his career. But, at the same time, this seems wrong. Lee calls Dave in Accounting to get his thoughts:

**Dave Broadbeck:** This is Dave Broadbeck.

**Lee:** Hi, Mr. Broadbeck?

**Dave:** Yeah.

**Lee:** Hi, it's Lee Reid up on the tenth floor? I just got a call from Mr. Jones. He was wondering if I could come down and get the timesheets on the Worldwide litigation. Can I do that?

**Dave:** Well, you can only look at invoices if there has been a mistake. That's the firm policy. And, technically, only partners are supposed to review the time sheets. What's the problem?

**N:** Lee has to decide what to say next.