

# REALITY BYTES: USING TECHNOLOGY IN MOOTING

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*This article considers how law schools can facilitate the development of technology skills by using technology to enhance access to mooting in settings that replicate legal practice. The authors conducted research into the use of technology by Australian law schools for mooting and evaluated an internal mooting competition using Elluminate, an online communication platform available to students through Blackboard. The analysis of the results of the survey and the Elluminate competition will demonstrate that technology can be used in mooting to provide an authentic learning experience. The paper concludes that while it is essential to teach technology skills as part of legal education, it is important that the benefits of using technology are made clear in order for it to be accepted and embraced by the students. Technology must also be available to all students considering the widening participation in higher education and consequent increasing diversity of law students.*

## I INTRODUCTION

The use of technology for purposes such as communication and document management has become essential to legal practice, with practitioners and courts increasingly relying on various forms of technology.<sup>1</sup> The emergence of a newly constructed digital social space and the adoption of electronic forms of communication in the wider community have led to electronic communications technology becoming relatively commonplace in the courts and legal firms. Lawyers therefore need to be able to understand and use modern technology in order to communicate effectively for the purposes of legal practice. Accordingly, where legal education purports to prepare graduates for legal practice, technology skills are an essential learning outcome. In addition to the need for graduates to have technology skills, different forms of technology are increasingly used in legal education for pedagogical reasons. Online learning assists students in becoming more flexible and enhances the ability to understand and adapt to change.<sup>2</sup> Given the importance of these dual purposes in using technology in legal education, consideration should be given to whether students have equitable access to technological skills development. The increased diversity of law students, both in terms of socio-economic circumstances and study mode, expected to result from the widening participation agenda, brings the equity issue

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<sup>1</sup> Frederika De Wilde, 'Courtroom Technology in Australian Courts: An Exploration into Its Availability, Use and Acceptance' (2006) 26 *Queensland Lawyer* 303, 303.

<sup>2</sup> Bernadette Richards, 'Alice Comes to Law School: The Internet as a Teaching Tool' (2003) 14(1) *Legal Education Review* 115, 117.

into focus. To neglect the development of technology skills and to fail to ensure equitable access to skills training would be to fail in a fundamental aspect of a university's obligation not just to its students, but ultimately to its students' potential employers and their future clients.

The authors conducted a project over a two year period which investigated the use of technology in mooting competitions including ways of improving the experience of external students and increasing the number of students participating in mooting by addressing the impediments to participation in the program. As the project involved surveys and focus groups of students, ethics approval for the project was obtained. The project's hypothesis was that technology can be used to increase the participation of students in the mooting program. The first stage of the project comprised a literature review in relation to the benefits to students of participating in mooting and the use of technology in legal education and the courts, and a survey of students to ascertain the perceived benefits to students of participating in mooting. At this stage the project team concluded that while mooting assists students to develop a range of practical skills such as advocacy, research and writing, analytical ability and networking, as well as improving self-confidence and building networks, there are impediments to students participating in mooting such as lack of access due to remoteness of location or time commitments, and a lack of experience and confidence.<sup>3</sup>

The second stage of the project involved a survey of Law Schools regarding the use of technology in moot courts (see Appendix 1); and the trial of a number of technologies (*Second Life*, *Elluminate* and videoconferencing) in the mooting program at the Queensland University of Technology (QUT). After evaluating the different technologies, the project team concluded that while videoconferencing is the ideal platform for remote mooting, it has a significant drawback in relation to accessibility by off campus students. *Second Life* is not appealing to students and does not enable them to develop advocacy skills due to the use of avatars and lack of visual communication. *Elluminate*, being a low bandwidth readily available and usable online communication tool which facilitates both audio and visual communication, enables students to practice mooting skills and participate in competitions regardless of location.<sup>4</sup> Based on these conclusions, in the final stage of the project, the team conducted an internal moot competition using *Elluminate*. The *Elluminate Moot* enabled students to participate online wherever they were located without the need for a physical presence in a moot court room. The project team evaluated the effectiveness of *Elluminate* as a platform to conduct a moot by a focus group of students who participated in the competition which included external students and students new to mooting (see Appendix 2).

This article evaluates the success of the *Elluminate Moot*, concluding that technology should be a routine part of the university experience not only as a

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<sup>3</sup> The results of this stage of the project have been published in Jennifer Yule, Judith McNamara and Mark Thomas, 'Virtual Mooting: Using Technology To Enhance the Mooting Experience' (2009) 2 *Journal of the Australasian Law Teachers Association* 231.

<sup>4</sup> The results of this stage of the project have been published in Jennifer Yule, Judith McNamara and Mark Thomas, 'Mooting and Technology: To what extent does using technology improve the mooting experience for students?' (2010) 20 *Legal Education Review* 137, 148.

means of ensuring administrative efficiency in the delivery of teaching programs but also as part of an authentic learning experience, paralleling developments in the legal industry. As such, it must be available to all students regardless of location and economic resources. The authors used *Elluminate* for the mooted competition primarily because it already formed part of the University's suite of standard software. However, the recommendations are not platform specific, and can be adapted to any equivalent technology (such as *Skype* video) a particular university has, or can readily gain, access to.

## II WHY CONSIDER TECHNOLOGY?

The justifications for utilising technology in legal education should be considered from the student learning and institutional perspectives. Technology can support student learning and provide authentic learning experiences that can, particularly in the context of mooted, assist universities to support students from increasingly diverse backgrounds to transition to university and to have a positive overall course experience.

### A Student learning perspective

It is universally accepted that different students have different learning styles.<sup>5</sup> Contemporary law students are predominantly members of what is known as 'Gen Y'. The learning styles of Gen Y (and Gen X before them),<sup>6</sup> appear to be significantly different from 'traditional' forms of student engagement and these differences need to be considered if the modern law school is to meet the expectations of students. According to Bohl, Gen X and Gen Y have a predominantly passive relationship with information and an expectation of instant gratification.<sup>7</sup> They have a consumerist attitude which includes a sense of being entitled to an educational experience that is accessible and entertaining (rather than simply the acquisition of knowledge).<sup>8</sup> Similarly, adult learners need to be actively engaged with content, which demands participation and context,<sup>9</sup> necessitating learning environments which include role playing, participation in clinical experiences, externships, clerkships and moot courts.<sup>10</sup>

Generation Y students are predominantly visual learners who log on for information who have developed the expectation that they will find information by clicking a button.<sup>11</sup> However, accessing case law electronically is not yet

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<sup>5</sup> John Biggs, *Teaching for Quality Learning at University* (Open University Press, 2003), 17.

<sup>6</sup> Definitions vary but generally Gen X is defined as persons born between 1961 and 1981 and Gen Y is defined as persons born between 1980 and 2000.

<sup>7</sup> Joan Bohl, 'Generation X and Y in Law School: Practical Strategies for Teaching the MTV/Google Generation' (2008) 54(4) *Loyola Law Review* 775, 780.

<sup>8</sup> *Ibid.*, 781.

<sup>9</sup> *Ibid.*, 784.

<sup>10</sup> *Ibid.*, 785; Ernest Pascarella and Patrick Terenzini, 'How College Affects Students: A Third Decade of Research' (Jossey-Bass, 2005); *Law School Survey of Student Engagement, 2007 Annual Survey Results, Student Engagement in Law School: Knowing Our Students 9* (2007); Joanne Ingham and Robin A Boyle, 'Generation X in Law School: How These Law Students Are Different From Those Who Teach Them' 56 *Journal Legal Education* 281, 288.

<sup>11</sup> *Ibid.*

universally accepted (or appreciated) as evidenced by the following exchange in the High Court:

MR LLOYD: I apologise for that, your Honour. I did look it up on LawCite. It is not reported as reported on LawCite, but anyway, in that case your Honour Justice Gummow admittedly, I accept, in a distinguishable context, did indicate that there was scope to read down a provision when it was a provision that favoured a monopolist against individual rights.

GUMMOW J: I think counsel should spend more time in law libraries and less time huddled over computers. It might assist us in our task.<sup>12</sup>

The twenty-first century law student regularly uses virtual learning environments provided by universities, publishers and others. While contact with other students is important, the use of technology is attractive to students who are, for the most part, already deeply acculturated to, and engaged in, virtual environments.<sup>13</sup> In any event, in a world in which on-line social networking is a primary form of communication, contact need not necessarily be face-to-face. Furthermore, students are working longer hours,<sup>14</sup> which demands access to blended and more flexible modes of delivery.

Despite the benefits of using technology to facilitate flexible delivery and accessibility described above, the effectiveness of technology in improving student learning is enhanced when appropriate education theory is applied in the development of learning tools.<sup>15</sup> Various educational theories may assist in developing a robust pedagogical framework on which to build a functional mooted program. For example, Marton, Biggs and Ramsden all describe the important role of engagement and collaboration in higher education and how a student develops critical thought through engagement with the material.<sup>16</sup> Both the theory of social constructivism<sup>17</sup> and the constructivist theory of learning<sup>18</sup> look at the role of students in their learning, aiming to integrate skills and knowledge, epitomised by this dual role for technology. The value of customised learning experiences and hands-on problem solving implied within constructivist theory is well-served by technology-based mooted programs, reflecting the general proposition enunciated by Maharg that:

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<sup>12</sup> Phonographic Performance Company of Australia Limited & Ors v Commonwealth of Australia & Ors [2011] HCA 118 (11 May 2011).

<sup>13</sup> Alison Bone, 'The twenty-first century law student' (2009) 43 *Law Teacher* 222, 244.

<sup>14</sup> Richard James, Kerri-Lee Krause and Claire Jennings, *The First Year Experience in Australian Universities: Findings from 1994 to 2009* Centre for the Study of Higher Education (University of Melbourne, 2010), 35  
<[http://www.cshe.unimelb.edu.au/research/experience/docs/FYE\\_Report\\_1994\\_to\\_2009.pdf](http://www.cshe.unimelb.edu.au/research/experience/docs/FYE_Report_1994_to_2009.pdf)>.

<sup>15</sup> Caroline Coles, 'The role of new technology in improving engagement among law students in higher education' (2009) *Journal of Information, Law and Technology* 1.

<sup>16</sup> Ference Marton and Roger Saljo, 'Approaches to learning' in Ference Marton, Dai Hounsell and Noel Entwistle (eds), *The Experience of Learning* (Scottish Academic Press, 1984) 36; Biggs, above n 5; Paul Ramsden, *Learning to teach in higher education* (RoutledgeFalmer, 2<sup>nd</sup> ed, 2003).

<sup>17</sup> Lev Vygotsky, *Thought and Language* (MIT Press, 1962); Jean Piaget, *The Psychology of Intelligence* (Routledge & Kegan Paul, 1950).

<sup>18</sup> David Jonassen, 'Constructivism and Computer-mediated communication in distance education' (1995) 9(2) *American Journal of Distance Education* 7.

Constructivism, with its emphasis on the social construction of knowledge, and negotiation of knowledge within problem-based environments, is ideally suited to ... many Web-based learning initiatives.<sup>19</sup>

Mooting as an authentic real world experience for law students, also provides an appropriate and effective platform on which experiences consistent with theories of experiential learning can be built, combining as it does the cognitive components of case preparation and presentation with the aspects of a student's affective responses generated within the dynamics of forensic argument.<sup>20</sup> Kolb, for example, describes a learning cycle, with the learner having an experience, reflecting upon it, generalising into a theoretical framework and finally engaging in active experimentation.<sup>21</sup> Within this framework, Wolski has applied experiential learning theory to mootings, identifying the four stages as preparing for an experience by receiving theoretical instruction, practicing the skill in simulations, reviewing and reflecting on the experience and undertaking further practice.<sup>22</sup> The mootings program is, in itself, sufficiently flexible to accommodate the various learning styles identified by Kolb,<sup>23</sup> while the implementation of the program with the assistance of technology can enhance the experiential learning framework by providing *multiple* opportunities for students to practice and receive feedback on their mootings skills, regenerating the cycle as often as is practicable or appropriate for each individual student.

The focus of this article is not on the learning framework which supports the development of mootings skills, which may differ depending on whether the context is an assessable mootings subject or an internal or external competition, but rather on the best use of technology to facilitate mootings. It is argued that the technology chosen must be the most appropriate to address the problems which have been identified (in this case lack of access to mootings due to remoteness of location, lack of time or lack of confidence due to inexperience), otherwise there may be resistance by staff and students.<sup>24</sup> So the challenge for academics is not only to design the appropriate learning opportunities but also to communicate effectively with the students as to why it is to be valued.

In addition to the pedagogical benefits, the use of technology in legal education also provides a more authentic learning experience in that students gain the technology skills they will need in their future working lives. The development of 'e-courts' in the Australian jurisdiction reflects the increasing need for technology-based communication skills as an essential part of contemporary litigation practice. Workplaces use technology at all levels of advice and litigation, from initial advice and checking for conflicts of interest through to

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<sup>19</sup> Paul Maharg, 'Negotiating the Web: Legal Skills Learning in a Virtual Community' (2001) 15(3) *International Review of Law Computers and Technology* 345, 358.

<sup>20</sup> See, for example, David Kolb, Richard E. Boyatzis and Charalampos Mainemelis, 'Experiential Learning Theory: Previous Research and New Directions' in Robert Sternberg and Li-Fang Zhang (Eds.), *Perspectives on cognitive, learning, and thinking styles* (Lawrence Erlbaum, 2000) 227.

<sup>21</sup> David Kolb, *Experiential Learning* (Prentice-Hall, 1984).

<sup>22</sup> Bobette Wolski, 'Beyond Mootings: Designing an Advocacy, Ethics and Values Matrix for the Law School Curriculum' (2009) 1 *Legal Education Review*, 41, 53.

<sup>23</sup> See generally Kolb, Boyatzis and Mainemelis, above n 20.

<sup>24</sup> L Hunt, "Student Resistance to ICT in Education" (Proceedings of the International Conference on Computers in Education 2002, 964).

preparation of documents for trial and presentation of the case in court. Courts increasingly use technology for storing and accessing documentary evidence as part of the litigation process.<sup>25</sup> Koo argues that law schools should be teaching students more of the technology which is used in practice: '[t]oday's legal workplace demands technology-related skills that the traditional law school curriculum does not cover.'<sup>26</sup> Successful legal education links acquired skills with future employment through the perceived authenticity of tasks. In a study involving students at the Lancaster University Law School where web-based learning technologies were used, it was found that 'students reported that they felt the course had increased their skills and developed their confidence and ease with computer systems.'<sup>27</sup> Since a primary obligation of lawyers is communication with clients, lawyers need to be able to communicate, persuade and understand their audience using appropriate modes of communication. While this does not diminish the value of communication in conventional forms, education for the lawyers of the twenty-first century necessarily includes the development of communication skills within virtual environments, as the profession's client base comes increasingly from a more highly computer-literate population.

### *B Institutional perspective*

From an institutional perspective, considering that universities are being encouraged and provided incentives by the government to increase the diversity and number of students in higher education, there is a need not only to develop technology skills and encourage the use of technology in an educationally beneficial way in order to support educationally disadvantaged students but also to ensure equity in securing access to the necessary technology.

The government's agenda of widening participation in higher education<sup>28</sup> means there is likely to be a greater number of students from diverse backgrounds, including increased numbers of overseas students, and students from lower socio-economic backgrounds. There is likely to be an increased number of students who are 'first in family' to attend higher education. Widening participation in higher education, particularly increased access by external and equity students, risks a lack of equality of opportunities for practical instruction.

A number of government targets may impact on higher education funding models in the future. Of particular concern are the targets of 40 percent of 25-34 year olds participating in higher education,<sup>29</sup> and 20 percent of undergraduate enrolments in higher education coming from low socio-economic backgrounds by

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<sup>25</sup> Sheryl Jackson, 'Court-provided Trial Presentation Technology- The Way of the Future?' (July 2008) *Proctor* 58, 58.

<sup>26</sup> Gene Koo, *New Skills, New Learning: Legal Education and the Promise of Technology* (2007) Berkman Center for Internet and Society at Harvard University <<http://ssrn.com/abstract=976646>>.

<sup>27</sup> Chris Jones and Sefton Bloxham, 'Networked Legal Learning: An Evaluation of the Student Learning Experience' (2001) 15(3) *International Review of Law Computers and Technology* 317, 325-6.

<sup>28</sup> Denise Bradley, Peter Noonan, Helen Nugent and Bill Scales, (2008) *Review of Australian higher education: Final Report* Canberra, Australia: Commonwealth of Australia. <http://www.deewr.gov.au/HigherEducation/REview/Pages/ReviewofAustralianHigherEducationFinalReport.aspx> accessed 21 September 2011, 35.

<sup>29</sup> *Ibid.*

2020.<sup>30</sup> Further, there are links between government funding and the results of student surveys (such as the *Course Experience Questionnaire* and the *Australasian Survey of Student Engagement*) and regulatory audits (such as the *Australian Universities Quality Agency* and the *Tertiary Education Quality and Standards Agency*).<sup>31</sup> Accordingly it will be imperative for higher education institutions to ensure that the students who are from educationally disadvantaged backgrounds have the opportunity for a successful learning experience.

From an institutional perspective, it will not be sufficient merely to comply with enrolment targets; universities must also enable students to succeed and value their educational experience, as survey results and attrition rates will form part of the suite of data supporting funding and policy decisions. Since many students will be coming from a background where they may be the first in their family to go to university and may not have financial support or a socio-cultural background which provides a degree of preparation for tertiary study, universities will need to develop strategies to assist in the transition to higher education to maintain acceptable retention rates by minimising 'preventable' attrition. In response to these drivers many institutions have adopted policies supporting commencing students in their transition to tertiary studies. For example, QUT policy provides that all commencing students should be supported to adjust successfully to study at QUT by providing a strong transition experience according to their varied needs, which connects new learners with their teachers and peers.<sup>32</sup> This assists with their sense of belonging, satisfaction, course experience and also with retention.

One means of providing a strong transition experience for first year students is to provide engaging, authentic learning experiences<sup>33</sup> so that students can see the relevance of their learning experience to their whole degree and to their future post-university lives. Appropriate and relevant extracurricular activities assist in the transition into tertiary education, the acquisition of skills and engagement with the campus and peers.<sup>34</sup> Therefore the authors argue that the use of technology is an integral part of the university experience and assists with students developing a positive sense of belonging, satisfaction and course experience, and hence with retention.

### III MOOTING AS A SOLUTION?

This article argues that mooting is one of the most authentic real world learning experiences for law students. Mooting requires students to engage in active

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<sup>30</sup> Australian Government Productivity Commission, 2008-9 *Annual Report Reform beyond the crisis* <[http://www.pc.gov.au/\\_data/assets/pdf\\_file/0017/92042/annualreport-0809.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0017/92042/annualreport-0809.pdf) accessed>.

<sup>31</sup> James, Krause and Jennings, above n 14, 59.

<sup>32</sup> Queensland University of Technology, *Manual of Policies and Procedures*, C 6.2.1 <[http://www.mopp.qut.edu.au/C/C\\_06\\_02.jsp](http://www.mopp.qut.edu.au/C/C_06_02.jsp)>.

<sup>33</sup> Sally Kift, 'The next, great first year challenge: Sustaining, coordinating and embedding coherent institution-wide approaches to enact the FYE as 'everybody's business'' in *11<sup>th</sup> International Pacific Rim First Year in Higher Education Conference, An Apple for the Learner: Celebrating the First Year Experience Proceedings*, (Hobart: 2008) <[http://www.fyhe.com.au/past\\_papers/papers08/FYHE2008/content/pdfs/Keynote%20-%20Kift.pdf](http://www.fyhe.com.au/past_papers/papers08/FYHE2008/content/pdfs/Keynote%20-%20Kift.pdf)>.

<sup>34</sup> James, Krause and Jennings, above n 14, 37.

learning, independent research and study and collaboration with their peers, while at the same time mimicking a real world function of lawyers, arguing a legal case before a Bench.<sup>35</sup> Mooting assists law students in developing forensic skills, engagement with both substantive content of their course *and* authentic real world learning, as well as developing an understanding of the dynamics of persuasion. As such, a widely accessible mooting program utilizing communications technology has the capacity to redress the apparent lack of real-world learning experiences identified in 'traditional' law school programs, which 'have not ... focused on preparing students for the realities of the legal workplace, concentrating instead on technical legal knowledge and practical legal skills.'<sup>36</sup>

There is general agreement in the literature about the benefits of participating in mooting.<sup>37</sup> These benefits fall into broad categories of skills, networking/resume building and socialisation. The skills developed include, research, legal analysis, persuasive writing and advocacy.<sup>38</sup> Mooting teaches the techniques of problem analysis, research, logical thinking, presentation of argument and verbal skills.<sup>39</sup> The benefits to employability include improved self confidence, the development of professional networks and enhanced resumes.<sup>40</sup> The benefits of providing mooting opportunities to as many students as possible include:

- academic learning is improved because students are actively engaged with the law and have time to analyse the problem and relevant law in depth;
- mooting provides an authentic learning environment in which students must 'think like a lawyer' i.e. analyse problems logically, applying the facts of a problem to the law and present complex legal arguments simply and concisely;
- mooting assists students to develop general skills in written and oral communication and legal research;
- mooting assists students to gain self-confidence and to build character;
- mooting assists students to understand court room processes and how to develop and run a case; and
- involvement in mooting can assist students to obtain a job by networking and resume building.<sup>41</sup>

To obtain the full benefit of this process, it is argued by the authors that students need to have access to a staged program of mooting, beginning with internal moots (where expectations can be set relative to students' lack of experience, thereby creating a less threatening environment in which to develop skills) with

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<sup>35</sup> Yule, McNamara and Thomas, above n 3, 231.

<sup>36</sup> Melissa Castan, Jeannie Paterson, Paul Richardson, Helen Watt and Maryanne Dever, 'Early Optimism? First Year Law Students' Expectations and Aspirations' (2010) 20 *Legal Education Review* 1,1

<sup>37</sup> See for example Yule, McNamara and Thomas, above n 4, 138; Michelle Sanson, Jennifer Ireland and Paul Rogers, 'Fake It Till You Make It: Using *Second Life* to Teach Practical Legal Skills' (2009) 2 *Journal of the Australasian Law Teachers Association* 245; Wolski, n 22; David Pope and Dan Hill, *Mooting and Advocacy Skills* (Sweet & Maxwell, 2007); John Snape and Gary Watt, *How To Moot: A Student Guide To Mooting* (Oxford University Press, 2005); Terry Gygar and Anthony Cassimatis, *Mooting Manual* (Butterworths, 1997).

<sup>38</sup> Snape and Watt, above n, 37.

<sup>39</sup> Gygar and Cassimatis, above n 37.

<sup>40</sup> Pope and Hill, above n 37.

<sup>41</sup> Yule, McNamara and Thomas, above n 3, 232.



the option of progressing to external national and international competitions. The use of technology to facilitate the development of mooting skills is supported by Ireland, Sanson and Rogers who found in an evaluation of a pilot *Second Life* moot competition that mooters benefit from the opportunity to practice mooting in a simulated moot court where there is an opportunity for interaction with other students in a less threatening environment.<sup>42</sup>

The benefits of using technology to facilitate this progression in the development of mooting skills through the program include:

- the development of technological skills needed in legal practice (particularly in relation to trial preparation);
- accessibility to off-campus students; and
- an improved learning environment for students, in that requiring students to use technology assists them in becoming more flexible and enhances their ability to understand and adapt to change.<sup>43</sup>

Nevertheless, while the creative use of technology fulfils a significant need in providing students with practice as part of the process of overcoming the identified impediments, including lack of experience and distance, students still need to compete in face to face competitions to maximise the other benefits.<sup>44</sup> There are limitations in the use of technology including the development of advocacy skills, interactions and engagement with the bench and the networking aspect.<sup>45</sup>

In most law schools in Australia, mooting takes place both within the curriculum and as an extra-curricular activity, with mooting competitions being an important part of the law school experience.<sup>46</sup> Many law schools take part in externally organised mooting competitions and internal competitions are often also organized either by law schools or student organisations. While participation in external competitions may be limited to experienced, highly skilled mooting students, given the importance of mooting in providing an authentic real world learning experience and accordingly contributing to a positive university learning experience, it is important that all law students have an opportunity to participate in mooting regardless of their experience or level of skill. Such an approach balances the *competitive* aspect of mooting (which is most relevant to students who intend moving to the Bar at some stage of their career), with the acquisition of a skills component (which is relevant to *all* students). Internal competitions are an effective means of providing this access and they allow students to see how the law works in practice, within a relatively non-threatening environment in which they can practice and develop skills like research and advocacy.

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<sup>42</sup> Jennifer Ireland, Michelle Sanson and Paul Rogers, 'Virtual Moot Court: A Pilot Study' (2010) 3 *Journal of the Australasian Law Teachers Association* 1, 7.

<sup>43</sup> Yule, McNamara and Thomas, above n 3, 233.

<sup>44</sup> Yule, McNamara and Thomas, above n 4, 155.

<sup>45</sup> Ibid 153.

<sup>46</sup> Sanson, Ireland and Rogers, above n 37; Joel Butler and Rachel Mansted, 'The Student as Apprentice: Bridging the Gap Between Education, Skills and Practice' (2008) 1 *Journal of Australasian Law Teachers Association* 287.

Despite the benefits to students of participating in mooting at an early stage in their degree, creating mooting opportunities which are appropriate to first year students who have little, if any, prior experience of the forensic environment is challenging. First year law students are often deterred from participating in mooting due to a lack of familiarity with the mechanics of case preparation and presentation, and consequently they often lack confidence.<sup>47</sup> Mooting also involves a substantial time commitment on the student's part and there are obvious logistical problems for off-campus students.<sup>48</sup> These issues for students are likely to intensify as the impacts of the widening participation agenda referred to above are felt.

#### A Using technology to expand mooting opportunities

In the context of expanding the availability of the mooting experience to off-campus students, universities can utilise advances in technologies such as *Second Life*,<sup>49</sup> *Elluminate*,<sup>50</sup> videoconferencing<sup>51</sup> and *Skype*.<sup>52</sup> The authors have previously concluded that of these technologies, *Elluminate* or similar technology is most easily used for internal mooting competitions and practices involving off-campus students.<sup>53</sup> While *Second Life* may be 'funky' and a 'safe' place for students to learn about mooting and develop some basic skills, it lacks authenticity and effectiveness as a training site for mooters, primarily because its graphical capabilities are (at least so far) relatively crude and largely incapable of conveying the subtle nuances of human communication which are such important components of effective forensic rhetoric. The University of Western Sydney piloted the use of *Second Life* for a mooting competition and concluded that:

While ... there is potential for Second Life as a platform for virtual mooting, the interface, and particularly the sound, would need to be much more reliable, more realistic and more user-friendly before we could commit to using it for any compulsory assessment or to conduct formal competitions .... However, this does not mean it cannot be used to good effect for training and practice in mooting and advocacy, and we conclude from our pilot study that this is a use of Second Life we should investigate further.<sup>54</sup>

In the project trials, videoconferencing was demonstrated to be the ideal platform among the available options for remote mooting and provides an authentic experience. However while many law schools have technology available in moot courts to facilitate videoconferencing,<sup>55</sup> the availability of such technology is not universal, and even where it is available in the law school, students who are located off-campus are not likely to have access to the technology. The only capacity for conducting moots by using videoconferencing is in external

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<sup>47</sup> Yule, McNamara and Thomas, above n 3, 240.

<sup>48</sup> Ibid.

<sup>49</sup> For explanation of Second Life see Yule, McNamara and Thomas, above n 4, 141.

<sup>50</sup> For explanation of Elluminate see *ibid*, 148.

<sup>51</sup> Jeffrey Wilkinson and Ai-Ling Wang 'Crossing Borders: How cross-cultural videoconferencing can satisfy course goals in dissimilar subjects' in Philip Tsang, Reggie Kwan and Robert Fox *Enhancing Learning Through Technology* (World Scientific, 2007).

<sup>52</sup> For more information about *Skype* see <http://www.skype.com/intl/en/features/>.

<sup>53</sup> Yule, McNamara and Thomas, above n 4, 154.

<sup>54</sup> Ireland, Sanson and Rogers, above n 42, 10.

<sup>55</sup> Yule, McNamara and Thomas, above n 3, 235.

competitions between universities, where the technological platforms are supplied by, and supported by, the University.

Given the limitations of videoconferencing, it is suggested that *Elluminate* (with web-cam) should be used for internal competitions and practices to enable off-campus and inexperienced students to participate in order to gain experience and confidence. *Elluminate* allows for multiple participants with minimal training requirements, but most importantly, closely approximates the forensic environment which would be encountered in existing e-courts in Australia. While not perfect, the visual component of *Elluminate* moots (provided by webcam) can nonetheless more accurately convey non-verbal cues which are beyond the facility of *Second Life*.

As a result of the previous trials of these different technologies for mooting, the authors decided to conduct an internal mooting competition making use of the *Elluminate* technology.

#### IV THE ELLUMINATE MOOT TRIAL

In 2010, the QUT Law School conducted a mooting competition primarily for first year law students as well as external students.<sup>56</sup> The competition was conducted using *Elluminate* technology. Weekly instructions were sent to the competitors via email guiding the students through the process of research, preparing written arguments and oral submissions. The topic of the moot problem was in the subject area of torts, which is a unit students usually undertake in first year. The competition was run from the end of the examination period in first semester, when the problem was released, until the oral arguments in week two of second semester. Judges were based either in the law school's e-Moot Court or from office or home personal computers. External students logged in and made submissions from their own remote sites, with on-screen real-time images of judges, other counsel and the bailiff (and the system administrator). The timing of the competition was chosen so as not to conflict with assessment commitments. The 18 competitors participated in focus groups which were conducted by the project's research assistant after the competition<sup>57</sup> (see Appendix 2 for focus group questions).

The results of the feedback from the focus groups show that students appreciated an opportunity to moot which involved no travel and minimal expense, and was relatively non-confrontational. Students said it would be good for external and first year students, and for those anticipating progressing to mooting competitions against other universities. For example students commented:

As a first year external student this has been a great opportunity for me to be part of ... has been a positive milestone in my learning;

I think it is a great start. I think it is an excellent program.

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<sup>56</sup> Elluminate Moot Competition was funded through a Law Faculty Teaching and Learning Grant awarded to the project team of Jennifer Yule, Judith McNamara and Mark Thomas.

<sup>57</sup> Thirteen students participated in the focus groups out of eighteen competitors.

The *Elluminate* moot assisted students who were inexperienced mooters to develop confidence. Students reported experiencing less stress being away from the judges ‘because it is less confrontational’ and ‘it is a good way to just ease yourself into it. It helps with confidence. Instead of speaking to a panel of judges face-to-face, you can speak more freely with someone over the webcam or some other technology.’ Other students said they were more confident now to do face to face moots as ‘[i]t also helps with your confidence, you know, speaking to a person of a higher level, judges, it helps you communicate a lot better, especially on the spot.’

Students also acknowledged the value of the *Elluminate* moot in developing skills in using technology in authentic ways. Student comments included:<sup>58</sup>

using technology builds skills that wouldn’t be developed in face to face mooting;

As a lot of court proceedings are through video link, this was a great precursor to what it could be like in the future; and

It definitely overcomes the distance issue.

Some limitations in the quality of the interactions experienced by students were noted, including that it was difficult to interact with and read the body language of the bench:

It was difficult to gauge their reactions and the latency made it difficult to engage in exchanges with them.

A further limitation was the lack of any opportunity to engage in dialogue with other students. Comments from students included that it was ‘not as good as face-to-face interaction’, that it lacked the formality of a real court such as ‘get[ting] less exposure to the formalities of the way courts run’ and sitting to make submissions.

Some students also reported difficulties resulting from inadequate internet speed and there were some issues of occasional time lag. (see Appendix 3 for screen capture of *Elluminate* Mooting Competition.)

The authors were involved in the organisation of the mooting competition, communication with the students and judging the moots. On reflection, the authors observed the students becoming confident with the technology and with mooting as the competition progressed. The target groups for the competition were external students as well as students new to mooting. These groups, by competing in the competition, were able to overcome the identified impediments to mooting which had previously been identified by the authors, being distance and lack of experience. The *Elluminate* trial achieved the goals of technology training from both the student learning perspective as well as the institutional perspective.

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<sup>58</sup> All student comments below were recorded during the focus groups following the *Elluminate* competition in response to the questions set out in Appendix 2.

## V CONCLUSION

The *Web 2.0 World 2009 Report* observes that there is an ‘uncomfortable co-existence between the norms of our social world and that of education that cannot be sustained.’<sup>59</sup> It is important to ensure all students, regardless of any impairment or disability, can access the technology used and achieve the learning outcomes.<sup>60</sup> There is a demand on academic staff to deal with development of technology<sup>61</sup> but this is often in the context of the ‘development of content and on perceived administrative efficiencies than on the educational strategies being employed online,’<sup>62</sup> rather than as an integrated strategy aimed at creating both institutional *and* student benefits.

There are, of course, many benefits to using technology, and we have demonstrated that it can be used in mooting to provide an authentic learning experience. It should however not be used simply because it is available and ‘attractive’ (‘funky’ or ‘wickid’). As with any tool, the deployment of technology within the educational environment needs to be linked to, arise from, and be justified in the context of specifically identified purposes.<sup>63</sup> There must be a sound pedagogical reason for introducing on-line learning<sup>64</sup> and sound pedagogical principles must underpin the use of technology for educational purposes.<sup>65</sup>

Conversely, where it is available, technology *should* be used to solve problems which are amenable to a technological solution.

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<sup>59</sup> Coles, above n 15, 7.3.

<sup>60</sup> Simon Ball and Helen James, ‘Making law teaching accessible and inclusive’ (2009) *Journal of Information, Law and Technology* 2.

<sup>61</sup> Debbie Weaver, Diane Robbie, Rosemary Borland, ‘The Practitioner’s Model: Designing a Professional Development Program for Online Teaching’ (2008) 7(4) *International Journal on E-Learning* 759, 760.

<sup>62</sup> *Ibid.*, 759.

<sup>63</sup> Catherine Easton, ‘An examination of clicker technology use in legal education’ (2009) *Journal of Information, Law and Technology* 14.

<sup>64</sup> Bernadette Richards, ‘Introducing the Internet to the Law School: Some Lessons from Adelaide’ (2001) 15(3) *International Review of Law Computers and Technology* 369, 372.

<sup>65</sup> Selma Vonderwell, ‘An examination of asynchronous communication experiences and perspectives of students in an online course: a case study’ (2003) 6 *The Internet and Higher Education* 77, 78.

## APPENDIX 1

Questions asked in Law School survey:

1. Does your Law School have electronic moot court facilities? Yes/No
2. If yes, do those facilities include the following:

	Yes	No
Video conferencing,		
Internet access		
Digital recording		
Integrated audio-visual facilities		
Electronic document/evidence management system		
Large size projection screen		
DVD player		
Document camera/ visualiser		
Interactive electronic 'smart' whiteboard		
Bar table computer screens		
Bench computer screens		
Clerk's computer screens		
Juror's computer screens		

Please specify any courtroom software available (eg Ringtail Courtbook software):

Please specify any other facilities available that are not listed above:

3. Is your electronic moot court able to interact with other electronic moot courts in a way that mimics real court room technology?
4. If your School does not have electronic court facilities does it have plans to establish them within the next 2 – 3 years?
5. Does your Law School use its electronic moot court for teaching purposes?  
Yes/No

If yes, please provide details:

6. Does your Law School participate in any external mooting competitions using its electronic moot court facilities (eg International Virtual Moot)? Yes/No  
If yes, please provide details of the competition and the years entered:

Do you have any comments in relation to the use of electronic moot courts for external competitions?

7. Has your Law School used any other types of communication technology for mooting competitions or practices (eg Second life, Elluminate)? Yes/No  
If yes, please provide details:

Do you have any comments in relation to the use of communication technology for mooting competitions or practices?

## APPENDIX 2

Questions asked in focus groups:

When we surveyed students last year, students identified several benefits of participating in mooting. What do you perceive to be the benefits? Let's have some discussion of what the benefits might be.

Think back over the internal competition you have been involved with using Elluminate.

- Do you think that the benefits of mooting were achieved when Elluminate was used as the communication platform? What benefits do you think might not have been achieved using Elluminate?
- Do you think that the benefits of mooting could be achieved using a different form of technology as the communication platform?

Do you think that there may have been any benefits in using technology to facilitate mooting over and above the benefits of face to face mooting?

In our survey of students, students identified several impediments to their participating in mooting (ask students what they perceive to be some impediments, for example, time, being an off-campus student, being a first year student, lack of confidence and lack of experience). Do you think that using technology to participate in mooting helps to overcome any of these impediments?

Do you think QUT should have internal mooting competitions using Elluminate?

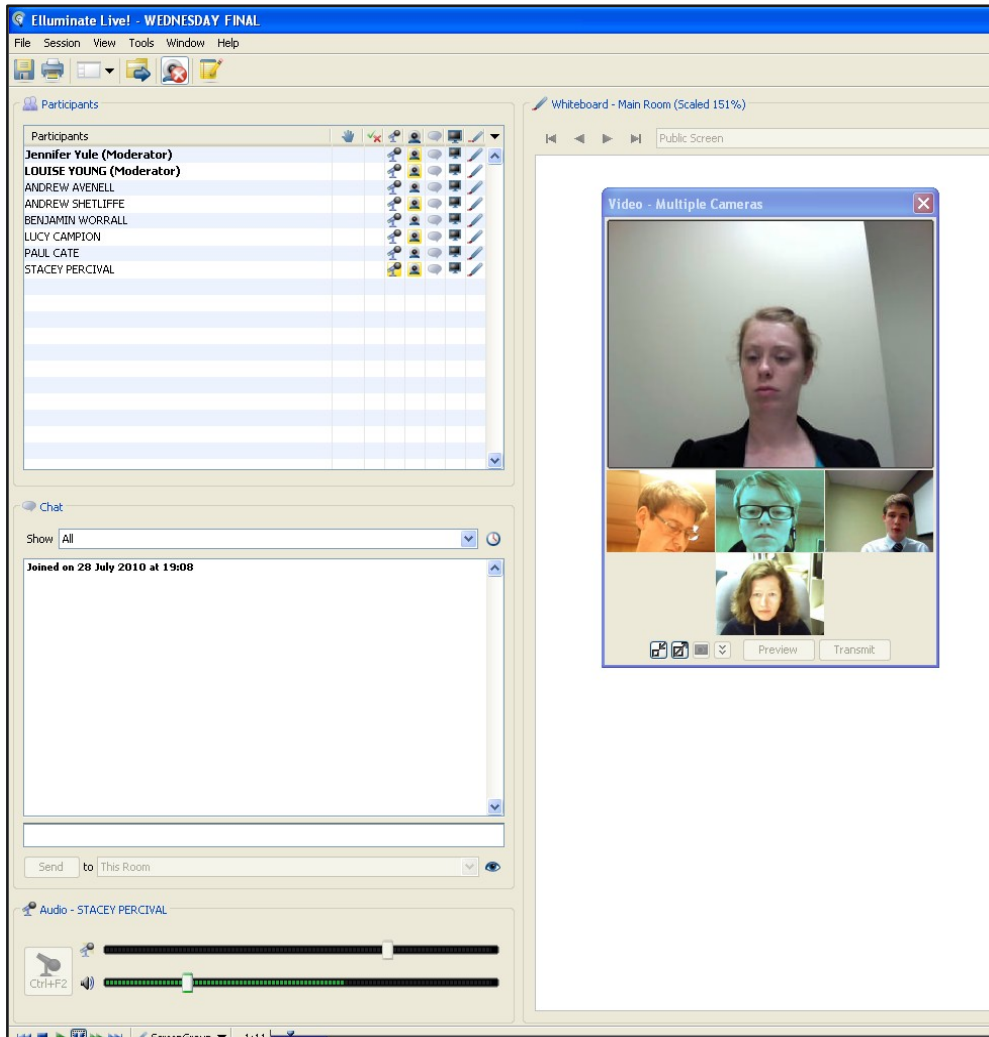
Should QUT moot with other universities using Elluminate?

Can you think of any ways to improve the use of Elluminate?

Are there any reasons for not using Elluminate?

## APPENDIX 3

### Illuminate Mooting Competition:



Illuminate: screen showing participants (left panel) and counsel and judges (main panel)