## ASSESSMENT METHODS

**Assessing oral skills**

H Brayne, C Maughan & M Maughan
36 *Law Teacher* 2, 2001, pp 140–167

Current methods of teaching and assessing oral skills can create, or at least encourage, a superficial, non-reflective, imitative, checklist approach in the students and a cynical, atheoretical, unscientific, uninformed and educationally unresearched approach in the teachers and assessors.

The post-war research into notions of professional competence falls into three main traditions: first, a behaviourist tradition, which based job training programs on a two-stage process of job and skills analysis. Focusing on the personal qualities which enable a person to do a job rather than on the skills needed to do it is the basis of the second tradition, known as the generic approach to competence. The third tradition — cognitive competence — seeks to distinguish performance from competence.

We can perceive professional competence as neither the mere performance of a series of tasks and learned techniques, nor the possession of certain characteristics or attributes, but as an integration of attributes with performance. Further, if we accept that competence is not directly observable but is inferred from performance, there are important implications for our assessment methodology.

When we talk of oral skills on the Bar Vocational Course and Legal Practice Course, what do we mean? We do not just mean sets of practical skills and behavioural operations, because such a narrow definition would not accurately describe the open-ended interactions characteristic of the professional-client relationship. Surely, we mean a whole repertoire of integrated capacities which students will apply, or not, depending on their reading of the situation. This repertoire encompasses skills, judgment, knowledge, understanding, reasoning, insight, reflection, values and beliefs. We should be asking: is the student merely a performer of learned techniques and processes or is there evidence of a deeper competence?

Teachers and assessors should not primarily concern themselves with learned techniques and behavioural operations. However, behaviour, actions and responses are a lot easier to measure than the ability to analyse a situation, understanding, insight, values and the like. Either a student has 'covered' confidentiality or she has not. But how do you measure 'putting a client at ease?' What does 'putting at ease' mean? And how can you even attempt to measure it without asking the client's opinion?

Simplified practice situations make it easier for us to write and agree learning objectives and assessment criteria. However, simplification raises the problem of transfer. Is it reasonable to infer that performing well in one simplified situation is sufficient evidence of competence in different or more complex situations? There is a further difficulty. In an observed performance, we only see the action, not the thought behind the action. So is it reasonable to infer competence from merely observing a performance? We, the assessors, can make inferences about why a candidate made a particular decision, or acted in a particular way, but we have no reliable means of checking whether our inferences are correct. Some may perform apparently competently, though the knowledge or reasoning underpinning that performance may not be competent. We cannot make any valid judgment about a performer's ability unless we can assess their analysis of the task or situation, the reasons for their actions and their evaluation of what occurred.

Competence defined narrowly in terms of outcomes, performance, behaviour and responses represents a restricted, inaccurate view of human action. How could we appraise internal standards more accurately?

The aim of a workshop roleplay designed by the authors was to demonstrate how we could use the performer's oral reflection to discover the internal reasoning processes. Immediately the conference was over, the assessor asked the student to give feedback on the performance by referring the former to several points in the interaction where it was not clear from the performance why the student had said or done certain things. After the performance reflection, the workshop participants were asked to re-grade the student's performance in the light of the discussion. The authors discussed with them whether this had altered their assessment and why or why not. The new grades revealed movement in both directions: instances of lesser and greater competence underpinning certain thoughts and actions.

The participants in the workshop appeared to agree that the additional dimension of allowing the interviewer to explain the reasoning processes behind the actions could help to assess performance more accurately. But is this strong enough reason to retain the assessment in its present form — one performance, limited to, typically, 20 minutes? The inadequacies are: first, without post-performance reflection, it takes no account of underlying reasoning processes which explain the decisions made and actions taken during the performance and therefore cannot accurately predict students' ability to perform in the future; second, assessment criteria defined as outcomes can be at odds with notions of lifelong learning; and third, we may find ourselves teaching to the assessment (consciously or unconsciously).

How valid or reliable is a process which leads some assessors to raise their assessment mark, others to lower it and yet others to make no change? It will become apparent that if we are to assess competence from observing

performance, then we need to understand what cognitive and affective processes led to that performance on that one day in those particular circumstances for that individual student.

Clearly, we must expect our students to be able to articulate their legal reasoning processes. If we are unhappy with the one-off summative assessment of oral skills as a means of validating a student's competence to move to the next stage of training or practice, does a subsequent reflective discussion help? In spite of reservations, the authors would give a strong affirmative reply to this. It is helpful at the most basic level because it provides additional information for assessment. It is not, however, a panacea for the ills of the summative assessment. Much depends, for example, on when the reflection takes place and how it is elicited. It seems intuitively valuable to get a student's reaction to their performance as soon after the performance as possible. This helps align the thinking of the assessor(s) with that of the student. It has the potential to uncover the reasons why certain things were done rather than others, assuming the skill of the assessors and the openness of the student to reflect honestly, combined with her capacity to articulate the theories behind the actions. But this does not give time for the learner to aggregate all the important (for them) aspects of the experience and to modify their frame of reference.

We still do not know what lessons have been learned from the event, which the learner might generalise into effective theories of action for the next stage of learning. If we lack confidence in the assessment content itself as a reliable and valid indicator of future capability, we are little further forward in being able to report to the profession and, through it, to the public at large, that the student is ready and able to proceed to the next stage of development.

**The experience of external examiners**

P Harris & A Bone

36 *Law Teacher* 2, 2001, pp 168–183

The external examiner system provides one of the few ways in which the academic quality of the law courses provided by law schools can be externally assured. To date, the only other such input for most law schools will have been through external advisers or panel members at periodic validation or review events. The roles and responsibilities of external examiners in the higher education system have been the subject of public debate on several occasions since the mid-1980s.

Although much is expected of external examiners, very little is known about them as a group. There is no central register of external examiners. We do not know how many there are in the system and little or nothing is known about their perceptions or experiences beyond the limited contacts we all have through our own law schools. This survey was designed therefore to try to obtain information on external examiners engaged in undergraduate law courses at UK law schools. Who are they, how do they relate to the institutions who employ them, how do they carry out their work and what are their perceptions of their role?

The first task was to identify external examiners in order to distribute the survey questionnaire. After two email shots to a total of 88 law schools in England, Wales, Scotland and Northern Ireland, using the lists of Heads maintained and used by the Committee of Heads of University Law Schools, information was obtained from 60 law schools in Higher Education Institutions (HEIs). Between them, these HEIs had 302 academic law staff who acted as external examiners at other law schools. A total of 302 survey questionnaires was then mailed out to Heads of schools, with the request that they distribute the questionnaires to those members of their staff who were externals.

From this information, it is possible to estimate the total number of external examiners in law currently in the system. Sixty law schools, between them, have 302 staff acting as externals. That is an average of five per law school. If we assume that all the 28 non-responding law schools also have at least five staff acting as externals, then the estimated number of academic lawyers acting as external examiners on undergraduate qualifying law degrees is 442. This figure is, if anything, likely to be an underestimate for a number of reasons.

The response rate was 43.4% of the total number of questionnaires sent out to externals at law schools, which represents slightly under 30% of the estimated total population. This response rate is considered to be acceptable and the results are indicative of the experiences of external examiners in law.

External examiners in law tend to be predominantly male. Interestingly, external examiners from old universities are more likely to be male than externals from new universities. 126 (96%) stated that their background was 'white'. Interesting though these data are, they cannot be compared with overall numbers of academic staff at law schools, since although some data exist on the numbers of women in senior posts in law schools, none exist on the ethnic background of academic lawyers.

How did they gain their appointments as external examiners? There is a widespread notion that appointments as externals are the result of an 'in-club' of contacts. It seems, however, that most academics are contacted directly by employing law schools, suggesting that professional reputation is more important than 'networking'.

The information from the current survey strongly suggests that the distinction between old and new