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Videotape in Legal Education : A Study of its Implications and a Manual for its Use

Michael Botein

New York Law School, farrah.nagrampa@nyls.edu

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VIDEOTAPE IN LEGAL EDUCATION

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INTRODUCTION

Aside from legal education, most types of higher and professional education recently have undergone a quiet revolution in their use of audiovisual aids.¹ One of the newest tools is videotape recording (VTR). This is a comparatively easy and inexpensive method of recording and replaying high-quality television pictures.² Television stations have used videotape since the 1950s; but this "broadcast quality" equipment generally was bulky, balky and costly.³ With the advent of new, inexpensive and easily usable equipment, however, VTR has moved from studios to classrooms—and now to homes.⁴

¹E.g., Carnegie Commission on Higher Education, *The Fourth Revolution: Instructional Technology in Higher Education* (1972).

²For a more complete description of VTR technology, see Appendix B, *infra*.

³Although the Federal Communications Commission's rules do not require or even define "broadcast quality" equipment, the term has taken on meaning through custom and usage among engineers. The FCC is primarily involved, of course, with broadcast television stations. The FCC's concern with high-quality equipment reasonably enough stems from the fact that broadcast television stations make VTR recordings not for their own use, but for broadcast to audiences many miles away; in the process of transmission, the quality of the signal is inevitably degraded. Several manufacturers recently have found ways to make the comparatively inexpensive VTR equipment discussed here compatible with broadcast-quality standards; this process generally involves the use of a "time base corrector," which matches the unstable signal of inexpensive VTR equipment with television broadcast equipment. In fact, the latest craze in broadcast television is using light-weight and low-cost VTR equipment for on-the-spot news reporting; this has generated a whole new series of models under the acronym of "ENG"—electronic news gathering.

⁴During the past few years, a number of comparatively high-priced VTR systems—e.g., more than \$2,000—hit the market and promptly flopped. On the other hand, the future seems comparatively bright for "video-discs" and lower-cost VTR as home entertainment devices. E.g., *Popular Science*, January 1977.

This study shows that roughly five percent of all law teachers currently use VTR.⁵ By comparison to use in other disciplines, this figure seems rather low; but legal education's use of audiovisual aids in general does not appear to have increased significantly in the past decade.⁶

Other forms of professional education have used VTR for more than a decade. Medical and psychiatric education present interesting analogies, since they involve teaching techniques comparatively similar to legal education. Indeed, psychiatry focuses on "skills training"—and very often on counselling and other skills akin to those taught in law school and necessary in law practice.⁷

A comparison between adoption of VTR in medical and legal education shows different patterns in development. Medical and psychiatric literature began to discuss VTR's potential as early as 1956.⁸ By the end of that decade, VTR use had begun in medical schools.⁹ By the end of the next decade, VTR had become firmly established in medical pedagogy and practice. Indeed, psychiatry's use of VTR is reflected by the fact that a "manual" on VTR has existed since 1970.¹⁰

Medical education thus adopted VTR far more readily than legal education. Although practicing lawyers have used VTR increasingly in adjudicatory proceedings during the past few years,¹¹

⁵As indicated in the description of the study's methodology, discussion at n. 33, *infra*, however, the survey instrument may not have reached all teachers using VTR. Moreover, increased interest in VTR at AALS and other meetings may reflect increased use since the 1974-1975 academic year in which the survey was conducted.

⁶Ryan, *Television and the Law Schools—A Preliminary Appraisal*, 1968 Chittys L. J. 293; Association of American Law Librarians, *Report on the Use of Audio-Visual Materials in Legal Education* 3 (1967).

⁷E.g., Watson, *On Teaching Lawyers Professionalism: A Continuing Psychiatric Analysis*, in Council on Legal Education for Professional Responsibility, *Clinical Education for the Law Student* 139 (1973). Indeed, Professor Watson notes the potential value of VTR in skills training. *Id.* at 172.

⁸*Videotape Techniques in Psychiatric Training and Treatment* (M. Berger, ed., 1970).

⁹*Id.* at 37 et seq.

¹⁰J. Onder, *The Manual of Psychiatric Television: Theory, Practice, Imagination* (1970).

¹¹E.g., Bermant & Jacobvitch, *Fish Out of Water: A Brief Overview of Social and Psychological Concerns About Videotaped Trials*, 26 Hastings L. J.

legal educators have made little use of the medium.¹² It is temptingly easy to generalize about these apparently anomalous reactions of legal and medical education. After all, lawyers may have an inherent stodginess and resistance to change; if print was good enough for Langdell, some teachers might feel that it is good enough for present legal educators.¹³

But although perhaps initially satisfying, these and similar off-the-cuff answers are simply not satisfactory. This study thus attempts to explore the reasons behind legal educators' uses of VTR. As Section II indicates, the empirical data belie conventional wisdom and easy assumptions.

Although this study focused solely upon the use of VTR in legal education, other audiovisual materials obviously are useful, used, and possibly underutilized. The reasons for focusing solely on VTR were quite simple. First, VTR was the newest medium, although hardly the newest technology. Second, it was necessary to narrow the scope of the study, in order to avoid using a two hundred page questionnaire.

VTR is obviously just one of many audiovisual tools, ranging from blackboards to multi-media presentations. Indeed, audiovisual techniques are as old as teaching; after all, Socrates drew diagrams in the sand.¹⁴ A discussion of each audiovisual medium's potential use in law teaching naturally is beyond the scope of this study. But Professor Dale's "cone of experience" concept is a useful yardstick for measuring audiovisual techniques.¹⁵ Although it does not

999, 1007 (1975). The number of law review articles on VTR as a practice tool is quite large—more than fifty since 1970. At the same time, only two articles on VTR in legal education have appeared. Dresnick, *infra* n. 33; Ryan, *supra* n. 6.

¹²For example, a 1967 study found only *one* law school which used VTR to any significant degree. Carnegie Commission on Higher Education, *supra* n. 1 at 4. On the other hand, the same study identified sixty-three medical schools and fifty-eight nursing schools which used some form of VTR. *Id.* See also Berger, *supra* n. 8 at xi.

¹³Bermant, Chappell, Crockett & Jacobvitch, *Juror Responses to Pre-recorded Trial Presentations in California and Ohio*, 26 Hastings L. J. 975, 988 (1975).

¹⁴Plato, *The Meno*.

¹⁵E. Dale, *Audiovisual Aids in Teaching* 43 (3d ed. 1967).

Professor Dale's "direct, purposeful experiences" presumably are rare for most law students, unless they either run afoul of the law or work in a law office. Contrived experiences, dramatized experiences and demonstrations,

provide a pat formula for the use of audiovisual media, it is a helpful analytical tool. It seems to indicate that VTR would have fruitful applications in legal education for dealing with non-conceptual, experimental material. As discussed in Section II, however, VTR does not appear to have achieved very wide acceptance.

however, are comparatively easy to arrange and are commonplace in some types of education—e.g., roleplaying in courses, moot court activities, demonstrations by expert practitioners. As discussed in Section II—and as might be expected—VTR use is more common in these types of simulated activities. Discussion in text at n. 40, *infra*. On the other hand, field trips have a largely untapped potential. Although many law schools deliberately are located near centers of judicial, legislative, and administrative activity, few teachers expose their students to these activities in a structured way. And physical exhibits currently are used in only a few of the many areas—most commonly, legal research courses—in which they could be fruitful. For example, a display of the discovery documents in a run-of-the-mill antitrust case presumably would increase a student's understanding of the complexities inherent in antitrust litigation.

It is interesting to note that Dale rates television more highly than film in terms of potential pedagogical impact on students. This parallels—and preceded—McLuhan's similar conclusion that television is a "cool" medium which receives intense viewer interaction. M. McLuhan, *Understanding Media: The Extensions of Man* 42 et seq. (2d ed. 1964). Section I adopts both of these analyses in somewhat different terms. Discussion in text at n. 21, *infra*.

I

ASSUMPTIONS AND METHODOLOGY OF THE STUDY

Perhaps the greatest difficulty in analyzing the interaction between the use of VTR and the process of legal education lies in conceptualization of the latter. Education is an inherently slippery notion, and legal education has received comparatively little analytical attention.¹⁶ It thus may be useful to begin by outlining at least some of the assumptions about legal education underlying this study.

A. *Assumptions About Legal Education*

Any type of legal education has at least three partially separable components: goals, methods, and tools. A course may have the goal of teaching students some legal principles and techniques for manipulating them; it may employ the Socratic method for teacher/student interaction; and it may use a blackboard to convey visual data. (To a certain extent, of course, this merely represents a traditional distinction between form and content, gestalt and gehalt.)

One difficulty in studying the interaction between VTR technology and legal education's goals or methods is the difficulty of defining the latter. Most legal educators have only foggy ideas of their goals.¹⁷ Similarly, the methods of legal education have not been rigorously defined. Teachers acknowledge the existence of something called the "Socratic method," but have no consensus as to its meaning.¹⁸

¹⁶E.g., Savoy, *The New Politics of Legal Education*, 73 Yale L. J. 293 (1970); Weihofen, *Education for Law Teachers*, 43 Colum. L. Rev. 423, 424-26 (1943); Watson, *Some Psychological Aspects of Teaching Professional Responsibility*, 16 J. Leg. Ed. 1 (1963). Compare a professional educator's approach in R. Mager, *Preparing Instructional Objectives* 6-18 (1963).

¹⁷Weihofen, *supra* n. 16; Savoy, *supra* n. 16; Reich, *Toward the Humanistic Study of Law*, 75 Yale L. J. 1402 (1965).

¹⁸*Id.*