Avatars Go to Law School: Digital Standardized (And Not So Standard) Clients for Law School Teaching

A Working Paper

Archie Zariski, Athabasca University

Standardized clients have been a feature of medical schools for years. Digital technologies now offer the opportunity to create them in interactive form as avatars. In addition, advances in semantic computing now allow extensive and complex dialogues with computerized agents using "chatbots".

Teaching interviewing and counseling as well as other client related skills requires repeatable, realistic practice that is not optimal when relying on students to simulate being clients for each other. This paper proposes the development of digital client avatars for these teaching purposes. It examines some of the technical challenges and pedagogic opportunities.

Introduction

I argue, perhaps counter-intuitively, that humane lawyering can be promoted by using the most advanced high-tech to help educate and train law students. In outline, the argument goes like this:

- Humane lawyering requires more than legal knowledge; lawyers need well developed skills to assist clients

- The essential skills of lawyers primarily involve communication, both written and oral

- Oral skills required for interacting with clients are different than those required for interacting with courts and other lawyers

- Skills can only be taught effectively through use

- Simulations provide the most efficient and cost effective method of teaching skills in law school

- Digital technology exists to allow the development of effective simulations for teaching interpersonal communication skills

- Conducting the initial client interview is a key communication skill that helps to create a good lawyer-client relationship

- We should use digital technology, in addition to present methods such as clinical and communication courses, to teach law students client interviewing skills

This paper expands on these points, and provides an example of how a digital simulation for training law students in client interviewing skills might be created.

Lawyer Skills

A skill may be described as knowledge put into practice to accomplish a desired result. Skills have always been part of the modern law school curriculum, but the type and range of skills has been limited. Highly specialized communication skills have been taught, at least implicitly, emphasizing the crafting of written legal analysis and argument, and their oral counterparts (Redlich 1976). These are skills for engaging in professional discourse. What has been lacking is attention to those skills necessary for interacting with clients (Maxwell 1993). In the result, lawyers have been criticized perennially for their legalese, and poor relationships with clients (Howarth and Hetrick 1983). Influential studies of legal education such as the "MacCrate Report" (American Bar Association 1992), the Carnegie Report (Sullivan et al. 2007), and the Best Practices study (Stuckey et al. 2007) have highlighted these shortcomings. Humane lawyering requires not only knowledge and motivation but the skills necessary to achieve clients' goals within the legal system (Dauphinais 2009, Garvey and Zinkin 2009).

The problem with the limited range of skills traditionally taught in law schools is that it leads students to believe that "thinking like a lawyer" consists entirely of analytical thought about legal theories and "acting like a lawyer" means communicating authoritatively and persuasively. In practice these skills may be useful in litigation, but counter-productive when trying to counsel clients compassionately and supportively in a problem-solving mode (Cunningham 1999).

More recently, other pedagogies besides Socratic dialogue have entered the law school (Eagar 1997). The clinical legal education and legal writing movements have introduced experiential learning and problem based instruction among other methods. One effect of this change has been to widen the range of skills to which law students may be exposed. Skills such as interviewing and counseling clients, fact investigation, negotiating, and writing more than briefs and opinions have been introduced to law schools through live-client clinics, courses and workshops. These innovations have flourished despite skepticism or outright opposition from

many law faculty members. Nevertheless, the nature of the training involved has had a limiting effect on the numbers of students who may take advantage of it.

Training in skills is best done through experiential learning – the process of trying to employ a skill, reflecting on the results, and using the knowledge gained through reflection to better guide the next attempt. Thus, effective skills training involves repetition (Peters 1996). It also involves authentic experiences, or at least those the student perceives as authentic (Barton et al. 2007). The live-client clinic is one environment that provides this combination of authentic opportunities to repeatedly employ lawyering skills such as communicating with clients.

Clinical legal education has, however, one major drawback. Because intensive supervision is required in the interests of client protection, and sophisticated physical and administrative structures are needed to deliver legal services, it is an expensive form of legal training (Grosberg 2001). For this reason it can be made available only to a limited number of law students.

There has also been some criticism of the value of live-client clinics for skills training. These commentators note that such clinics cannot usually select clients for the purpose of offering practice in target skills, and that opportunities for repeated practice may be limited (Binder and Bergman 2003). For these reasons, some suggest that simulations may be a more effective method of training law students in lawyering skills (Snyder 1995).

Simulations

Simulations offer the benefits of experiential learning in a controlled environment (Bergman et al. 1987, Mack et al. 2002). They work best when there is a fine balance between the element of pedagogical control through design and opportunities for learner experimentation in response to the indeterminacies of an authentic experience (Barton and Maharg 2007). Control helps to shape the experience for maximum learning, while unpredictability yields the challenge and engagement of reality.

Simulations have been a part of the modern law school from the beginning: they are called Socratic dialogue, and moot court. Both simulate the discourse of argument in appellate courts, the latter with more realism. The power of simulation as a teaching method is shown by the generations of lawyers who learned that thinking and talking like a lawyer means acting as if they were appearing before the Supreme Court regardless of the situation they were in.

The use of simulations in law school has recently spread beyond the litigation context, and the skills involved in them have been broadened beyond persuasive writing and speech. Legal writing and lawyering courses have employed transactional simulations (Maharg 2003), and

interviewing and counseling courses have implemented simulations using peer role plays and sometimes hiring actors to simulate clients (Mosten 1985).

"Standardized clients" were first used in medical education to simulate doctor-patient interactions. In this type of simulation volunteers or actors are trained to give standard answers or responses to challenge medical students practicing their skills of examination and diagnosis (Grosberg 2001). In law schools, standardized clients have been used in skills training simulations for law students (Grosberg 2004, 2006, Barton et al. 2006, Coughlin et al. 2010). The costs and logistics of training such "clients" and administering these simulations have been found to be considerable (Gunsalus and Beckett 2008), and perhaps beyond the means of most law schools acting on their own (Moscato 2007).

Creating and managing effective simulations is a significant task that often involves a number of people besides the law teacher (Feinman 1995, Lipton 1998). When simulations are mounted in a digital environment such as the Internet, or include audio-visual components, there is need for extensive technical design and support (LeBrun 2002). However, if they are well designed and supported, digitally based simulations may offer long term cost effective alternatives to clinical programs and other forms of simulation such as standardized clients.

Digital Artificial Intelligence

Digital technology offers the opportunity to give law students learning experiences involving simulated clients. In transactional simulations students receive and send documents and messages from clients who may be played by instructors or peers. Such interactions may take place in a virtual online environment such as a fictional town (McKellar and Maharg 2006, Barton and Maharg 2007).

Paul Maharg and others have been active in creating such transactional simulations and templates to extend their use in a variety of legal contexts (Maharg 2003, 2004,). Because the student experience reflects the timing of actual transactions, there is little need for instant automated interactions, but it is time consuming for teachers and assistants to communicate acting as clients with the students.

Simulating real time communication with automated clients using digital technology is a challenge that has not yet been fully met. Great advances, however, have been made in fields related to artificial intelligence that may lead to workable solutions for law. Over the past decades there has been much work in the areas of natural language processing (Lambiris and Oberem 1993, Gabrilovich and Markovitch 2007, Maxwell and Schafer 2010), intelligent tutoring systems (Kerly et al. 2008, Phobun and Vicheanpanya 2010), computer assisted legal

instruction (Lambiris 2007), and foreign language teaching programs (Micarelli and Boylan 1997, Jia 2009, Jia and Chen 2009) that may be combined to create a sufficiently authentic simulated digital client. There have been great advances in creating computer programs that recognize, analyze, and respond meaningfully to textual input such as statements or questions. These advances have in turn led to the creation of "chatbots" or programs that simulate the experience of conversing with a human being (Kerly et al. 2007). Adding a visual representation of the conversational agent leads to the creation of an interactive digital avatar (Proctor 2010, Heller et al. 2010). Researchers have proposed such an avatar for the purpose of training medical students in the skills of diagnosis (Veletsianos et al. 2010). As with standardized clients this approach should be transferable to the similar context of training law students in client interviewing.

Enhancements that may be made to basic conversational digital programs include speech, animations, emotional expressions, and even physical robots (Einstein 2010, Sakr 2010). For instance, the capacity to put affectively-oriented questions and receive emotion laden responses could help students practice the tasks of showing empathy towards the client, gaining her trust, and managing emotional issues (Silver 1999).

Finally, the recognized pedagogical advantages of presenting training in a gaming environment may be realized using programmable avatars (Maharg and Owen 2007). Either a limited amount of time may be set to elicit all the client information, or the goal may be to do so using the least number of questions. Gradually enhancing the image quality of the representation of the avatar might serve as incentive to proceed. One the goal of eliciting the client's full story has been reached it could be signaled by replacing the avatar with a video of a human being. The client has thus been discovered in her uniqueness and complexity.

It is time, I suggest, to discover if existing digital technology can supply a sufficiently authentic simulated experience to law students learning the skills of communicating with a client.

Client Interviewing

Clients played no part in the traditional law school curriculum. Their role was taken by statements of facts recited by appellate courts, or the factual hypotheses of law professors engaged in Socratic dialogue (Shalleck 1993). Over the years a variety of influential studies of legal education have noted the rather obvious problem created by this omission – graduating law students don't know how to interact effectively with clients. Some graduates learn the necessary interpersonal skills "on the job" and become client-centered practitioners; many others do not, and help to give the profession a bad name.

The initial interview between lawyer and prospective client has been recognized as a key point in creating a respectful and collaborative professional relationship. For this reason the skills of interviewing and counseling have been recognized as worthy of inclusion in law school training, and there has been significant research and writing in the area. Most law teachers with an interest in interviewing recognize that it must be practiced to be learned, and use role playing and simulation in their teaching. Interviewing skills may also be touched on in law clinics.

The pedagogy of interviewing has been elaborated and a variety of models for interacting with a client have been recommended (Smith 2006). Recently there has been some criticism of standard client interview protocols, suggesting that through them lawyers exercise inappropriate control over the presentation of the client's needs and interests. A more flexible approach to interviewing has been suggested to be more respectful of, and demonstrate more empathy towards the client (Smith 2008).

Despite these concerns, most teachers of interviewing and counseling agree that an initial interview should touch on some common basic elements: the concerns of the client and how she sees the problem; the chronology of events that seem to be involved; and significant details that may have legal consequences. These constitute the minimum of information a lawyer should seek in an interview.

Of course, the lawyer also has other needs and objectives: to inform the client about the nature and cost of legal services, to demonstrate empathy and care for the client, and to provide some guidance as to future action that may be taken. These are all complex tasks, and training does not need to deal with them all at once to be valuable. Listening and asking questions is a good first step for law student (Enos and Kanter 2003).

Studies have shown that even some experienced lawyers are not adept at conducting a respectful, effective and efficient client interview (Smith 2008). It seems that the habits of being assertive, in control, and inclined to cross-examine are hard for lawyers to shake.

Law students should be given ample opportunity to practice interviewing and so develop those communicative skills necessary to interact with clients collaboratively and respectfully.

Example of an Avatar Client

In this section I will show how the pedagogy of skills training in interpersonal communication may be combined with digital technology to produce a conversational avatar which may be interviewed as a simulated client.

Computer programming to simulate unbounded human conversation is extremely difficult due the need to analyze inputs containing a potentially limitless number of topics and ideas in order to produce meaningful responses. If however, the number of topic areas to be considered is limited, and the forms of interaction constrained, the computational task becomes much easier.

Here we meet the central problem of simulations again: what degree of control over the content can be exercised while retaining the value of unpredictable authenticity? In the relatively restricted world of a legal client interview this problem can be managed, if not completely solved. A well-accepted protocol for an initial interview (Zorn 1985) can be used as a template within which random variation may be permitted in the avatar client's responses so as to test the student's ability to adapt to unpredictability.

A first step is to constrain the human input by allowing a limited number of questions to be asked. This is consistent with pedagogy in the area which often prescribes the form and wording of appropriate questioning.

The second step is to introduce some unpredictability of responses from the program by allowing available responses to be made in a somewhat random order, and requiring the interviewer to accept the direction taken by the client to some extent. This is realistic in acknowledging that the interviewer should not exercise total control over the course of the interaction, and should show respect by allowing the client to tell their story as they see fit.

These guidelines may be used to design a program that will act upon the following elements:

- A series of permissible questions that may be put by the interviewer

- A number of "topics" which may also be labeled as "concerns" or "needs" which are expressed in conversational terms

- A series of "events" related to each other chronologically

- A series of "details" each associated with a particular "event"

A chatbot program using these elements should have the capacity to respond appropriately to permissible questions, but sometimes randomly through changing the topic, and so simulate a client interview in the fact gathering stage. The simulation may be mounted as a game in which the goal is to elicit all of the available information in each of the categories using the fewest questions. Interest may be stimulated and realism enhanced by allowing the avatar to acquire more detailed human features as questions are answered. This simulates a client gradually revealing themselves to their lawyer through the interview. The program may be enhanced by introducing less than ideal patterns of responses by the avatar such as hesitant, limited

responsiveness, repetitiousness, or excessive and irrelevant information. These changes would simulate the "less than standard" client.

Following is an analysis of a scenario written for a role play interview simulation in terms of the programming for such a chatbot. The questions have been adapted from those recommended in a leading textbook used in interviewing and counseling courses. (Binder et al. 2004)

Permitted interviewer questions and prompts:

Topic questions

How can I help you?

What can I do for you?

What is your concern?

Chronology questions

Please help me create a timeline of what happened.

When did (event) happen?

What happened (before/after) (event)?

What happened next?

Detail questions

Please tell me more about (event).

What can you remember about (event)?

Can you remember anything more about (event)?

General prompts

Please go on.

Please explain (topic/event/detail) further.

Is there anything more you'd like to tell me?

Available client answers and responses:

Topic responses

I'm concerned about (topic).

I need help with (topic).

I'm here because (topic).

Chronology responses

It started with (event).

(Event) happened on (date/time).

(Event) happened (before/after) (event).

Detail responses

What happened was (detail).

Here's what I remember about (event): (detail).

I can't remember anything more about (event).

General responses

Yes/no

OK/sorry, I can't

I don't know how to answer that question.

I can't think of anything more to tell you – how can you help me? (Target final response)

Client Information (automobile accident):

Topics	Events/dates	Details
Topics	**Events/dates**	**Details**

T1: I was injured in an accident caused by the reckless driving of the other party. I suffered cuts and bruises, and injuries to my neck and back that have disrupted my daily life and work. The other driver should pay for my pain and suffering, lost income, and medical expenses.

E1: The accident happened in the evening on June 1 on the freeway.

D1: I was taken to hospital, treated and discharged.

D2: I couldn't work for a month and lost $10,000 in income.

D3: My medical expenses so far have been $15,000.

E2: Since the accident I haven't been able to carry on my regular life.

D4: I couldn't care for myself for a month and my spouse and mother had to help.

D5: I can't play tennis, my major hobby, anymore.

T2: The other driver is blaming me for the accident, and I don't want to be held responsible. He says I cut him off, but I didn't.

E3: I was going home after an office party.

D7: I was travelling slightly above the speed limit.

D8: I had two or three drinks at the party.

D9: The police did not administer any formal breath testing.

E4: The accident happened when our vehicles collided while travelling in the same direction.

D10: The collision caused me to swerve to the side and hit the guardrail.

D11: The other driver stopped and called the police.

D12: The police have not charged me with any offence.

Some of the advantages of using programmable avatar clients for training law students in interpersonal communication skills are:

- Standardized responses can be provided without requiring human actors while preserving the unpredictability of authentic interactions through variable response patterns (Grosberg 2001)

- Avatars can be presented to many students simultaneously via Internet sites

- Interaction with the avatar can be in private with one student, or in groups allowing peer collaboration and teaching

- Records of interactions can be saved and printed for student review and reflection, and research analysis

Conclusion

I hope I have convinced you that law students can be trained to communicate effectively with clients through interacting with a digitally created avatar. Such a method should be cost-effective and efficient compared with other approaches to skills training in law schools.

Although no human is involved, a law student who has encountered conversational avatars will be better equipped to practice law humanely and respectfully of their eventual human clients.

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