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## PRACTICAL TRAINING

### From sink or swim to the apprenticeship: choices for lawyer training

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69 *Wash L Rev* 3, Summer 1994, pp 587-591

The gap between training and practice is probably no wider now

than it was 20 or 30 years ago. Law schools are producing graduates who are prepared *to begin* the practice of law. There is much that the new law graduate will not know, but in two to three years' time most law graduates gain the skills and substantive knowledge needed to be successful.

Recently a judge commented that most of the new lawyers appearing before her are not competent to try cases. The MacCrate subcommittee investigating such complaints commented that the gap is widening because of the increasing complexity of the law and the diverse range of skills now required to try a case. The MacCrate Report recognised that the job of the law school is to bring students to a point where they are prepared *to become* competent practitioners under the supervision of experienced lawyers. Many however are not receiving any meaningful supervision.

To determine what can be done to narrow the gap, we need to look at the reasons why there is a growing recognition of a gap and a lack of on-the-job training. First, there are many more lawyers today. Judges no longer see the same lawyers on a regular basis and so the opportunity to form a bond between judge and new lawyer which would enable the judge to offer constructive criticism of the lawyer's performance arises less frequently. Second, judges are increasingly busy and have less time for moulding new talent. Third, the legal profession has expanded and lawyers are forming fewer collegial relationships with other lawyers. Friendly advice from more senior opposing counsel does not take place as before. Increasing competitiveness between lawyers also explains the recent lack of collegiality. Fourth, the starting salaries of forty and fifty thousand

dollars mean that new lawyers are expected to produce large numbers of billable hours. Basically, the new lawyer is expected to "just do it".

Law schools are therefore doing a good job of preparing people who are prepared to become competent lawyers. However, this is not to say that the issue of curriculum is dead. Law schools should still examine and update curriculum on a regular basis. However, it is the practising bar that needs to recognise its obligation to assist new lawyers to become competent practitioners and, in particular, it should ask every lawyer to examine closely how new lawyers are supervised.

In practice, the model of supervision that appears to be employed is the sink or swim method. Matters are turned over to new lawyers who are left to their own resources to run with them and either succeed or fail. Such a model favours those with established legal contacts who are usually white and male, thereby excluding many others who, with proper guidance, would make good lawyers.

The response to this lack of practitioner-based guidance can sometimes be the introduction of practical training programs or articles/apprenticeship arrangements. The former, however, still produce lawyers who are ill-prepared for practice, whilst the latter point to lower incomes for law school graduates, who are often graduating with student debts of around US\$20,000. Furthermore, clerkships would favour those with prior contacts in the legal profession.

The practising bar needs to heed the wake-up call by sharing the responsibility for lawyer training and



recognising the importance of learning from mentors.

**Design and build: the legal practice course at Nottingham Law School**

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4 *Nottingham Law Journal* 1, 1995, pp 75-89

In 1990 the Law Society of England and Wales decided to replace its final examination with a new course, the Legal Practice Course ("LPC"), which would include the teaching of legal skills. Of great significance was its decision to devolve much of the responsibility for professional legal education onto individual teaching institutions, which were required to design their own LPCs based on a set of predetermined objectives, apply to the Law Society for validation and deliver their own courses and assess their own students, subject to regular Law Society monitoring. This article describes the process of transformation of Nottingham Law School, in which a team of law teachers took on the job of designing and developing its own LPC.

The designers reduced the Law society's objectives to an easily understood two-point aim, which became the theme around which the course was designed: to enable students to prepare for practice by learning (a) how to solve clients' legal problems; and (b) to adopt attitudes which encourage professionalism. They identified three basic ingredients of problem-solving ability: *knowledge* (of procedural and substantive law as well as transactional law), *relevant skills* and *attitudes*. This conceptual vocabulary enabled the designers to break down legal problem-solving into teachable parts: lectures, prescribed readings and discussions

for knowledge, and practical activities or "learning by doing" for skills. Since issues of professional ethics pervade the curriculum, these and other attitudinal objectives were to be met in a variety of ways.

However, an important realisation was that legal skills and knowledge are inextricably linked, so that one cannot learn skills without knowledge. One of the challenges was to arrange core subjects and skills in order to integrate the knowledge and skills elements, yet keep them separate so that students could transfer skills among different knowledge contexts in ways that propelled them toward the problem-solving goal.

After giving a description of the structure of the course, the authors explain how the integration of legal knowledge and skills was achieved in the design. Two principles were adopted: legal knowledge and skills should be integrated no matter what sequences the learning follows; and theory should usually be followed by practice. The core subjects provided the contexts into which the skills are integrated e.g. writing, drafting and negotiation with business and conveyancing.

Successful integration of knowledge and skills is thus mutually enhancing: skills enhance and deepen knowledge by enabling students to manipulate the knowledge for a specific purpose; and knowledge enhances skills by enabling students to practise those skills in a variety of realistic contexts. Since both knowledge and skills are necessary in solving clients' problems, the integration of knowledge and skills in a series of purposive transactions helps the curriculum to achieve its problem-solving goal.

An attempt was made to keep assessment strategies simple and to ensure that it did not dominate the course at the expense of new learning. Two devices are used: a practical exercise, being a piece of assessed course work; and a final written assessment, which aims to provide a summative assessment of a student's ability to solve clients' problems using the knowledge and skills acquired during the LPC. In addition, each student has a "narrative" assessment, compiled by tutors during the course, intended to reflect the student's attitudes towards the LPC learning experience and the development of the professional attitudes necessary for practice.

It is recognised that a concentration upon getting students through the tasks might suggest a regimented style of instruction that professional educators seek to avoid. Students may also be tempted to adhere rigidly to the prescribed criteria, using a lockstep approach rather than learning to solve clients' problems holistically as in real life. Legal education must be designed, therefore, to encourage reflection and deep approaches to learning that are compatible with learning how to solve realistic problems.

**Professional legal training in the Commonwealth**

M F Fitzgerald

12 *J Prof L Educ* 2, pp 179-209

Professional legal training is a reasonably new phenomenon in many parts of the Commonwealth and it is only currently that it is being considered by a few states in the United States.

Only recently, with the increasing concern about the competence of lawyers, has there has been