of competence is identical. Common themes do, however, emerge.

With regard to methodology, the most frequently used method for research is the mailed survey. Most of the mailed surveys were almost identical to the original Zemans and Rosenblum survey from 1975 in which about 550 Chicago lawyers completed a 23 page questionnaire with a list of 21 skills and areas of knowledge. The respondent were asked to rate the importance of skills and knowledge, the contribution of law school, the contribution of experience and the contribution of other lawyers in their office.

Recently, however, researchers have begun to adopt other methods of looking at what lawyers do. Researchers are now moving away from the survey approach towards methods such as interviewing, observation and small group discussions. The Legal Skills Research Group in England and the American Bar Association (Martin and Garth) research, for instance, involved the use of telephone and individualised interviews.

Almost all the research conducted found that legal skills, as opposed to black letter law or substantive law, were most important to a lawyer's competency. This is perhaps because formal legal education has tended to focus on substantive law. Those in practice may be more attuned to their needs in areas in which they have less training or education. The most recent research conducted by the American Bar Association over 1989-92 which produced the MacCrate Report resulted in a list of ten fundamental lawyer's skills, with which every lawyer should be familiar before assuming the full legal responsibilities of a member of the legal profession, and four fundamental values.

Although the research indicates that very similar skills and knowledge are required of practising lawyers, the ways in which these skills and knowledge are described and categorised are very different. Many of the differences in the definitions of competence are attributable to semantics or categorisation. The majority of researchers seems to agree on a comprehensive description but disagree as to how this description should be divided and categorised. the original 'trinity' of knowledge, skills and attitudes as a description of competence has been abandoned for a more functional model which tends to emphasise tasks and abilities with special emphasis on problem solving, legal analysis and management skills. At the end of the day, it seems that the model selected depends upon the anticipated use of the model. If used for teaching, for instance, it takes into consideration teaching theory and focuses on distinct skills and knowledge. If used for regulatory purposes, however, it takes into consideration the actual practice of a lawyer and focuses on functions and tasks.

SKILLS

The teaching of skills: rebuilding — not just tinkering around the edges
R Hyams
13 *J Prof Legal Ed* 1, 1995, pp 63-80

Law schools are failing in their duties by not teaching students enough about the practice of law. Whether law schools are educating students for professional life outside of law or for a career within the profession, most current law teaching is deficient.

The current data suggest that less than 50 percent of law graduates enter into and remain in private practice. Therefore, any skills integrated at undergraduate level need to acknowledge these facts about our graduates' intended use of the degree. Our responsibility should be to ensure that students gain a wide range of interpersonal skills of general benefit, rather than just for the practice of law.

Many law students enter law school with an expectation that they will learn to think and act like lawyers. Currently, their education does not prepare them particularly well for practice or for work in other office environments. Our goal should be to provide our students with a basic grounding in both technical legal skills and interpersonal skills at undergraduate level.

Modern educational theory examines how we learn. Kolb described learning as an active process of constructing meaning from the material presented to us. This is known as the cognitive perspective of learning and involves two separate matrices. The first is experiential and describes learning as involving four cyclic stages, namely concrete experience, reflective observation, abstract conceptualisation and active experimentation. The second deals with the problems inherent in the lecturing model. Adult learning is described as a psychological contract of reciprocity which requires that adult learners give of their present knowledge. This helps them integrate and apply new perspectives and at the same time they learn from other students and thus incorporate new ideas.

A better law course should include a combination of teaching methodologies, such as legal rules by way of lecture/tutorial/seminar system, skills training via simulation, role-playing and problem-based learning method, and learning by doing in the clinical environment. Students must have a solid foundation in black-letter law and lectures and seminars should be retained as one of the methods of providing that knowledge. However, it is also essential that students learn the principles of law, understand and analyse cases, use libraries, interpret statutes and have an understanding of

the fundamentals of legal research. Problem-based learning is founded on the concept that students learn most effectively by self-education and discovery. It abandons the lecturing model and relies on their motivation based on ownership of a problem.

It is also desirable that students gain an appreciation of the human side of legal skills — something they can acquire through simulated or role-play activities. Negotiating and advocacy or court appearances lend themselves well to this methodology. Although simulation used alone can soon lose its novelty, when used in combination with other methodologies, such as a clinical component, it can be a valid teaching tool.

The clinical method is most effective when students become involved at the commencement of their degree. Exposure to a clinical setting gives insight into how law works in its social context and blends together the interpersonal and technical skills, which have been learnt through living, with the legal doctrine that has been studied. Although sheer numbers mean that not all students could be involved in a clinic all the way through their degree, a dual system of placements at participating law firms and involvement in university-run clinics would help resolve this difficulty.

Many legal educators have not been taught to be educators, and we need a core group of teachers from within the law schools themselves who are familiar with and comfortable with different teaching methodologies, to train their colleagues in their use. A comprehensive clinical program would be expensive to run, but a law school could adopt an expansive funding style by approaching local Council and State bodies, for example, as well as the private profession itself, which is getting the ultimate benefit of such programs when it employs graduates who do not require a large commitment to train.

We know that students perform in a variety of ways depending on the mode of assessment to which they are subjected. To be fair to most students, the use of the various methodologies outlined above would require different assessment methods. There is room for assessment by formal written examinations, by participation and presentation during simulations, by performance in problem-based learning tasks and by their clinical work which can use a traditional grading system. Continuous assessment can remove the pressure of the 100 percent examination and provide students with feedback to enable them to improve their performances. In clinical work, the provision of an evaluation at various stages would enable students to adjust their performances by reference to previous feedback in the various tasks.

There is no need for an immediate revolution to put new methodologies in place. Instead, they can be introduced partially and slowly where resources permit. By utilising various methodologies of law teaching, we can make the legal system relevant for students and students relevant to the system by training them in the appropriate skills (including interpersonal, ethical and communication skills which are integrated into each subject) that they will need to survive in the professional environment.

Teaching 'lawyering' to first-year law students: an experiment in constructing legal competence
F M Schultz
52 *Wash & Lee L Rev*, 1995, pp 1643-1665

Introduction to the Lawyer's Role (Lawyer's Role) at Washington and Lee University's School of Law is one of a small number of first-year 'lawyering' courses taught at American law schools. In the second semester of first year the class is divided into six sections of approximately 20 students, each section being taught by a professor and a teaching assistant. One of the course's primary purposes is to give all first-year students a perspective on how a practitioner deals with a problem that a client brings to a law office. A second purpose is to counteract the impression readily gained from reading cases in casebooks that lawyers spend most of their time litigating in appellate courts. A third purpose is to introduce students to the major non-litigation skills one needs to practice.

Many law schools have successfully incorporated various types of clinical and practice training in the second and third years and such apprenticeships and in-class exercises are fairly well accepted in the law school community. However, schools have paid little attention to what could be taught in this area to first-year students.

The course includes preliminary looks at the art of interviewing and counselling a client, engaging in a negotiation with opposing counsel and using mediation or some other alternative dispute resolution technique to resolve a dispute short of going to court. The course also attempts to teach students how to negotiate and then draft a business contract. All this is generally accomplished by using role-playing exercises accompanied by class critiques and discussion. Students are also taught library and computerised legal research and participate in a moot court exercise which involves researching and writing a trial or appellate brief of about ten pages and making an oral argument to the instructor. There may be excursions into jurisprudential problems scattered throughout the semester or explorations of ethical problems and dilemmas. The course also includes a heavy component of legal writing,