

correlative with a perspective that is deep, complex and critical.

Basic skills, such as identifying and applying legal principles to facts or analysing the application of legal principles in different cases, do not necessarily come naturally to students. At the level of teaching methodology, there is a need for the integrated teaching of writing skills and critical consciousness. The research suggests that expert reading and writing skills are acquired only by close interaction with expert texts of the kind students are expected to emulate in an environment which fully utilises the complex communicative functionality of those texts. Because becoming expert in the language of a discipline is one and the same thing as acquiring knowledge of its content, integrated teaching in writing skills is vital. This kind of approach to legal pedagogy provides a perfect context for reconceiving the teaching of inter-subjective and professional ethics in law.

A number of writers have suggested that, because of the elaborate linguistic strategies of writing and reading inherent in expertise, and because of the broader linguistic elements of purpose, audience and context, writing skills cannot be taught in universities. More significantly, it has been argued that attempts to teach writing skills, especially in a professional discipline like law, in the decontextualised environment of a university, can lead to alienated and counter-productive educational practices.

Quality in any writing and especially in the expert writing of professional communities, is literacy, where literacy is understood as expertise rather than competence. What are the possibilities for teaching writing? Genre and discourse theory, while questioning the nexus between understanding generic and discursive forms and being able to reproduce them, nonetheless seems to accept, not only the importance of teaching writing, but also that written

skills should be taught within a pedagogical relationship by a professional who is differentiated from students and whose status in the learning process is authoritative.

A great deal of recent scholarship on teaching writing has highlighted the need for writing to be taught as a process rather than a product. The process of writing and editing should be incorporated into the teaching. This can take numerous forms, including: encouraging students to keep a journal in which to record thoughts, observations, concerns; requiring students to submit an outline or first draft of work; and requiring students to submit short writing exercises.

Written legal skills should be identified as part of the overall educational objectives of the law school curriculum. Their location within law subjects ought to be strategically selected to ensure that the writing tasks and structures are as appropriate as possible.

A major resource issue is who delivers legal writing skills tuition. In the United States, two main models have emerged. In the first, where legal writing skills is a separate course, the teaching is increasingly frequently done by specialist teachers. The second involves members of the doctrinal faculty who may have an interest or specialisation in legal writing and legal skills more generally.

Under an integrated model of teaching, there are essentially two options as to how allocation of teaching could occur. First, teachers of substantive law subjects can incorporate legal writing into their regular classes. The advantage of this approach is that teachers have an opportunity to incorporate the importance of writing and discourse issues into all of their teaching. The main disadvantage is that, for reasons of institutional history and pedagogical culture, some law teachers are disinclined to teach legal writing skills. The second option involves specialist teachers teaching stand-alone classes on legal

writing. The main advantage of this approach is that quality and consistency in writing teaching is ensured. But such an approach runs the risk of reproducing the problems of the separation of legal content from legal writing, usually leading to the devaluing of the matter as an intellectual activity.

A major problem with the traditional casebook is that it presents the law as objective, decontextualised and autonomous. Students need exposure to a wider range of legal materials in order to be able to write in different genres and learn the different voices required of legal writing.

It is clear from the experience of the University of Sydney Law School and law faculties elsewhere that equipping students with the language competencies they need to complete their studies successfully and function effectively in professional workplaces is an equity issue, and one that is critical if faculties are to respond to an increasingly culturally diverse clientele. An awareness of this issue will also need to inform curriculum design and assessment to a far greater extent than it does at present.

## TEACHERS

### Professional training, diversity in legal education and cost control: selection, training and peer review for adjunct professors

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25 *Wm. Mitchell L Rev* 1999, p 193

Adjunct faculty make a unique and valuable contribution to legal education. Law is best taught by a combination of full-time and adjunct faculty members. Serious consideration should be given to the issues of how best to divide teaching between full-time faculty and adjuncts. Adjunct faculty can teach courses that no full-time faculty member is qualified to or interested in teaching.



Among the major challenges facing law schools today are the calls to improve the readiness of graduates for the practical and ethical difficulties of practising law, the demands for diversification of law faculties and the need for cost control. Employment of practising lawyers and judges as adjunct faculty can help law schools meet all of these challenges.

Employment of adjunct faculty is not without difficulties. Many law schools have traditionally resisted the use of adjunct faculty, based, at least in significant part, on concerns about the quality of education delivered by instructors whose primary occupation is the practice of law. Nonetheless, as these challenges to legal education become more compelling, it is important to look seriously at the advantages that adjunct faculty offer to legal education and to develop means to alleviate the concerns.

Law students must learn how to be lawyers, either in their law school studies or on the job after they complete their law degrees. They must learn not only legal theory and doctrine and how to analyse both, but also how legal theory and doctrine influence each other in the practice of law and how to use both theory and doctrine in preventing or solving legal problems. Beyond this, they must learn how to relate to clients, how to deal with thorny professionalism and ethics issues as they arise in the context of the pressures of law practice, how to decide when their research of an issue is sufficient, and how to perform the many other tasks that a lawyer must perform.

It may be claimed that the job of law school is to give a conceptual base to students and that they can learn to be lawyers on the job. This claim assumes either that professional skills can be self taught or that law graduates take their first jobs in settings, mainly traditional large law firms, that provide sufficient structured skills training. Both assumptions are false.

The training in law firms probably never was available for as many new graduates as the model assumed and it is probably less available now than ever. Many graduates do not move from law school into traditional law firms where they take up associate or other 'learning' positions. They go to work instead in smaller firms or in government offices where there is less opportunity for training that precedes doing.

While much of the discussion about professional skills education has been addressed to specially designated courses in skills and to law school clinics, in fact a broad range of skills are now taught in many traditional courses, especially in more advanced courses. Many law school courses now include drafting, statutory analysis, problem solving, and other legal skills components. Furthermore, sophisticated skills education should not be, and perhaps cannot be, separated from substantive education. To understand the full import of legal theory and doctrine, it is essential to examine how they play out in practice.

Adjunct faculty should be particularly good at teaching students about the practice of law and about how an on-the-job professional solves problems. To some extent, full-time faculty can also provide such training, but adjuncts have a more direct interest in these matters, a richer source of experience, and an extra measure of credibility with students.

Adjunct faculty, when properly selected, are as good as, and in some ways better than, full-time faculty in showing students how theoretical considerations of the law are important in practice. Not only do good practising lawyers understand legal theory, they also should be good at showing students how theory is relevant to practice. Adjuncts also have a special legitimacy with students when they talk about the importance of theory to the practice of law.

Adjunct faculty can help meet the demand for greater faculty diversity at a time when few tenure track positions are open. Adjuncts can bring other types of diversity to a faculty as well. Full-time faculty tend to be drawn from a narrow range of practice experiences. The traditional background for full-time law teachers is in large law firms, judicial clerkships, or large government authorities. Adjunct faculty can be drawn from a much broader range of practice experiences, increasing the diversity of practice experiences brought into the classroom.

Adjunct faculty provide several other advantages to law schools. Love of teaching is a primary motivating factor for adjunct professors; they can be expected to bring a high level of enthusiasm for the task. Adjunct faculty can teach courses that no full-time faculty member is qualified to or interested in teaching. Having adjunct faculty allows the full-time faculty greater flexibility in their teaching. If a full-time faculty member wants a leave or a sabbatical, someone must step in and cover that person's regular courses. Lawyers who teach as adjuncts get to know both the school and its students. Familiarity with the school can make the adjunct faculty member more willing to hire students from the school or to recommend that colleagues do so. In addition, contact between the students and adjunct faculty can give students leads to jobs. Beyond job hunting, it is helpful for students, when they graduate, to know practising lawyers.

This picture of the relative advantages of full-time and adjunct faculty provides a basis for allocation of responsibilities between them. Full-time faculty should teach basic courses in which broad concepts of legal theory and doctrine are introduced. In these courses, the advantages offered by full-time faculty are most important.

In advanced classes, the pedagogical advantages offered by adjunct faculty are most prominent. In these class-



es, it is most helpful for students to be exposed to something of the practice of law; to consider how theory, doctrine and practice connect; and to encounter a practical, professional perspective on the subject. In advanced classes, the enthusiasm of the teaching practitioner may be especially valuable in maintaining student interest. It is also in advanced courses in which a number of the practical advantages of adjuncts are most striking: the offering of a broader range of course offerings, the need for providing a connection to the practising bar and assistance with placements. Similarly, in these courses, some of the advantages offered by full-time faculty are less important, including the broad perspective and the general introduction of legal doctrine and theory.

## TEACHING METHODS & MEDIA

### Design-a-court: an introductory socio-legal assessment exercise

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9 *Legal Educ Rev* 2, 1998, pp 193–212

First-year law has always been a challenge for both students and teachers. Both groups have high expectations of what can be achieved in an introductory law subject. An unsatisfactory, or unbalanced, introduction to law can lead to some of the disturbing learning pathologies that characterise some first year students' experiences of law school.

In their rush to become discipline literate, for example, some students undergo a form of conversion experience. The result is high achieving students with little motivation for reflexive thought. More commonly, though, students fall prey to a second pathology. They are so intimidated or bored in their first year that they lose confidence and/or give up intellectual engagement with the subject matter.

One attempt to overcome the problems of this unfortunate start is to introduce students to law as a complex culture in its own right. This approach integrates the acquisition of factual knowledge with the development of skills under the rubric of a theory of law as culture. It underscores the design of La Trobe University's first year Legal Studies introductory subject, *Law and Society*, and its LLB introductory subject, *Legal Skills in Context*. Both subjects aim to equip students to evaluate critically the role, nature and operation of law in Australian society, to reflect on their own socialisation into legal culture and to identify the dynamic relationship between law and legal institutions and the impact of political, social and economic developments on them. The approach attempts to promote students' capacity to look at law from the informed position of 'insider' while preserving the critical eye of the 'outsider' toward legal practices and institutions.

The subject has two distinct components. In the first six weeks the focus is on investigating the language and ritual of law. Throughout this component the teaching emphasis is on drawing parallels between the strangeness of law with the 'strangeness' experienced by many students. The second component introduces students to more traditional legal skills such as legal reasoning and problem solving.

One of two pieces of assessment is a 2,000 word 'Design-a-Court' assignment piloted in 1998. The assignment constituted 50 per cent of the marks for the subject. The objectives of the assessment task were to learn to 1) do a literature review; 2) conduct their own empirical testing of the ideas in the literature; and 3) apply their own and others' insights on the topic to create their own model court.

The main aim of first part of the assignment was to help students learn how to undertake a literature review. The assignment explained that this is a

generic skill which underlies all scholarly enterprise. The second part introduced students to the possibilities of empirical research. It required them to attend at least one court and reflect on how their own observations of the architecture, layout and interior design of the court, support, qualify or refute the ideas they canvassed in the literature they reviewed. The final section of the assignment required the students creatively to apply the insights they gained through their reading and observation. The aim of this section was to encourage students to apply higher order skills, such as synthesis. Students were asked to either sketch, or provide a design brief, describing their 'ideal' court. The most important feature of the assignment is that it is directly related to both the substantive and skills based objectives of the subject. (*Editor's note: a copy of the assignment as issued to students is included with the article.*)

Although the considered view of the teaching staff, based on discussions with their students, was that the assignment was not easy, the vast majority of the students demonstrated a conscious effort to grapple with both the substantive and skills-development objectives of the assignment. However, the assignments also exhibited evidence of the perennial complaint of university teachers: that students tend to be more comfortable with description than analysis and critique.

Design-a-court was devised as a developmental exercise. By completing the required task students were expected to acquire new insights and learn new skills. There are strong grounds for concluding that the assignment fulfilled at least some of these ambitions. The challenge for introductory subjects is to devise assessment exercises which work at a number of levels. 'Design-a-court' is an example of assessment led teaching and learning innovation. The assignment is part of an over-all pedagogical strategy which introduces students to the discipline from the perspective of 'law as culture'.