every school addresses them to some extent, it is amazing that an issue that will affect at least twenty percent of the students directly and most others indirectly – and ruin many careers – is not a primary concern. The failure of law schools to address the problem aggressively is even more complex considering the high rate of dissatisfaction among new law firm associates.

Many of the trends likely to affect the way legal education is structured during the next ten years suggest that profound change may come to legal education. Perhaps the most visible crisis in legal education will focus on the information revolution that has already transformed the business world. Change could come suddenly and without warning. Within an organisation the only certainty is that there will be change. A mission statement is the first step in weathering the change because it provides the common purpose that the organisation has embraced.

The effort to develop a mission statement and to focus the direction of an organisation becomes a constant and necessary effort. The mission statement has been a central feature of many successful business plans. Many law schools have mission statements but they are seldom meaningful. In fact, they are difficult to find, even though a mission statement is a requirement for ABA accreditation. For most schools success is mainly excellence in teaching, scholarship and service without really seeking to define what is meant by excellence.

PURPOSE

Lawyers' work and legal education: getting a better fit
J R Chart
19 *NZ Universities L Rev* 2, 2000, pp 177-205

Technical legal expertise, while obviously essential, has only ever been part of what clients seek from lawyers. Clients have always valued the lawyer who is a good communicator, a skilled negotiator and a wise counsellor. Changes in social, business and political relationships, especially over the past two decades, have if anything heightened client expectations of legal services. More than ever, lawyers need to bring to their work facility in human relations, conflict management and problem-solving, together with sound personal, ethical, commercial and political judgment.

Modern lawyers often work in teams, especially in large and medium-size firms. This requires internal negotiations with colleagues as well as external negotiations with the other side. In addition, lawyers commonly need to collaborate with other professionals such as accountants, psychologists, planners and engineers. Negotiation plays an important role in the interaction between lawyer and client and is therefore an inevitable and major part of what lawyers do.

Different practitioners, however, have different conceptualisations of what negotiation means. For some, it denotes an adversarial battle in which the aim is to score a victory at the opponent's expense. For others negotiation is synonymous with compromise and making concessions.

What does law school teach prospective lawyers about values, conflict and negotiation? What professional self-concept does traditional legal education nurture? Such questions require us to examine what law schools (mostly) do and how they do it.

New Zealand legal education continues to focus primarily on the product of the courtroom. New Zealand law schools have begun to pay attention to negotiation and mediation, but generally this has been by way of optional courses, separate from the 'mainstream' subjects. Being optional, such courses come late in the students' career, after the formative experiences of their early years of study and without the possibility of influencing attitudes to other legal study.

As a result, many students embark on legal practice with no exposure to negotiation apart from three days in the course conducted by the Institute of Professional Legal Studies. While arguably better than nothing, such a short burst at the end of their professional education is insufficient to balance out the message of the preceding years. More significantly, the courtroom model for dealing with disputes continues to dominate the compulsory core subjects and many optional courses. Court cases are presented as the vehicle for learning about 'the law'.

The issue is that law schools do not simply impart information about the law in a neutral way. Like all professional schools, they model and give students experience of particular ways of thinking and of viewing the world. Learning to 'think like a lawyer' involves a process of acculturation. That acculturation occurs not only through what we teach but how we teach it and what we reward in our students.

The traditional lecture and examination format of teaching 'the case' also inculcates a particular way of viewing the world. The process of lecturing itself conveys the message that law is knowledge to be transmitted from expert lecturer to neophyte/learner, just as the expert lawyer will transmit this knowledge to the lay client. Students thus experience and come to expect as normal a hierarchical model of instruction which focuses on the content of rules and their impersonal analysis rather than on dynamic processes. Likewise, examinations – which remain a major form of assessment – value individualism and competition, logic and argument to the exclusion of other values, other forms of thought and behaviour.

In this traditional and still dominant model of legal education false dichotomies are set up between (valued) intellectual and (lesser) practical skills, between doctrine (important) and action (less important), between rationality (good) and emotion (to be discounted). Such dichotomies insulate students from the complexities of law in the real world. In so doing, they provide a misleading exemplar of what law and legal practice involve. They deny the essential interdependence of thought and emotion, of thinking/reasoning skills and of the interpersonal and problem-solving skills necessary in practice.

Separate courses in dispute resolution should play an essential role in equipping students for professional life. They expose students to multi-disciplinary research and to a range of theories about precisely the kind of activities practice will involve. They provide students with opportunities to test theory in practical exercises across a variety of contexts, to develop their skills and self-awareness, and to reflect on the philosophical and ethical dimensions of the exercise of skills.

If students are to acquire facility in working with both the litigation and the problem-solving paradigms, then both need to be integrated into their experience of learning the law. A transactional approach can be used in almost any area of legal study. Thus students might craft transactions, such as contracts, leases and mortgages, company buy-outs, partnerships, employment contracts or licensing arrangements. They can deal with disputes between vendor and purchaser, between the Crown and/or a private corporation, between separating parents or employer and employee. To be effective, the approach needs to be used as a vehicle for both teaching and assessment.

Using case studies, in which both adversarial and problem-solving themes figure, can offer many benefits. Problem solving and creativity are fostered. Students learn to be proactive. Students appreciate the significance of the context in which legal principles operate. Students must exercise judgment. Students learn to manage information. Students learn to collaborate with each other. Students develop awareness of their own reactions and values.

Why should graduates not emerge from law school already equipped with the understanding and judgment to be effective conflict managers for their clients? Why should so much of their learning effectively come at their clients' expense? Is it not time for the law schools to seek a better fit between legal eduction and the work lawyers do?

RESEARCH

Publish or perish: the paradox
P F Postlewaite
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The publish-or-perish cry strikes terror into the hearts of all junior professors. Their welcome to the profession is that they must be all things to all people. Not only must this neophyte appear to be an expert before a sea of cherubic faces in two to four classes; not only must the inductee quickly adapt to the political ropes by insightful participation at committee meetings and faculty meetings; not only must this plebe exude appropriate receptivity to meaningful mentoring. Above all, the novice must publish.

While the tenure standard for most law schools includes scholarship, teaching, collegiality and professional service, it is a most unusual research school if the candidate's scholarship is not the *sine qua non* of the decision. The pace is daunting. From appointment as an assistant professor, it is typically but three years until one's colleagues, Dean, provost, and president pass judgment on one's worth.

Typically, the candidate must spend another three years in the state of indentured servitude. Continuing to solidify a political base, the candidate knows, or should know, that the single most critical decision of an entire career will be made after only six years of actual performance. The receipt of tenure bestows on the recipient benefits and riches that few in society can ever realise.

Granted tenure, one instantly confronts the paradox of academic life. The publish-or-perish maxim magically disappears. One can overnight repudiate the pretenure governing rule of professional existence. The efforts that led to tenured status can be renounced, even publicly, and the tenured professor may never write another word. Yet employment may not be terminated for this reason.

Anecdotal evidence suggests that the accredited law schools fall into three distinct categories with regard to the expectation of scholarship: the elite law schools, which for purposes of this article have been limited to 16; the other (about 35) research-oriented law schools; and the remaining schools, typically classified as 'teaching' law schools.

To observe the effect of tenure on productivity and publication patterns, this study focussed on the elite institutions where, in theory, the highest expectations exist, as well as on virtually any and all items written by the senior professors in these law schools and published between 1985 and 1995, a period of ten academic years.

To determine whether the publication of articles in academic journals by professors after the award of tenure was a frequent occurrence, it was ascertained which senior academics published what type of items in (1) the top ranked academic legal journals, (2) student journals other than those affiliated with an elite institution, including placement by invitation for purposes of symposia and the like; and (3) the relatively few faculty-edited journals published by academic institutions. In the ten-year period surveyed, the elite senior professoriate published slightly less frequently in the elite academic journals than in other academic forums.

Books were published slightly more frequently by elite university presses than by others. The elite institutions had slightly less than a quarter of their senior faculty publishing a university press book. Notwithstanding the assumption by many that publication of articles in the elite academic journals is the primary, if not exclusive, component of the senior professoriate's research agenda, the publication pattern revealed by the survey is the exact opposite. Once senior status has been achieved, the data confirm that the productive scholar branches out, enjoying the freedom brought by tenure, and tries to master other forms of expression. The majority of senior professors surveyed wrote a book during this period.

This study addressed three basic issues. What was the preference of the elite senior professoriate regarding publica-