

Legal Education Digest

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First of all many apologies for the late arrival via electronic communication of this first 2016 edition of the LED. As you will appreciate changes of staff, venue and mode of delivery has created some difficulties in the ongoing publication of the Digest. It will mean further delays in its production during this year, but it is expected that by the end of the year any further difficulties will have been resolved and that normal arrangements for regular publication will be in place for 2017.

However there has been no delay in the regular round of legal education conferences around the world. In January the 110th Annual Meeting of the Association of American Law Schools took place in New York. In March the Association of Law Schools (UK) held their conference in Newcastle under the auspices of the University of Northumbria Law School. The choice this Law School as conference host was resolved under a new system of law schools tendering for the privilege of providing the conference venue.

Preparations are now well in hand for the Australasian Law Teachers Association Conference to take place in July at the University of Victoria Law School, Wellington, New Zealand. This will celebrate the 70th anniversary of the foundation of the Association in July 1946.

Also the Australian Academy of Law has begun its annual circuit of events with a major symposium in Hobart on 27 April when the Academy's Patron, Chief Justice French AC spoke on 'Rationality and Reasonableness'. The symposium was also attended by the Hon Professor Kate Warner AM, the former Dean of the University of Tasmania Law School and who is now the Governor of Tasmania.

The book review in this edition is of particular interest as it incorporates a selection of lectures, essays and speeches by Lord Judge the former Chief Justice and Head of the Judiciary of England and Wales from 2008 to 2013. Lord Judge will be remembered for making a major impact with his speech at a Breakfast Meeting in Sydney of the Australian Academy of Law in 2012.

The first article digested in this issue by Minnetti under the heading of **Assessment Methods** is a review of research which has been carried out which revealing a positive correlation between students' work related preferences and their grade point averages. The research has also discovered that Work Drive is a personality trait which leads to a connection with undergraduate students' work related preferences having a powerful impact on academic performance.

Under the heading of **Career Paths** Dangel and Madison consider the tensions that arise between entrepreneurs and traditionally-trained lawyers and examine the innovative programmes at many law schools which ameliorate that tension, including the one offered by their own University of Pittsburgh School of Law under the auspices of their Innovation Practice Institute (IPI).

Clinical Legal Education covers an article by Leiman, Ankor and Milne which relates to their Flinders University Law School's programme that incorporates the embedding of practical legal skills throughout the Law School's law degree. This means that graduates are able to seek immediate admission to legal practice without any further qualifications.

The heading **Computer Assisted Instruction** incorporates a passionate description by Allbon of the advantages of computer assisted learning which focuses on three key areas ripe for change; 'partnership with librarians', going 'beyond the text' and finally, 'keeping it real.'

The law library also has a role in the article by Donaldson and Ferris which under the heading of **Cooperative Education** describes it as being a valuable place of learning within the Nottingham Trent Law School (UK) where the policy of putting learners into the library has shown that it can facilitate learning and help to create the formation of identity for them to become members of a legal community.

Krantz and Millemann argue that this point of time is a pivotal moment in the history of legal education. This acknowledgement of legal education in transition is reviewed under **Philosophy of Legal Education** in which they argue that many law schools are now recognising that they have a special obligation to prepare their students for the realities of the marketplaces they will be entering.

Professional Skills involves two articles, the first by Condlin dramatically states that if 'the sky is falling on legal education' then preparing 'practice ready' graduates is an appropriate strategy for surviving such a fallout. In this article the author is of the view that practice readiness also requires an understanding of the lawyer role as much as a command of lawyer practice skills. The second article by Boothby and Sylvestar describes the integrated approach adopted by Northumbria Law School (UK) towards students for a transition from their traditional academic writing environment to the adaption of their clinical training by the development of professional writing skills.

It was difficult to allocate the appropriate heading for Sernlight and Robbenolts article on the relationship between psychology and effective lawyering, but the view prevailed that **Students** was the appropriate heading. The thrust of the argument incorporated in this article is the importance of ensuring that law graduates develop good interpersonal and decision-making skills. They also

emphasise the substantial contribution which a knowledge of psychology can make to this part of the practice of law. A further article under this heading by Soh, Burns, Shackle, Robinson, Robertson and Walter investigates why university students often have higher level of psychological distress than the general public and that law students record higher levels of stress than most students in other disciplines.

Teaching Materials and Equipment is a rarely used heading in the Digest but is appropriate for the article by Riley which discusses the development of an animal law case book as part of an elective subject entitled 'Animal Law and Policy in Australia.' This forms part of an Animal Law Case Book Project which incorporates both electronic and print versions of the case book and is designed as a practice-oriented learning experience.

The concluding heading of **Teaching Skills** involves an article by Bifold which has the challenging title of 'How to be the World's Best Law Professor!' However this title encapsulates a stimulating inquiry into an examination of the ten best learning methods and a revised law school curriculum. It also examines how law schools and their staff can identify opportunities to support students in teaching legal concepts and practice in the larger community.

This is a most stimulating article upon which to conclude the review of the topics covered in this edition of the Digest.

Emeritus Professor David Barker AM
Editor

S Dangel, M Madison

UMKC Law Review, 2014–2015, pp 967–989

To survive in today's legal marketplace, all law school graduates must be entrepreneurial: they must be enterprising, opportunistic, and willing to take risks in the hope of reward, just like entrepreneurs.⁷ While a legal education may not be the best training for business entrepreneurs, we argue that law schools can and should be training the next generation of social entrepreneurs, i.e., "entrepreneurs who serve the whole of society with solutions that are sustainable, fair and sufficient."

We begin by examining both the tension between entrepreneurs and traditionally-trained lawyers and the innovative programs at many law schools that ameliorate that tension, including the programs offered by our Innovation Practice Institute (IPI) at the University of Pittsburgh School of Law ("Pitt Law"). These programs focus on training law students to represent entrepreneurs ("entrepreneurs' lawyers") and to be entrepreneurial in law-related careers. We then address the potential difficulties posed by law school programs that focus exclusively on training law students to be entrepreneurs in the business sector ("lawyer entrepreneurs"). Drawing on our own experiences and the writings of Bill Drayton, the lawyer who pioneered the field of social entrepreneurship, we discuss how some lawyers have applied their legal education to be successful social entrepreneurs ("lawyer social entrepreneurs"). Finally, we outline a three-year law school program explicitly designed to train law students to be lawyer social entrepreneurs, a program that we are building at the IPI.

Lawyers and entrepreneurs make strange bed fellows. Lawyers look "backwards" at precedents while entrepreneurs look "forward" to the launch of a new business or new product. Lawyers are generally conservative and risk-adverse while their clients are almost always optimistic and willing to take chances to achieve their goals.

Preparing law students and new graduates for these roles can take many forms. Although traditional legal education may fail to produce lawyers who are trained to innovate, the Ewing Marion Kauffman Foundation's Entrepreneurship Law website currently lists more than 100 law schools that train law students to represent innovators and entrepreneurs. Many of these programs are law school clinics offering legal services to innovators and entrepreneurs.

At the Innovation Practice Institute at Pitt Law, we take a three-pronged approach to preparing law students to represent entrepreneurs. First, the IPI integrates the teaching of entrepreneurship into the curriculum with courses such as "Law and Entrepreneurship," which takes law students "through the life cycle of a technology start-up company, from concept and formation to exit."

Second, the IPI works to ensure that its law students are integrally involved in the campus-wide entrepreneurship education program at the University of Pittsburgh, which provides opportunities for law students to work with Pitt researchers and entrepreneurs as part of the technology commercialization process.

Third, the IPI offers an extracurricular, community-based program entitled "Start Smart Law," a unique cross-university collaboration with Project Olympus, a Carnegie Mellon University (CMU) innovation center. During Start Smart Law seminars, experienced startup lawyers teach basic startup law and practice to IPI law students and CMU computer science and engineering graduate students. These seminars are open to the public as well, and attendees may include other researchers, inventors, investors, and practicing lawyers.

These startup legal issues include seminars on entity formation, raising capital, intellectual property, employee relationships, and immigration law. Start Smart Law workshops follow the seminars, during which, startup lawyers and IPI staff oversee the law students as they work with their graduate student peers and other local entrepreneurs to produce "roadmaps" of legal information that will guide the entrepreneurs in their planning and decision-making process.

Sam Glover, founder of Lawyerist, an online lawyer's survival guide, warns that lawyers must evolve and "think more like an entrepreneur" or "risk extinction." Susan Cartier Liebel, founder of Solo Practice University, views solo law firm practice as "the ultimate expression of entrepreneurship." And in the legal services industry, the influx of technology and venture capital financing are pressuring lawyers and law firms to be more entrepreneurial.

A growing number of law schools have created "incubators" or partnered with law practices employing their own recent graduates, which helps to develop those lawyers' skills as new solo or small office practitioners. A related but distinct development is a legal "residency" program

operating independently of a law school but designed to hire new graduates, train them for a period of years as future solo or small firm practitioners, then transition them into their own practices.

At Pitt Law, the Innovation Practice Institute offers a framework that provides opportunities for law students to learn from and about entrepreneurial lawyers through both curricular and extracurricular programs. A classroom course entitled “Understanding the Legal Services Marketplace” teaches IPI law students about “the commercial landscape of the legal services industry” by interacting with both practicing attorneys and consumers of legal services. A course entitled “In-House Counsel in Modern Corporations” explores the unique legal and practical challenges that counsel face when working in corporate law departments of various sizes, including entrepreneurial contexts. The IPI extracurricular weekly “Innovators, Esq.” lunchtime speakers’ series gives law students the chance to interact with entrepreneurial lawyers who have been innovative in law-related careers, including lawyers who have: moved from solo practices to law firms and vice versa; moved back and forth between private law practice and in-house positions; developed innovative business and organizational practices inside law firms; and built law-related technologies and startups.

Anyone who is intelligent enough and has worked hard enough to become a lawyer can become a success in a myriad of fields. Tim and Nina Zagat were working as successful corporate lawyers when a dinner party conversation about lousy restaurant reviews changed their lives. What started as an informal survey printed on legal size paper grew into the “world’s original provider of user-generated content.” By 2005, the Zagat Survey covered seventy cities. In 2011, Google acquired the company for a reported \$151 million.

Despite these positive portrayals of lawyer entrepreneurs, a number of lawyer entrepreneurs have reported that their legal education was an impediment to becoming a successful lawyer entrepreneur. The American Bar Association Journal featured a troubling article entitled “Lawyer-Turned-Entrepreneur Says He Had to Overcome His Legal Training to Succeed.” In an article entitled “Why Most Lawyers Make Terrible Entrepreneurs,” a lawyer entrepreneur writes that “thousands of lawyers make the leap every year, [but] it’s been my observation that very few succeed.”

Training law students to be lawyer entrepreneurs in non-legal fields raises a number of practical questions, including whether there are a sufficient number of students interested in becoming lawyer entrepreneurs to warrant the development of a program to support that ambition, and, of course, the staffing and content of the program itself.

Assuming that a sufficient cohort of students exists to justify developing a program that focuses on entrepreneurship in both law-related and non-legal fields, a number of different program approaches can be used.

Like programs at some other law schools, the IPI has also developed a curriculum that exposes students to entrepreneurship in non-legal fields through courses co-taught by law and professors in other schools and departments. The University of Colorado recently announced the launch of the thematically similar “Entrepreneurs in Residence” program. Instead of bringing law students into frequent but brief contact with a range of lawyer entrepreneurs, Colorado Law is bringing a small number of entrepreneurs to the law school to engage deeply with students. At Pitt Law, the IPI has connected its students to team-based research commercialization activities at the Swanson School of Engineering, through the Coulter Translational Research Partners II Program. Law students collaborate with business students and engineering students on teams that support full-time faculty researchers in developing proposals to commercialize bioengineering research.

The IPI also connects interested students with summer internships that “embed” its students in a local startup incubator, which allows them to experience the business side entrepreneurship in a variety of non-legal fields. The IPI also mentors law student teams that enter business plan competitions both at the University of Pittsburgh and at local and regional business incubators. And like many law schools, the IPI also connects their prospective lawyer entrepreneurs with entrepreneurship programming through joint degree programs, particularly JD/MBA programs, and through internships in university technology transfer offices.

Despite the success of these programs, one frequent concern raised in discussions of lawyer entrepreneurs working in business fields is ethics. To what extent are ethical frameworks that inform and guide lawyers and the legal profession compromised when legal training is so explicitly blended with the rhetoric and practice of for-profit entrepreneurship?

What defines a social entrepreneur is the motivation from deep within to serve the whole and to make sure that solutions are sustainable, fair, and efficient. In the view of many admirers, “no one has done more to put social entrepreneurship on the map than Bill Drayton.” While still a law student at Yale, Drayton launched a social enterprise that engaged one-third of his classmates

in drafting legislation. During the 1980s, Drayton “coined” the term “social entrepreneur” and founded Ashoka, the world’s largest network of social entrepreneurs.

Although Bill Drayton may be the most famous lawyer social entrepreneur, we know that he is far from the only lawyer participating in this movement. After leaving the practice of law in the late 1990s, one of the authors — Stephanie Dangel — spent a decade promoting and producing social enterprise entertainment, i.e., entertainment that is both socially meaningful and commercially viable.

The lack of more lawyer social entrepreneurs is unfortunate for a number of reasons. In terms of jobs, the dearth of lawyer social entrepreneurs is a missed opportunity for underemployed law school graduates.

The lack of more lawyer social entrepreneurs also suggests a failure of law schools to respond to the interests of their current and prospective students. We have met lawyers who skeptically view social entrepreneurship as a socialism best avoided or as a fad destined to disappear — but those lawyers do not belong to the current generation of students, who, given the global financial crisis, are often suspicious of strictly business or governmental solutions.

The Innovation Practice Institute at Pitt Law is currently developing a pilot version of a three-year program to train law students to become social entrepreneurs via a wide variety of career options, including some more conventional routes (as legal practitioners in private law practice, government service, or as in-house counsel) and some less conventional (as social entrepreneurs in for-profit, non-profit, or hybrid entities).

Based on the experience of Stephanie Dangel in launching a social enterprise, our three-year program will follow what we see as the three stages required to launch such a venture. In brief, these three stages require social entrepreneurs to:

- (1) Identify a social innovation that is commercially promising;
- (2) Incubate the social innovation until it is commercially viable; and
- (3) Invest in the social innovation so that it can become commercially sustainable.

These three stages align with the three years of law school.

The first year of the program will focus in part on extracurricular events, as the courses during the first year of law school are traditionally mandatory. A year-long mandatory first-year course entitled “Pitt Law Academy” brings members of the profession to the law school as guest lecturers on a wide range of subjects, from forms of practice to work-life balance issues.

During the first year, students serious about exploring the field of social entrepreneurship will also be invited to participate in the IPI’s extracurricular “Leadership Forum.” The forum will focus on the three qualities of an effective social entrepreneur and begin to address how these qualities specifically apply to lawyer social entrepreneurs. First, an effective social entrepreneur “must be creative in both goalsetting and problem-solving.” By drawing on case studies of Ashoka Fellows who are lawyer social entrepreneurs working in a variety of fields, the law students will learn how to use their legal training to solve social problems.

Second, an effective social entrepreneur must have an entrepreneurial quality. Drawing on materials from Ashoka, law students will learn that “everyone’s a changemaker,” or, in other words, “anyone can apply the skills of changemaking to solve complex social problems.”

Third, a social entrepreneur must have ethical fiber, because “[p]eople will not make significant changes in their lives if they do not trust the person asking them to do so.” With respect to lawyer social entrepreneurs, law students will learn that [a]s change accelerates and as the world becomes more complex, the rules cover less and less. They have not been invented. They are changing.

Drawing on materials from Ashoka’s Start Empathy initiative, law students will learn that empathy means much more than “the ability to understand what someone is feeling.” It means the ability to grasp the many sides of today’s complex problems and the capacity to collaborate with others to solve them; it means being as good at listening to the ideas of others as articulating your own; it means being able to lead a team one day, and participate as a team member the next.

After students complete their leadership training, during both the students’ first and second years the IPI will also work with Pitt Law’s Office of Career Planning and Development (OPCD) to find these students summer internships working with lawyer social entrepreneurs.

During their second year of the pilot, law students will participate in experiential, team-based courses that will focus on “incubating” social innovations.

After completion of the team-based courses, the IPI and OPCD will work with law students to find internships with national and international lawyer social entrepreneurs. Our goal is to weave social enterprise themes into the fabric of the law school’s overall program.

In the third year of the program, IPI students will have the opportunity to explore the variety of career options open to lawyer social entrepreneurs through more advanced curricular and extracurricular offerings and further work in community settings. The IPI aims to build the third year of its program by combining those opportunities with other, more novel ones with social entrepreneurship themes: Team-based projects identified during the students' second year may mature into entries into business plan competitions or grant applications for outside funding.

Today's law school graduates need to be entrepreneurial to succeed. A focus on social entrepreneurship in legal education offers the prospect of bridging two worlds in need: law graduates in need of 21st century skills and abilities and 21st century communities in need of new solutions.

In a world filled with injustice, lawyers have long served as an essential corrective force in courtrooms and board rooms, in non-profits and for-profits, and in public and private organizations. The time has come for law schools to prepare its students to play that corrective role as social entrepreneurs.

CLINICAL LEGAL EDUCATION

Beginning in the first year: Towards a vertically integrated curriculum for clinical legal education. A Practice Report

T Leiman, D Ankor, J Milne

The International Journal of the First Year in Higher Education Vol. 6 Issue 1, 2015, pp 171–177.

In their first year of law study, students begin a journey towards developing their identity as a future legal professional. Before enrolment, however, many prospective law students have very little realistic understanding of what a legal career may actually involve. Self-determination theory distinguishes between motivation that is intrinsic (“doing something because it is inherently interesting or enjoyable”) and extrinsic (“doing something because it leads to a separable outcome”). Significant numbers of students choose to study law as the result of external, rather than internal, motivating factors. Preconceptions about what it will mean to become a future legal professional thus may have little basis in reality, especially when compared to the increasingly varied reality of the lived experience of lawyers in the 21st century. Younger students may also lack exposure to many legal issues commonly encountered in adulthood (buying/selling property, employment contracts, wills, insurance, etc). As a consequence, students may face difficulties in placing theoretical discipline content within a broader applied context, or making links to the realities of future practice. Where students are not readily able to make these links, they may find it difficult to engage with this important foundational material or to comprehend threshold concepts that “lead to a qualitatively different view of the subject matter” in the discipline. Students may begin to ask themselves whether a law degree is really what they want to pursue. Without a clear understanding of a possible goal for their studies, or any experience of what a future legal professional career might entail, students may lack the capacity to develop their own internal motivating factors to enable them to respond successfully to the challenges they are facing. For those who choose to study law because of a strong personal orientation towards social justice or community service, inability to easily reconcile legal theory, moral imperatives and real world experiences can even cause them to question whether they have made the right career choice.

Unlike most other law degrees in Australia, Flinders University's Bachelor of Laws and Legal Practice [LLBLP] permits graduates to seek immediate admission to legal practice without further qualifications. Practical legal skills are embedded throughout the degree, beginning with client interviewing and negotiation in first year topics and culminating in final year practical legal training [PLT] topics. These PLT topics require students to meet explicit detailed competency standards for entry level lawyers and to undertake a legal workplace placement. Convinced of the many benefits of experiential legal education, we have been seeking ways to maximise experiential opportunities for students as early as possible. We envisioned this as a series of incremental and interlaced experiential learning opportunities linked horizontally and vertically across the degree from enrolment onwards, with the potential to provide a transformative experience for students as they are supported to develop a positive identity as a holistic legal professional. Lizzio has identified five key areas as important in supporting students as they transition into study: a sense of connectedness, a sense of capability, a sense of resourcefulness, a sense of purpose and a sense of culture. As Kift notes, first year “students must be inspired, supported, and realise their sense of belonging; not only for early engagement and retention, but also as foundational for later year learning success and a lifetime of professional practice”.

In early 2014, this vision coincided with plans to both expand the operation of the Flinders Legal Advice Clinic and improve its service delivery to clients. This would require a greater number of student interns to staff the Clinic, particularly as it also included the aim of improving practices to ensure higher levels of service provision within shorter time frames. The Clinic is staffed by interns who commit to be involved for at least a semester, under the supervision of Clinic solicitors. Interns comprise law students enrolled in the elective topic Social Justice Internship together with law student (and occasional graduate) volunteers. However, students have space for only a limited number of electives in their LLBLP enrolment, particularly those who are graduate entry students or completing a combined degree. It was therefore unlikely that we could significantly increase intern numbers simply by increasing enrolments in Social Justice Internship. Other ways of increasing student involvement were needed. Even though many are willing to do so, timetable constraints restrict later year students from being able to volunteer during semesters, the time of greatest need.

First Year Clinic Placement [FYCP] was designed to support students as they transition both to the discipline and the law school community, and encourage them to explore and develop their emerging professional identity as early as possible. University student-operated legal clinics seek to balance three competing objectives: effecting student learning; social and community justice goals; and providing professional and competent legal advice for clients. In the FYCP clinical setting, our intention was that students would gain insight into the practical application of legal concepts. By observing interviews between clients and interns, and then working on files closely with interns and supervisory staff (including being exposed to the subsequent discussions with interns and supervisors about clients' issues), students would build connections with more senior students and legal practitioners. The FYCP program was offered in conjunction with the Flinders Legal Advice Clinic, which operates one day per week at a local Court for the whole year and two days per week on campus during semesters only. Two additional placement spaces were made available for FYCP students on each day of Clinic operation. We utilised existing resources to develop and run the FYCP program, with no additional funding.

FYCP students were required to complete a comprehensive induction online, and read and sign a confidentiality agreement before attending. They were expected to wear business attire and to attend from 9am until 5pm on the day of their placement. During that day, with the Clinic's supervising solicitor and interns, they observed client interviews and took notes (although primary responsibility for note-taking rested with the interns conducting the interview). They then used their own notes as an aide memoire to type up the interns' notes as a record of interview. During the course of the day, FYCP students participated in briefings prior to interviews, subsequent debriefings and handovers between clinic supervisors and interns. They also joined interns for a collegial lunch in the building where the Clinic office is located.

As noted in connection with the health sciences, the examination of what it means to be a professional or to practise in a professional manner, is not simply a matter of rational critique. Instead moral development, along with the process of transformation towards an ethical and compassionate professional, requires a development of a personal philosophy of 'meaning'.

Seligman identifies meaning, "belonging to and serving something you believe is bigger than self", as one of five elements crucial to wellbeing generally. As FYCP students observe and participate in relationships and teamwork as part of the clinical environment, they are exposed to "the kind of [real life] knowledge that makes explicit what was tacit and generates a richer understanding about practice". They experience supervising solicitors and interns engaging in varying approaches to resolving legal problems, giving them the opportunity to "cultivate practical wisdom or judgement [and] ... professional values". They are offered a glimpse of "self-understanding" of what it may mean for them to be a lawyer in this specific professional context — what they learn is "intertwined" with who they are becoming. Clinical experiences are powerful in "[engaging and expanding] students' expertise and professional identity". They can stimulate and refine for students the values, ideals, hopes and inspirations that start to shape professional identity; form their personal narrative of a way of being in the world and challenge them to consider how this aligns with values governing the legal profession. Inevitably, due to the nature of community legal practice, FYCP students are likely to encounter vulnerable clients with myriad complex legal and other problems and observe interviews that may be highly emotionally charged. It may be that for many FYCP students, this will be the first time they have had such an experience. As they are required to undertake "[b]oth emotional work and emotional labour" to process this, they may be challenged to consider how an appropriate legal response accords with their personal narrative.

The Clinic operated on 59 days during the period March 18 and September 4 2014 (the due date for the reflective report in Professional Skills and Ethics), with 118 possible FYCP spaces. Of 176 students enrolled in Professional Skills and Ethics, 52 made bookings to participate in the FYCP and 46 of those attended. The frequency of bookings increased as the semester progressed, and it is not clear whether this was due to increasing self-efficacy or confidence amongst first year students, awareness of the due date of the reflective report or whether word of mouth about the experience encouraged more students to apply as the semester wore on. Although not in place when the FYCP program began in March, we subsequently developed pre-entry (online) and exit questionnaires (hard copy), which first year students complete anonymously. Student feedback has been overwhelmingly positive, with all respondents answering either Strongly Agree or Agree to the following questions on the exit questionnaire:

- I now have a better idea of what lawyers do in real life;
- I feel more motivated to continue my law studies;
- I can make better connections between the theoretical material I am learning in my law topics and real life application as a result of Clinic placement;
- My experience in the Clinic has helped me to see real life ethical implications in giving advice;
- I feel more a part of the law school community as a result of my participation in Clinic;
- I learnt a lot from discussions between interns or with the supervisor about how the law works in practice.

Numerous responses noted that FYCP students had gained “a lot of insight into real work” and “the day to day workings of the law.”

The FYCP program encourages students to explore and develop their emerging identity as a legal professional from their very first year in the Law School. The initiative has been shown to have significant student support and the potential to achieve our envisaged outcomes, and merits further evaluation. In light of the success of the FYCP program in 2014, it will be continued in future years. We intend to investigate its impact in supporting students as they transition into Law School and in the development of their professional identity.

COMPUTER ASSISTED INSTRUCTION

Seeing is believing: we are all converging

E Allbon

The Law Teacher, Vol. 50, Issue 1, pp. 98–113

Picture the scene:

Boston, USA, July 2012, American Association of Law Libraries Annual Conference.

Having just finished giving my paper on “Engaging and Educating the Screen Addicts of 2012” I slipped in at the back of a room where a roundtable discussion around technologies in teaching was taking place. I was in time to hear one of the (clearly appalled) participants sounding off about my session and how it wasn’t her job to *entertain* (this said with particular disgust) students.

Fast-forward three years, I’ve since swapped law librarianship for teaching law and although the memory of that sting remains vivid, I am even more committed to a view that we need to reach out to our students in a variety of ways, drawing on whatever tools we have, to bring our teaching (and their learning) alive.

Today, communicating to burgeoning lecture theatres of students who struggle to concentrate brings vast challenges to universities. Much has been made of the effect of excessive, competing demands for our attention in these times of “instant-everything”.

Within higher education (HE) we seek to tackle this via various methods, a current popular option being by “flipping the classroom” to use the physical space for active learning with small-group breakouts, putting the responsibility on them for front-loading their knowledge. We may enhance more traditional lectures through the use of various technologies in order to engage students: PowerPoint or Prezi, polling systems like PollEverywhere where we can test them, check understanding or simply break the ice. Assorted mediums are used to maintain engagement: video footage from YouTube or clips of TV programmes from Box of Broadcasts. Some lecturers are using social media tools like Twitter to connect with students in new ways.

The question as to when engagement crosses the line into the realms of entertainment implies that this cheapens the message. Catching the imagination of our students gives us half a chance of then absorbing them; the hook of engagement meaning they may then get involved in that tutorial discussion rather than sitting mute, that they might independently tackle that journal article you added to your reading list.

Outside lectures, we are concerned that students enter HE ill equipped for the rigours of a law degree, many struggling to keep up with the reading, to engage in meaningful debate or to write critically. We know that they need some persuasion to step up and take individual responsibility for their learning — researching independently, asking questions of the literature they find, rather than wordlessly accepting what they read or hear as gospel.

In this piece I seek to show that discrete areas of practice, typically the concern of professionals *outside* law teaching, are not only coming together but also may need to become a key focus of those teaching law if we are to meaningfully address the issues spoken of above.

In what follows we'll look to engagement and how librarians and digital or information literacy might have a role to play, before focusing on the importance of the visual within learning, via books, online, TV/film and considering what we can learn from practitioners of information design. Finally the article will touch on experience-based learning via simulation and pro bono. The piece concludes with an impression of what might be necessary in the future.

Many academic law librarians in the UK have until recently enjoyed a somewhat protected position within university libraries, partly because of the requirements within the SLS Statement of Standards and partly because legal research is seen as so specialised. However the role of liaison or subject librarian has been chipped away at many institutions, with some libraries preferring to run an economic model based on function — including a group of teaching and learning librarians who will interchangeably adapt generic materials to teach, whether dealing with future optometrists, engineers or lawyers. Individual expertise is being eroded, whilst jacks-of-all-trades are embraced.

What does this mean for law schools? It means losing that individual who knew your students, the courses that they were studying and the challenges they faced. Most troubling is the legal research element of that role, a skill that many law schools leave to the librarian to teach for an hour or two via a stand-alone class in semester one, rather than embedding throughout the curriculum. You may have heard the term “information literacy” used within your own institutions.

Information literacy, used somewhat interchangeably with digital literacy or even metaliteracy, has been defined in a multitude of ways but SCONUL expresses it clearly:

Information literate people will demonstrate an awareness of how they gather, use, manage, synthesise and create information and data in an ethical manner and will have the information skills to do so effectively.

Metaliteracy has been described as “information literacy reinvented” and additionally incorporates the way we collaborate to produce information and share it via digital environments, such as social media or online communities.

In this print/digital hybrid era, researching students have a double-edged problem: information overload and ill-refined quality receptors. The familiarity with technology, embedded in most aspects of our lives, can mean overconfident students dismissing the need to learn how to research, stubbornly utilising the “stick-it-into-google” approach, regardless of database.

In terms of information literacy these observations raise several issues: first students' aforementioned sheep-like acceptance of what they read online; second the non-appreciation of hierarchy amongst sources (especially crucial to law); and thirdly the pitfalls concerning digital reputation and identity (also key to those considering entering the legal profession).

Historically legal research was taught in a very structured linear fashion: print first, allowing students to gain familiarity with indexes, citators and multi-volume sets like Halsbury's before letting them loose online. This approach does not help in an academic or practice context, and profound changes need to take place if we are to empower independent learners who are ready for practice.

Another conference story — this time we are in Newcastle, June 2011 at the British and Irish Association of Law Librarians (BIALL) Conference. Here, at a “Have Your Say” session, a number of practice-based librarians piped up to comment on the appalling research capabilities of trainees entering their firms, wondering why academic law librarians weren't teaching them. This prompted some expected defensiveness from the academic sector, with members raising the issue that many law librarians struggle to secure allocated space within the timetable for legal research teaching. Palfrey reinforces this dissatisfaction: “Firms and young lawyers themselves report that law schools are not meeting the needs of the lawyers that they are sending into the profession”.

These fierce discussions prompted the creation of a Working Group to investigate. The end product of this scrutiny was the Legal Information Literacy Statement (“Statement”) that, along with interviews with selected members of the Working Group team, was able to feed into the Legal Education and Training Review (LETR).

The Statement is designed as a competency framework to be used across both the academic (undergraduate or law conversion courses) and professional spheres (Legal Practice Course (LPC) — for intending solicitors, or Bar Professional Training Course (BPTC) — for intending barristers) of legal education and training. Encompassing five broad research skills, these are then broken down into learning outcomes with the knowledge, understanding and skills required in a separate column. Ideally the regulators would incorporate this Statement, offering some form of accreditation for the training of the legal profession.

Rather than having legal research neatly parcelled as a distinct part of a legal skills or method course at the beginning of the first year, there is a sense that actually the students should see legal research as part of everything they do — whether it is finding literature to support their view in an essay, researching firms online before starting the application process or keeping up to date via both traditional mediums (news sites/journals) or more social means like blogs or Twitter.

Legal information literacy needs to be threaded into the very fabric of law school life, embedded in curriculums via partnerships between academics and librarians.

As a former librarian I can vouch for what the information profession can contribute to law schools, if it is given the opportunity.

Understanding the challenges of transition for those studying law at university is one thing but actually connecting with students and helping them engage with your learning materials is quite another. This goes back to that barbed comment from a US librarian; we might not like to think we are entertaining students or think we have to. However our students spend much of their day connected to devices, whether watching, listening, tweeting, taking photos, status updating, sharing, chatting or texting.

Ask outsiders what they imagine law student life is like and likely themes would emerge around reading weighty books and excessive periods spent in the library. Books of course, do feature heavily in a law student's life but we know that many of them find extensive reading very challenging, and struggle to keep up.

After a decade of resistance from legal publishers to make their textbooks available electronically, we are finally there. Most of the practitioner texts have been available for some time. However the textbook model has been difficult to pin down, with publishers concerned with how they can guarantee the same levels of profitability they enjoy from hard copy texts purchased by university libraries and students.

The JISC e-books observatory project found that many students see e-books as useful for dipping into, for something specific, but not as an extended reading tool. Convenience and search functionality is seen as useful but interactivity viewed as breaking concentration. Having to use a device or computer to access e-books means students find themselves tempted by social media distractions. Navigation is also an issue, with many services requiring the use of scrolling and a next page button. What is becoming clear is this isn't just a case of one format over another but actually indicates an alteration in the way these "millennials" read, with rapid scanning triumphing over a reflective "deep-read".

When we think about visual learning we think of images on screen but reading text in books can be a visual experience. One of Baron's interviewees speaks of "building a physical map in my mind of where things are" — recalling where a significant section of the text is by the layout of the page and text within it. Other reflections of reading in print include "it takes me longer because I read more carefully" and "it's easier to follow stories".

Without question the study of academic law favours text, with the norm for assessments via written submission. However there are exciting examples of learning materials with visual emphasis emerging. Enhancement of written content via different mediums is becoming more commonplace. Choices around mode selection may pivot around what message you want to get across, what you want the effect to be or what societal conventions exist. Certain modes may be more specialised for a specific purpose.

Despite great advances in mobile technology meaning that almost anyone can film cheaply, creating films or video clips is time-consuming and creating effects requires expertise. Certainly students find the novelty of watching film engaging, and a welcome break from listening to their lecturer or reading textbooks, but there are added benefits: development of non-textual reasoning skills and establishment of context within a legal practice setting amongst them.

Touching back on the entertainment issue, this section wouldn't be complete without reference to Neil Postman's *Amusing Ourselves to Death*. He argues that our existence is more akin to the vision in Huxley's *Brave New World*, than in Orwell's *Nineteen Eighty-Four*, a world where a totalitarian state is unnecessary — we in fact control ourselves by succumbing to the soporific,

unchallenging medium of television. Postman asserts that each medium of communication is only capable of transmitting a certain level of knowledge, and that our enslavement to neat packages of visual content (a departure from a wholly literate culture) has meant that we are only capable of taking on soundbites, nothing more substantial.

Postman's warning about the risks of making the mode of delivery more important than the message has resonance in the "edu-tainment" debate.

The Learnmore site has a strong emphasis on the visual to aid student engagement, from the hand-drawn style of illustration that ties the site together, to the range of multimedia. The first thing users see is a student head with different sections of his brain portioned off: Exams, Careers, Writing, Mooting, Research and Newbies. Choosing a section will then deliver resources for refining that skill.

There is an increasing movement to recognise the importance of designers in communicating the law, whether to law students or citizens. Rights Info was launched in May 2015 by barrister Adam Wagner (founder of the much-admired UK Human Rights Blog), in order to combat "misinformation and lack of understanding" around human rights.

The focus on design to enhance the accessibility of the message is not just about adding pretty pictures; information design is, as Helena Haapio notes "also about many other useful things such as language, readability, typography, layout, colour coding, and white space". Visualisation refers to any non-textual way of communicating, and might take the form of a diagram, infographic, image, table, icon or chart. Simplification is the ultimate aim and there are many examples of projects designed to bring alive and aid comprehension of legal content. All this prompts the thought that actually here's another role to add to Susskind's list of potential legal roles of the future: the "legal visualiser".

Simulation and pro bono have a long history of success within legal education, and their importance shows no sign of waning. In an academic law environment however, the chances you get to put what you've learnt into practice can be quite limited until you have got all those core subjects under your belt. Problem-based learning, which "requires learners to construct and develop their own knowledge through researching and developing solutions to open-ended, real-life problems", is an obvious pedagogic strategy within law, and may take place via a "combination of the real, paper and virtual worlds".

Earlier in this piece we've touched on a number of ways in which we can bring that element of "real life" into academic law — Lawbore uses its community, both current students and alumni, to share their experiences with the site's users. Students are often far keener to accept advice from peers than from their lecturers; Herndon notes how "Law professors' personal stories about 'how I learned it' are somewhat meaningless and antiquated". Lancashire's Preston Law Trial takes students to "real" locations and then connects those with "real" issues and current case law.

Pro bono work and law clinics are very much in demand; technology has altered these too, with great enthusiasm for clinics with a tech dimension.

Collaboration is one of the core values of today's digital space, with so many technology solutions offering features which allow you to share, whether it be documents (Google Docs), photos (Flickr, Instagram) or research papers and references (Mendeley). Despite the ready availability of such tools, there is an argument that there hasn't been enough focus on collaboration in the teaching of law, whether at the academic or professional stage. Odd, when teamwork is so pivotal to legal practice.

As teachers of law, we are concerned with getting the best from our students: keeping them interested, helping them develop into independent learners capable of reasoned critique and giving them some insight into how that law might work in the real world of practice.

Technological advances have meant the educational tools available to us to assist our teaching have increased significantly, and yet the teaching of law has not changed to the same degree. We have a responsibility to ensure our students find meaning in the digital realm via our teaching practices. This means exploiting the tools used in their personal lives to enrich our teaching, ensuring what they do at university is not so far removed as to make them question its relevance to their lives.

This article has sought to give a flavour of three key areas ripe for change.

First, partnering with librarians to embed information literacy within the law curriculum — incorporating research skills across the whole programme in order to ensure they excel whilst at law school but also thrive within practice.

Secondly to bravely go "beyond text", looking to other complementary mediums in order to communicate more effectively with a generation who place the visual top of the tree when it comes

to learning materials. Law teachers will need to think more creatively, implanting visual triggers via multimodality into their teaching in order to catch the attention of their students. There is huge potential here, particularly if we tap into the learning process of students — we should be looking to how they compile their notes for revision for clues, in addition to working with those in informatics and creative design for expertise in visualisation.

Finally there is the “keeping it real” aspect: there is sure to be much development in this sphere in the coming years. As our students gain valuable experience via ever more diverse pro bono options, they will look to “give back” to form partnerships with law schools as they go into practice.

All of this convergence should make for an interesting next decade: if “entertaining” students means giving them an opportunity to connect, engage, see more clearly or even “feel” something of our teaching, then bring it on.

COOPERATIVE EDUCATION

Collaborating and Co-operating to Make the Connection: How Law Librarians and Academics Can Work Together to Develop Communities of Legal Practice

A Donaldson, G Ferris

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That the Library is a valuable place of learning is obscured by a metaphor based on a somewhat outdated but still powerful view of education as a process of transmission of ideas or information from someone who knows to someone who is ignorant. So, this metaphor forms part of a coherent system of metaphors that together form a “common sense” way to understand learning.

Our only criticism of this is the implicit assumption that a mature domain can avoid the use of metaphors. However, the risk of distortions and blind spots produced by over-reliance on the information transmission metaphor imperils realistic understanding of learning and recognition of aspects of Libraries not easily visible from such a perspective.

The metaphor of information transfer rather obscures the fact of the body, and sharply focusses on the “information” that is being “moved”. Where, physically and socially, a learner hears, reads, talks or writes about a topic impacts upon where in the future the topic is relevant for the learner. Relevance is what makes information available in the future.

One illustrative example from educational research brings home the importance of this embodied, and specific to learning context, aspect of learning. Engineering students were asked about the forces that operate when a coin has been flipped (as when calling heads or tails). They had all been taught Newtonian theory, which tells us only one force is in play (gravity), and no doubt could and did produce that answer in assessment. What they answered, using diagrams and not a typical physics answer calling for formulae, was two forces were in conflict: gravity (pulling down) and momentum (pushing up). This answer has respectable historical antecedents (it is basically Aristotelian), but has been known to be wrong since Newton, a fact all physics graduates know (in a test situation).

Such research, and it is not an isolated finding, confirms the importance of non-official-curricula factors in what is going on when people learn. The phenomenon has been described as situated learning: where, and with whom, one learns will impact upon what is learned, and that impact may be more significant than the formally recognised teaching activities taking place. The researchers who took this insight most seriously, and developed it into a novel account of learning, were Jean Lave and Etienne Wenger. The key linked ideas Lave and Wenger developed were: legitimate peripheral participation.

It is not always possible to provide opportunities for legitimate peripheral participation in university or the work place. Sometimes the learner has gone beyond the realm of apprentice learner, and is now involved in expert participation that is at the vital centre of the discipline. Obviously, such a learner needs to be supported in different ways to the neophyte.

“Legitimate” means something like “permission” but also something like “member”. Thus one aspect is external (permission) and the other is internal (membership) to the learner. Legal professional education and training tends to split the two aspects sequentially: one becomes a student of law (permission); then upon successful study one is admitted into the practice arena (marked by entry into professional body and work based learning). Obviously reality is more complex than this schematic. The university live client law clinic makes a student into a practitioner, as the student can experience providing legal services; the application for membership of the Law Society or an Inn of Court involves the grant of permission, and may be denied if the applicant has a history

of dishonesty: mere completion of a Graduate Diploma or Qualifying Law Degree does not entitle a student to membership.

“Participation” is at one level of consideration participation in a specific community of practice, being part of a social group engaged in various activities. We will call a community of practice “community”; and a set of communities engaged in the same practice a “network”; and use the term “group” as a general term that can cover either communities or networks.

In legal education there will be more than two potential reference groups, because “legal practice” is made up of many practices. A community of practice is small, it will be limited to those one has regular contact with. A network can be very large and extend across time and space. A network of communities engaged in the same practice can give rise to an imagined community of practitioners. An imagined community is imagined in the same sense that a nation is imagined, or a religious community is imagined:

“It is imagined because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.”

Such imagined communities can be very important for real communities and individuals, as Anderson pointed out people have been and are willing to risk death for their Nation.

Business organisations, such as firms or chambers, will be the site for communities, but networks will not tend to respect organisational boundaries, and communities of practice may include members whose primary network identification vary. Thus, what one participates in when one has access to legitimate participation is not a simple matter or unitary in meaning, and this can have important consequences for learning, whether in educational institutions or business organisations. Participation means being a part of the activity the community is engaged in.

“Peripheral” is a spatial metaphor and it indicates not central or vital. The neophyte is protected from making costly mistakes. Recognition of competence is withheld until the neophyte has demonstrated mastery of the necessary parts required for competent practice. As the new member becomes experienced and skilled in the talk and activity of the community of practice she moves from the periphery towards the centre of the social space occupied by the community.

The model of learning encapsulated in the phrase “legitimate peripheral participation” is very dissimilar to the more familiar, and often unconsciously assumed, model of information transmission. Learners learn through the opportunities for observation given by legitimate presence, and the licence this gives them to ask questions, and by trying to engage in the practice they have observed. Learners do not stop learning, and as they become central members of the community they may change what there is to know.

It is worth focussing on one major element of the Law Library: the collections of reports, encyclopaedias, and bound journals. It is clear that a book is not merely a repository of the information it contains, and that a long historical series of books is not merely a lot of books across which the information is contained. Seely Brown and Duguid list several important features of physical books that are not easily carried over into information available through a computer screen, or mobile phone screen, or a print-out.

One set of features, and an area where the now common pdf of excerpts from printed books does help a lot, is the information contained in the formatting and organisation of the words on the page. An ICLR report is full of information given peripherally to an experienced reader, and available to a neophyte reader. It takes a very short time for an experienced user to extract a wealth of information, and decide whether it is useful or necessary to proceed to read the judgments.

Even with the now widely available pdf (which piggy-backs on the printed work) a neophyte who relies upon a source other than the book loses out on information. If too small a screen is used to access an electronic copy of a report then the risk of confusion is great, the very clear formatting can become obscure.

Any database that catalogues by case report misses out the information carried by place in the Reports. Finally, the book carries a contents page, and can be skim-read (due to the excellent design of the reports noted above) in a way that the databases cannot be.

Digital information media handle some types of information superbly, but they are efficient partially by excluding information unsuitable for digitisation; a lot of information present in the physical and social world is simply lost in translation to digital form. If student identification with an imagined community, or imagined communities, is a desired outcome, then the physical reports naturally embody and express elements conducive to such imagining.

It is not only the Law Reports that manifest the importance of and longevity of sources. The legal encyclopaedias are impressive series of books. The quality of the works, their extent and

continuation over long periods of time are all aspects of their warrant for the importance of their contents. One can, and people and businesses do, fake tradition, authority, and importance on the internet. It is far more difficult to do so in the physical world, and impossible to do so in a properly run Library.

Books as objects have individual histories. This can create problems for Librarians, as annotation is often unwelcome. However, there may be some positive aspects of the physical history of a book. One can see which cases are the most heavily used, and that the headnote is the most heavily used part of the Report.

Finally, books have the dual qualities of being “immutable mobiles”, easily moveable through space and yet resistant to change. This makes books, and other physical documents, potentially very useful as “boundary objects”. The idea behind the boundary object is that it travels across the boundaries of communities, thereby linking networks together, or integrating communities with organisational imperatives. In law the reliability of precise reference across practitioners and over time, the primacy of the legal source in canonical form, is a central aspect of the domain.

Hopefully, all of this is familiar, if not usually given prominence in discussions of the Library as a learning resource. Next we draw on our experience at Nottingham Trent to illustrate how putting learners into the Library can facilitate learning and the formation of identity as members of a legal community.

Angela used a situated learning approach to teach basic legal research skills to the Graduate Diploma in Law (GDL) students, as part of the English Legal Method (ELM) module. GDL students are graduates in non-law subjects undertaking a year-long law conversion course. ELM for GDL students is delivered as an intensive 6-week module, before the students move on to study the other qualifying law subjects. As the GDL students are new to the subject of law, the ELM module acts as their introduction to the fundamentals of law, the legal system, and basic legal concepts.

The Law Librarian plays a key role in the ELM teaching team, delivering an introductory lecture on primary and secondary sources of law and the texts that embody them. To make these texts real for the students the Law Librarian runs several small group sessions, introducing both printed and electronic legal resources, and devising activities for the students to engage in that require the use of both printed and electronic resources.

If GDL students are trying to form a sense of their new identity as law students, who hope to become law practitioners, then the Library and the law books offer a setting primed to facilitate the imagination of those communities the GDL students are joining. Their research tasks are peripheral participation in a community of practice, linked to a network of practice, both of which demand familiarity with primary source texts, and awareness of the authority of primary sources, as an assumed part of the world.

After the session with the Law Librarian, the GDL students then have to complete 5 further relatively simple research tasks in their own time that require them to use printed resources, which their academic tutors will discuss with them in their next tutorial.

The difficulty of searching the print resources for a case when you don't know the date; or of following up an entry in a Halsbury's Index when the main volume in question has since been reissued, are amongst the types of research problems looked at during the training. However, the team is under no illusion that the students will go on to do all their research in print at the expense of the electronic databases. But the real aim of the session is not to convince them that print is better; instead it is firstly to enable them to interact with the printed materials in a way that simply isn't possible with the electronic sources; and secondly to allow them to come face to face with the body of legal knowledge that applies in the community of legal practice that they have now joined.

Printed sources embody physically, and therefore apparently, the size, arrangement, and something of the gravitas of the law. As discussed above the Law Reports bear a mute witness to the persistence through time of legal practice. The monograph collection makes conceptual links topographical through their arrangement, allowing serendipity of discovery of links between subjects, and the possibility of access to sources the students did not know to search for. The need to constantly update and the problem of constant change is brought home in the carrying out of the research exercises. It is these aspects of the experience that are missing from interaction through a screen alone.

Although this approach is still quite time intensive for the Law Librarian, for the teaching team involved at NTU the benefits in developing confidence, awareness and relationships far outweigh any perceived disadvantages, and we hope to continue to situate their learning in the Library for a long time to come.

Many Librarians, academics, practitioners, and students sense that the Law Library is central to the practice of law. It is part of the iconography of law, it is felt to embody the learning that makes the profession learned. We hope to have identified here some of the factors that confirm the validity of these feelings. In a world of scarce resources a case that cannot be articulated is likely to lose by default. The Library is important as a place of books, a place where a lawyer can learn to be.

Story interface and strategic design for new law curricula

C Collins

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CURRICULUM

This article argues for the essential value of stories and strategic thinking in crafting new law curricula — the re-imagining of which is compelled by the rise of information technology and the virtual age. In canvassing the stuff of curriculum, it argues for the restoration of the notion of law as a community of discourse, rather than as a body of rules and content. A new notion of curriculum is proposed as something emerging in concert with cyberspace, framing a journey of personal transformation, a process of initiation or a rite of passage. Strategic design is then identified as the kind of thinking necessary for crafting new law curricula, with observations about some of the central opportunities and constraints presented by the virtual age. Finally, the notion of “story interface” is proposed, drawing upon Joseph Campbell’s *monomyth* and *hero’s journey* for supporting students through their initiation into the discipline.

By 2000, although talking specifically of the challenge to copyright law represented by Napster, Barlow proclaimed that “[t]he great cultural war has broken out at last. Long awaited by some and a nasty surprise to others, the conflict between the industrial age and the virtual age is now being fought in earnest”.

Intersecting with the virtual age, the cultural war and the online learning revolution is our present sense and understanding of law. Of course, in the western common law tradition, our sense of law may be represented as an unbroken thread, plied out over centuries with a source receding far beyond the mists of time immemorial.

But the renowned adaptability of the common law is one thing. The rigidity of our modern system of legal education is quite another. And so today, against the dynamic forces of the virtual age, the common law and the learning revolution, sits a conventional pattern of law curricula exuding the aura of permanent entrenchment.

But if conventional notions of law curricula should begin to crack under the tectonic forces described above, what approach should be adopted as we are forced to re-imagine the shape of legal learning? What techniques might usefully be found, or rediscovered, for fostering effective legal learning in the virtual age? The answer to both questions might be found in the new application of two age-old notions: strategy and story.

Two different notions of law compete as the stuff of curriculum. One notion reflects common understanding as captured by the dictionary definitional sense of “the department of knowledge concerned with [legal] rules”.

It is remarkable how, since the 1960s (just as the infant Internet was stirring into life), law curricula have so quickly, deeply and widely become entrenched in Australian universities as a rigid structure framed around this kind of rule/content notion of law.

The 1960s were significant because, for the first time, the number of qualifying Australian lawyers with university law degrees started to outgrow those pursuing the traditional pathway into the profession by articles of clerkship. And, as full-time law students and legal academics grew into significant numbers, the model of curriculum adopted was that prescribed by Professor Christopher Columbus Langdell at Harvard Law School in the 1870s. The notion of law so framed was “law as science”.

This trajectory extends further back in time, with the common law first intersecting with university education upon the appointment of Sir William Blackstone to the first Vinerian Chair in Common Law at Oxford University in 1757. Blackstone was also the first to reduce to writing the corpus of “unwritten” English common law for a general audience.

This centring of law upon rule and text for university educational purposes has always occurred at some distance from the rather different focus of the profession. Michael Lobban has argued persuasively that the attempts by Blackstone and Jeremy Bentham to impose system and coherence upon the common law — by delineating positivist rules and narrow sources of law — were “outside the mainstream of what lawyers thought the law was about”. Practitioners and judges saw the limited utility of Blackstone’s effort and continued much as before, pursuing Coke’s early seventeenth-

century articulation of the common law as “a system of reasoning” in which “the source of law lay in the way that judges thought about legal problems”.

It follows that the discipline of law can be painted as a broad image of mind and talk, rather than just as a package of rules and enforcement.

This notion of law resonates well with the virtual age, just as the Langdellian notion of law as science was born out of the industrial age, with the possibilities of capturing knowledge for learning in printed casebooks.

Freed of its containers, information is obviously not a thing. In fact, it is something that happens in the field of interaction between minds or objects or other pieces of information.

The stuff of the law curriculum then, as of the common law itself, is a very particular kind of mind and talk, shaped around law’s ways of interacting, its frameworks for disagreeing, and its processes for reaching agreement — it is “an activity”, “a life form”, “a relationship”.

Having outlined a preferred notion of the stuff of law, what exactly is the nature of this framing device we talk about as curriculum? During the Renaissance, Professor Petrus Ramus of the University of Paris was perhaps the first to use the term “curriculum” in an educational context in 1576. Indeed, his approach to curriculum, “Ramism”, is the schematic precursor of both *Blackstone’s Commentaries* and the Langdellian case method.

This notion of a university curriculum — or “*methodus*” — was so successful because it represented a marriage of convenience between practising academics (“the dogsbodies who labored away to drum the arts curricula of universities into recalcitrant teenagers”) and the new technology of letterpress printing (the diagrammatic tidiness of which was making an impression upon the realm of ideas). Accordingly, “it became possible for the ... university lecturer to focus the whole pedagogical economy on the spatial arrangement of material before his pupils”. Here was a shortcut to knowledge.

Adrian Johns has described Ramism as a “dry as dust” approach to curriculum which applied a crude logic and which was “orientated entirely to sight, not to sound”:

As a movement, it was by and large anti-dialogic, anti-dramatic, anti-poetic, and anti-symbolic. It implied that conversation was not creative; novelty should be sought instead in the practices of visual juxtaposition and comparison.

Some 440 years later, the influence of Ramism has become so invisible that this aspect of the academic mindset has lost virtually all self-awareness of its own limitations. And yet, while Ramism has long carried a useful synergy with continental approaches to university legal education — namely, canon law and Roman law, grounded in Latin and text where “law is a rational arrangement” — it has always been a hopeless device for capturing the fluidity and sensibility of the unwritten common law. The effects of this disconnection are most keenly felt by bewildered law graduates, as they seek to make the transition from the community of academic legal discourse to that of the profession.

As a framing device, the notion of a curriculum for law is still necessary and useful. First, it pays to recognise, and become self-conscious of, the patterns of Ramism imprinted upon our own minds.

Secondly, if Ramism reflects a mentality made possible by the printing press, then what reconfigurations might cyberspace permit? If Marshall McLuhan was right in claiming that “Ramus was the first man in history to ‘surf’ on a wave of information launched by new media” then the same opportunity is now presenting itself.

Thirdly, perhaps more attention might now be applied to all of those things left out by Ramism: the dialogic, dramatic, poetic and symbolic? Some balance needs to be restored towards sound and voice, including the value of “dynamic, face-to-face interaction as a source of knowledge” — though now through synchronous interactions online.

Strategic design, in any large sense, is not a kind of thinking which has been much developed or applied in the context of law curricula.

Strategic thinking is, in essence, “an intellectual construct linking where [one is] today with where [one] want[s] to be tomorrow in a substantive, concrete manner ... it *relates ends to means*”.

This capacity for cool, calculating, detached and undistracted thought has even deeper roots and goes some way towards explaining the success of humans as a species. But, beyond the battlefield and any deeper evolutionary context, the notion of strategy captures more generally our “attempts to think about actions in advance, in the light of our goals and capacities”. For curriculum design, the trick is to match the means and capacities of teachers and students and then, striking a pitch into Vygotsky’s “zone of proximal development”, pursue a pathway towards achieving common goals. The zone of proximal development represents the “distance between the actual developmental

level as determined by independent problem solving and the level of potential development as determined through problem solving under adult guidance or in collaboration with more capable peers”.

At its most general, the common goal of teachers and students for a first degree in law might be characterised as initiation into the discipline.

Building upon our discussion of curriculum, this evokes the idea of learning law as navigating a “rite of passage” into the community of legal discourse.

If a first degree in law might be understood as the first stage of a longer journey, as preparation towards entering the room of a legal “community of discourse ... defined by ... [a] willingness to talk in certain ways ...” and “organized around its disagreements, its way of disagreeing, as well as its agreements”, what are the means and capacities most essential for supporting the safe navigation through this rite of passage? Of course, most central to strategic educational design of any sort is the available resources — including time, money, expertise, institutional support and technology. But our strategic thinking should not stop there. Even more fundamentally, it is suggested that four key strategic themes need to be addressed for any successful new law curriculum.

First, significant will-power is required of both teachers and students to see through the journey. Conscious effort is tiring, just as episodes of intense concentration and sharp alertness are fleeting — especially amongst those at the developmental stages most commonly found at university. As a resource constraint, we should recognise that the “margin of conscious alertness in modern man is relatively narrow, the intensity of [one’s] active performance is limited”. In the Age of Distraction compounding the above natural constraints, the resource in shortest supply — for both students and teachers — is the investment of the time, focused attention and conscious effort that is essential for any meaningful learning to happen at all.

Matthew Crawford refers to “this battle of attentional technologies”, suggesting that “[o]ur distractibility seems to indicate that we are agnostic on the question of what is *worth* paying attention to — that is, what to value”. Overcoming the fragmentation of time and attention is probably the central problem for any strategy for creating new law curricula.

Secondly, any effective strategy would need to address the problem of information overload. As Young says, “[t]o be diverted isn’t simply to have too many stimuli but to be confused about what to attend to and why”. In some ways, this is the same problem that Ramus was seeking to address in the sixteenth century with the proliferation of printed books. The casebook method also seeks to direct attention in a particular way. Information needs to be pitched in a manner to which consciousness is most receptive.

Thirdly, a further resource for careful deployment is emotion and affect. Strategic design needs to stimulate and harness emotion and motivation towards generating a sense of purpose, of mission, for pressing forward with the journey — even in the face of trials and tribulations. The value of the learning needs to be felt by both students and teachers.

Finally, if a first degree in law is to be characterised as a rite of passage, with the curriculum framed as a personal learning journey of transformation, then integral to design is the kind of help to be offered to students along the way. If innovation for new law curricula might be framed more by modes of interaction and engagement than by content, then those modes ought to be the focus of strategic thinking. This has implications for the role and identity of legal academics, as further developed below.

It is proposed that the notion of a story interface is the best design strategy for grasping the opportunities and minimising the constraints for new law curricula. More broadly, through story interface the locus of legal learning shifts from paper to people; from the notion of law as rules and content to law as a community of discourse.

In the virtual age, interface represents the computer screen (the graphical or visual display) through which people interact, whether in real time or asynchronously. For online learning, this surface represents the connecting point with curriculum, between student and teacher.

The current proposal for story interface taps into the sentiments expressed by Lanier, Barlow and Jackson about the construction of meaning, as well as the pedagogical approach of student-centred learning — as this constructivist tradition has evolved through John Dewey, Jean Piaget and Lev Vygotsky. It also extends the notion of a first degree in law as a rite of passage, itself imagined above as a spiral staircase connecting, at the base, one’s starting community with the new community of legal discourse some *stories* above. And, while strategic design might seek to map the legal knowledge, skills and values encountered with each step along the forward ascent, the single most important thing for any useful learning to happen is that which animates and propels one foot being placed in front of the other, and so on, step by step.

Campbell has developed the notion of the monomyth as “an archetypal story that springs from the collective unconscious. Its motifs can appear not only in myth and literature but, if [one is] sensitive to it, the working out of the plot of [one’s] own life”. Even if Campbell’s monomyth may not universally be accepted, the rich body of narrative discourse may be drawn into the present context to similar effect. In any event, Christopher Vogler has built upon Campbell’s work by drawing attention to the unconscious, structural story patterns commonly found within hit Hollywood movies, as well as proposing screenwriting tips for uncorking the wide audience appeal which translates into box-office success. This plots the hero’s journey as “a magnification of the formula represented in the rites of passage: *separation-initiation-return*: which might be named the nuclear unit of the monomyth”.

In the same way as the curriculum as a whole might be presented as story interface, the monomyth can be mapped against shorter segments of the learning journey, with story interface applied as a framing device for courses and components within curricula.

The point is to inject the student into the story, towards establishing an emotional investment and conscious commitment towards seeing the story through. Freedman develops the notion of the “strategic story”, proposing as a framework “a script [which] can incorporate the possibility of chance events and anticipate the interaction of a number of players over an extended period of time. This requires an unfinished quality. The script must leave considerable scope for improvisation”.

The object of the story interface is to inspire and draw in the student, as part of this meaning-making enterprise, to pursue the kind of deep immersion within the primary and secondary sources of law necessary for close-knit thinking and creative synthesis. By journey’s end, “the individual has lost [themselves] in the law and been reborn in identity...”.

Operating in a kind of parallel universe from — or, at best, as a small subset of — the discipline of law at large, conventional law curricula cannot hope to survive the rewiring of brains and new ways of engaging with knowledge unleashed in our society by information technology, at least not without a large kick along the path to adaptation. Before our eyes, the Ramist framework for learning is rapidly retreating into the past. But it is vital to recall that the cultural transmission of law both predates — and has continued to this day alongside — the book-learning of law. Accordingly, this paper suggests adaptation to the virtual age through promoting the need for strategic design and story interface for new law curricula.

For oral cultures, stories are central to the transmission of knowledge, skill and wisdom. This applies no less to the common law as customary, unwritten law. Accordingly, the wise and masterful lawyer might be said to be a deeply layered composition of law’s stories. And, as a repository of such discipline knowledge, insight and wisdom, hearing stories from such a lawyer — typically with the telling happening just at the moment when most needing to be heard — offers the best prospect for propelling one’s own learning and development within the discipline.

All of this is to say that knowledge and discourse come out of human experience and that the elemental way to process human experience verbally is to give an account of it more or less as it really comes into being and exists, embedded in the flow of time. Developing a story line is a way of dealing with this flow.

It follows from this notion of law as a community of discourse, as something felt, something experienced, something lived, and something accumulating, as Oliver Wendell Holmes so famously said, that “[t]he law embodies the story of a nation’s development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics”. Each student who embarks upon the quest of law offers hope for us all that they will travel far. And one day speak their stories. For the taproot of law is sunk deeply within.

PHILOSOPHY OF LEGAL EDUCATION

Legal education in transition: Trends and their implications

S Krantz, M Millemann

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This is a pivotal moment in the history of legal education. Revisions in American Bar Association accreditation standards, approved by the ABA House of Delegates in August 2014, both impose new requirements and provide law schools with greater flexibility in how they educate their students.⁷ Unbeknown to many, a number of law schools throughout the country are making important reforms in the interrelated ways in which they prepare law students for practice, teach about professionalism, and introduce students to the extraordinary access-to-justice problems in this country and the legal profession’s role in addressing them. Changes like these belie the oft-quoted skeptics of legal education, who said over 25 years ago that “[i]nnovation in legal education comes hard, is limited

in scope and permission, and generally dies young.” Innovation is breaking out all over, and the pace of change is accelerating.

Thus, our goal in writing this article is not to add our voice to the “cottage industry of criticism [that] has grown up about legal education.” We have different purposes in mind—to describe the new courses and initiatives that law schools are developing; to suggest how law schools might take advantage of and build upon such developments; and to propose ways that law schools and the profession can better coordinate their efforts to prepare lawyers for practice. In spite of calls by President Obama and others to reduce legal education to two years, we recommend retaining the current three-year model but with some modifications that differ from those of traditionalists like Justice Antonin Scalia, who argues that the third year is needed “to study systematically and comprehensively entire areas of the law.” We also endorse a nascent movement by some law schools, state and local bar associations, and at least one court system, to create transitional post-J.D. programs, typically referred to as “incubator” programs. These programs provide expanded employment opportunities and needed training for recent graduates and provide some help addressing the access-to-justice crisis. In the aggregate, they are ad hoc steps toward potentially more substantial post-graduate apprenticeship programs.

Law schools are not the only professional schools being criticized in this way. The fact that they are not alone in being criticized should not, however, give legal educators any comfort. The assessments are far too informed and specific for that. But this wave of reports by the ABA and others did not have much impact on law school curricula.

In August 2008, the ABA’s Council of the Section on Legal Education and Admissions directed its Standards Review Committee to undertake a comprehensive review of ABA accreditation standards. We do not uncritically accept all of the recommendations and externally-imposed requirements, although we believe, in the aggregate, they generally are moving legal education in the right direction.

The pedagogical goals many first-year teachers have are ambitious. We believe, for many reasons, that we need to broaden what is taught in the first year and diversify the methods we use to teach first-year students. We believe students need to be exposed early on to fundamental questions about what it means to be in a profession; what obligations flow from that status; how a lawyer’s personal values relate to his or her professional obligations; what types of moral, ethical and potential malpractice and criminal problems lawyers may confront; and what problems the profession faces now, and why.

We believe that clinical courses, in which students have supervision and significant responsibility for actual clients, are an essential step in developing practice competency, that there are some core skills that most lawyers need to be competent, and that law schools generally should do more to both teach them and offer students additional experiential experiences.

Most first-year courses lack factual depth as well. This significantly limits first-year legal education. For example, it precludes or at least significantly limits application of the basic method lawyers use to develop a “theory of the case” as part of preparing for litigation, including the litigation that produced the appellate opinions the students are reading.

A classic example of a good teaching aid is Richard Danzig and Geoffrey R. Watson’s *The Capability Problem in Contract Law: Further Readings on Well-Known Cases*. It contains background information on the clients, lawyers, judges, and negotiations in key cases in first-year Contracts courses.

There are other ways to add actual practice, access-to-justice issues, and pro bono responsibilities into the first year. For example, for a number of years (and thus it is not a recent innovation), Maryland Carey School of Law provided clinical-type experiences in its first-year classes, called “legal theory and practice” courses, and it is returning to that model in 2015.

Opportunities like these introduce students to the cross-cultural competence they will need in any future practice. They also expose students early on to the serious access-to-justice problems in our society, and invite analysis of the obligations (including pro bono) of lawyers in responding to these problems.

By demonstrating that law is a helping profession, these courses also reinforce the idealistic reasons that prompted many students to apply to law school. Some of these courses require additional resources, but many can be taught or co-taught without additional resources simply by diversifying teaching methods and making limited use (for selected classes) of co-teaching relationships.

In recent years, there have been substantial variations in the forms of experiential education. In this expanding continuum, there are varying degrees of experience, student responsibilities (or not) for clients, exposure (or not) to access-to-justice and professional-responsibility problems, types

of supervision and teachers, forms of specialized education, and links to jobs and service. We add here “practicums.”

The practicum courses take one of several forms: students are placed in fieldwork consistent with the subject matter of the course, they work on projects with their professors who are practicing lawyers in the field, or there is some combination of these two models, e.g., a classroom teacher and practicing lawyer combine to integrate theory and practice.

We recommend a planning process that, as skeptical as we are about what law schools have called “strategic planning” in the past, we believe is warranted — indeed, essential — today. On the agenda ought to be how, consistent with the seemingly paradoxical “more practice education” and “cost containment” demands of today, we can responsibly expand the numbers and variety of experiential courses that we offer our students and sequence them with clinics and externships.

It is apparent that understanding and harnessing technology have become basic practice competencies in the legal profession. New lawyers entering the profession must be ready to practice in today’s more efficient and more technology-driven workplace. For the most part, law schools are not currently equipped to teach these new skills and technologies. Seven law schools are now participating in a national technology project, called the Access to Justice Clinical Course Project, which offers excellent models of law-related technology education.

The technology clinics that have been created have demonstrated how lawyers can deliver services online to otherwise unserved clients and how lawyers can use technology to cut costs, improve the quality of their legal services, and compete in the marketplace.

Through these “unbundled legal services,” clients can “determine how much attorney involvement they want, need, or can afford.” In these ways, lawyers are “batting back” against “venture-funded legal websites like LegalZoom and RocketLawyer.”

The technology clinics can also introduce students to “[t]echnology-assisted review (also known as ‘predictive coding’), which now allows litigation support teams quickly and effectively to sort through the massive quantities of documents, emails and other potentially relevant material in the discovery phase of civil litigation.”

Predictive coding is an advanced form of technology-assisted review. Predictive coding takes a sample of the pool of documents, along with keywords and human input, to categorize the full set of electronic material and expedite the e-discovery process.

Technology can also improve the way lawyers and law offices manage themselves as a business, handle recurring types of legal work through the use of technology-driven templates, and market their services.

This is a very incomplete list of the uses of technology, but it indicates that the nation’s law schools need to become players in both teaching the application of technology to the work of the legal profession and engaging in research and development to advance these applications.

We do not accept unquestionably that all new uses of technology are good for the public. Legal educators have a leadership role to play in protecting the public from overreaching and exploitation that inevitably come with rapid development of new commercial products, and from mistakes that come from the impersonal nature of this source of legal help.

Litigation simulation courses have been around for decades. What is different today is the degree to which podium professors are offering seminars and courses that integrate simulations to teach transactional drafting skills.

Medical students develop specialties while in school that shape their career options. That has not generally been true for law students because they have far less control over what their career options will be. But some schools are beginning to identify areas of specialization or concentrated studies to give added credentials to students and to allow them to pursue areas of particular interest to them.

More schools are undoubtedly now exploring initiatives like these, particularly those whose students are less likely to be hired by bigger firms. They are well aware that a substantial majority of law graduates who go into private practice go into smaller firms or become solo practitioners. These lawyers provide the bulk of personal legal services in this country.

In sum, many law schools are recognizing that they have a special obligation to prepare their students for the realities of the marketplaces they will be entering. It is also in a law school’s best interest to develop and pursue its own distinctiveness. In a highly competitive market, law schools can benefit from being known for their emphasis on certain areas of focus and specialties.

Some law schools are going one step further by creating post-J.D. opportunities for their graduates. Different terms have been used for these programs, including “incubator,” “fellowship,” “residency,” “apprenticeship,” and “job corps.”

The “focus” of these programs is “on training lawyers who can help to resolve the unmet legal needs of individuals and entities from moderate to low income communities while they build economically sustainable practices that will continue to serve those client needs.”

A collateral and important benefit of law school, law firm, and bar affiliated programs, if replicated, is that they should stimulate greater collaboration between law schools and the profession in transitional based education and practice not often existing today. Such collaborations, if they give priority to addressing the access-to-justice crisis, can be even more significant.

What we have just described clearly indicates that there have been substantial developments in legal education, far more than the law school critics and cynics have suggested. That being said, we offer several important caveats. First, we describe the innovations, not to suggest they all are good or pedagogically equal, but rather to demonstrate the extent and dimensions of recent changes and trends in legal education. Second, we acknowledge that the reforms do not represent the norm today and are, if not at the periphery of legal education anymore, also not at its core. Third, in many instances the new courses and projects have been ad hoc in nature and not the result of strategic planning.

We know from our own experiences that strategic planning has a bad reputation in most law schools, deserved or not.

We do not seek to prescribe a single planning process. The process by which it is done depends heavily on particular law school cultures and the best judgments of deans. We do recommend, however, that the process include fair representation from all of the faculty (including clinical, legal research and writing, and adjunct faculty), and direct input from thoughtful members of the public and private bars.

As we have noted, there have been important debates about curricula before the ABA’s Section on Legal Education and Admission to the Bar and its Standards Review Committee as part of the revisions of accreditation standards. We believe law faculties should lead this process of change and engage on the issues raised before ABA’s Section on Legal Education and Admission to the Bar and its Standards Review Committee in a systemic planning process.

Among common issues, we suggest that through strategic planning processes, law schools consider core competencies, experiential course requirements, evaluation of legal education and learning outcomes, faculty status, and the role of practitioners.

The ABA Section of Legal Education issued a Guidance Memorandum in March 2015 defining more specifically what the requirement that a course be “primarily experiential in nature” means.

Simulation courses must provide “substantial experience similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member.” A law clinic option must provide a substantial lawyering experience that involves one or more actual clients, and a field placement must meet the law school’s experiential and quality control requirements and involve both faculty and site supervisor oversight.

The integrated approach responds to the “it’s too expensive” criticism as well. At the threshold, we note that several scholars have responded to this criticism by demonstrating, with studies, that schools that provide substantial clinical opportunities to their students do not have higher tuitions.

We warn, however, that the integrated courses, especially the first year course models that we describe, are not substitutes for the more substantial set of experiences and student responsibility for clients that clinics offer. In the integrated courses, which seek to teach a number of different things than clinics, students likely will not have clients or primary responsibilities for the legal problems of people or organizations. These courses should be the first step in a sequence that culminates with a clinic.

A new ABA accreditation standard requires that law schools conduct ongoing evaluation of their legal education programs and learning outcomes and use the evaluation to measure “the degree of student attainment in the learning outcomes and to make appropriate changes to improve the curriculum.” This will be a challenging undertaking because there has been so little experience in legal education in these types of evaluations.

We believe it also is important, as part of a planning process, to identify ways to expand the involvement of practitioners in law school teaching. Without question, it will be difficult for law professors with little or no practice experience to teach practice-based core competencies on their own. As in other professional schools, law schools should make use of skilled practitioners not only in skills and clinical courses but in theory-focused courses as well.

We believe there are creative and cost-effective ways to use practitioners in clinical teaching as well. There is a hybrid teaching model, mid-point between in-house clinics and externships,

that has educational benefits and is cost-effective. Under it, the full-time faculty member is the educational solicitor; the practicing lawyer is the barrister.

These teaching partnerships depend heavily on mutual respect and close communication. When two lawyers discuss legal work there often are differences of opinion as well as agreements. Clinical teachers and their students engage in these conversations, but when clinical teachers and coteaching external lawyers model these behaviors, students see the importance of this dialectical process and why and how they can engage in it. This is especially important in identifying and resolving ethical issues.

As part of the strategic planning process, law faculties must confront the questions being raised about the need for the third year. We agree with Georgetown Law Professor Philip Schrag's assessment of this proposal:

President Obama's suggestion to cut law school education from three years to two has surface appeal. But the result would be that new lawyers would be exposed only to basic survey courses and would receive little of the specialized training that their future clients will need. It is virtually impossible to construct a four-semester curriculum that would include the basic subjects such as corporations law, criminal law and procedure, the introductory tax course and evidence along with more advanced subjects such as corporate taxation, the law of government, international trade law and negotiation. Small seminars to teach research and writing would vanish. Education in ethics would be threatened. Clinical education, which best prepares students for the real practice of law, is expensive because of its hands-on approach. It is taught mainly in the third year, and it might be the first to go.

The New York City Bar also urged that the third year be retained in a report it released in the fall of 2013.

The New York City Bar's position gains further support now that experiential and core competency requirements have been added to the ABA accreditation standards. There is no doubt that it will be a challenge for some law faculties to incorporate practice-based requirements into a three-year curriculum. But they really have no choice.

There are two different job markets for law school graduates: the job market for graduates of top tier law schools; and the market for graduates of most other law schools. Law faculties have to decide if these statistics and those specifically relating to them matter in how they structure their curriculum and overall educational program. If they do, then strategic planning must assess what steps need to be taken to enhance the prospects of students who are paying dearly for their legal education and incurring significant student debt.

In our view, law schools need to recognize the critical importance of expanding focus on: 1) how professionalism and ethical responsibilities apply in practice situations; and 2) what a lawyer's obligations are to address access-to-justice concerns.

Even though new ABA Standard 302 requires law schools to develop competency in the exercise of proper professional and ethical responsibilities to clients and the legal system, it only mandates that students take one course of at least two credit hours in professional responsibility.

When the ABA Task Force on the Future of Legal Education issued its Draft Report and Recommendations in September 2013, it did not emphasize, in the way it should have, the importance of expanding law school curriculum on professionalism issues.

Expanding curricular offerings to address the application of ethical rules in actual practice settings is particularly needed. This will not be as difficult as it once was because a number of law professors are now undertaking and writing about creative ways to teach ethics in a variety of course offerings.

We believe law schools also have a responsibility to address the access-to-justice crisis that exists in this country. Studies document the extraordinary unmet legal needs of low- and middle-income people.

New ABA accreditation standard 303(b)(2) specifies that law schools shall provide substantial opportunities for "student participation in pro bono legal services."

The standards also specify that full-time professors have a responsibility to provide service to the public, including participation in pro bono activities. In deciding how best to fulfill these obligations, law faculties should confer with legal services providers and access-to-justice commissions in their jurisdictions. In many jurisdictions, these programs are an essential part of the legal services delivery systems.

The issue whether legal education will change is passé. The many critics of legal education have failed to note just how much innovation is now underway or planned. We must begin by acknowledging what all know: that it is impossible to accurately predict any future, including the future of legal education, or even to disentangle the interrelated components of the perhaps perfect

storm that is now driving legal educational changes. Despite these imponderables, we make several predictions.

First, we believe that law schools will increasingly come to understand that they need to do more to prepare their students for practice. Second, to prepare students for practice, law schools will continue to diversify their curricula and develop pedagogical hybrids, e.g., first-year courses that include experiential components, upper-level traditional courses that include transactional simulations, experiential practicums, and “midternships” that are a bridge between in-house clinics and externships.

Third, law schools will continue to develop technology clinics in which students apply and create applications that give low- and moderate-income people more effective access to justice. These clinics also offer opportunities to connect clinical teachers to classroom IT teachers and scholars, in this still largely uncharted world.

Fourth, law schools, in partnership with the bar and foundations funding access-to-justice projects, will continue to develop post-J.D. apprenticeship, incubator, fellowship, residency, and job corps programs that will engage post-J.D. students in a fourth year of transitional legal education. This must not be at the expense of postgraduates, who already are choking on educational debt.

Fifth, the substantial majority of law schools will come to understand that they must provide their students with a comprehensive education about how to participate in or establish a solo or small firm practice.

“Practice Ready Graduates”: A Millennialist Fantasy

R Condlin

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PROFESSIONAL SKILLS

The sky is falling on legal education, say the pundits, and preparing “practice ready” graduates is one of the best strategies for surviving the fallout. It is a millennialist version of the argument for clinical legal education that dominated discussion in the law schools in the 1960s and 1970s. But the two movements are alike in one fundamental respect: both view skills instruction as legal education’s primary purpose. Everything else is a frolic and detour, and a fatal frolic and detour in hard times such as the present.

Most would agree that the United States legal system has both a labor market and a student debt problem.

Law schools cannot revive the labor market, or improve the employment prospects of their graduates, by providing a different type of education. Placing students in jobs is principally a function of a school’s academic reputation, not its curriculum, and the legal labor market will rebound only after the market as a whole has rebounded (and perhaps not then).

The labor market and student debt problems have been discussed extensively at both the breezy and sophisticated levels and I will not revisit those discussions here. Instead, I will focus on the popular “practice ready” graduates proposal and explain why it is a bad idea. The proposal has been accepted uncritically in many quarters and this is surprising, since it is largely unintelligible in its own right, and even if intelligible, irrelevant to the present troubles.

There are as many different types of practice, for example, as there are levels of readiness for it, and proponents of the proposal do not explain which of these various possibilities (and combinations of possibilities), they have in mind. If the “practice ready” concept had a single meaning, on the other hand, schools still could not act on it since proficiency at practice (or any expert skill) is based on dispositions (i.e., habits informed by reflection), and dispositions take longer than a school semester to develop. Like a lot of blog commentary, the “practice ready” proposal is more slogan than idea. Perhaps that is why it is so popular.

Prevailing wisdom has it that legal education has drifted into uncharted waters, its instruments have failed, and it is in danger of sinking.

First came the recession and the concomitant flight of wealth from the economy, then a decrease in economic activity that wealth had fueled, then a corresponding loss of law firm business that economic activity had supported, followed by law firm reductions in staff to compensate for the loss of that business, and ultimately by fewer jobs for newly minted law school graduates in the now downsized law firms. All the while, law schools proceeded as if it were business as usual, admitting the same number of students, charging the same prices, and turning out the same number of graduates.

At first, this all seemed like a minor hiccup in an economic system characterized by boom and bust cycles. But over time it became clear that a market correction of historic proportions and

unknown duration was underway, and many bloggers started to describe the changed conditions as the “new normal.”

Legal bloggers were quick to capitalize on the situation. Schools were faulted for charging too much, misleading applicants about employment prospects, not preparing students for a changing market, and being profligate spenders (overpaying and underworking a lazy professoriate) and passing the cost on to the group least able to bear it (i.e., students).

This focus on law schools was a little surprising. Law schools had not caused the recession and were not major players in the economy. This non-sequitur notwithstanding, in short order reform of legal education became the principal blogging game in town, and the demand for “practice ready” graduates became the proposal around which most bloggers united.

To begin with, it is not clear what types of “practice” proponents of the concept of “practice ready” have in mind. People have known for a long time that law is not a “unitary profession.”

Law schools cannot prepare students for all of these types of work because the range of skills needed is too large. But they also cannot target sub-categories of the work because students will not know what types of practice they will enter when they graduate.

If the concept of “practice” could be given a single meaning, however, there still would be the question of what it means to be “ready” for that practice. Are they “practice ready,” for example, if they can draft a coherent and logically organized memorandum or pleading irrespective of its quality, or ask a series of understandable and logically ordered questions in an interview or deposition, irrespective of the questions’ helpfulness to the case? Must they be able to teach themselves a new body of law over the weekend, adapt standard forms to fit a client’s estate plan, do “country conditions” research, trace a chain of title in a registry of deeds, file a document with an agency, interview a witness, or perform any of the dozens of other such tasks assigned to entry-level lawyers (and paralegals) in even mid-size and small law firms? Someone who cannot do all of these things is not “ready” to practice law in one sense of the term, but expecting new law graduates to be able to do all of them is wishful thinking. The list of required skills is simply too long.

Proponents of “practice-ready” education do not seem to understand the difference between socialization and education. Socialization is the work-based process of internalizing the habits, values, beliefs, vocabularies, and motor skills of a profession to make them second nature. Becoming socialized in a profession is a long-term process, however, a consequence of repeated immersion in the profession’s tasks, relationships, and body of knowledge. Legal education contributes to professional socialization — being a law student is itself a type of professional role — but it provides too limited an experience of actual law practice to move one very far along in that process.

Schooling and work divide responsibility for the education of law students along a kind of understanding/performance line: the former provides the background information, theory, and critical thinking skills needed to understand the legal system intellectually, and the latter provides the opportunity to turn that intellectual understanding into behavioral dispositions by putting the understanding into practice. The two processes interlock and overlap, of course, each doing the work of the other on occasion, but at their core they are fundamentally different, and cannibalizing one to bolster the other will bring the entire system down.

Law school clinical instruction brings these two processes together by having students represent clients in actual cases and review their efforts with supervisors against explicit standards of competent performance.

Underlying this process are two foundational premises, one psychological and the other philosophical. Our society prolongs the development of identity by extending formal education well beyond adolescence. This in turn delays role commitments, including occupational commitments, attendant upon adult status and creates a space in which educational instruction can have a significant developmental impact.

Because law students do not usually think explicitly about their roles as lawyers, the construction of their professional identities results largely from the emulation of role models — those who are respected, or in some cases feared or hated, for their performance of practice tasks. Clinical practice instruction provides students with models of technically competent lawyer behavior and the opportunity to try out that behavior under expert guidance to make it part of their personality. In theory, little could be done to improve upon such a design.

The philosophical premise underlying practice instruction traces its roots to Aristotle and has to do with the way that virtue is known. It holds that only someone who has had the experience of acting in a certain way is capable of understanding that way of acting. Critical reflection on habits, to harmonize behavior with belief, is an important but chronologically second step in the process.

Only after reflecting on behaving in this way does the virtuous and skillful nature of the behavior become clear, and at that point the behavior becomes a disposition.

Given this epistemology, it is not hard to see how law school clinical practice instruction was thought to provide an ideal setting for the development of lawyer practice skills and values.

The problem, of course, is that the time frame of a law school semester does not permit this process to play out to any significant extent. Acting in lawyer role for thirteen weeks (or even an academic year), does not provide an opportunity to observe, imitate, reflect on, and internalize the skills and values of professional practice to any substantial extent.

If actual practice instruction cannot make students practice ready, instruction based on simulated practice experience is even less likely to do so. They lack the real life emotional, psychological, and informational content needed to permit students to make the judgments involved in deciding how to proceed in the first instance.

In the end, however, these concerns are largely beside the point. The argument for “practice ready” graduates is not driven by a desire to prepare law students for practice as much as one to shift the cost of new lawyer training from law firms to law schools. The push for practice ready graduates should be seen for what it is, therefore, a move by law firms to save money, not a program for improving the education of law students.

Unfortunately for law firms, the strategy cannot work. These are situation-specific skills that require local knowledge, on-site experience, and insider help, and law schools cannot reproduce the circumstances and conditions in which they are learned. It is easy to understand why firms would want to shift the cost of training new lawyers, but why they think they should be able to do it is baffling. They seem to believe that it is possible to have a world in which there are only benefits and no burdens, only income and no expenses, but this vision of law firm nirvana does not exist.

Proponents of “practice ready” education want to change the nature of law school radically, not just add a few skills courses to the curriculum. The problem with this argument is that it is based on a kind of worker-bee myopia that fails to understand education’s principal contribution to development: to provide students with the knowledge and critical thinking skills needed to adapt received wisdom to changing circumstances, beliefs, and needs over time.

There is a more substantial objection to the argument for “practice ready” graduates, however, than the fact that law schools cannot produce them. Increasing the time spent training students in practice skills will divert attention and resources from what law schools do best: teach the critical thinking skills that underlie and give shape to lawyer practice behavior generally.

Both in presenting their own work and evaluating the work of others, lawyers use a set of skills they refined (and sometimes learned for the first time) in law school: reasoning analogically, analysing facts, synthesizing principles, devising ends-means strategies, interpreting texts, marshaling reasons and evidence to support arguments, and the like. Each of these tasks begins with and is grounded in an understanding of the background normative standards and practical constraints that govern the issues under consideration and define the parties’ options. Without this understanding a lawyer’s behavior would be only coincidentally effective.

Practice readiness also requires an understanding of lawyer role as much as a command of lawyer practice skill. For most students, law school will be the last good opportunity to consider in detail, relatively unconstrained by financial, familial or psychological factors, how best to live their lives as lawyers: what ends to serve, what interests to defend and advance, and what principles to stand for. Law schools have an obligation to help students think through these questions, identifying the various paths available in legal work and constructing standards for choosing among them.

Not all students will be interested in issues of professional role, of course; many will be pre-occupied with technique. But that is not an argument against organizing legal instruction around them. From a law school’s perspective, students who confront such issues will be better adjusted and more thoughtful lawyers than students who do not, and adding even a small number of better adjusted and more thoughtful lawyers to the profession is better than adding a legion of unthinking automatons with virtuoso motor skills.

Providing a forum for the critical examination of how to live one’s life as a lawyer is one of the most important contributions law schools can make to the development of students. To shortchange the examination of that issue in order to prepare students to navigate the currents, shoals, and reefs of law office politics would be perverse.

The campaign to expand the place of skills instruction in the law school curriculum has met with mixed success over the years and this makes it somewhat of an anomaly in law school curricular reform. How can this be explained?

Part of the answer, no doubt, lies in the nature of skills instruction itself. Historically, legal education has been about the study of law, its content, nature, and effects, the interests it serves, and the extent to which it embodies and effectuates the normative commitments of the society. The goal in such study is intellectual understanding, and the skills most directly implicated are analysis and research. Skills instruction, on the other hand, is about what law delivers more than what it promises and legal education always has been concerned more with promise than delivery.

One way to understand the legal academy's reluctance to embrace skills instruction is to identify the common properties of successful curricular reform efforts in the past, to see if they define a tacit standard of acceptance, and then hold skills instruction up to that standard. The first step in doing this, constructing a consensus list of successful reforms, is itself controversial. Sometimes it is difficult even to determine what counts as a reform: does it include a marginal extension of, or improvement on, an original theory, for example, or must it offer a wholly distinctive view? My own list would include the programs in law and policy sciences, law and social sciences, law and philosophy, law and economics, and law and health sciences, as well as the critical jurisprudential schools of legal realism, legal process, critical legal studies, feminist legal theory, critical race theory, and LGBT theory.

"Law and . . ." programs are supplementary in nature, crosspollinating the legal subject matter with theories and methods from other mature disciplines. They expand theoretical perspectives and methodological tools to permit a more comprehensive examination of the nature and function of law, the effectiveness of legal institutions, and the legitimacy of legal results. Critical jurisprudence, on the other hand, does not supplement legal study so much as seek to transform it.

While ostensibly different, therefore, one an outsider project interested in broadening law study and the other an insider project interested in transforming it, "law and . . ." programs and critical jurisprudential theories have important properties in common. Change legal rules, these projects seem to assume, and justice will be done; expand theoretical perspectives and understanding will increase. Each seems suspicious of reforms that require the coordination of thousands of individuals over time, in fact, where one cannot be sure everyone will do his part, or even that the parts will be understood consistently from one person to the next.

If past curricular reform efforts have been concerned principally with issues of law, politics, and morality, therefore, and have been based on ideas borrowed from other mature disciplines or critical jurisprudential schools of thought, skills instruction has a different focus and a different pedigree. For the most part, it accepts the moral and political beliefs of the existing legal world as givens and focuses on teaching students to achieve instrumental success within that world. It is a field without its own distinctive Freud-Marx-Jesus debates (and more importantly, without its own Freud, Marx and Jesus), which is to say that it is a field that is not yet completely conceptualized, connected, and grounded.

The study of skills need not be relentlessly instrumental. Jurisprudentially, it could be based on a kind of Holmesian "bad man" (or Legal Realist "functionalist") view, for example, one that looks at law and legal institutions from the perspective of how they will be manipulated by self-interested actors, and concerned with making suggestions, both to individuals and institutions, for neutralizing (or at least minimizing the harmful effects of) that manipulation. Early in its history, skills instruction looked as if it might develop in a jurisprudential direction, but for the most part that did not happen.

The most prominent of the skills instruction reforms, the clinical education movement of the 1960s and 1970s, was based on a substantive critique of legal education that succeeded in major part because it was made at a time (not unlike the present) when the legal world was in turmoil and law schools were undergoing a crisis of confidence. Proponents of skills instruction have yet to convince the professoriate that the study of practice skill is a natural extension of the intellectual and substantive activity going on in the rest of law school, the application of "thinking like a lawyer" skills to the practical realm. That this would remain a live concern more than fifty years after the clinical revolution of the 1960s and 1970s reflects the difficulty of the issues.

The debate over the place of "practice ready" skills instruction in American legal education is a little like the Thirty Years War.

The law school skills instruction debate also goes back decades to unresolved disagreements, unrequited overtures, and unforgiven slights, sometimes reducing to a trickle, only to become resurgent at the urging of a powerful interest group or strong personality; and it too seems destined never to end. While ostensibly about the content and structure of American legal education, it also is about the allocation of power, status, and authority in the legal profession, the important practical

question of who will pay for what, and the seemingly intractable problem of how to connect theory to practice.

Whether the debate will end like the War, with a reconciliatory intellectual breakthrough, remains to be seen, though there are reasons to be doubtful, and the argument for practice ready graduates shows why. Where the discussion of morality and politics is called for, it focuses on motor skills and costs. Where theory is needed, it offers taxonomy. Where depth is required, it glides cheerfully over the surface. And where multiple points of view are needed, it narrows discussion to a single idea. It has all the qualities of a lost cause having a Warholian moment. Hopefully, the good sense that prevailed in the last century has some life left in it yet.

Getting the fish to see the water: an investigation into students' perceptions of learning writing skills in academic modules and in a final year real client legal clinic module

PROFESSIONAL SKILLS

C Boothby, C Sylvester

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In 2010 Tonya Kowalski described the problems faced by students entering clinic for the first time as a one step backward, two step forward phenomenon. Students appeared initially unable to transfer skills and knowledge learned in earlier academic and other settings to clinic but once they were immersed in clinic their skills development improved rapidly. Clinic is often presented as a “bridge to practice” and delivered as the capstone to more traditional elements of an undergraduate degree. However, even with an integrated approach like that at Northumbria Law School, a seamless transition to the skills required for clinic is challenging and gives rise to a constant review of how best to prepare students. Our research focused on legal writing and used focus groups to find out how students participating in the year four clinic at Northumbria University perceived and adapted their previous experiences of writing for use in the clinical context. It identifies strategies which should be considered for integration into non-clinical modules and in the clinical module itself to facilitate this transition from academic orientated writing to practice orientated writing.

In 2013 the Legal Education and Training Review survey data revealed widespread concern about all aspects of legal writing including “gaps in the structuring of written communications, developing familiarity with writing for different purposes, and their relationship to legal analysis and meeting client expectations”. The report recognised a “need to enhance writing skills” across all the training schemes and recommended the introduction of a discrete assessment for “legal research, writing and critical thinking skills” at level five to give students “a reasonable but challenging opportunity to demonstrate their competence”.

The journey from year one undergraduate study to legal professional will require students to constantly adapt and transfer their skills. Taking a constructivist approach to learning this process of adaptation requires students to activate and then build on their prior knowledge. This study sought to explore the extent to which students drew and built on their existing experiences of writing from their undergraduate and vocational education and clinical legal education experiences to develop writing skills for clients in the real practice setting of the Student Law Office.

At Northumbria University, the four-year Master's in Law exposes students to both traditional academic writing and the writing skills required for legal practice.

In year three students are required to take a practice orientated module which will require them to conduct a simulated case file, interview a standardised client and write an advice letter. This module will prepare them for practice in the year four Student Law Office (SLO) clinical programme which is a compulsory assessed module. In the SLO students advise and represent members of the public on a range of legal matters under the supervision of qualified staff. Students will be required to write advice letters to one or more of their clients. These advice letters are normally prepared after the student has interviewed the client and prepared the requisite attendance note and file documentation. The student adviser will then prepare a research report setting out applicable law and procedure and applying their findings to the facts of their client's case addressing strengths and weaknesses and identifying missing information and initial advice. This will be checked by the supervisor and will form the basis of the advice letter.

For the purpose of this study the focus group discussions drew predominantly on the students' experiences of writing advice letters. We focused on advice letters because they require students to adjust their writing skills for a different audience external to the university.

The nature of clinical practice in the SLO inevitably means that all documents are checked by qualified supervisors. Whilst no specific mark is given to practical legal writing in the clinic it is

consistently acknowledged by both students and supervisors that advice letters typically require fewer amendments as the clinic module progresses.

This study was prompted by observations from supervisors in the SLO that students starting year four SLO struggled to adjust to writing for clients in a real practice context. Once over this period of initial transition, students' writing skills in clinic, in almost all cases, demonstrated sustained and progressive improvement to a level of competent novice practitioner.

The problems of transition were identified by Schrup who observed that on entering clinic, students are "entering into a new discourse community" with language, conventions and culture, which may explain why "students' writing expertise initially dips" and that "such a shift can be disorientating". Kowalski, writing on students' experiences of entering clinic in the US, drew on schema theory to hypothesise that the "seeming inability to cue previous knowledge for use in a new situation occurs because when human beings learn, they encode their knowledge according to the context in which they obtained it". However, US postgraduate law programmes traditionally use the case method of teaching and provide very little preparation for clinical practice, so this issue of transitioning to the new demands of professional legal writing was perhaps understandable in that context. This was not the context for students entering the clinic at Northumbria, who have had support in terms of preparation in earlier years for the skills required in live client work, including written communications in a professional context. Drawing on schema theory we wanted to explore which prior writing experiences students perceived as providing support for their emerging legal writing skills and if this did not occur why that might be the case. The other aspect of transition is the observed rapid progress students make within legal writing skills once they have embarked on the clinical programme. We were interested in finding out which aspects of the clinical teaching worked most effectively to develop legal writing skills for practice.

This study sought to examine the students' perceptions surrounding the transition to legal writing in the SLO and the development of this skill in the clinical setting. We asked them to identify which prior learning and experience both external to and within the clinical module helped them to make the transition.

The use of qualitative methods such as focus groups appeared more suitable here, as this enabled us to look at the respondents' perspectives and attitudes, and to obtain more textured data, allowing an exploration of shared understandings, and values and behaviour/attitudes. We selected themes relating to how students access their prior learning, how they take the steps to develop their written skills through their live client work, what different types of writing students are aware of, what they think prepared them best for the writing they do in clinic (prior experience both inside and outside the degree), and what role their supervisor and other sources of feedback have in their development.

Focus groups allowed more naturalistic observations and spontaneous responses, using students' natural vocabulary, and allowed the group to "explore topics and generate hypotheses and helping us to learn about the students experiences and perspectives in a way that questionnaires might not". Clearly, the responses are self-reporting, but ideal for enabling an investigation of not only what students think, but why they think as they do.

The following themes emerged from the focus group discussions:

- Students did not value their previous experiences of writing unless they received individual feedback or were producing it for assessment purposes.
- Students felt they had little to draw on from their experiences outside university to assist with legal writing except where there was a clear link, such as work placements.
- The vast majority of students used informal peer review without prompting and valued it in clinic.
- Students perceived writing in a clinic environment as being very different to other practical and academic legal writing they had done.
- Students identified various strategies for dealing with legal writing in clinic.
- Students identified the feedback they received in the clinic as being different, both in the level of detail and as regards its content, from feedback they received on the written work they produced outside clinic. They also appeared to be more responsive to it because of it being part of an ongoing drafting process.
- Students appear to process the feedback in clinic in a different way because of their relationship with their supervisor and because of the obligations to the client.
- Students were clearly of the view that their practical legal writing in clinic had improved during the course of the clinical programme but there was a division of opinion as to whether this had had any impact on their other academic and wider writing skills.

It appeared that students generally struggled to relate their previous experiences of legal writing to practice in clinic even though they had by this stage completed a variety of writing tasks.

The apparent inability to transfer learning, that is, the use of knowledge or a skill acquired in one situation to perform a different task, is referred to by Kowalski as “the perplexing phenomenon ... of collective amnesia”. Educational theory can tell us much about how to help learners connect with previous knowledge, particularly where the context has changed.

However, in the current teaching environment, we might have been forgiven for believing that we had moved beyond this, by including in the curriculum a compulsory module in which students prepared for clinic, including writing a letter to a mock client. Basic strategies such as providing cues — even just reminding students of their previous experience of letter writing, can help students to connect with their prior knowledge.

Students were asked to list writing tasks they had done in years one to three of the degree and to consider the extent to which it helped them to prepare for practical legal writing in the SLO. Student comments from the focus groups suggested that the relevance of the writing done in earlier years was not flagged up clearly enough or contextualised as being relevant to future work in the SLO.

This is likely to be surprising to teaching staff and those creating the integrated curriculum which is intended to provide a skills-based experience. However, it may be that a clearer “thread” is needed, enabling students to see more clearly how their practical legal writing experience is structured through the degree and how it might provide a framework for the writing they will experience in clinic.

On the other hand, this may be all that can be achieved within the crowded curriculum and available teaching resources, bearing in mind some of the issues relating to the need for detailed feedback, discussed later in this article. Perhaps the prior experience of practical legal writing does just provide a starting point, but in that case, it is essential that those teaching in the clinic understand the level of expertise the students have when they enter the clinic, and that staff have effective strategies for developing these skills within the pressured environment of clinic, and recognise the value of refreshing previous experiences and learning, enabling students to “mindfully connect their studies to both past and future experiences” where simple strategies such as reminders and drawing analogies can help.

As well as not being able to see the links to their past practical legal writing experiences, it is perhaps less surprising that students could see very little commonality between approaches to practical legal writing and academic writing. In general they felt the two types of writing were distinct or even conflicting (but see later how they take legal writing experiences into academic writing). Most of the comments were restricted to how to adjust writing for a client audience (tone) and to some extent content (balance) with virtually no observations about more generic issues such as how to structure or organise legal information in an accessible and logical way.

Students felt they had little to draw on when starting practical legal writing in clinic. Perhaps unsurprisingly their strategies for dealing with this were predominantly to refer to textbooks or precedents, generally ones they had come across before, and to adopt a more “trial and error” approach.

Students generally acknowledged the challenges with transition from prior academic writing work to clinic and made the following suggestions in terms of practical preparation and explicit links:

“We should have more model letters”

“I know that every case is different and that you can’t exactly have a template for some of the letters but it would have been good knowing exactly how to write and what kind of things to write”

Arming students with templates can raise concerns amongst clinical teachers who see this as wasting valuable learning opportunities and does nothing to instil the habit of drafting and redrafting to refine writing, but in terms of orientating students in the early stages to the expected standards and formats, annotated templates can avoid time-wasting confusion and allow students to focus on more advanced writing skills.

A number of issues emerged as being central to the development of practical legal writing skills in clinic. The following emerged as dominant themes:

- The use of an iterative approach to honing practical writing skills.
- The nature and impact of feedback on practical legal writing in clinic.
- The working relationships with the supervisor and peers in clinic.

As can be seen from student comments under section 1 above students repeatedly referred to adopting a “trial and error” approach to writing in clinic. The use of multiple drafts is a standard

clinical teaching method. Students appeared to find this process useful and the sense of learning to “craft” written work emerges.

These comments highlight a significant difference between the process of writing in the academic setting and practical legal writing in clinic. The former is typically produced for assessment purposes and is product driven whereas when writing in the SLO students were able to adopt a process or iterative approach. The process approach, also referred to as “the New Rhetoric”, relies on a drafting process to develop both meaning and purpose in writing, in contrast to the product approach which “assumes the thinking process is completed before the writing process begins”.

Students identified the feedback they received on their written work in the clinic as being different to other feedback they received on their prior academic work. They appreciated the professional significance of the written documentation on real case files and the need that it be measured against professional standards as well as, on a more personal level, against the clinic assessment criteria. The general consensus was that it was effective in changing how they wrote.

Whilst the comments overall suggested a mature approach to the detailed critique of their work, there may be value in preparing students for this. It could be argued that the uncompromising move to a professional standard has a value in jolting students into striving to achieve more and to prepare for practice, but there were clearly some students for whom the experience undermined their confidence:

“To be honest I think it’s given me a complex that I am so bad”

Students identified the feedback given in the clinic as being different not only in its detail but also in its content from other feedback. They also appeared to be more responsive to it because of an ongoing drafting process.

The feedback given in clinic and its frequency throughout the programme allowed students to monitor their progress more closely.

In the light of these findings it would appear that there is scope for reviewing how feedback is delivered in non-clinic modules to maximise its impact and this process is underway. Students generally did not appear to value their previous experiences of feedback in these modules unless they were part of an individually marked process of formative or summative assessment with feedback written on individual pieces of work.

The relationship with the clinical supervisor appeared to both assist students to understand the new legal discourse community they found themselves in and motivate them to develop writing skills. Students appear to process the feedback in clinic in a different way because of their relationship with their supervisor and because of their shared obligations to the client.

Interestingly it emerged that the use of peer review as an aspect of formative feedback in other modules did not appear to be valued by students as much as it is in the clinical setting.

This naturally evolving process of using each other as proof readers, and to gain some element of consensus fits well with the New Rhetorical approach and to a certain extent replicates practice where the input of colleagues is an important aspect of developing expertise. It is not entirely clear why or how this worked, but it could be that one of the keys to the clinical experience, the real client, played a role, in that the students were highly motivated to succeed and create a favourable impression, not just of themselves as individual students, but of the clinic as a whole. Replicating this naturally evolving collegiality is not always possible outside clinic where the common aim of assisting a client is not present, or outside the community created within the clinic itself.

For those seeking to develop particular skills such as legal writing, this study highlights the need to consider barriers to the transfer of knowledge, and the impact of situational learning when seeking to integrate this through a programme. Students in this study identify clinic as a powerful environment in which to learn a skill like writing but it appears that it can also be a very challenging one, in which they receive a high level of scrutiny through repeated revisions and feedback.

As a consequence of this study we identified a number of steps that should be considered to help the novice student in clinic draw on their past learning and “see the water” when it comes to developing writing skills in clinic. Probably the most obvious of these is to ensure that writing experiences learned prior to clinic are more overtly identified and contextualised at the time they are experienced and then reflected on at a later date in clinic.

In terms of students’ experiences of legal writing in clinic there may be lessons to learn about how writing skills develop in the authentic clinical setting. Students in the clinic appeared to be motivated not just by a drive for personal excellence but also by shared feelings of loyalty to the client, the clinic and their clinical supervisor. This shared goal led to a more collegiate approach in which students were willing to critique their own and others’ work. The extension of the clinical model or use of clinical materials into earlier years may encourage this to develop at a lower level of study.

The importance of feedback is well established but students' responses indicate not only the importance of getting this right but also the risk of getting it wrong and the importance of ensuring some consistency of approach across modules and different types of writing.

Students were clearly of the view that the clinical experience did improve their practical legal writing skills and this is borne out by supervisors' experiences. Regardless of whether a clinical module is available we would argue there are steps that programmes can take to instil practices which will be useful in easing the transition from academic writing to producing high quality practical legal writing wherever that transition takes place.

Law Student Mental Health Literacy and Distress: Finances, Accommodation and Travel Time **STUDENTS**

N Soh, F Burns, R Shackel, B Robinson, M Robertson, G Walter

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University students often have higher levels of psychological distress than the general population. Ibrahim et al in 2013² conducted a systematic review of literature from 1990–2010 dealing with the prevalence of depression in university students generally. Twelve of the studies related to medical students and eleven related to data from a range of different faculties. The studies, which were drawn from a wide range of countries, reported the prevalence of depression in undergraduate students as ranging from 10% to 84.5%.

The Brain and Mind Institute Report, published in 2009, found that 35% of law students recorded high or very high levels of psychological distress as measured by the K-10 test. The literature since then has generally affirmed the findings of the Brain and Mind Research Institute report, similarly finding high levels of psychological distress amongst the law student population. That said, the literature also indicated that law students as a group do not necessarily experience more psychological distress than non-law university students.

However, law students did record higher levels of stress than certain other cohorts, such as biomedicine, engineering and science. Mean scores on the DASS-21 stress scale were higher for law students than for non-law students, but there were only small differences for anxiety and depression. Moreover, when looking at the odds of reporting a severe or extremely severe score on any of the three DASS subscales, there were no significant differences between law and non-law students. This paper compares findings of a survey of law students conducted in 2013 with an earlier survey of medical students conducted in 2011 at the same University. The law student survey was modelled on the medical student survey to permit a direct comparison between the two groups of students.

In its comparison the study examines a number of factors related to student living conditions including finances, accommodation and travel time. These factors may contribute to mental stress in university students but more research is needed which looks specifically at these factors. This study also adds to the understanding of how such factors may impact on law student distress.

As mentioned already, there is a sizeable literature on mental stress in medical students from Australia and internationally which reports that a large proportion of medical students have elevated levels of mental distress compared to the general population.

The professional and general media has, in the last decade, increasingly recognised that mental health distress is a significant issue facing the legal profession. Greater awareness of law student distress has prompted legal educators to ask why law students may be stressed at law school; what factors may be contributing to their stress; and what strategies may be needed to better support law student wellness at law school.

Though law students in the US face an educational and professional context different to that faced by Australian law students, the findings of research conducted in the US on law student distress may be useful to help us unpack the issues that Australian law students face. In view of the significant and influential US literature on the subject of the mental health of law students, it is not surprising that Australian researchers began to explore the Australian situation. For current purposes, it is important to note that five research trends (which have not necessarily been consistent, complete or complementary) have become evident in the published research.

First, a number of studies have confirmed that law students do suffer high levels of stress, anxiety or depression, thereby deepening the psychological profile of the law student cohort. Second, several studies have compared and contrasted students from other disciplines with law students. Studies have also found not only that university students as a whole suffer from higher levels of stress or depressive symptoms than the Australian community, but that there were students

from other disciplines who indicated levels of severe stress, anxiety or depression that were equal to or exceeded that manifested by law students. Third, researchers have asked whether there are factors within the law school environment that may contribute to or exacerbate stress, anxiety or depression. Fourth, some researchers have considered the broader socio-economic context in which law students are located in order to ascertain whether there are predictive patterns for stress, anxiety and depression. What the studies highlighted was that socio-economic factors such as youth, gender, the number of hours worked and carer responsibilities could contribute to higher levels of stress, anxiety and depression, but that care needed to be taken before making broad assumptions. Finally, researchers into student mental health have re-evaluated and criticised the conclusions drawn from empirical studies measuring stress, anxiety and depression. In the law context, Parker has contended, *inter alia*, that studies that stress that law in terms of the nature of legal thinking or the law school experience may be the 'problem' have missed the wider picture. Rather, she warns that mental distress is a society-wide issue.

The study that is the subject of this article was framed in view of several of the research trends outlined above. The study of the law and medical students was inspired by significant and consistent reports that these students suffered from high levels of stress, anxiety and depression. Therefore, the surveys were framed to (i) determine whether there were similar levels and kinds of stress amongst law and medical students at the same institution, and whether the trends reported in earlier literature were evident in these student cohorts; (ii) test a variety of socio-economic factors some of which had not been tested previously (such as housing and travel); and (iii) consider the nature and extent of mental health literacy amongst law and medical students. The study reported in this paper descriptively compares data collected from law students in 2013 to data that was collected from medical students at the same university in 2011, using similar questionnaires and techniques. The survey assessed psychological distress using the Kessler-10 and collected data on students' self-rated distress and sociodemographic data.

All undergraduate and postgraduate students enrolled at Sydney Law School were invited to participate in the survey. According to Sydney Law School enrolment data, in second semester 2013 there were 1,360 LLB, 617 Juris Doctor, 386 Masters of Law by Coursework and 345 Specialist Masters students enrolled in the faculty.

The study was conducted as an anonymous online survey over six months from June until the end of November 2013. The survey collected demographic data including: age; gender; the degree in which the student was enrolled; year of enrolment; category of student (domestic/international); course enrolment (full time/part time); and whether the student was a parent. Socio-economic factors that were the subject of consideration included accommodation type (family home, own residence or renting); number of people living at the same residence; travelling time to site of academic study; paid work; and type of financial support received during their studies. To allow comparison with the 2011 medical student study, the survey largely followed the medical student survey. Mental distress was measured using the Kessler-10 as was done in the 2011 medical student survey. The Kessler-10 was chosen for both the medical student and law student surveys because it has been used in other Australian studies as well as by the Australian Bureau of Statistics, thereby allowing a comparison and contrast of the results of the study with Australian population data.

This study has several limitations. First, law students are a more diverse student population than medical students, given the range of different courses and levels of study students may enrol in. Second, although this study included students from four different degrees and the analyses controlled for degree type, the small number of students may have contributed to type II error (false negative): very unwell students may not have had the capacity to respond and very well students may have viewed the survey as irrelevant to them. The multiple linear regression analyses were conducted on a small subset of responses, owing to incomplete data, and so may not be representative of the entire study sample. Third, the low response rate due to the voluntary nature of this study also means that the results may not be representative of the entire university's law student population. Fourth, Sydney Law School may have some unique cultural and demographic characteristics that may limit the generalisability of the findings to all law schools.

A key finding of the study, confirming the findings of previous research, was that a high percentage (27%) of law students had very high distress levels (K-10 scores = 30-50), which indicates the presence of a serious mental illness. In contrast, less than 10% of medical students surveyed at the same university fell into this category, and only 2.6% of the Australian general population reported very high distress levels. The study also found that 60% of law students scored 22 or above on the K-10 (high to very high distress levels), which is consistent with the earlier results of Leahy et al where 58% of law students scored above 22. 37% of medical students at the same university as the

present study's law students scored 22 or above on the K-10. Therefore, the proportion of medical students having high to very high levels of distress is lower than that of law students, but is still substantially greater than the 9.5% in the general Australia population with high levels of distress. This high level of distress in law students appears to carry over to legal practice: in Australia, 31% of solicitors and 16.7% of barristers in the Kelk et al study scored 22 or over on the K-10, indicating high to very high psychological distress levels.

There has been little consideration of the effect of travel times on stress and family life. Feng and Boyle conducted a large longitudinal study of commuting durations and psychological distress in the general adult population in the UK. Feng and Boyle reported that travel time and transport time were associated with significantly greater mental distress in women, but not men. They were unable to explain why this was the case, but reported that for the same commute times, women living with children either as single parents or with a domestic partner had greater stress levels than women living with a partner and without children. Our study of law and medical students indicated that average travel times were similar for the two sets of students, but when this was examined in relation to Kessler-10 distress scores, longer travelling times were weakly associated with less stress in law students, which is the opposite of the observation in medical students.

Having dependants was not significant in the present statistical model for law students, but was still a confounder and so was retained in the final model. Having dependants was not significantly associated with psychological distress in medical students. As Larcombe and Fether indicate, more research is needed on this, as well as on any potential connections between this variable and financial stress.

It has been reported that Australian students living with other people (eg, with parents, with a partner and/or children or in university accommodation) had lower than expected frequencies of high or very high distress levels, while students living alone or in other types of offcampus accommodation had higher than expected frequencies of high or very high levels of distress. In this study, the law students' living arrangements were similar to that of medical students, with more than half renting during semester. However, the type of residence was not significantly associated with distress scores in the final model.

The evidence on age and risk of mental distress is inconclusive.

Compared with medical students at the same university, law students tended to rely more on paid work for financial support (68%), although half also received financial support from their families and 28% received student allowances. Medical students were mostly supported by their families or domestic partner (60%), paid work (46%) and by student allowances (46%).

Said, Kypri and Bowman reported in their 2013 study of over 6,000 students at an Australian university that there were significantly greater odds of reported harmful alcohol consumption in men compared to women, 17–24 year olds compared to other age groups, students born in Australia or New Zealand compared to students born in other countries, students who undertook paid work for more than 20 hours per week, and students who identified as bisexual. In the present study, the amount of money spent on alcohol was weakly associated with distress levels. The proportions of law students reporting the use of alcohol and recreational drugs were similar to that reported by medical students. A recent study conducted by the University of NSW reported that close to one-third (32%) of the nearly 1,000 Australian legal practitioners surveyed in 2012–13 were medium or high risk drinkers. A significant difference was found between males and females, with 43% of males compared to 26% of females being in the medium and high risk groups.

The multiple linear regression analysis demonstrated that for law students, only gender remained significant: women were more distressed than men, although the difference was not large. This finding is consistent with other studies and is not restricted to law students.

In contrast to previous studies of student health and wellbeing, this study considered the mental health literacy of law and medical students. In this respect, there are two issues. First, there is the question of what constitutes mental health literacy. Mental health literacy has been defined as 'knowledge and beliefs about mental disorders which aid their recognition, management and their prevention.' Second, there is the issue of what constitutes a mental health service. For the purpose of this article, mental health service is inclusive so that it includes not only traditional sources of mental health services such as hospitals and consultations with medical specialists and general practitioners, but also those services provided at the University of Sydney.

The study indicated that law students potentially lack the mental health literacy that may be expected of students in health and medical sciences in the sense that while they were willing to assert that they felt stressed or anxious, a significant proportion did not have fundamental knowledge about where they could seek assistance for their mental stress from the university based mental health services.

A recent Australian study of university students from a variety of faculties reported that the most common service consulted for mental health issues were GPs (30%), followed by psychologists (29%), psychiatrists (19%) and counsellors (18%). This is not unusual and correlates with the general Australian population who utilise mental health services. This data indicates that a sizeable portion of law students evidenced the mental health literacy necessary to seek and obtain professional assistance. However, in view of the fact that 60% of law students evidenced high to very high stress levels, the level of mental health literacy of the cohort as a whole may not be high.

Two hundred and twelve of the 485 law students who responded reported they wished to conceal mental health or emotional problems while at law school, which is a slightly higher proportion than the 188 out of 477 (39%) in medical students at the same university. Law students were also more concerned about their mental or emotional state, as 24% reported they were concerned a lot or a great deal with this in contrast to 14% of medical students. However, the problem is that a student's concern about his or her mental or emotional state, may not translate into positive action towards or evidence of mental health literacy.

A very high percentage of law students in the study (66%) felt not at all or only a little supported at university; the proportion of medical students who felt the same way was also high (54%). Indeed, 9% of law students were considering 'seriously' to 'extremely seriously' dropping out of their course. These were surprising results for both cohorts in view of the extensive array of counselling and medical services available.

This study has highlighted three matters. First, consistent with other research, a sizeable proportion of law students are very distressed and some may have a serious mental illness. Second, the demographic or educational factors that were surveyed — such as living arrangements, degree type and age — were not significantly associated with psychological distress. Only gender remained statistically significant, with females more distressed than males, but the magnitude of difference was not large. Third, it is highly doubtful that law students have acquired the level of mental health literacy as a foundation for wellbeing.

The high levels of distress in the present study's sample of law students may lead to adverse consequences in terms of degree progression, their experiences of legal and tertiary education and learning, and the resources the university may need to deploy in supporting distressed and dissatisfied students more generally. However, the conclusions of this study are subject to the limitations of the study's design and study sample.

STUDENTS Work Drive Matters: An Assessment of the Relationship Between Law Students' Work-Related Preferences and Academic Performance

J Minnetti

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I have been fortunate to work with a number of law students who have substantially outperformed traditional predictors of academic success and bar passage, including the students' scores on the Law School Admissions Test (LSAT) and their undergraduate grade point averages (UGPA). Over the years, I became convinced that there are attributes among students that were simply not captured by the LSAT and UGPA, but have affected their academic performance.

Karol Schmidt administered the Learning and Studies Strategy Inventory (LASSI), which assessed aspects of law student motivation such as "diligence, self-discipline, and willingness to exert the effort necessary to successfully complete academic requirements." Schmidt found that higher-performing students reported greater strengths in selecting main ideas and implementing test strategies. In a study of law students' legal writing performance, Anne Enquist found that law students who earned high grades in legal writing engaged in a cluster of common specific behaviors and that other behaviors were negatively correlated with high academic performance, such as procrastination and scapegoating.

This article provides an assessment of law students' work related preferences and reveals a positive correlation with their grade point averages, and when regressed with LSAT and UGPA, students' work-related preferences provide a powerful predictor of academic success. During spring 2014, 215 law students responded to a survey that included questions from the Multidimensional Work Ethic Profile (MWEP) and Work Drive Inventory. Analysis of the responses indicated that while the students' LSAT and UGPA explained 18% of their law school grade point average at thirty hours (LGPA), the students' Work Drive, LSAT and UGPA explained 28% of the students' thirty hour LGPA.

Our contemporary understanding of work ethic arises from Max Weber's discussion of the relationship between the "protestant ethic" and the "spirit of capitalism." Weber provided insight into the concept of work ethic, noting that the concept is rooted in Protestant religious tradition and the spirit of capitalism and it has evolved with them.

Weber also wrote that the "spirit" of capitalism contributed to our understanding of work ethic. Specifically, capitalism invoked a duty on individuals to increase their capital. An individual's engagement in making money was not rooted in the happiness, pleasure, or self-gratification that came from the money he or she made. Instead, making money was an end in and of itself.

Michael J. Miller provided a historical summary of work ethic and noted that recent research "has failed to find a consistent relation between religious orientation and work ethic." Miller concluded that what was once "conceived as a religious construct is now likely secular and is best viewed as general work ethic and not a protestant work ethic." Miller asserted that work ethic is a multidimensional construct that involves attitudes and beliefs about work and work-related activity in general. In addition, Miller asserted that work ethic has a motivational aspect that is reflected in behavior, and that work ethic is learned. Unfortunately many of the one-dimensional models of work ethic lacked the psychometric validity necessary to make them useful for empirical study. Thus, Miller identified seven work-ethic dimensions and generated ten survey items for each of the seven dimensions. Through a series of six studies, Miller validated the items and dimensions, calling the finished product the Multidimensional Work Ethic Profile (MWEP).

The seven MWEP dimensions and a brief description of each follow:

- (1) Centrality of Work — Belief in work for work's sake and the importance of work;
- (2) Self-reliance — Striving for independence in one's daily work;
- (3) Hard work — Belief in the virtues of hard work;
- (4) Leisure — Pro-leisure attitudes and beliefs in the importance of non-work activities;
- (5) Morality/Ethics — Believing in a just and moral existence;
- (6) Delay of Gratification — Orientation toward the future; and the postponement of rewards, and
- (7) Wasted time — Attitudes and beliefs reflecting active and productive use of time.

In January 2013, John P. Meriac published a "short form" of the MWEP, dropping the length of the inventory from 65 items to 28. Meriac noted that while the MWEP had been widely used, its length was a "potential drawback," and the MWEP drafters and other work-ethic researchers had received multiple requests for a short form.

Having refined the work-ethic construct and generated instruments to assess work ethic, attention turned to evaluating work ethic among specific populations, including undergraduate students. In 1994, a study examined the extent of PWE among college students. The authors hypothesized that older students, graduate students, and non-American students would have stronger PWE. The results were contrary to two hypotheses: younger students and undergraduate students held stronger PWE beliefs than older students and graduate students. As a predicted result, non-American students had a stronger sense of PWE than American students.

Meriac employed the MWEP in a study among college students to determine the nature of the relationship between work ethic and academic performance, which he defined as GPA, organizational citizenship behavior (OCB), and counterproductive behavior (CPB). Meriac found that work ethic was "generally unrelated to college GPA," but work ethic explained "incremental variance" in OCB and the CPBs, cheating and disengagement.

Regarding work ethic and college GPA, Meriac found that the Hard Work dimension of work ethic was negatively correlated with GPA. Meriac theorized that students who expressed belief in the virtue of hard work but had lower GPAs may "expend 'more' effort instead of developing more effective study strategies." Regarding OCB and CPB, Meriac noted that universities have emphasized the ethics and integrity of their student bodies, which makes assessment of OCB and CPB important, and thus the relationship between work ethic and OCB and cheating and disengagement relevant. A hierarchical regression analysis revealed that work ethic explained "a significant proportion" of the variance in OCB, ahead of high school GPA and ACT scores. The study also revealed that the work-ethic dimension morality/ethics was negatively correlated with cheating and wasted time was negatively correlated with disengagement.

Also employing the MWEP, John T. Parkhurst and his colleagues examined whether work ethic had any relationship with a student's choice to complete a lengthier assignment. Parkhurst found that collectively, the work-ethic dimensions explained 24% of the variance in student choice behavior. Among the dimensions, hard work and delay of gratification were "significantly positively related" to students' choice to complete the lengthier assignment and leisure was "significantly negatively related" to students' choice to complete the lengthier assignment.

Different generational cohorts have different levels of work ethic. In a study Meriac and his colleagues published in 2010, Meriac used the MWEP to survey work ethic among three generations: Baby Boomers (born between 1946 and 1964); Generation X (born between 1965 and 1980), and Millennials (born between 1981 and 1999). These generations responded statistically differently to six of the seven work-ethic dimensions: self-reliance, morality/ethics, hard work, centrality of work, wasted time, and delay of gratification. They were equal only on the leisure dimension. As a result, the authors inferred that the generational differences between Generation Xers and Millennials were not solely attributable to other characteristics such as age or career stage.

In a related study, researchers explored whether there were differences in work ethic between upper-level college students and working professionals. The findings indicated that the work ethic of the college students was statistically similar to the work ethic of the professionals. There were, however, statistically significant and substantial differences between the two groups on specific work-ethic dimensions. College students reported a stronger sense of self-reliance, leisure, and hard work than the working professionals. But the working professionals reported a stronger sense of morality/ethics, centrality of work, and wasted time than the college students. There was no statistical difference in the groups' responses on delay of gratification.

A number of studies have considered the impact of values associated with work ethic on academic performance, with mixed results. In their study, William Rau and Ann Durand coined the phrase "academic ethic" and hypothesized that the ethic exists among college students and is related to academic performance. Their study confirmed both hypotheses.

Previous academic performance is a strong predictor of subsequent academic performance. In a study of 2,103 first-year agricultural students enrolled at Kansas State University from 1990–1999, the authors found that high school cumulative GPA offered the best explanation for first semester college GPA explaining 12.9% of the variance, and first semester grades offered best explanation for second-semester grades, explaining 43% of the variance.

John W. Lounsbury was lead author on a study that considered whether intelligence, the "Big Five" personality traits, and "Work Drive" predicted a course grade. Results indicated that among the variables tested, intelligence explained most of the variance in students' course grade (16.1%), the Big Five accounted for 6.7%, and Work Drive accounted for 4.1%. The Big Five personality traits refer to neuroticism, extraversion, openness, agreeableness, and conscientiousness, which are well-researched personality traits and are measured with the Personal Style Inventory. Work Drive is a phrase that Lounsbury coined to represent a "personal disposition or trait, reflecting an individual's characteristic behavior at work and general orientation toward work, which is not limited to a specific job."

Work Drive is not work centrality, which focuses on the degree of importance that work plays in one's life; it is not workaholism, which considers the "negative or dysfunctional aspects of excessive work"; and it is not job involvement, which considers an individual's "orientation toward a particular job" and involves a specific psychological state not a personality trait, like Work Drive.

In all administrations, Work Drive significantly contributed to job performance predictions, "beyond that accounted for the Big Five measures as well as by both the Big Five and cognitive aptitude measures."

In a subsequent study, the authors investigated the impact of Work Drive on the academic performance of middle and high school students. Regression analysis of the results revealed that Work Drive is "significantly related" to students' cumulated GPA and Work Drive "contributes incremental variance to the prediction of GPA beyond the Big Five personality measures." The authors then considered Work Drive's relationship to other cognitive, personality, and motivation measurements, including instruments that measure job satisfaction, work ethic, the protestant work ethic, work values, job involvement and workaholism. Participants' responses indicated that "Work Drive was significantly and positively correlated" with work ethic, Protestant work ethic, central life interest — work, Type A personality, and Workaholism. Interestingly, Work Drive was not significantly related to general intelligence or cognitive aptitude. Collectively, the authors' studies support the criterion related validity of Work Drive and the incremental validity of Work Drive as a predictor of job performance and academic success, beyond the Big Five personality traits, cognitive aptitude, and the Big Five variables.

In a follow-up article, Susan D. Ridgell and John W. Lounsbury considered the relationship between general intelligence, the Big Five personality traits, Work Drive, and a single course grade and student-reported cumulative GPA. Results were consistent with earlier studies, showing that general intelligence and Work Drive were correlated with course grade and GPA. As a single variable, Work Drive predicted academic success.

Time spent studying outside of class was only related to academic performance when it was considered in conjunction with students' aptitude for study. Specifically, the study revealed that students who had high ACT scores and who spent more time studying outside of class performed better in their courses. The study suggests that academic performance is not a product of ability alone; instead, ability and time spent outside of class contribute to success.

Darrell W. Guillaume and Crist Simon Khachikian also considered the impact of time spent studying on academic performance. The authors found that students' time on task was not correlated to course grade or overall GPA. Higher performing students appeared to optimize the time they spent preparing for class and remained consistent with that amount of time through the remainder of the semester. Following the week three reduction in time, "B" students actually increased the time they spent throughout the semester preparing for class. "C" students, alternatively, continued decreasing the amount of time that they spent preparing for class.

The research findings described above have accomplished much. First, they have more precisely refined work ethic and they have added a new conceptualization of work-related preferences to the conversation — that Work Drive as a personality trait. In addition, the findings reveal undergraduate students' work-related preferences powerfully impact academic performance. General assessments of students' motivation and more narrow time-on-task surveys, however, show no such impact. These findings set up the next portion of the paper — whether law students' work-related preferences have any impact on their academic performance.

The current study was conducted at a private law school in the southeastern United States during spring 2014. The survey the students received included items from the MWEP short form and the Work Drive inventory. These items were chosen because both instruments have been validated and used in the context of academics.

A statistical analysis was conducted on the data. The correlation between Work Drive and 30 Hour LGPA supported the first hypothesis. In light of the correlation between students' Work Drive, High LSAT, UGPA, and 30 Hour LGPA, a regression analysis was performed. Regressing Work Drive, High LSAT, and UGPA, revealed that the variables explained 26.99% of the variance in students' 30 Hour LGPAs. Put another way, we can predict a student's 30 Hour GPA approximately 27% of the time, when we know the student's Work Drive, High LSAT and UGPA. When High LSAT and UGPA were regressed in the absence of students' Work Drive score, the variables explained only 18% of the variance in 30 Hour LGPA. Thus, Work Drive matters.

The absence of any statistically significant relationship between any dimension of the MWEP or the MWEP total score and students' 30 Hour LGPA is curious, especially in light of the significant correlation between Work Drive and 30 Hour LGPA and the similarities between the MWEP and Work Drive. The findings here, however, are consistent with the studies cited above — MWEP has not been found to be correlated with academic performance, whereas Work Drive has. The disparity in statistical significance between the MWEP and Work Drive revealed here suggests that additional research on this topic is necessary.

This study's results will impact current and future law students and the course of future research in this area. As to current students, the results have the potential to enhance the academic performance among two groups — those just beginning law school and those seeking to improve their academic performance. To the extent that students' understanding of their capacity for academic success in law school is driven by how their LSAT and UGPA performances compare to the rest of their class, these results offer another predictive variable — students' Work Drive. Informing students during new student orientation or during their first semester that their schoolwork-related preferences and behaviors can impact their academic performance may incentivize the students to invest themselves more fully and effectively in their work. Messaging should emphasize that time-on-task alone is not sufficient; instead, what matters is students' approach to their work and the extent to which they prioritize it over other aspects of their lives. Regarding specific schoolwork related behaviors, Schmidt's and Enquists' research suggests that schools should instruct students on efficient and effective reading, note taking, and outlining strategies.

Enquists' work further suggests that providing students with strategies to overcome procrastination, distraction, and scapegoating may enable them to enhance their academic performance. And Hill's work suggests that law schools should generate means to assess the extent to which students are investing themselves into their work. Simply having conversations with students about the significance of their work-related behaviors, giving expression to the behaviors through context and vocabulary, would be helpful, especially in light of students' intrinsic need for autonomy and autonomy support. When students learn that they, and not their professors or their

classmates, have a great deal of control over their academic performance, they will be more likely to accomplish their personal best.

Among those students who have received feedback on their law school academic performance and seek to improve it, these study results can incentivize students to refine their Work Drive. While personality traits are generally thought to be static, research shows that the traits are changeable. Scholars have prescribed a three-part framework for refining a personality trait. First, the individual must consider the refined trait-related behavior as a desirable end. Second, the individual must believe that the changes in trait-related behavior are feasible and that the individual is capable of doing them. And third, the individual must repeatedly engage in the behaviors so that they become habitual. The framework can be utilized in the law school context through individual student conferences.

Having established an action plan, next, the student must execute the plan. The plan should include accountability and follow-up measures to ensure the student is making progress and that the revised behaviors become habit. In addition to providing support to individual students who seek to enhance their academic performance, law schools can communicate the Work-Drive refining framework to groups of students, especially after the students have received first-semester grades, and can offer to partner with individual students, assisting them as they formulate and execute action plans designed to enhance their Work Drive. Regardless of the medium for delivering the framework, law schools should be aware of the obstacles that students may have to overcome to refine their Work Drive.

This study's finding that Work Drive enhances the predictive power of the LSAT and UGPA on students' first-year law school grades triggers the issue of whether to consider an individual's Work Drive in law school admission decisions. The author cautions against such a widespread pre-matriculation use of the Work Drive inventory. The inventory is a self-reported survey; if applicants see the items among admissions materials, the applicants may be incentivized to respond to the items with aspirational preferences, rather than the applicants' actual preferences. Instead, to the extent that an admissions committee is looking at applicants on the margin, for example, those on a waitlist, reviewing the applicants' resume and personal statement for Work Drive traits may be helpful.

In addition to directly impacting current and future law students, the results have sparked the need for additional study. First, as the survey respondents graduate from law school and take the bar exam, the impact of the respondents' Work Drive on final law grade point average and first time bar passage should be assessed to determine whether Work Drive retains its predictive value with those outcomes. The Law School Survey of Student Engagement (LSSSE) is another source of information that could be drawn upon to provide a fuller picture of students' work ethic/drive.

In addition, the results suggest that alternative measures of work ethic/Work Drive should be considered. Specifically, behavioral measures of law student work ethic/drive should be constructed to more fully capture the impact of work ethic/drive on academic performance.

The task of understanding the attributes that impact law students' academic performance is a bit like trying to put together a puzzle when all the pieces have not yet been identified or defined. This paper has clarified the task by identifying and defining one of the pieces as "Work Drive" and has revealed that Work Drive matters.

TEACHING MATERIALS AND EQUIPMENT

Developing an Animal Law Case Book: Knowledge Transfer and Service Learning from Student-Generated Materials

S Riley

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This article discusses the development of an animal law case book as part of an elective subject, 'Animal Law and Policy in Australia', taught at the University of Technology Sydney (UTS). The Animal Law Case Book Project (the CB Project) provides an example of an innovation in learning and teaching, demonstrating how practice-oriented learning in an emerging area of legal scholarship can also potentially make a meaningful contribution to the field of study.

In Australia, animal law is a recent area of legal scholarship, with the literature and materials being in their early stages of development. In particular, the field lacks a case book, representing an appreciable gap in animal law scholarship. Although much of animal law is derived from legislation, case law is significant to interpreting and fine-tuning legislation. Moreover, case law provides examples of the human-animal relationship in a legal context, highlighting the

advantages, deficiencies, inconsistencies and trends in the law. Such matters are not only relevant to practitioners but also to all who are concerned with society's interactions with animals. Indeed, the lack of case-based information and knowledge likely means that some animal law materials remain inaccessible to stakeholders. In these circumstances, the notion of 'stakeholders' includes all those who have an interest in animal law, ranging from students to NGOs, legal and policy makers, and the wider community.

Accordingly, an important objective of the CB Project was to open up animal law to a wide range of participants. The concept of service learning is still evolving and varies in accordance with the circumstances.

Einfeld and Collins, for example, categorise five service learning models that have differing objectives and outcomes. Goss, Gastwirth and Parkash identify the 'research service learning gateway' as being a synthesis of service-learning and 'community-based research'. This paradigm incorporates low-key elements of indirect service learning with knowledge creation and knowledge transfer, allowing students to work on research or inquiry based topics relevant to their learning and the community's interests.

At a more fundamental level, service learning allows universities to reformulate the way they and their students interact with society. However, the reality may fall short of expectation. A number of commentators consider that direct service learning such as volunteering reinforces stereotyping that equates 'service' with charity. If this is the case, students are at a disadvantage due to the absence of 'transformative potential' often seen in this type of service learning.

The term 'knowledge transfer' is a comparatively recent innovation. As discussed in the introduction to this article, it initially described a technique for universities to derive economic benefit as they transferred their research to analysts, investigators and other industry stakeholders. The term, however, also supports values that spread beyond economic utility. It can underpin approaches that call for greater communication and exchange of research, knowledge and ideas among universities, communities and other stakeholders. This formulation is more akin to a public service than a commercial transaction. Indeed, for some, the public service component is seen as a way of making higher education more socially relevant, allowing universities to give back to the community. In this way knowledge transfer effectively becomes a new form of social contract between universities and society.

Wersun and others take this argument further and contend that knowledge transfer can potentially comprise an accountability process to evaluate the legitimacy of universities. Such accountability can occur on two levels: first, by producing graduates who give back to society, and second, by making knowledge more 'useful'. One way of benefiting society is to make knowledge more useful. To achieve the second level, knowledge creation and transfer need to be more receptive to the wants of the community and stakeholders. Waghid argues that for knowledge transfer to reach this level of responsiveness, two types of knowledge, Mode 1 and Mode 2, need to be combined. Mode 1 knowledge is 'rigidly institutionalised', it being drawn from a particular field of study and practice. By way of contrast, Mode 2 knowledge stems from 'sites of knowledge production' that extend beyond universities and disciplines. Waghid's argument centres on the premise that by supplementing Mode 1 with Mode 2 knowledge, universities are more likely to engage in activities that are pertinent to societal needs. At its aspirational apex, this type of cooperation prompts universities and communities to become catalysts for transforming the social order.

One rationale for the CB Project stemmed from the somewhat prosaic need for an animal law case book in the Australian jurisdiction. The lack of a case book is not surprising if it is kept in mind that the study of animal law in Australia is a comparatively recent innovation. White, writing in 2005, noted that there were no animal law subjects available for undergraduate students, nor were animal law textbooks available in this country. By 2014, at least fourteen Australian law schools offered animal law courses and three animal law textbooks were available. In addition, a number of other useful publications had been generated by academics, law groups such as the NSW Young Lawyers Animal Law Committee (Young Lawyers), and NGOs such as Voiceless and the RSPCA. The growing interest in animal law has created a 'market' for legal knowledge among stakeholders, especially those who lack legal expertise and will likely need legal knowledge in a user-friendly format.

As already discussed, other crucial rationales for the CB Project centred on providing students with a practice-based learning experience that also enabled them to contribute to the community of practice in animal law.

In spring 2013, the CB Project was rolled out in the subject Animal Law and Policy in Australia. The learning objectives for the subject were designed to facilitate student learning in the context of the animal welfare/animal rights debates. The learning activities comprised class presentations, a research essay and the CB Project. Each of these provided students with opportunities to display their knowledge and, to varying degrees, their analytical skills. In particular, writing accurate and accessible case notes required students to condense large volumes of material while still capturing the essence of the decision.

The building blocks of the CB Project consisted of case notes that students were required to complete as part of their assessment in the subject. Each student was asked to prepare three case notes from a list that was compiled by the teaching team. The cases were selected from a number of jurisdictions including Australia, Canada, Israel, the United Kingdom and the United States of America. The choice of cases was limited by the fact that the cases needed to be available in English and also had to be formally reported, so that the students had access to them.

From the outset it was intended that the case notes would be both an educational and a community resource. For these reasons, the assessment criteria focussed on a synthesis of elements such as legal knowledge, communication skills and public service, informed by social justice concerns. The overlay of social justice was largely incorporated in two ways: first, by asking students to explain the significance of the case; and, second by collating the case notes into a book that would be freely available to the community. With respect to the first element, in order to explain and reflect on the importance of the case, students needed to link their allocated cases to material drawn from areas of the subject such as the theoretical underpinnings of animal law, statutory interpretation and social justice. This encouraged students to think about the way the law operates in specific instances, highlighting the law's benefits, gaps and deficiencies. The second element, the production and dissemination of the case book, relates to knowledge creation and the availability of that knowledge. These matters are also relevant to social justice issues, particularly where knowledge gaps lead to knowledge becoming inaccessible.

The students wrote some 80 case notes, and 78 of these were selected for inclusion in the case book. The assessment task was a type of formative assessment in the sense that it assessed both the quality of legal knowledge created by the students and the way that the students used that knowledge. Accordingly, it was assessment for learning. Given that law is ever-changing and legal practitioners are constantly learning, it was seen as important that assessments facilitate students becoming skilful and proficient learners. The students will be acknowledged as the authors of their case notes and the electronic version will be hosted by the Australasian Legal Information Institute (AustLII).

The CB Project presented many challenges, for both students and teachers alike. To start with, some students found it more difficult than anticipated to prepare materials for readers outside their discipline. The project team saw this as a positive development because it emphasised to students that plain expression can be difficult to achieve but is important for good communication. Another challenge stemmed from the word limit allocated to each case note. The teachers, however, were flexible, as some cases clearly raised more complex issues than others. From the teachers' perspective, challenges mainly centred on workload matters and the time involved in setting up the project, and marking and editing the students' work. As with any class, the students' work reflected a variety of standards and abilities, and this was reflected in the differing times that the marking and editing processes took per case note. On the positive side, the students were mainly enthusiastic about the CB Project. The personal comments were all positive, with students expressing enthusiasm about being part of the project, and asking about the launch of the casebook and whether they could take animal law internships or otherwise volunteer. It is anticipated that subsequent student cohorts will add to the casebook, and that over time it will be built into a comprehensive resource.

Asking students to write case notes contributed to their acquisition of disciplinary knowledge in a way that is consistent with practice-oriented learning. Beyond this aspect of the project, the assessment also helped students to understand how judges deal with legal argument and how the law deals with animals in range of situations. Moreover, the case notes also facilitated the development of skills and attributes important to community engagement. This involves exercising legal skills as well as providing a community benefit. In essence, the CB Project challenged the students to write the case notes from the standpoint of a 'community need'. In this way, a conventional student assessment became practice-oriented at a more advanced level. Moreover, the CB Project delivers the benefit of a resource that can encourage dialogue and action on animal matters. For these

reasons, the discussion in this article places the project within the framework of service learning and knowledge transfer.

Although, as already explained, the notion of service learning varies, at its core it involves providing students with a learning experience gained through helping and assisting others. The CB Project does not sit within this category of service learning. It is more a derivation of service learning, in a similar way to the research service-learning gateway described by Goss, Gastwirth and Parkash. One of the benefits of this type of service learning is that it is available to greater numbers of students than would normally be possible with traditional service learning projects such as clinics and internships. Research or inquiry based projects possess innate flexibility, enabling the work to be allocated in accordance with the number of students, giving each of them a chance to participate. Notwithstanding these benefits, teachers also need to be aware of pedagogical and ethical considerations flowing from student involvement.

Furco, quoting Sigmonds, notes that service learning should provide benefits to both the recipient and the student, which should occur in an 'academic context' that facilitates student learning. The CB Project was based on a form of assessment routinely given to law students and directly related to their studies. Thus, even in the absence of the CB Project, the writing of case notes would have facilitated student learning. However, as explained above, the students who worked on the CB Project were writing for an identified audience knowing that their work would reach the public domain. By foreshadowing that the case notes would be available to the community, the project gave students ownership of their work and encouraged them to be professional. Notwithstanding these positive features, a common difficulty with service learning is assessing the impacts of the project on student learning.

The dissemination of the case book represents the knowledge transfer component of the CB Project. These impacts have not been formally evaluated because knowledge transfer is the next stage of the project. However, it is useful to consider the benefits, in a general sense, of providing a case book for animal law and to examine preliminary and informal feedback provided by interested parties. Antoine F Goetschel, speaking in 2013, explained that the basic needs for educating animal lawyers include textbooks and case books.

As already discussed, although animal law in Australia is largely statute based, case law is still important for understanding how the law is interpreted and applied. Cases reveal trends in the law that highlight recent developments, spotlight whether regulation is effective and draw attention to gaps and inconsistencies. These matters are relevant to lawyers and non-lawyers who form the community of practice in animal law.

The decision to disseminate the case book by producing electronic and print versions was made for a number of reasons. The first stemmed from benefits provided by using differing media. Given the fact that print is still a popular and useful delivery method, it was considered important to provide both electronic and print versions of the case book so that participants or stakeholders were not excluded. Another reason for choosing both electronic and print media stemmed from the way the project developed and was resourced.

The CB Project was designed as a practice-oriented learning experience that was also a form of derivative service learning involving knowledge transfer. It provides an example of an innovation in learning, demonstrating how practice-oriented learning can lead to the production of a resource that makes a potentially meaningful contribution to the field of study and to the community. Although the scope of activities that come under the umbrella of service learning and community service is vast, at their core is the aim 'to demonstrate social responsibility and a commitment to the common good', something that is also consistent with graduate attributes that incorporate public service and social justice issues. It is also important to bear in mind that elements of public service and a commitment to the common good do not take the place of student learning; rather, they inform it by placing students at the centre of knowledge creation that answers both a societal and pedagogical need. The CB Project fulfilled these aims by focussing on student-prepared learning materials that could be used beyond the class room to contribute in a meaningful way to the animal protection community.

W Binford

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It is always dangerous to start with a confession (unless you are a Catholic stepping into a confessional, of course) but here is mine. The title of this essay was originally, “How to Be the World’s Worst Law Professor.”

But when I sent an early draft of my essay to a more savvy colleague across the country, he immediately pointed out that for the rest of my life, anyone who Googled my name would see “World’s Worst Law Professor” pop up in the search results. So I accepted his challenge to reframe the essay from a more positive perspective, but presenting the same research.

We learn far more from failure than we learn from success. But I am trying to learn from my own shortcomings and failures, and here are a few of the most important findings I have learned so far about teaching and learning in my own quest not to be the world’s worst law professor.

One of the most important things I have learned in my endeavor is that there has never been a better time to be an educator. Advances in neurological research in the past thirty years have given us a better understanding of how the brain works and how humans learn than at any other time in human history. Some of what we have learned from that research is not surprising and confirms what we have known and done for millennia. But other lessons directly counter mainstream teaching practices, and challenge educators in law and other fields to step back and re-evaluate how we teach our students.

One of the most counterintuitive lessons discovered recently through educational research is the power of failure to prime the mind for deep learning. In legal education, we spend an entire semester preparing our students to be successful on a high-stakes final exam at the end, but now we know that we actually should be giving our students exams at the beginning of the semester and hoping that they fail so that they will be mentally prepared to learn.

A recent study by Elizabeth Ligon Bjork, a psychologist at U.C.L.A., found that students’ performance on a final exam was improved an average of ten percent by doing nothing more than taking a test at the beginning of the course.

I know what you are thinking: “Is she really saying that in order to become ‘The World’s Best Law Professor’ I need to test my students more and create more opportunities for my students to fail?” Yes, I am, with the understanding that testing has consistently been proved to be a highly effective learning method when designed well, in addition to its value as an assessment method. Moreover, it is critical that we recognize that “testing” can take many forms.

In a higher education system that is placing more and more value on learning outcomes, pretesting becomes mandatory so that we can establish baselines; but more important, we now have confirmation of a century’s worth of research that testing is not just valuable for assessment purposes, but is one of the most highly effective learning approaches.

And if we want to be the best, we can’t stop there. We need to keep testing, but in kinder, gentler ways across time. A recent series of clinical trials by Professor Price Kerfoot at Harvard Medical School shows that introducing content to students repeatedly in a test format over time increases both acquisition and retention of content. In other words, we need to test our students earlier, more, and in low-risk settings if we want to increase their retention, comprehension, and test performance on that high-stakes final exam that we rely on for final assessment, as well as the bar exam after they graduate.

“But doesn’t that mean more work for us?” you might wonder. Yes, but not much. Another wonderful aspect to the fact that we are law teachers in this day and age is that technology exists that allows us to create a test once, and then have that test administered and graded, and automatically provide customized feedback to our individual students.

Finally, adaptive learning software programs and apps which combine spaced education, low-risk testing, and individualized content delivery have been developed by Dr Kerfoot, BarBri, the creators of Core Grammar for Lawyers, and many others. Even if we do not assign these tests and exercises ourselves, we should at least teach our students about the effectiveness of this learning method, so that they can engage it themselves as part of their study strategies.

The Dunlosky Study also confirmed that the second aspect of Professor Kerfoot’s spaced education theory, which the Dunlosky team refers to as “distributed practice,” has high utility for learning and increases retention of content and comprehension. Distributed practice requires students to revisit topics across time rather than to cram them into a single study session or a series of study sessions, which is very different than the model of most law school courses.

Some of the most relevant research for legal educators regarding distributed practice examines the ideal length of time between practice sessions. According to the distributed practice research, legal educators should design a curriculum in which the student re-engages with the concept of offer and acceptance every three to six months or so to increase the likelihood that she will be able to recall the information when needed.

Of the ten learning methods examined in the meta-analysis conducted by Dunlosky et al., low-risk testing and distributed practice were the only two learning methods that met the criteria for high-utility learning techniques. However, there is a third learning method examined by Dunlosky et al. that holds promise and closely complements the only two methods (testing and spaced education/ distributed practice) found to be high utility.

Unlike testing and spaced education/distributed practice, which can no longer be challenged vis-a-vis learning efficacy given the significant amount of scientific literature supporting these learning methods, there is a more limited amount of research considering whether it is better to organize blocks of learning around a specific topic or to interleave various topics. The emerging research that has examined this learning approach fairly consistently finds that interleaving topics may lead to notably higher performance than blocking topics when one measures performance over time.

In other words, if we want to be “The World’s Best Law Professors,” we need to start envisioning a law school curriculum that is far more integrated, with repetitive coverage of topics interspersed across semesters and even years.

Of Course Limit Lecturing, but What about the Socratic Method?: Not by lecture. Over 700 studies have confirmed what many of us know based on our own experience as students: Lectures are among the least effective methods for achieving almost every educational goal ever identified. In fact, for some education goals, lectures have been identified as the least effective learning method.

When we do use large classes and the “sage on the stage” approach, traditional legal pedagogy favors the Socratic method, which was identified in the recent Carnegie Report of legal education as advancing certain outcomes during the first year of law school. These advances could be attributed to the fact that the Socratic method utilizes elaborative interrogation, which has been shown to increase learning and retention, at least in the short term.

Elaborative interrogation was examined in the meta-analysis conducted as the Dunlosky Study, and was identified as a “moderate-utility” learning method. Reasons that it was not rated higher include the fact that not enough research has shown whether the short-term advantages evident in the approach endure across longer periods as well as whether the effects would be evident among a wide variety of learner populations.

Another reason the Socratic method may work follows from its integration of the case study method, which implicates two elements shown to contribute to heightened learning. The first is stories. Storytelling has played a central role in transferring knowledge across generations for millennia. Indeed, study after study has shown the human mind’s ability to retain content when organized in and around stories.

In addition to the stories inherent in a study method organized around legal cases, the learning effectiveness of the Socratic method as used today is likely helped by another less likely characteristic: confusion. According to Martha Minow, Dean and Jeremiah Smith, Jr. Professor of Law at Harvard Law School, when we use the case method, “We have conflicting principles and are committed to opposing values. Students have to develop some degree of comfort with ambiguity.” The finding that a certain amount of confusion yields higher learning outcomes is further supported by the educational research suggesting that problem-based learning, which engages students more, also leads to better learning.

It is well-known that the Socratic method has had many critics, starting with the Harvard Law School alumni and law school students who left in droves between 1870 and 1873, the first three years of Dean Langdell’s administration, when he introduced the case method. The critics continue to voice their concerns today. In light of the research documenting the shortcomings and disadvantages of the Socratic method, it is crucial that law schools employ this method selectively and with sensitivity, while avoiding the lecture at all costs — literally.

On second thought, there is at least one person in the lecture hall who benefits greatly from lecturing: the lecturer. So if you want to be “The World’s Best Law Professor,” the first thing you should do is sit down and let your students go to the lectern.

Opportunities to collaborate and teach during law school are not limited to peer tutoring and collaborative learning, of course. Law schools and their faculty can also identify opportunities to

support students in teaching legal concepts and practice in the larger community. Whether it is done for academic credit or simply as pure community service, it is critical that law schools recognize the high-retention yield of teaching and create and support opportunities for their students to find and create teaching opportunities so that they, in turn, can learn using the most effective learning method identified.

These practice experiences are not beneficial just because they provide teaching opportunities for law school students. Practice experiences are highly beneficial in their own right. Indeed, according to pedagogical research, practice by doing has the second-highest rate of long-term retention of any learning method (75 percent).

As law schools consider how to balance the budget and keep the lights on during the worst downturn in law school enrollment in modern history, it is natural that some administrators may be tempted to conduct a casual analysis and conclude that high-enrollment courses are the answer and try to cut costs by reducing smaller experiential courses. However, a familiarity with effective pedagogies and the retention yields of various methods reveals that not all courses are equal when it comes to learning outcomes. The value of courses and teaching methods should not be measured predominantly by teaching or staffing inputs, but rather by learning efficiencies, efficacies, and outcomes.

Of course, learning does not just occur within the classroom, and so legal educators must also consider what and how students study outside of our presence. In legal education, we assign tens of thousands of pages of reading at a cost of thousands of dollars per student over the course of the student's law school career. These purchases contributed to a \$4.4 billion law publishing industry in the United States in 2007, but did it help our students? Probably not as much as we think. According to studies of learning methods, our students will remember only approximately ten to twenty percent of what they read. You know what yields even worse results? Rereading more than once.

The Dunlosky Study included rereading as one of the ten common learning techniques it examined and concluded that rereading, especially after the second round, was a low-utility learning method. This finding is especially concerning in light of the fact that rereading is such a widespread learning method.

Certainly, rereading does show some improved learning, but these gains are largely attributable to the second reading. Moreover, the benefits are usually demonstrated in recall; it is not clear that rereading has a significant positive impact on comprehension. Moreover, when the gains from rereading are compared with the gains from other learning methods, such as low-risk testing and distributed practice, it becomes clear that rereading is far less effective.

Will highlighting help our students? Not one bit. Not only has highlighting proved ineffectual in multiple studies across diverse populations, in the case of higher-level tasks such as those implicated in graduate education, highlighting might actually hurt performance by reducing the student's ability to make connections and draw inferences, individuating the information too much.

Does it matter whether the text is on a screen rather than paper? The jury is still out. Research before 1992 suggested that individuals who read text on screens read more slowly, less accurately, and had a lower level of comprehension than when reading text on paper. However, the studies conducted since then have been far less conclusive, although most still show higher gains when reading on paper, especially when the text is especially long or dense. Indeed, studies have shown that reading digital text on screens is more exhausting mentally and visually than reading on paper.

While we are taking a long hard look at those two-pound, 20th century-style casebooks, we might as well reopen the "laptops in the classroom" debate. However, empirical study after study demonstrates that the use of laptops in the classroom has a negative impact on student learning by distracting them from focusing on classroom tasks. Moreover, students who use laptops in the classroom do not perform as well academically, and are less satisfied with their educational experience.

In addition, the latest educational research out of Princeton University finds that even when students are not distracted from classroom activities, even the basic process of taking notes on a keyboard rather than by hand compromises a student's learning as measured by retention, comprehension, and ability to synthesize and generalize. Across three separate experiments, it was clear that students who use keyboards take more notes, but learn less than students who take notes by hand. The researchers who conducted the research believe that the cognitive processes entailed in note taking by hand are different from those used on a keyboard. Students who take notes by keyboard are able to type much faster and so tend to write close to what the instructor actually

said, whereas students who handwrite their notes have to summarize the material, which requires a higher level of intellectual engagement than mere transcription.

The lessons from this latest research on note taking compels law professors committed to effective teaching techniques to approach the question of how best to integrate technology in the classroom with humility and caution. We know that when law students use laptops in class, one study showed that ninety percent (90%) go online for at least five minutes, and approximately sixty percent (60%) are distracted for approximately half the class.

One of the most frustrating things about being a legal educator is that there is almost no quantitative pedagogical research focused specifically on legal education and our dominant teaching and learning techniques. Thus, most of the educational research cited in this essay is drawn largely from general pedagogical research on how the human mind learns with a discriminating eye favoring studies of populations of learners similar to law school students or results that endure across varying populations of learners.

Although I found no studies examining the effects of case briefing specifically, summarization is a technique that was examined in the Dunlosky meta-analysis. The researchers ranked summarization as a low utility study method because in order for it to be effective, the learner must be skilled at summarizing and most people are not. Thus, if law schools are going to encourage law students to use this technique, they should provide robust training to their students on how to summarize or briefcases.

In short, summarization will most likely help if students know how to do it well and if the assessment is generative rather than focused on evaluation and synthesis (in fact, some studies have shown a worse performance among students who used summarization as a study technique for assessments that include evaluative questions and those that involve synthesis of content). Overall, Dunlosky et al. concluded that summarizing was a more effective learning technique than rereading, about comparable to taking notes, but less effective than other study techniques such as self-questioning or generating explanations.

Becoming the best requires us to reprioritize our research endeavors and create value around quantitative educational research focused specifically on law school students. We need to collaborate with our colleagues in schools of education, educational psychologists, and others to design and conduct studies to determine what works best for our population of learners.

Finally, anyone who aspires to the “World’s Best Law Professor” must be mindful of the voluminous data that continue to show the importance of the professor as a human mentor and teacher to her students. Those human interactions — teacher to student — have a profound impact on our students’ learning experiences.

Every day we come to campus, we each have a choice. Do we want to strive to be the best law professor possible, or are we willing to risk being the worst?

You will need to rethink your teaching methods, your students’ study methods, even your law school’s curriculum. You will have to figure out how best to harness the latest technologies to support frequent low-risk testing for your students and individualized content delivery at ideal intervals across time while interleaving subjects in meaningful and intentional ways. You will need to identify and create opportunities for your students to teach, collaborate, solve problems, and apply what they are learning through practice. All the while, you will need to maintain personal and enthusiastic teaching and mentoring relationships with your students if you want to have a positive, lifelong impact on them.

Psychology and effective lawyering: Insights for legal educators

J Sternlight, J Robbennolt

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TEACHING SKILLS

Lawyers spend substantial amounts of time and energy working with people. Thus, it is no surprise that effective lawyers are not only skilled intellects, but also excel at questioning and interviewing, communicating and persuading, planning and managing, resolving conflict, entrepreneurship, working with others, and making ethical decisions. And it is not surprising that legal employers and clients desire lawyers who can communicate well, are able to collaborate effectively, are motivated and hard-working, can work independently but know when to ask for guidance, and are able to effectively plan projects. Recent law graduates recognize that they would benefit from more and better education in the interpersonal and decision-making skills needed for effective lawyering.

Psychology — the science of how people think, feel and behave — has a great deal to teach about a range of core competencies related to working with people and making good decisions.

For example, psychologists have conducted extensive research into perception, memory, communication, individual and group decision-making, conflict, goal setting and planning, self-assessment, motivation, “grit,” and many other matters that are central to effective lawyering. This research has much to contribute to an understanding of the work of lawyers and can be effectively incorporated into how we teach law students to practice law.

Despite the importance of the interpersonal aspects of lawyering and the utility of psychology for mastering this aspect of the profession, law school curricula include relatively little psychology. Legal academia has slowly started to take account of the fact that new lawyers need to be skilled in dealing with people in addition to being skilled legal analysts. Yet, even recent calls for adding more practical skills training to law schools do not particularly emphasize that lawyers need good interpersonal and decision-making skills, nor does legal education fully recognize the substantial contributions that knowledge of psychology can make to the practice of law.

Given the typical focus of the law school curriculum, many lawyers must learn the people side of law practice on the job. But, learning from experience has its limits. As George Bernard Shaw purportedly noted: “[W]hat we learn from experience is that [we] never learn from experience.”¹ While Shaw’s assertion maybe too extreme, psychologists have found a human tendency to overestimate our ability to learn from experience. Thus, it is important to provide students with grounding in the science of human behavior—a grounding that will prepare them for the interpersonal aspects of practice and will inform and shape what they learn from their experiences. Harnessing the science of psychology can attune lawyers to insights that are difficult to discover organically and help lawyers avoid drawing mistaken insights from their experiences in practice.

Psychology has much to contribute to a wide-range of lawyering tasks, particularly aspects of practice that have grown in importance in an era in which trials are rare. As we have urged in our recent book, *Psychology for Lawyers: Understanding the Human Factors in Negotiation, Litigation, and Decision-making*, lawyers who are knowledgeable about cognitive and social psychology can be more effective at such tasks as interviewing clients and witnesses, counselling clients, negotiating and mediating, conducting discovery and due diligence, writing, behaving ethically, being productive and successful, and being happy. Psychologically savvy attorneys can perform their jobs more effectively because they better understand how people—themselves and those with whom they work—think, feel, and make decisions. Below we highlight some of the most important insights attorneys can draw from this body of psychology.

Many people believe that human perception operates much like a video-recorder or computer, such that the environment is accurately and completely observed and recorded. But that sensory experience tends to be so rich that we mistakenly believe that we take in all or at least most of what we encounter. Instead, our capacity to perceive everything is limited in ways that can cause us to miss many important details, even for important events such as assaults in progress. And while we also do amazingly well at assembling the information that we do take in, our interpretations are inevitably influenced by stereotypes, schemas, preexisting attitudes, and our own perspective, expectations, and preferences. But, it is difficult to appreciate the extent to which one’s perceptions and construal are so influenced. Thus, it is critical for attorneys to recognize that a client or witness’s prior conceptions may have led them to misconstrue a situation, that a witness who claims not to have seen something that seems like it would have been obvious may be telling the truth, or that the attorney’s own psychology may have led the attorney to make assumptions about clients or to miss or discount key documents produced in discovery.

As with perception, people tend to believe that memory works like a video recorder that faithfully records events for later accurate replay. We do remember lots of information. But we also forget much, we are suggestible, and our memories can be colored by our experiences, our moods, hindsight, and the desire to view ourselves in favorable terms. Attorneys who are not knowledgeable about the workings of memory run the risk of expecting too much of the memories of clients, witnesses, and themselves and risk tainting memories with inartful questions. But attorneys who understand the nuances of memory are better equipped to develop strategies for eliciting more—and more accurate—information from clients and witnesses.

Although law students sometimes believe (or are taught) that they should strip emotion from their assessment of legal problems, it is impossible, and often even counterproductive, to try and ignore emotion. Instead, recognizing and understanding how emotions work can help attorneys predict, manage, and even use their own, their clients’, their adversaries’, or others’ emotions.

When making judgments and decisions we use numerous shortcuts, or heuristics. The use of shortcuts is often an efficient route to reasonably accurate judgments, but can also produce systematic errors in judgment. Attorneys can make better predictions and more effectively advise clients if they know, for example, how positive illusions, anchoring, the representativeness heuristic,

hindsight bias, the framing of options, irrelevant information, and the structure of decision-making processes influence judgments and decisions made by attorneys, clients, neutrals and others.

Whether working with clients, colleagues, adversaries, arbitrators, judges, or government officials, attorneys need to be adept at communicating with and convincing others. Understanding why and how to demonstrate expertise and trustworthiness, use concrete examples, and present two-sided messages can increase persuasiveness, as can understanding principles of reciprocity, scarcity, consistency and commitment, liking, and social norms. With respect to communication, knowledge of psychology can help attorneys be better listeners, more effectively build rapport, manage communication difficulties, more successfully elicit disclosure from clients and witnesses, more effectively deal with the possibility that others may lie, and provide more influential advice. These abilities can serve attorneys well in virtually all aspects of their work. And, importantly, lawyers who communicate with their clients more effectively are less apt to be charged with ethical infractions.

The psychology of justice teaches that clients and opponents care about far more than the monetary bottom line or staying out of jail. Clients or opponents may measure monetary outcomes in light of their assessments of equality, equity, or need. They care tremendously about procedural justice — desiring voice, dignity, respect, and the opportunity to tell their story to someone they perceive as neutral. And, they may focus on retribution or restoring damaged relationships or property. Understanding how people value and respond to different aspects of justice can help attorneys tap into client concerns in interviews, better respond to those concerns as counselors, frame attractive proposals in negotiation, and more persuasively craft arguments as advocates.

Attorneys' ability to act ethically can be enhanced by understanding that we are each far more vulnerable to ethical missteps than we may realize. Ethical rules are breached not only by “bad apples,” but also by ordinary people who have ethical blind spots, allow ethical lines to blur, and take small steps down slippery slopes. Vowing to be ethical is not sufficient protection against ethical lapses, and indeed those who pride themselves on their ethics can sometimes be particularly vulnerable. But both firms and individuals can use knowledge of behavioral ethics to take concrete steps to prevent ethical infractions.

The psychology literature teaches about how best to avoid procrastination, the limitations of multitasking, the importance of “grit” and perseverance, the value of seeking (and being) a mentor, how best to collaborate how to deal with pressure,” and how to learn from mistakes. Psychological studies also provide many insights regarding how to choose a job that will help one be happy and how to craft a given job to lead to greater satisfaction and fulfillment.

Although some of the psychological findings in each of these areas may be intuitive to those who have good instincts and good people skills, others are counterintuitive. Thus, even the most experienced practitioner has a lot to gain by learning more about the nuances of psychology.

Exposing students to the science of psychology through a course that is explicitly focused on psychology and lawyering is a powerful way to give students the opportunity to think about how psychology can help them be better lawyers. We have each taught such courses to upper level law students, and Professor Sternlight will soon teach the course as a first-year elective.

These semester-long three credit courses have included aspects of both a seminar and a skills course. Students were assigned our book, *Psychology for Lawyers*, and the courses followed the organization of that book. Accordingly, students first studied a range of findings from psychology that are relevant to lawyering, next applied that psychology to specific lawyering tasks, and finally presented papers applying psychological concepts to lawyering.

Given our emphasis on drawing from the lessons of psychology, it is perhaps not surprising that we also draw on the lessons of psychology in thinking about how best to teach this material. Educational psychology reveals that most people do not learn best by reading a text or listening to a lecture, even if the text or lecture is brilliant. Instead, it is important to use multiple modalities or channels to help maximize student understanding.

Research from a variety of fields shows that students particularly benefit from “active” learning that engages them in the provision of information; approaches such as small group activities that can help activate prior knowledge; teaching methods that situate lessons in contexts similar to those the students are likely to encounter, so that applications will be more apparent; techniques that stimulate students' inherent interests in learning and becoming better attorneys rather than trying to motivate them through grades; collaborative activities that boost student self-efficacy and retention; and meta-cognitive or self-explanatory work that requires students to think, write, and talk about the concepts they are learning and the processes of learning themselves.

Law school professors have devised a number of ways to involve students in more active and cooperative activities that encourage students to explain and reiterate the lessons they have learned. Popular approaches include simulations or role plays, small group exercises, student presentations, and journals. It is particularly important to help students learn about psychology first hand given what is known as the bias blind spot—the difficulty that people have in recognizing the influences on their own perceptions, judgments, and decisions.

In her first class, Professor Robbenolt asks students to respond to a series of hypothetical situations—each exploring a psychological phenomenon. The class revisits the questions, together with their responses, as they study the relevant topics throughout the semester. Students quickly learn that they, and not just others, are affected by the psychological phenomena under discussion—often in ways that are surprising to them. They are also able to use their experience as participants to better understand the strengths and limitations of experimental simulations. Similarly, Professor Sternlight has used an in-class encounter with her secretary in her first class to help students see that their perception and memories are not as good as they might think. In the staged encounter, the secretary—wearing some distinctive clothing—entered the class to deliver an unusual object to Sternlight. At the end of the class the students were asked to fill out a survey describing the incident and the clothing. Their answers demonstrated the difficulties inherent in perception and memory, the common variability in witness accounts, and the influence of stereotypes. Both courses use role plays and actively involve students in commenting on videos of attorneys engaged in lawyering activities. Thus, students might conduct role plays on subjects including interviewing, counseling, negotiation, or discovery and then analyze those activities using the psychology they have learned. Similarly, students watch attorneys conduct interviews or depositions and then discuss how knowledge of psychology might help attorneys improve their effectiveness in these tasks. Our courses also emphasize the importance of self-directed learning, cooperative activities, and self-reflection.

In addition to teaching courses focused specifically on lawyering and psychology, it is also possible and desirable for law schools and law professors to infuse psychology into courses devoted primarily to other topics. Clinics offer a wonderful opportunity for teaching students how psychology can help them be more effective attorneys. Because clinics provide students with direct exposure to real clients (and frequently to opposing clients, attorneys and neutrals as well) clinics can enable students to see how the psychology they have learned in seminar classes plays out in practice. In short, psychology can provide clinical faculty and their students with an ideal framework for discussing legal representation, and clinics equally provide an ideal setting for teaching students the value of psychology. At the same time, given that clinicians have so much to cover with their students, we recognize that they will need to make difficult pedagogical choices, incorporating psychology selectively and, sometimes, implicitly. Depending on the clinic, professors may choose to emphasize psychology relating to interviewing, counseling, negotiation, mediation, written or oral advocacy, or other lawyering tasks.

Professors in specialized “skills” classes can quite easily integrate psychology into their courses, and some already do. Courses that focus on writing should emphasize psychology relevant to communication and persuasion. Many legal writing texts and classes have already begun to do at least some of this. Students who are learning to help clients draft contracts and other documents need to be aware of how real people make decisions about contractual relationships, and how the language used in contracts may impact how those documents are used by the parties.

Doctrinal courses and seminars can also draw on aspects of psychology pertaining to lawyering. An increasing number of courses are already taught from a problem-solving perspective, in which students work to apply concepts they are learning to hypothetical situations, and it would be fairly easy to add a psychological dimension to courses and texts that already have a problem-based focus. But, even courses that are not focused on problems can use psychology in analyzing how attorneys might apply course concepts.

We believe it is possible and desirable to add psychology to virtually any law school course. A civil procedure course could touch on the psychology relating to perception, justice, discovery, persuasion, or negotiation in order to help students consider how to evaluate claims and defenses, how best to resolve clients’ disputes, or how to present arguments most effectively. A course in contracts, property, or torts could have students consider what disputants’ concerns might be, whether litigation is the best or only way to meet those concerns, how disputants might communicate their concerns or arguments most effectively, and how well attorneys do at predicting case outcomes. Courses on criminal procedure ought to address psychology pertaining to witness identification, lineups, and false confessions, as well as biased assimilation and other aspects of perception and

decision-making. A transactional course such as tax, business associations, or secured transactions should include insights such as how alternative framing will cause participants to see a prospective deal more positively or negatively, how implicit biases or prior schema may affect analyses, and how psychology affects the way that we seek and process additional information. A class focused on constitutional law could consider how advocates might use psychology pertaining to preexisting biases, emotion or communication and persuasion to more effectively represent their clients.

We believe that law professors should increasingly draw on psychology to enhance their teaching of lawyering. A law school pedagogy that combines rigorous analytical training and grounding in the psychology of how people perceive the world, interact with each other, and make decisions will produce well-rounded lawyers who can more effectively serve their clients and the interests of justice. In our experience, law students are eager to embrace the relevance of psychology to their future work as attorneys and find psychological training to be a practical complement to their education in substantive law and legal analysis.

The Safest Shield

Lord Judge

Hart Publishing 2015, 368 pp

BOOK REVIEW

This book consists of a selection of lectures, essays and speeches by Lord Judge who was first appointed a Judge of the High Court in 1988 and was Lord Chief Justice and Head of the Judiciary of England and Wales from 2008 to 2013.

The choice of topics reflects lectures and speeches which he delivered to live audiences and the wide variety of their subject matter guarantees that they should be of lively interest to anyone who has a concern with the law, the manner in which it is presented to law students, and those who are training to become members of the legal profession. In his introduction Lord Judge explains that his text has omitted many talks designed to improve the efficiency of the administration of justice which either led to improvements or have since been overtaken. He has instead focused on broader issues which in his view have affected the community as a whole. It is a reflection of this approach which is responsible for the title of the book — the rule of law in its modern sense — emphasising that the rule of law is our safest shield.

The book is basically divided up into six sections with the first two sections entitled *Towards a Constitution* and *Continuing Constitutional Concerns* discussing the historic development of United Kingdom constitutional arrangements commencing with Magna Carta and observing all the events which have flowed from the creation of that Charter in 1215. Included is a 2012 lecture given to the Anglo-Australasian Lawyers Society in Sydney on the effect of the Justice of the Peace Act 1361 which gave rise to the appointment of non-professional judge citizens who became known as Justices of the Peace. In the words of Lord Judge it was such appointments that guaranteed the ‘value of the preservation of the peace [which] is beyond price’ and ‘the creation of the concept of justices of the peace with the deliberate purpose’ of ‘the intent that the peace should not be blemished and those using the streets should not be disturbed or put in peril.’ Under these sections there is also a discussion of such matters which flow from the outcome of the Magna Carta such as ‘No Taxation Without Representation’, ‘Constitutional Change’ and ‘Sovereignty’ and some issues which affected Lord Judge personally such as the abolition of the office of the Lord Chancellor in 2003 and which eventuated in the Constitutional Reform Act 2005, leading to the replacement of the House of Lords as a final Court of Appeal by the creation of a Supreme Court of the United Kingdom.

The third section, *Liberties and Rights* includes such topics as ‘Equality before the Law’ and ‘Human Rights: Today and Tomorrow’ which have an increased poignancy as they were delivered in South Africa after the abolition of apartheid. He also stresses in another lecture delivered in Jerusalem that ‘without any infringement of the mutual independences of the judiciary and the media, they can and should speak to each other, so as to ensure the open administration of justice and the preservation of two independences of cardinal importance to the rule of law.’

Whilst these first three sections are of obviously of particular importance to all lawyers it is the concluding sections which are of particular interest to legal educators. Section four contains a wide ranging review of the *Administration of Justice* and in the opening lecture, ‘The Art of Advocacy’, Lord Judge stresses the importance for the administration of justice of ‘high-quality advocacy [being] fundamental to the forensic process, whether in an adversarial or inquisitorial system.’ One of the other lectures in this section deals with the difficulties which are inherent in any system of

law in which expert evidence is admissible. This is a complex topic not usually the subject of a public lecture but which is dealt with in a masterly fashion by Lord Judge.

Under section five — *The Judiciary* — Lord Judge is able to call upon his personal experiences when discussing the importance of ‘Judicial Independence and Responsibilities’, ‘Being a Judge today (2013)’ and ‘Judicial Diversity’, but it is in the lecture ‘Judicial Studies: Reflections on the Past and Thoughts for the Future’ that the judge stresses the importance of the education and training of judges. He recalls that when he was appointed as a Recorder there were no such facilities available but now the United Kingdom Judicial Studies Board has subsequently brought about significant changes in the training of judges.

The final section six of *Personal Reflections* is even of more direct relevance to law academics with ‘Why Read Law’ being a basic text which Lord Judge has given at different universities over the last few years. It is a wide-sweeping discussion as to why someone should study law and the responsibilities inherent in this role. As Lord Judge concludes, ‘In years to come the long-term safety of the rule of law must be the responsibility of those who are students of the law today. Guard it well.’

This concluding phrase is an ideal summing up of the quality of language and advice contained in the text of this book which is a most important addition to any lawyer’s and particularly any law academic’s library.

Emeritus Professor David Barker AM
Editor

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Email: admin@centreforlegaleducation.edu.au

Directors: Professor Michael Adams and Emeritus Professor David Barker AM

CLE Research Assistant: Sonya Willis

Administrator: Lisa O'Farrell

Digest Editor: Emeritus Professor David Barker AM

Digest Associate Editor: Bridget Kennedy

Digest Researcher: Alysia Saker

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ANU College of Law, Bldg 5, Rm 214

The Australian National University

Acton ACT 2601

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Tel: +61 2 6125 4178

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Gaunt Inc.

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