The legal profession's failure to teach practice management has had many negative effects on the profession. These include the release of neophyte lawyers into the workforce who fail to make the transition from law school to practice and end up never practising law because they appear so naive about the business of practice that no one will take the risk of hiring them.

The legal profession as a whole should develop a systematic approach to teaching law students and young lawyers how to work effectively and efficiently as lawyers. The law schools should plant the seeds of sound practice management which will come to fruition when the student becomes a lawyer, thereby empowering them to take responsibility for what happens to them in their professional work.

It appears that as many as 80 - 90% of lawyers may have had no experience of what it was like to be a lawyer before they commenced law school and may have based their decision to study law on popular images of lawyers in films and on television. However, law schools fail to teach anything about day-to-day legal practice and the academic slant of legal education makes law students negative and disdainful of practice management issues. Articling also fails to deliver because it assumes that the practice is well run, has good management practices in place, that the principals are inclined to impart the knowledge to the articled clerks and that they know how to teach. However, neither articling nor bar admission courses can be expected to carry full responsibility for practice management education. As a result, young lawyers are thrust on the unsuspecting public with few resources to assist them in making up for this gap in their legal education.

Law schools should make a commitment to prepare students for all dimensions of legal practice, including practice management. The author recommends that practice management be taught at law school as a designated block of instruction in first year, that issues relating to practice management should be integrated into other law school subjects in all years, that various teaching methodologies be used, including visits to law firms and readings from practice management literature, and that all exams should have at least one practice management question. Practice management courses should be taught by practitioners whose practices have been reviewed and found to be excellent.

Producing a competent lawyer: alternatives available
J K de Groot
Centre for Legal Education, 1995

This book, published by the Centre for Legal Education, originated from a doctoral thesis submitted by the author, based upon a study he conducted in Queensland, Australia. The study entails a comparison of the impact of the two methods of professional legal education which operate as parallel streams in that State, namely articles of clerkship and a legal practice course. The research objective was to determine which approach is the more successful in achieving the aim of producing a competent lawyer.

Following closely the traditional three-tier compartmentalised structure of legal education contained in the Ormrod Report, the author in Chapter 1 describes a number of systems which have been set up to meet the educational objectives of the professional or vocational stage (or stage 2), including articles and various practical legal training course paradigms. Chapter 2 examines the variety of perspectives that are brought to bear on the notions of lawyer competence and professionalism. The articles system, which once monopolised lawyer training, is evaluated in Chapter 3 and shown to have serious deficiencies.

The author contends that, despite some acknowledged shortcomings, the legal practice course model appears to be substantially superior to articles, asserting that it comes down to the answers given to two questions: '1. Is it better to provide a student with an ordered, thorough curriculum or to rely on the opportunities to learn which may present themselves in a work setting?; and 2. Should students be exposed to the practice techniques, guides and attitudes of a large number of highly regarded lawyers or potentially be limited to the role model of a principal who has no credentials as a teacher?' De Groot labels these questions as rhetorical; others might query whether they might more aptly be described as leading.

Chapter 5 examines the main features of articles and the Legal Practice Course as they operate in Queensland, in effect as independently operating delivery methods for professional training.

The author's review of the small body of literature on studies of lawyer competence is presented in Chapter 6. This is followed in the next chapter by a description of the design of the instruments and the rating format for use in the subjects' and supervisors' survey

forms and the response rates generated.

Within the compass if this very brief review, it is impossible either to probe the validity of the research design or to do justice to the author's findings and the conclusions and to their significance with respect to the research objectives of the study. De Groot is left to cope with the unfortunate outcome that, although the data he collected enabled answers to other questions to be ventured, no conclusion could be reached on the main research question of which of the two approaches to professional education can be regarded as the better. Whether this was because no significant differences in the competency levels of the two populations indeed existed, which would seem unlikely, or because the research design lacked the sensitive measures needed to pinpoint the differences, this reviewer is unable to say.

Editor

PURPOSE

[no material in this edition]

RESEARCH

Producing a competent lawyer: alternatives available
J K de Groot
Centre for Legal Education, 1995
[See Practical Training]

RESOURCES

[no material in this edition]

The assistance of the Librarian and staff of the libraries of the Law Society of New South Wales and the University of Sydney Law School is gratefully acknowledged.

SKILLS

A more realistic approach to teaching appellate advocacy
F Tuerkheimer
45 J Legal Educ 1, March 1995, pp 113-118

Appellate advocacy courses rarely reflect real advocacy and do not address or alert students to the real-life challenges of appellate advocacy. The University of Wisconsin has avoided this problem.

A traditional appellate advocacy course provides students with a lower court's decision and instructions to brief and argue the case in the appellate court. The briefs are short on facts and so there is little need to select out relevant from irrelevant facts. The case law discussion in such courses is by far the largest part of the brief and oral argument is heavily focused on legal analysis. Whilst there is nothing wrong with requiring students to research open ended issues of law, this is more like a district court motion rather than an appellate case.

Appellate cases consist of trial transcripts, extensive submissions on summary judgments and pre-trial hearing transcripts. The work of an appellate advocate is fact-focused. The judges know the law. Appellate judges are not, however, experts on the record of the particular case being heard. This is the major demand in appellate advocacy. The appellate advocate must master the record developed in the trial court in the context of the applicable case law to show why the decision of the lower court should be affirmed or overturned.

The solution to teaching trial advocacy is to teach it as a two-semester sequence. In trial advocacy students conduct the 'real' trial and the trial is recorded. The instructor is the judge and errors are built in which would form the grounds of appeal and other unintentional errors on the part of the instructor/ judge are appealable. The author provides a table, indicating how the students are arranged in two teams and the tasks each student must perform. The next semester is devoted to appellate advocacy. The two teams are now abandoned and students are arranged in pairs, one from the winning side of the trial and the other from the losing side. The assumption is made that the plaintiff won at trial and so each pair of students consists of an appellant and a respondent. The record for the appeal is the record of the trial from the first semester. Students are given four weeks to prepare and submit their briefs. Lecture supplements are also run concurrently.

The appeal is before a panel of three, the instructor who has an intimate knowledge of the case and two outsiders who have little knowledge of it. This creates a very realistic situation as the students come before a panel whose knowledge of the case is not uniform.

The advantages of the course are that it is realistic and students must constantly demonstrate their knowledge of the record. They learn the value of the record as they proceed through the course and emerge as expert in the finite world