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

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

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

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

RESEARCH

Publish or perish: the paradox
P F Postlewaite
50 *J Legal Educ* 2, 2000, pp 157-188

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

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

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

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

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

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

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

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

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

tion for the various constituencies? What was its preference as to the publication of articles (academic or professional) versus the publication of books (casebooks, treatises, or university press)? And what was its record of productivity, both individually and institutionally, in the various modes of scholarly expression? The following conclusions emerge from the data.

First, while most senior professors published in academic journals, on the whole they did so in minimal fashion. An overwhelming majority (86%) published in an academic journal during the surveyed period, but only 39% of that group averaged 23 or more pages per year in such journals. Almost one-fourth of the senior professoriate wrote a book for the academy. The vast majority (73%) of those senior professors wrote more pages per year in university press books than in academic articles.

Second, almost half of the group (47%) published an educational book, and 85 percent averaged more pages for educational purposes than pages (including book pages) for the academy. Of the productive scholars, 50 percent produced on average more for students and the general public than for either of the other two constituencies.

Third, more than half (56%) of the group published for the profession, but less than 10 percent published a professional book. Of the productive scholars, 8 percent produced on average more for the profession than for either of the other two constituencies.

Fourth, a majority of the senior professoriate (60%) published a book during the surveyed decade. If overall non- or minimal participants are eliminated, then almost 80 percent published a book. Almost 50 percent of the elite senior professoriate wrote an educational book, almost 25 percent wrote a university press book, and almost 10 percent wrote a professional work.

A healthy percentage of the academy, given their prodigious production of written words, appears to be totally unaffected by the guarantee of lifetime employment without regard to productivity. While the top tier of the elite senior professoriate certainly would have produced similarly without tenure, the issue is more difficult when one attempts to assess the impact of tenure on productivity of other senior professors. But the data suggests that the receipt of tenure, and the protection afforded by it, profoundly influenced professional behaviour, at least with regard to the quantity of legal scholarship.

Once tenure has been received, it is irrefutable that the admonition to publish or perish is inapplicable to the senior professoriate. Nevertheless, the most productive group must fear the causal connection, if any, between extensive publishing and perishing. If it exists, the professor's epitaph might read: 'Perished Because He Published and Published'.

Tax (and lots of other) scholars need not apply: the changing venue for scholarship

W J Turnier

50 *J Legal Educ* 2, 2000, pp 189-212

In recent years considerable scholarly attention has incestuously been paid to the very topic of academic scholarship. The matters covered have included storytelling as scholarship, the ranking of law faculties and individual faculty members based on their frequency of publication in major reviews, the ranking of law review articles based on frequency of citation, and the growing disjunction between much academic legal scholarship and the profession. It will come as no surprise to readers familiar with contemporary academic legal journals that little of this discussion has dealt with tax scholarship.

In an attempt to document what most tax scholars intuitively know - that over the years the major reviews have become less and less receptive to tax scholarship - the contents of 17 major law reviews were examined over the last 55 years. Although anyone who has been following tax scholarship for some time will hardly be surprised to learn that it has been appearing in major law reviews with decreasing frequency, the marked rate of decline is probably greater than most would have guessed.

There are a number of reasons put forward to explain this. Much of the fault for the isolation of tax lawyers within the profession and of tax teachers within legal education can be attributed to their failing to open up tax law to the light of non-tax insights.

A further reason is that student editors, even at the best law schools, do not appreciate the social and economic importance of tax policy issues. They perceive any issue with a constitutional or human rights component as infinitely more important than some issue which they see as merely involving who pays for the cost of operating government. During a period of relative inactivism by the Supreme Court, the subject of constitutional law has become a virtual obsession of the major law reviews, accounting for 18.15 percent of published scholarship, with the closely allied subject of criminal law and procedure accounting for an additional 9.26 percent.

The major reviews' concentration of interest on only a handful of topics is illustrated by the fact that the top five topics account for 42.47 percent of all entries. This strongly suggests that studies purporting to rank law schools on the basis of faculty publication in major law reviews are primarily devices for ranking the productivity of faculty in a few favoured areas. The disproportionate presence of constitutional and criminal law in the major law reviews cannot be explained as the result of extraordinary scholarly production by faculty in these areas and extreme laziness on the part of their colleagues.

The data indicate that the student editors of the major law reviews are doing only a fair to poor job of providing a balanced insight into the full panoply of broad legal issues which concern society, and they appear to make no attempt to provide scholarship of benefit to the legal profession and to the teaching profession in fulfilling its educational obligations across the curriculum.