

EDUCATING LAWYERS: HOW LAW GRADUATES PERCEIVE  
FIRST YEAR LAW SCHOOL EDUCATIONAL PRACTICES

by

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## ABSTRACT

The purpose of this study was to better understand the educational practices used in first year law school and the impact of these practices on students. Prior research showed that students are negatively impacted during first year and that educational practices are somewhat to blame. This study is consistent with this literature and provides new and important information about the extent to which teaching methods; content and curriculum; assessment and grading; learning theory and aims of law school all contribute to the experiences of law students.

The research method in this study consisted of in-depth interviews of 19 University of British Columbia law school graduates who had completed law school a few months earlier. Graduates were questioned about their perceptions of both the first year law school educational practices and their impacts, specifically in relation to the five *core* courses taught in first year law school.

This study revealed that students found first year law school problematic in many ways. This research supports the literature that suggests the case method and the lecture method used in first year are not entirely effective or efficient for student learning. The case method seems to makes learning more difficult and slower than it needs to be. As suggested in the literature the lecture method was useful in providing information to students and this information helped students focus their studies. However, these typically didactic lectures did not appear to engage students or encourage deeper learning. The question and answer technique used in some lectures intimidated students and appeared to interfere with their learning.

This study is consistent with the literature that suggests that the law school curriculum is based on an epistemology of *objectivism* and that this causes several problems. Also, this study suggests that law school examinations impact students in many ways. Students become cynical when they discover that exam expectations are not clear; exams assess things not taught; exams are not an accurate assessment of ability; and marking is arbitrary.

This study confirms that the combination of educational practices used in first year makes students feel isolated, disoriented, disengaged, and ultimately resigned to having no control. Yet first year law students show extraordinary resilience.

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## CHAPTER ONE

### INTRODUCTION

*It is my contention that law school education explicitly shapes the character development of law students in certain ways that are detrimental to efficient professional performance. (Watson, 1958, p.131)*

This research was about the education of Canadian lawyers. My aim is to better understand what happens to law students during their first year of law school and specifically identify some of the educational practices that lead Krieger (2002) to conclude:

*The tales of law school and lawyer depression, overwork, dissatisfaction, alcohol abuse, and general distress are legion and many of us see, more clearly than we would like, the undoing of our students' collective energy, enthusiasm and engagement after only a few months of law school. (p.113)*

#### Purpose of the Study

The purpose of this research is to discover how law graduates perceive the educational practices used in first year law school. Educational practices include teaching methods; content and curriculum; assessment and grading; learning theory and the aims of legal education. The two questions central to this research were:

- How do law graduates describe the educational practices they experienced in first year law school?
- How do law graduates perceive the impacts of these practices on themselves as learners?

From this description I hope to help legal educators better understand how certain educational practices impact first year law students. This in turn may stimulate educators to pursue further research and contemplate ways of improving legal education.

In this Chapter I discuss the significance of the study, my qualifications to conduct this study and the structure of this thesis.

### **Significance of the Study**

When I began my exploration of legal education over 20 years ago, I became acutely aware of the heated debates and deeply held beliefs about what is right and not-so-right about legal education. There are many people who are committed to improving legal education and there are many who are frustrated by the difficulties of bringing about change. My aim is to help those people who wish to make legal education better. As stated so eloquently by Steinzor and Hornstein (2002):

*The most important goal is not to arrive at a single set of substantive solutions, but to ensure that faculties, deans, alumni, the bench, and the bar understand each other well enough to negotiate reform, with all participants conscious of the implications of those decisions. Oversimplification of such complexities can only tempt faculties to ignore such demands, distancing their schools from the world of practice at a time when legal education is increasingly vulnerable to forces outside the profession. (p. 463)*

I started my doctoral studies several years ago with a feeling. That feeling was that something happens to students in first year law school that forever changes them – and not all for the best.

My pre-research thinking was that law school education tended to focus on, and value, intellectual aspects and avoided or down-played emotional or more human aspects of learning and practicing law. My belief was that any attempt to separate the intellectual from the emotional is neither possible nor useful.

My feeling is that many of the educational practices used in law school impact law students in ways which we do not recognize or understand. I hoped to discover, through my research, not only what educational practices are being used, but more importantly, how

students are impacted. At the current time there is very little research that links practices and their impacts (Sheldon & Krieger, 2004). Also, the majority of the literature relates to American law school education.

Krieger (1998) recently proposed that the dominant beliefs and practices in legal education thwart natural human needs for growth, potentially explaining many of the negatives noted in legal education (p. 262-3). Like Krieger, I am interested in the *dominant beliefs and practices* in legal education, how they manifest themselves in educational practices and how they impact first year law students.

There are four main reasons why the study of legal education is so important. The first relates to the impact that lawyers have on society, second is the cost of legal education, third is the lack of research about legal education and fourth is the current “crisis” affecting legal education.

#### *Impact of Lawyers on Society*

There is no disputing that lawyers have significant influence over society and the way it functions. Lawyers are engaged in influencing governments, creating laws, interpreting laws, enforcing laws, challenging laws and protecting the rights of citizens inside and outside of Canada. The impact of lawyers, judges and other legally educated persons cannot be overstated.

Because our democratic society is governed by laws, lawyers are one of the most powerful groups. Lawyers are the law makers, the law interpreters and the protectors of the law (Steinzor & Hornstein, 2002, p. 452). In more practical terms lawyers provide critical services to the public and occupy many high level positions in corporations and in government. They have extraordinary impact on international, national and local lives of millions of people (Dammeyer & Nunez (1999). Their education is critical to society.

### *The Cost of Legal Education*

The study of legal education is also important because of its cost. This cost includes the public funding of university law faculties, tuition fees paid by students and the actual time spent by students attending law school.

University administrators are concerned about the rising cost of operating universities, law faculty are concerned about adequate funding of appropriate and necessary legal education and students are concerned about rising tuition fees (Arthurs 1998; Backhouse 2001; Steinzor & Hornstein 2002, p. 464).

### *Lack of Research*

The third reason why this research is so important is because empirical research on legal education is extraordinarily rare. As stated by Rochette and Pue (2001):

*Because Canadian university law faculties have never systematically looked at the implications of change for what we do, how we teach or who we teach, all of this is virtual terra incognita. The most recent authoritative assessment of legal education in Canada was the [1983] Arthurs' report. Ever-absent however is research exploring the actual state of contemporary Canadian legal education. The empirical foundation which one might have thought essential to any reasoned education review or assessment of reform proposals is curiously lacking. Astonishing though it seems, no systematic data whatsoever is available on such matters. (p. 171)*

A recent call for research was made by Krieger (2002) who discovered an alarming rate of depression and dissatisfaction among law students. Krieger accused law faculty of engaging in a sort of institutional denial:

*There is a wealth of what should be alarming information about the collective distress and unhappiness of our students and the lawyers they become. We appear to be practicing a sort of organizational denial because, given this information, it is remarkable that we are not openly addressing these problems among ourselves at faculty meetings and in committees, and with our students in the context of courses and extracurricular programs. The*

*negative phenomena we ignore are visible to most of us and are confirmed by an essentially unrebuted body of empirical findings. (p. 112)*

Krieger (2002) found that most teachers and students were dumbfounded when they saw his research yet rarely disputed the findings as it confirmed much of what they already knew (p. 126).

Not only is very little known about what happens in law school, but it has been suggested that the debates are not well informed. As stated by Twining (1994), law hardly gets any mention in the discussions on higher education and is almost invisible in the literature (p. 26-27). Twining (1994) suggests that,

*The massive, obsessively repetitious secondary literature on legal education is similarly inward-looking and cocooned, presenting a not particularly appetizing picture of lawyers and law teachers talking past each other or to themselves, airing their prejudices and promoting sectional interests. There have been power struggles, conflicts about objectives and priorities, and genuine puzzles and dilemmas. As we shall see, there has also been a propensity to misread the situation, not least in respect of power and finance. (p. 27)*

There is only one book dedicated to the topic of Canadian legal education. It is a collection of articles written for a 1984 conference in Winnipeg and is aptly titled, *Legal Education in Canada* (Matas & McCawley, 1987). It includes articles ranging from the history of legal education (McLaren, 1987), to articling (Scott, 1987) and the continuum of legal education (Severide, 1987). Although written over 15 years ago, many of the issues and debates raised still remain. In the introduction Justice Matas called upon academics, lawyers and regulators to do a better job of educating lawyers (Matas & McCawley, 1987, p. 3).

In 1980 the Social Science and Humanities Research Council of Canada (SSHRC) funded a three-year project on legal scholarship. SSHRC had observed over the years that, unlike other academics, legal academics rarely applied for funding. As a funding body for academic study, it was concerned about the extent and quality of legal research and

particularly research about law and its impact on society (Arthurs, 1983, p. 4). The SSHRC was concerned about the state of legal research and wished to assess the capacity of the Canadian legal and intellectual communities to address questions about law and its impact on society. As stated by Arthurs (1983), *What attention have we devoted to the education of those who are deeply enmeshed in law as professionals, of those who produce law as politicians or administrators or consume it as citizens, and of those who are concerned with law as scholars or public administrators, as journalists or critics?* (p. 4).

That report emphasizes the importance of this kind of research but, sadly, attracted very little participation. This is a critically important fact that I raise in this study. Arthurs (1983) ponders in the introduction of that report why the professional bodies of lawyers and law faculties were not interested in his research. He supplements this perception in a recent article and acknowledged that little has changed as a result of the 1983 research. He suggests that legal education is too complex to change easily (Arthurs, 1998, p. 14).

Not only is very little known about what happens in law school, articling and professional legal training but there is almost no research relating to what lawyers do and who they are. Thus there is no link between what lawyers need to practice law or the extent to which the education they receive is relevant or appropriate. Some of the questions that remain unanswered were identified by Arthurs (1983) as follows:

*Are Canadian lawyers, for example, being educated in such a way that they possess not only the necessary technical competence to give legal advice and representation to clients of various classes and interests, but as well to offer them wise counsel in the social and economic implications of their legal problems, to adapt to changing laws and client needs, to assume positions of political and community service and leadership to evaluate critically and to help improve the administration of justice?* (p. 4)

I suggest later in this thesis that Arthur's problem is bigger than he recognizes. The roots of inaction and lack of participation in research is part of a broader complex and



systemic problem, resulting in extraordinarily slow change. Many believe that the problems of legal education are so complex that efforts at changing the system would be impossible.

As for lawyers, there is very little Canadian literature describing or critiquing the practice of law. There are only a few books written about the Canadian legal profession. The short list of books on the topic include two volumes produced after conferences in 1978 and 1980 on the quality of legal services. Both are titled, *The Legal Profession and Quality of Service* (Hurlburt, 1979; Hurlburt, 1981). Perhaps the best known book is titled, *Lawyers in Canada* (Stager with Arthurs, 1990). Although, primarily a collection of statistics on lawyers, Stager also describes how lawyers are governed, how they are educated and how they practice law. Most of the literature contained in this thesis originates in the United States and Australia

#### *The Current Crisis in Legal Education*

The final reason why this research is so important relates to two related crises: the crisis in legal education and crisis in the legal profession. The two crises are felt by the law schools generally, law faculty, law students, regulators of lawyers and practising lawyers. Steinzor and Hornstein (2002) wrote a pointed article about the economic, political and social pressures confronting law schools and the inability of law schools to keep up (p. 451-2). Backhouse (2001) summarized the specific pressures that Canadian law faculties are facing. They include reductions in university budgets, government demands for reporting, privatization of funding, hierarchal ranking of law schools, the "cult of consumerism", marketing the unending search for newness, internationalization, heightened pace of change within the legal profession, technological change, demographic change, greater inclusion of law schools within the academy, accelerating pace of academic work, tensions between law

faculty members, leadership issues, and tensions between law schools and university administrators.

Law students are also feeling the crisis and this is discussed in detail throughout this thesis. According to the literature, the legal profession is also in crisis. Daicoff (1998) summarizes the problems facing the legal profession and lawyers as follows:

*The legal profession is at a crossroads. Public opinion of attorneys and the legal system is very low, dissatisfaction among lawyers both professionally and personally is widely known, substance abuse and other psychological problems are almost twice as frequent among attorneys as in the general population, attorney discipline cases and malpractice suits appear to be common, and the lack of civility and "professionalism" among attorneys is frequently discussed. Some say these problems have always been present and have not necessarily increased in recent years. However, others suggest that these phenomena are reaching crisis proportions. The problems seem to fall into three categories: professionalism, public opinion, and lawyer dissatisfaction. Together, these three problems form a "tripartite crisis" in today's legal profession. (p. 547)*

It has been suggested that legal education is partially to blame for the crisis in the legal profession (Krieger, 2002). All of this suggests that there is a real need for research about how lawyers are educated.

### **My Qualifications for Conducting this Study**

For the last 20 years I have been learning, teaching and writing about legal education. I am in a somewhat unique situation, having experiences in each of the institutions that make up the Canadian system of legal education – from law school to law practice and the regulation of lawyers. For example, I obtained a law degree from the University of Western Ontario; I practised law in private practice in Toronto; I obtained a masters of laws degree from the London School of Economics; I conducted research out of the Institute of Advanced Legal Studies in London; I was a senior legal researcher at the Faculty of Law at the University of Liverpool; I taught at the faculties of law at both the University of British

Columbia and the University of Victoria; I practised law at the Law Society of British Columbia and I taught continuing legal education courses.

My publications include a law school textbook entitled, *Legal Problem Solving* (Fitzgerald, 2004). My first article entitled, *Stirring the Pot of Legal Education* (Fitzgerald, 1993) provides a critical assessment of the British system of legal education. I have also written about systems of professional legal training (Fitzgerald, 1995b, Fitzgerald, 1998b); lawyer competence (Fitzgerald, 1995a); evaluating legal training (Fitzgerald, 1999) and evaluating articling (Fitzgerald, 1998a).

My interest in this research comes from my desire to enable lawyers to be their best. Over the years I have witnessed much sadness and frustration in law students and lawyers – that I felt was not necessary. After I complete this research I intend to help law students and lawyers learn how to practice law in ways that are more consistent with their uniqueness and their values. My personal belief is that lawyers contribute significantly to the good of society. I would like to help them do that better.

### **Structure of the Thesis**

In the next Chapter I briefly describe the system of legal education in Canada. In Chapter Three I review the literature relating to the impacts of legal education on law students and the literature about the educational practices that appear to be impacting law students. I divide the discussion on impacts into the following categories:

- psychological distress;
- disengagement and spiritual distress;
- reduced sense of well-being; and
- underdeveloped professionalism.

I divide the discussion on educational practices into the following categories: teaching methods; content and curriculum; assessment and grading; learning theory; and aims of law school.

In Chapter Four I describe the research methodology used in this study and in Chapter Five I provide the results. In Chapter Six I discuss my findings and specifically the extent to which this study adds to the literature. In Chapter Seven I provide some conclusions and recommendations for further research.

## CHAPTER TWO

### LEGAL EDUCATION IN CANADA

In this Chapter I briefly describe the system of legal education in Canada, touching on the history and development of legal education in North America. Although the focus of this study is on the first year of a university *common law* degree program, it is necessary to understand this stage of education in the context of the whole continuum of legal education.

Legal education in Canada consists of three distinct parts: three years of university law school, up to one year of articling under the supervision of a lawyer and several months of professional legal training. All lawyers in Canada must obtain a university law degree (an LL.B. or equivalent); complete a professional legal training course and article with an experienced lawyer for up to one year. Most lawyers also complete an undergraduate university degree or bachelor's degree before attending law school.

There are 16 *common law* law schools in Canada. These law schools are housed in universities across Canada and each law school offers a degree-granting program resulting in the attainment of an LL.B. degree (also called a J.D. or Juris Doctor degree). With some exceptions, individuals who wish to become lawyers in Canada must receive this degree to comply with the entry requirements set by each of the provincial law societies and to practise law in Canada.

The law degree varies from university to university but is similar in many respects. Each consists of three years of full time residential education where students attend classes at the university. Some universities permit part-time attendance. All of these law degree programs have very similar first year curricula. All common law programs require that students take five core courses in the first year, usually consisting of at least four of the

following courses: Criminal Law, Contract Law, Tort Law, Property Law, and Constitutional Law. The curriculum in the second and third year varies significantly from law school to law school. Some courses are mandatory; some are optional, depending on the particular law school.

### **A Brief History**

Law schools are fairly new to academia. Until about 150 years ago lawyers were trained through apprenticeship. Legal education in the university became an alternative route to becoming a lawyer in the mid 1800s (Grossman, 1974). Twining (1994) suggests that law schools are still emerging from their historical roots and *coming of age* (Twining, 1994, p. 2). The main symptom is that law faculties are being pulled in three directions by the university, society and the legal profession. This tension is reflected in many of the modern debates about legal education, as described here:

*The intense criticism of traditional legal education by the bench and bar, and the academy's equally ferocious response, are nothing new, although the debate has erupted with unprecedented harshness over the last decade. These tensions are attributable to the profoundly different motivations that animate the members of each community, producing discord that rapid changes in the market for legal services have intensified.* (Steinzor & Hornstein, 2002, p. 457)

Dalhousie was the first Canadian law school, established in 1883. Prior to that time, legal training was essentially through apprenticeship and by passing an entrance exam that was set by the provincial law society (McLaren, 1987). These first entrance examinations tested *rudimentary knowledge of Latin literature and English composition* (Bucknall et. al., 1968). This first law school curriculum consisted of practitioner taught lectures for seven hours a day for 21 weeks (McLaren, 1987). Topics included constitutional history, public and private international law, crimes, contract and torts. In 1894 Osgoode Hall law school was established in Toronto. It too consisted of lectures taught by lawyers in the morning and

evenings, for 27 weeks (McLaren, 1987). The Law Society of Upper Canada still required that students article and pass an entrance examination (McLaren, 1987).

In 1915 the Canadian Bar Association (CBA) was formed and four years later a committee of the CBA created a model curriculum for use in law schools in the common law provinces. This 1919 curriculum consisted of a lengthy list of substantive law courses but not ethics and was essentially adopted by the five existing law schools (McLaren, 1987). The first year model consisted of Contract Law; Tort Law; Real Property Law; Constitutional History; Criminal Law; and Practice and Procedure with the History of English Law and Jurisprudence mentioned as worthy inclusions (McLaren, 1987, p. 124).

In the decade following the Second World War the education of lawyers was turned over by the law societies to university law faculties, although articling was still required. Although most provincial law societies defined the list of courses that law faculties should cover, the universities became responsible for setting the qualifications for entry into law school and the number of students to be accepted. University law schools also decided (and still decide) how many courses a student must pass during law school and the content of those courses. These decisions are sometimes made in consultation with the law societies, judges and lawyers but the ultimate decisions are made by the academics (Severide, 1987).

During the 1960s and 1970s several law societies loosened their control over the required courses to be covered and permitted law faculties to demand only a small number of mandatory courses and offer a larger number of optional courses. And so began the tension between law faculties and the profession that still exists today (Severide, 1987, p. 834).

Although the first year curriculum has remained fairly stable many law schools have introduced skills courses over the last 20 years. Courses include negotiating, legal writing and advocacy skills. Several law schools also offer clinical programs which allow a limited

number of students to provide limited legal advice to clients and appear in the lower courts on certain matters (Severide, 1987, p. 834).

Many law schools have also introduced or emphasized the study of ethics and professional responsibility – either as distinct courses or by integrating ethical aspects into other substantive law courses (Severide, 1987, p. 835; Cotter, 1992).

### **The Evolution of Legal Education in North America**

Because most of the literature on legal education originates in the United States, it is useful to understand the differences between the evolution of Canadian and American law schools.

Similar to Canada, during the 1870's in the United States the regulation of lawyers was established. In Canada, the courts delegated the authority for setting requirements for admission, bar examinations, membership, professional responsibility and discipline to the provincial law societies. In the United States, these functions remained with the courts. Control of lawyer discipline and membership is now exercised by the courts or delegated under court supervision. When university law schools were established the education of lawyers shifted from a system of apprenticeship in lawyers' offices to law schools. Unlike Canadians, American lawyers are not required to article or attend post law school training although they must pass state bar examinations.

During this time, the appellate case method of instruction was introduced at Harvard Law School under the leadership of Langdell (Grossman, 1974). This method, which involved the study of decided court judgments, provided an intellectual process which helped raise the study of law to an academic pursuit to be taught by the emerging scholarly law teacher (Grossman, 1974). As stated by MacCrate (1994), *legal education became a*



*respected academic discipline that sought to impart a basic body of knowledge through a core curriculum* (p. 518). The Socratic method supplemented the case method and has remained a solid part of American law school education to this day (Reed, 1921).

American law schools are much like Canadian law schools. Almost all law degree granting programs consist of three years of full time study on a number of substantive areas of the law. As in Canada, each law school in the United States has a fairly similar first year curriculum and more flexibility in the second two years. Although American Bar Association approved law schools have certain requirements, most American law schools have significant control over their curricula. Still there are many similarities among them.

## **CHAPTER THREE**

### **REVIEW OF RELEVANT LITERATURE**

This literature review consists of the following parts:

- A review of the literature relating to the various impacts of legal education on law students; and
- A review of the literature relating to the educational practices that impact law students.

#### **The Impact of Legal Education on Law Students**

Much of the legal literature seems to suggest that there is a crisis in legal education. Over the last 20 years, hundreds of articles have been written about a wide range of difficulties and struggles surrounding legal education, and a vast array of causes. Although the debates are fairly continuous, some suggest that the debates have increased in terms of harshness (Steinzor & Hornstein, 2002).

Only recently, however, has some attention been directed at the harm caused to law students. Although some concerns were raised as early as 1958 (Watson, 1958) the most recent wave of articles has emerged in conjunction with the ever-growing literature on the competence and ethical behavior of lawyers, or the so-called, loss of professionalism.

Although more articles and books are being written that critique the legal profession, there is still almost no empirical research on legal education (Twining, 1994). As you will see below, there is a small body of literature, and some recent disturbing research about the harm caused to law students during law school (Krieger, 2002). The majority of this research has been conducted by psychologists, who are interested in such things as depression, alcoholism

and well-being. As to *causes* of this harm, they make only suggestions and no correlations or empirical links. This research is discussed in detail here and generally suggests that law students are suffering more than the general population. There are also many academic articles and anecdotal writing about what is wrong with legal education, from the perspective of a handful of lawyers, academics and students (Rhode, 1993).

The current research on the impact of law school on students falls into the following categories: psychological distress; disengagement and spiritual distress; reduced sense of well-being; and underdeveloped professionalism.

### *Psychological Distress*

Research on law students extends back to 1958 when Watson, a law professor and psychiatrist conducted research on law student dissatisfaction and alienation. Watson (1968) believed that law school had a detrimental impact on law students and discovered through his research that many students felt alienated and tended to withdraw from law school and the practice of law. Students came to doubt their career choice and many came to see law as divorced from the human condition.

Watson (1968) noted that law students tended to intellectualize most situations without attention to emotions. He suggested that this tendency was exacerbated at law school through the use of the case method which tends to alienate students from the people-centered reality of every day law practice. He places much of the blame on the Socratic method (Watson, 1968, p.124).

This research was built upon by Benjamin et. al. (1986). Their initial research showed that law students have elevated emotional distress (Benjamin, Kaszniak, Sales & Shanfield, 1986; Shanfield & Benjamin, 1985). Their 1986 study (Benjamin et. al., 1986) is perhaps the

most systematic study of law students to date. They surveyed law students in the summer before they entered law school and during their first year. The results indicate that first year law students are psychologically normal before entering law school but that symptoms of psychiatric distress increase significantly, to a level higher than the mean for the normal population, during first year law school (Benjamin et. al., 1986, p. 247).

The study also showed that these symptoms increase throughout law school and do not decline during the first two years of practice. The symptoms of psychiatric distress fell primarily into the categories of obsessive-compulsiveness and paranoia. The 1986 study ultimately concluded that distress may be related to legal education's overemphasis on thinking and its under emphasis on the development of interpersonal skills. It debunked the theory that lawyer dysfunction and dissatisfaction are caused by law practice and specifically long hours and large law firm expectations (Benjamin et. al., 1986, p. 250).

Dammeyer and Nunez (1999) conducted research on the psychological distress of law students at the University of Arizona. They found that law students started law school with essentially normal psychological markers but quickly shifted to major psychological distress in the first year. These negative changes continued throughout law school and into law students' first few years in practice. They found that the incidence of clinically elevated anxiety, hostility, depression, and other symptoms among these students ranged eight to fifteen times that of the general population (p. 63).

This indicates two things. Although law students start out similar to students in other professional programs and the general population, soon after starting law school they show significant increases in psychiatric problems such as anxiety, depression, hostility, and paranoia. These changes continue into the second and third year of law school, and extend

into their law careers. In other words, this picture does not simply reflect a brief and temporary phenomenon at the beginning of law school.

### *Disengagement and Spiritual Distress*

A 1998 article by an anonymous student suggests that Harvard Law School, *routinely generates students who feel insecure, disengaged and fatalistic about the world and their future in it* (Anonymous, 1998, p. 2031). The author suggests that students are institutionalized through a variety of high school-like mechanisms including a fixed class schedule with teachers not of their choosing, the same classes with the same people every day, nightly homework assignments, and their own lockers. He or she suggests that, *this regimentation can create a feeling of destabilization and alienation from the people they were prior to their 1L year* (p. 2031).

The anonymous author describes the first year law experience as one in which students detach from their previous selves and previous relations, creating a type of identity homogenization (Anonymous, 1998, p. 2031-32). She or he suggests that law schools are somewhat like the prisons or institutions:

*Total institutions are designed to detach entering inmates from their previous or presenting culture, to strip away past individual loyalties, and in their place, [to] construct a set of legitimate and homogenous values, identities, and practices that are consistent with the institutional image. Similarly, the 1L year can be understood as a process of identity homogenization in which students are broken down and detached from their connections to the lives they lived before. This process can be a painful one. People come to law school with commitments to ideals and causes, but even more significantly, they come with a sense of self – of being a unique person with a particular history, rhythm of life, perspective on the world, and style of interacting with others. First year students arrive imagining that they will draw upon these particular features of personal identity through the course of this new challenge. Instead, the lesson learned in the first term of life in the total institution of Harvard Law School is that personal identity is largely irrelevant to their legal education and careers.* (Anonymous, 1998, p. 2031-32)

The anonymous author distinguishes his or her theory from Grandfield's (1992) and

suggests that law students tend to give up hope in first year because they are resigned to having no control. This loss of hope is not because, as Grandfield suggests, students adopt a sense of eminence based on the knowledge that they are part of an elite group and will succeed simply because they are part of that group. Anonymous states, *it is not eminence they feel, but rather resignation, confusion, and a loss of their capacity to chart their own futures or make things happen* (p. 2032).

Anonymous (1998) also blames the pacification of law students on the legal profession and the job market for lawyers. The way in which lawyers practice law and the way that jobs are structured reflects the same mythology that supports what happens at law school (p. 2042-43).

Dhanaraj (2001), in a similar vein, suggests that law schools are like medieval monasteries with ritual incantations. Students are forced to exclude from consciousness their prior lives, thoughts, and opinions (p. 2037). In essence Dhanaraj alleges that law school discourages students from becoming fully morally developed, causes emotional detachment, encourages students to devalue their own personal convictions, and stifles imagination and personal creativity.

This concern extends to law students' sense of *anchor* as it relates to values and morals. Recent research suggests that law school causes loss of connection with feelings, personal morals, values, and sense of self (Coquillet, 1994; Culp, 1994; Grandfield, 1992; Krieger, 1998; Mixon & Schuwerk, 1995); and suppresses moral reasoning and creativity (Culp, 1994; Janoff, 1991).

Pang (1999) discusses what is meant by spiritual distress by referring to the research on the spirituality of nurses (p. 259). Pang (1999) suggests that although perhaps

unintentional, law school experience is an assault on many students and causes students generally to detach from their pre-law selves:

*A recent law review note (Anonymous, 1998) laments the "pacification" of Harvard law students. The student author refers to "pacification" as the process that "sucked" from Harvard law students a notable measure of self-worth and energy in law school, turning them into "the walking wounded"—demoralized, dispirited, and profoundly disengaged from the law school experience. Although the note could be dismissed as one particularly disillusioned student's viewpoint, it describes universally recognizable phenomena: the detaching from pre-law school selves and lives, the inability to attain the level of academic excellence enjoyed before law school, the flattening homogenization of identity and career aspirations, and the malaise that quickly supplants the exhilaration felt upon entry into law school. (p. 271-2)*

Pang goes on to suggest that the damage caused to law students will continue to go unaddressed without an institutional awareness of the students' spiritual dimension (p. 260 & 273). These needs reflect the human impulse to connect with other human beings, a higher reality, and, for some, a deity (Pang, 1999, p. 259).

Morin (2000) describes the despair of law students as follows: *I've seen so many students give up their hopes and dreams in the desperate struggle just to survive the first year of law school. Even if they make it through, you can see the energy drain out of their bodies. They start the second year a shadow of their former selves* (p. 243). Morin (2000) blames the Socratic method, the logical, linear formalities of legal reasoning and the lack of any discussion about values in law school. She suggests that the way in which the cases are presented, with people as wooden characters, discourages personal empathy. This in combination with the workload causes students to split off from their own sense of self, as described here:

*In order to adapt to the rigidities of legal thought, students may have to give up valued ways of thinking and perceiving the world. In order to keep up with the vast quantities of doctrine they are expected to learn, students have no time for introspection; as a result, they are split off from their own idealism and forget the*

*very reasons they went to law school. In the process, their self-confidence is shattered and they lose sight of the goals and values they held when they entered law school. It is clear that law is a transformative process, and the transformation is not always for the better. (p. 243-44)*

### *Reduced Sense of Well-being*

The research on law student well-being is based to a large extent on the work of Maslow (1970) who studied human development and identified a hierarchy of human needs. According to his and other related research the extent to which these needs are satisfied is directly related to well-being and satisfaction. A recent empirical cross cultural study by Sheldon et. al. (2001) demonstrates that psychological needs are fundamental to positive life experience (Sheldon, Elliot, Kim & Kasser, 2001). These universal human needs include self-esteem, relatedness, competence and security (Sheldon et. al., 2001).

Krieger (1998; 2002) surmised that these fundamental needs are frustrated in law school and this causes students to become distressed and depressed. Between 1998 and 2002 Sheldon and Krieger (2004) conducted a longitudinal study on the motivation and well-being of law students at three points in time: when they first arrived, near the end of the first year and during the final fall semester. It is the first empirical study of students' changing values, goals and motives and the relation of these to well-being. Here is what they found:

*The arriving students showed healthy well-being, values and motives – stronger, in fact, than a large undergraduate sample. Within six months, however, the law students experienced marked decreases in well-being and life satisfaction and marked increases in depression, negative affect, and physical symptoms. Perhaps more revealing, their overall motivation and valuing patterns shifted in undesirable (external/extrinsic) directions, with particular increases in the valuing of image and appearance, and decreases in altruism and community orientation. These changes predict continuing decreases in life satisfaction and happiness, and are fully consistent with the reports of distress, dissatisfaction, and loss of ethics and values among practicing lawyers. (Krieger, 2002, p. 122-123)*



Krieger (2002) concludes that these shifts are caused by education-related factors and not self-selection, since the shift in well-being occurs after students begin law school (p. 123).

Related to well-being is the human need to feel connected. Research suggests that isolation is a common feeling in law school. Roach (1994) suggests that student problems result more from isolation than from the typically described alienation or from a loss of self-esteem (p. 672). She found that students in her academic support program were isolated from themselves, each other, their professors, and virtually all previously successful coping mechanisms from their undergraduate experience.

Roach (1994) also found that much of the distress felt by first year law students resulted from the lack of context within which they were operating; they were completely isolated from any direction, modeling, or explicit instruction about what specifically is expected of them during their first year (p. 672). According to Roach, the problem is even more difficult for many minority and non-traditional law students who experience acute isolation in most law schools (p. 673). Students of colour are often shut out of both formal networks, such as study groups, and more informal networking systems (p. 673).

This sense of isolation is related in part to the *incessant competition and individualism of law school* (Glennon, 1992, p. 1179). Glennon suggests that law school engenders a sense of failure and negative feelings and suggests that many students disengage from a search for meaning and connection in their professional lives because the law school curriculum conveys the idea that law offers few opportunities to effect meaningful social change. As a result, law students shift their hopes for a meaningful and connected existence from their professional lives to their personal lives (Glennon, 1992).

Also related to well-being is a sense of meaning or purpose. Cramton (1987) suggests that law schools contribute to law students' loss of sense of direction and purpose. He urges us to challenge the "ordinary religion" of traditional law school education that is passed along by silence and acquiescence and looks something like this:

- *Each of you is here (that is, in the world) to get ahead in the world.*
- *You are here (in law school) to learn a job, one that will help you get ahead in the world.*
- *Your job (after law school) is to help your client get ahead in the world.*
- *People can relate to each other only instrumentally, as objects, in a world that is characterized by separateness, competition, and scarcity.*
- *Justice, which is a basic aspiration, is obtained by fair procedures, by following the rules of the game (not lying, for example), and by seeking mutually beneficial exchanges.*
- *Justice is obtained, by and large, under present social arrangements; the interaction of individuals seeking to advance themselves produces a reasonably harmonious and legitimate social order. (p. 512)*

This ordinary religion becomes the new belief system of law students and drives their behaviour in detrimental ways. Cramton (1987) suggests that in order to combat this, law students should ask questions such as: who am I and what do I want to do in the world (p. 510)?

#### *Underdeveloped Professionalism*

Another impact is one relating to law student professionalism. It has been suggested that law schools create graduates who exhibit a lack of professionalism. Diacoff (1997) describes professionalism in the following way:

*... (1) a decline in civility and courteous conduct between lawyers, an increase in unethical and uncivil behavior among lawyers and judges, frequent lapses of appropriate ethical and professional conduct, and increasingly aggressive, competitive, and money-oriented legal battles, fought with a win at all costs approach; (2) increased competition and pressure to win – and the underlying theory that law has become a business rather than a profession, placing a heightened emphasis on materialism and money; a decline in attorney and client loyalty to the law firm; frequent and abrupt dissolutions and constitutions of large law firms; an*

*increase in aggressive lawyer advertising; a perceived general decline in lawyers' values, ideals, and morals.* (p. 1344-1345).

Concerns about the impact of legal education on professionalism first gained momentum in the early 1940's and have waxed and waned since (Llewellyn, 1942). The most significant recent investigation into the link between professionalism and legal education began in 1988 in the United States when Justice Wahl created a task force to find out what law schools should be teaching law students to prepare them for the practice of law (American Bar Association, MacCrate Report, 1992). A related call for accountability of legal education to the profession was initiated by Harry Edwards, Chief Judge of the United States Federal Court of Appeals (Edwards, 1992). As stated recently by Morin (2000):

*Much ink has already been shed about the "crisis" of professionalism and how law schools should respond to it. The critiques tend to center around several themes, including economic changes that have converted law practice from a profession to a business; perceived excesses in the adversarial process, including a loss of civility; an undermining of the traditional independent counseling role of lawyers; concerns about lawyer competency and ethics; and loss of purpose and a sense of "calling" to the legal profession.* (p. 238)

Related to professionalism is the impact of legal education on students' morals and virtues. Many believe that morality is at the root of ethics and legal judgment. As stated by Cramton (1987), *without a moral compass to guide us – a framework that gives significance to alternatives and their rationale – we are adrift* (p. 513). Recent critiques suggest that legal education creates a moral vacuum in students and actually causes a decline in professional and ethical behavior (Webb, 1998). An undercurrent to these claims is the suggestion that law school education downplays the interconnectedness of things and tends to separate the law and the world into distinct categories. Feminist scholars recognized this problem years ago (Gunier, Fine & Balin, 1994; Weiss & Melling 1988). Webb (1998) agrees and places some of the blame on the technical-rational individualism of legal education that separates

moral development from intellectual and professional formation (p.141). Included in the idea of creating divisions is the separation of the emotional and moral role of legal problem solving (Weiss & Melling, 1998, p. 1307).

Also linked to professionalism is the impact of legal education on law students' emotional competence (Silver, 1999a). Several academics have questioned whether law schools effectively prepare students to become fully engaged citizens or professionals in other fields such as professors, politicians, researchers and diplomats (Webb, 1998, Menkel-Meadows, 1994; Brest & Krieger, 1994).

Although many point to legal education as the main cause for some of these problems a few blame lawyers instead. Diacoff (1997; 1998) ultimately concludes that the main reason why there is a crisis in the legal profession is because lawyers are “thinkers” rather than “feelers” based on a psychological assessment. She used the Myers Briggs personality assessment tool to conclude that lawyers are fundamentally wired in a way that is problematic – like the spots of a leopard. Although this research indicates that personality is a factor, it does not dispel other important research that suggests that educational practices and culture have an impact on law students.

### **Summary of Impacts**

The literature identifies the following impacts on law students as being in some way related to legal education:

- Alienation and withdrawal from law school (Watson, 1968).
- Overemphasis on intellect and thinking and little emphasis on emotions and interpersonal skills (Watson, 1958).
- Elevated emotional distress (Benjamin et. al., 1986).

- High levels of psychological distress including anxiety, hostility and depression (Dammeyer & Nunez, 1999).
- Increased sense of insecurity, disengagement and fatalism about the world and the future. Loss of hope and resigned to having no control (Anonymous, 1998).
- Emotional detachment, devaluation of personal convictions, stifled imagination and creativity (Dhanaraj, 2002).
- Loss of connection with feelings, personal morals, values, and sense of self (Culp 1994; Grandfield, 1992; Krieger, 1998; Mixon & Schuwerk, 1995).
- Suppression of moral reasoning and creativity (Culp, 1994; Janoff, 1991).
- Spiritual distress and detachment from pre-law self (Pang, 1999).
- Decreased well-being and life satisfaction (Krieger, 1998).
- Increased depression, negative effect and physical symptoms (Krieger, 2002).
- Loss of sense of purpose and direction (Campton, 1986; Roach, 1994).
- Sense of isolation (Roach, 1994).
- Reorientation from positive personal values towards more superficial rewards and image-based values (Krieger, 2002).
- Loss of sense of professionalism including decline in civility, increased competition and emphasis on materialism (Edwards, 1992; Kronman, 1993; Diacoff, 1997).
- Loss of morality and sense of values (Webb, 1998).

Some of this literature alludes to causes or reasons why these impacts occur. Indeed, it has been suggested that law schools are the breeding grounds for lawyer demoralization among other things (Dhanaraj, 2001). However, as noted, there is little empirical research that links these impacts to the educational practices employed in law schools. Indeed, there has been very little theory-guided research at all, concerning these issues and problems (Dammeyer & Nunez, 1999).

Part two of this literature review describes the educational practices that relate in some way to these impacts.

### **Educational Practices that Impact Law Students**

The relevant literature identifies many law school educational practices that impact law students. Here is a list of some of the factors that surfaced upon an initial review of the literature:

- The Socratic method
- Workload
- Class attendance
- Class participation
- Feedback
- Competition for grades
- Class schedules
- Student ranking
- First year moots
- Homework and assignments
- Theory of legal knowledge
- Framework for learning
- Final examinations
- Case method
- Assessments
- Curriculum
- Emphasis on logical analysis
- Group work
- Choice of courses
- Abstract course content

I intentionally decided to look at *all* the educational factors and not just one or two. My thinking was that a combination of factors impacted students and to divide or separate them would lead to erroneous results. For ease of discussion, I decided to sort these factors into five “practices”. These five practices have their roots in the philosophical underpinnings of education (Scott, 1998). The five practices are:

- Teaching methods

- Content and curriculum
- Assessment and grading
- Learning theory
- Aims of law school

In this section I describe the literature as it relates to each of the five practices. This includes what we know about each and how these practices seem to impact law students.

### **Teaching Methods**

Although relatively extensive, much of the literature related to law school teaching methods is subject area specific and often about techniques. For example, professors who teach contract law tend to write about the various ways to teach this topic. Critiques about teaching methods seem to be narrowly focused without much discussion about the fundamental role of the law professor, learning theory, pedagogy or epistemology.

The reality of much of university law teaching is that many law teachers do not know much about teaching methods, or more importantly educational theory, pedagogy and epistemology (Morin, 2000). It has been suggested that many law professors, *adopt pedagogical methods primarily by virtue of personality and imitation, augmented by a smattering of learning theory, found in academic literature* (Morin, 2000, p. 228-9).

Webb (1996) suggests that one of the main reasons why law school teaching methods are very similar is because methods have rarely been debated outside the privacy of law school common rooms. He points to a deep-rooted conservatism towards how law professors teach and suggests it is ironic, given that faculty members pride themselves on constantly searching for new ideas (p. 27). Some of the literature suggests that many law teachers may be knowledgeable but are unable or unwilling to apply what they know in their classrooms (Morin, 2000).

In this section I discuss the main teaching methods employed at law schools across North America: the appellate case method, the lecture method and the Socratic method and their related critiques. I then discuss why so few teaching methods are used in laws schools.

### *The Appellate Case Method*

All of legal education is driven by the appellate case method which was introduced about a hundred years ago when law schools were introduced into universities in North America.

In the late 1800s Langdell was successful at introducing a law faculty into Harvard University. According to history, he convinced academics that legal education was appropriate for the university by demonstrating that law was a “science” and was worthy of academic study and learning. The new science was the distillation of legal principles from decided court cases. From this emerged the case method and the so-called traditional model of law school as described by Feinman (1998):

*That model of law school is so familiar that it needs only a quick summary. Think of the image of the Harvard Law School that was created in the 1870s by Charles Elliot, Christopher Columbus Langdell, and James Barr Ames, and portrayed in The Paper Chase and One-L. The core of the traditional model is the case method, a method that combined conceptions of legal reasoning and legal doctrine with a pedagogical technique. The case method defined a narrow, professional curriculum, excluding study of both lawyer skills other than doctrinal analysis and broader investigations of the legal process using tools such as philosophy, history, or sociology. At the same time, the case method was the dominant form of pedagogy, seen as appropriate to the subject matter and appropriate for what was presumed to be a student population of uniform background and education. (p. 476)*

The study of law became, and to a large extent still is, a study of the highest level of decided cases (the appellate courts) to elicit legal knowledge. This intellectual piece or knowledge is referred to as *legal doctrine or black-letter law*. Fundamental to the case method is the belief that law is science-like and can be taught as a system of rules which are ordered logically and are internally consistent (LeBrun & Johnstone, 1994).



The case method was considered the best way to teach the law and legal reasoning. Some suggest that it also *cultivates a civic-minded, public-spirited perspective and induces students to care about the good of the legal system and the community it represents* (Kronman, 1993, p. 119). However, the critiques of the appellate case method are numerous.

It has been suggested that the case method could not possibly teach students the necessary bulk of law – particularly statute law (Eagar, 1997). Brest and Krieger (1994) suggest that the case method is not a useful way to help students develop legal judgment:

*We imagine that this view stems partly from his surprising assertion that appellate cases allow students to reenact ... disputes by playing the roles of the original contestants or "their lawyers." In fact, if one looks back to the origin of many cases, the parties were not contestants at all. Rather, they were individuals or entities seeking counsel in arranging their personal or business affairs or resolving a dispute. In many instances, the very fact that litigation ensued signals a failure of their or their lawyers' judgment or skill. Appellate cases, with the facts neatly bundled in a few paragraphs and the legal issues already identified, are as far from those origins as one could be; they offer students little opportunity to develop the skills of the legal counselor. Moreover, appellate cases necessarily focus on matters of legal policy and doctrine, while lawyers are expected to apply their judgment and decision making skills in many situations where legal issues are secondary or quite peripheral. (p. 531-532)*

The case method has come under attack as well because of its emphasis on adversarial aspects of law and categorical thinking:

*The traditional model of law school teaching, with its emphasis on the Langdellian method, rigorous categorical thinking, and competitive adversarial process, may accomplish some important pedagogical goals, but it leaves many casualties in its wake. Critics suggest that it devalues students' experience and knowledge, fosters alienation, and ultimately leaves some students who survive the process cynical and greedy. (Morin, 2000, p. 234)*

The case method has also been criticized for teaching only the common law with little attention to policy, jurisprudence, critical analysis, or moral reasoning (Morin, 2000). Morin

suggests that this is partially why law students *find the law school experience demeaning, infantilizing, and ultimately devoid of passion* (Morin, 2000, p. 236).

It has been suggested that the case method in combination with the Socratic method trivializes our human side. As stated by Pang (1999), *[T]he pattern originates in law school where, on the one hand, students hear about the noble aspirations of the legal profession and, on the other, they learn a method of doing and thinking that tends, at best, to neutralize and, at worst, to trivialize a student's desire to be humanly noble through lawyering* (p. 283). Pang (1999) suggests that students are imprinted with this pattern on a daily basis, causing students to form bad habits simply from repeated experience and behavior, thus forming the *legally-reasoning* student without a soul (p. 282).

The case method has also been accused of being too academic, practical and out of context (LeBrun & Johnstone, 1994). Concerns about the case method are often linked to the so-called false vocational-academic dichotomy (Steinzor & Hornstein, 2002, p. 462-3). These debates center on the question whether law school should be an academic institution or a vocational school for training lawyers. For example, those professors who see legal education as primarily academic would likely prefer the case method.

### *The Lecture Method*

According to the mostly American literature the primary classroom teaching method employed in first year law school is the large group lecture method and the Socratic method. The Socratic method, however, often looks less like Socratic dialogue and more like question and answer periods (LeBrun & Johnstone, 1994, p. 257-258).

LeBrun and Johnstone (1994) reviewed the advantages and disadvantages of the lecture method as it relates to law. According to the literature, lectures are most effective at conveying small amounts of information quickly and concisely (Bligh, 1972). LeBrun and

Johnstone (1994) explain that the lecture method *is based on the assumption that teaching involves an expert lecturer giving pre-packaged knowledge to students* (p. 258). Although generally inexpensive and not very demanding for many professors it causes students to disengage from genuine involvement and it is not useful in developing higher-level skills:

*Lecturing is less valuable, however, for stimulating thought and fostering higher-level abilities. Although the lecture method tends to be at least equal to, and often more effective than, discussion for immediate recall of factual knowledge in an end-of-year examination, discussion-based methods are better for long-term retention and for higher-level cognitive and affective objectives.* (LeBrun & Johnstone, 1994, p. 259)

LeBrun and Johnston (1994) conclude that since law is a discipline that requires skills in application, analysis, communication and values, law teachers should use the lecture method selectively.

*From the discussion above, several conclusions can be drawn. We should never dictate information to our students. If we simply want to convey information to our students, we can give them notes in the form of a handout, or pinpoint parts of a textbook for them to read. Lecturing should never be a substitute for student reading.* (LeBrun & Johnstone, 1994, p. 259)

The lecture method has also been criticized for placing much of the responsibility for teaching on the shoulders of professors, often causing students to become passive learners. Macfarlane (1996) suggested that law school professors abnegated their responsibility of helping stimulate student thinking.

#### *The Socratic Method*

The Socratic method is a questioning technique used by law professors to help students articulate legal principles and the legal reasoning behind judges' decisions (LeBrun & Johnston, 1994). In the pure Socratic method the questioner seeks, along with the other participants, to find answers that are unknown to all of them (Dillon, 1980; Neumann, 1989).

*According to this method, the student has the power to find the truth through diligent searching, judging every solution by reason, and by refusing all authoritative*

*statements. In a Socratic dialogue, the questioner asks the student to assert the truth of a proposition and then refutes the proposition by a series of questions. The essential point is to expose contradictions in the answer. (LeBrun & Johnstone, 1994, p. 282)*

In action, the technique can be as unique as the professor using it, but the standard version consists of a professor asking individual students questions about the cases they have read, usually in a large group setting. The picture often used to describe this method comes from the movie and television series *The Paper Chase*.

The Socratic method has been criticized repeatedly. Webb (1998) suggests that the Socratic method exaggerates and distorts the importance of intellect and down plays the importance of emotions.

*I have already stressed the point that analytical skill is the hallmark of a good lawyer and a critically important tool. However, the Socratic Method leads to an ablation of emotional awareness and can have a seriously distorting effect. I recall my surprise when I first heard this stated as a desired goals in the development of lawyers... While I agree completely that emotions can thoroughly disrupt a lawyer's skill, I cannot overstate the folly of attempting to eliminate them. Emotions are part and parcel of the biological reactivity of the human animal and are therefore irremovable. (Watson, 1968, p.124)*

Strum (1997) characterizes this method as the *gladiator* model of legal education which celebrates analytical rigor, toughness, and quick thinking and defines successful performance as *fighting to win* (p. 121). Menkel-Meadow (1991) describes this method in the following terms:

*...the traditional classroom fosters adversariness, argumentativeness, and zealotry, along the view that lawyers are only the means through which clients accomplish their ends – what is 'right' is whatever works for this particular client or this particular case. We extol loyalty to the client above moral and other concerns . . . We fail to teach our students that lawyering involves responsibility to and for others. (p. 13-14)*

Stropus (1996) suggests that as a result of the Langdellian questioning method, students may suffer anxiety at the realization that law is not as certain, predictable, and

ordered as many students expect. As she says, *not only are the questions themselves difficult, but the student does not enter quid pro quo relationship with her questioner. In other words, students often go unrewarded for their persistence and insight* (Stropus, 1996, p. 458). She suggests that, because the Langdellian method emphasizes logic over personal conviction, it can threaten the personal values by which students define themselves (Stropus, 1996, p. 457). Roach (1994) argues that the combination of the case method and Socratic Method produces widespread acute psychological distress among first year students, often resulting in attitudes of emotional detachment or alienation (Roach, 1994, p. 670-671). Other articles suggest that the Socratic method is disproportionately harmful to non-white and non-male middle class law students (Gunier, Fine & Balin, 1994; Weiss & Melling, 1988).

In response to these problems, Dvorkin, Himmelstein, and Lesnick (1981) introduced a humanistic method of teaching law. Their work focused on the human dimension of teachers and students with an emphasis on teaching with a sense of meaning. They rejected the tendency of traditional legal education to *narrow and homogenize us in the way we look, feel, think, and aspire, in order to separate us from our humanity and values* (p. 2).

#### *Why so Few Teaching Methods*

Much of the blame for teaching methods has been placed on the system of legal education and on law faculty. As suggested by Jaquish and Ware (1993), *[i]nstitutions are also susceptible to habits of mind. Tradition, inertia, utilitarianism combine to produce a habitual approach to matters brought forward for initial consideration* (p. 1713).

Here are some of the identified reasons why law faculties have been slow to address some of the concerns.

*Law faculty are not skilled or able.* It has been suggested that law professors are not skilled or able to teach in more progressive ways. For example, law teachers might find

certain methods difficult or inappropriate (Gold, 1994). Morin (2000) suggests that, *many law school professors are afraid to open up discussion to include personal beliefs and values because they are afraid that the conversation will either turn to emotional "mush" or deteriorate into "politically correct" oratory and debate. But good learning thrives on risk, and it thrives on paradox* (p. 251).

One of the reasons why law professors tend to adopt traditional methods, including the case method is, *[B]ecause the case method was largely divorced from the realities of law practice and from academic disciplines elsewhere in the university, the law professoriate became a distinct academic class narrowly trained in legal reasoning, personified by the first professional law professor, the brilliant but inexperienced James Barr Ames* (Feinman, 1998, p. 476).

Cramton (1987) recognizes the difficulty and dilemma many professors have in teaching sensitive topics. Professors might find it awkward and students might be embarrassed (p. 512-3).

*Law faculty are not interested.* Gold (1994) suggests that many law teachers may not be interested in teaching because it is generally not valued relative to scholarship. Also, many law professors think of teaching as an innate talent and are simply not interested in the principles and practices of teaching and higher education (p. ix-x). Gold (1994) also suggests that the role that law teachers play reflects their own beliefs about who they are and about their own perceptions of lawyering and justice. Law professors are necessarily role models.

*Law faculty have other more pressing interests.* In defense of law professors, Steinzor and Hornstein (2002) remind us that the principals of academic freedom support academia's desire to remain free of the interests and pressures of practicing lawyers. Professors should feel free to write and teach as they please.

*The depressingly familiar quality of many debates about legal education during the last half-century stems in part from the gap between self-knowledge and self-interest. Despite substantial improvements over the last decade, most law professors recognize that our curricular priorities fall far short of our aspirations. We also know that doing anything significant about it would interfere with important academic freedoms – not in the formal sense that has strong First Amendment grounding, but in the more parochial sense that does not. (p. 548)*

Lawyers, on the other hand often feel that academic pursuits are not practical enough (Edwards, 1992).

*Law faculty cannot be held accountable.* It has been suggested that the system of higher education and tenure causes law schools to disregard modern management theories and causes the Deans to become powerless in implementing new ideas (Steinzor & Hornstein, 2002, p. 467-8). Many professors are simply comfortable (Rhode, 1993). As stated by Cramton (1982), legal academics are like other professional groups:

*...jealous of our prerogatives, comfortable with the way things are, and intensely conservative about matters as central to our selfhood as what and how we teach.... We are threatened by discussions of values, by messy human emotions, by personal involvement with students or clients. (p. 332-35)*

Rhode (1993) explains why even those professors who are committed will do little:

*Yet even those faculty who are most committed to teaching rarely storm the barricades seeking pedagogical reform. Few academics have anything to gain by underscoring problems that their colleagues find discomfoting to acknowledge, let alone to address. We all like to think that we are doing a pretty good job at whatever it is that we do. Drawing attention to our inadequacies in print is unlikely to attract the kinds of scholarly acclaim that motivate much of our research agenda. (p. 1549)*

### *Summary of Teaching Methods*

The three main teaching methods used in law school are the appellate case method, the lecture method and the Socratic method. Although all three methods are considered by many to be effective at teaching legal reasoning and legal principles, the following concerns have been raised.

The appellate case method:

- is not a useful in teaching legal judgment (Brest & Krieger (1994);
- is not useful in teaching the bulk of law (Eager, 1997);
- emphasizes adversarial aspects of law and categorical thinking (Morin, 2000);
- teaches only the common law with little attention to policy, jurisprudence, critical analysis, or moral reasoning (Morin, 2000); and
- trivializes our human side (Pang, 1999).

The lecture method:

- is useful at conveying small amounts of information (Bligh, 1972);
- is not useful at stimulating thought or fostering higher level thinking (LeBrun & Johnstone, 1994); and
- is not effective for long term retention (LeBrun & Johnstone, 1994).

The Socratic method:

- produces widespread acute psychological distress among first year students, often resulting in attitudes of emotional detachment or alienation (Roach, 1994);
- causes anxiety at the realization that law is not as certain, predictable, and ordered (Stropus, 1996);
- emphasizes analytical rigor, toughness and quick thinking and defines successful performance as “fighting to win” (Strum, 1997); and
- fosters adversariness, argumentativeness, and zealotry (Menkel-Meadow, 1991).

The literature suggests the following reasons why so few teaching methods are used in law school: law faculty are not skilled or able, are not interested, have other more pressing interests and cannot be held accountable.



## Content and Curriculum

There are many debates about the content and curriculum at North American law schools. Perhaps the most interesting observation about the law school curriculum, however, is that it has changed so little in the last 50 years (Steinzor & Hornstein, 2002).

In this section I describe the foundations of the current law school curriculum: doctrine and black-letter law. I then describe the main concerns about the doctrine and objectivism and explain what appears to be missing from the curriculum.

### *Curriculum Foundations*

Many of the fundamental aspects of the North American law school curriculum were developed over one hundred years ago. The first university-based law schools were designed to teach prospective lawyers the necessary intellectual legal knowledge to be able to practise law. This legal knowledge is referred to as *doctrine or black-letter law* (Webb, 1996). It includes substantive law such as cases and statutes, legal processes such as civil and criminal law procedures, legal systems and legal institutions (Webb, 1996). This is the knowledge that is to be gained by students during their tenure at law school.

### *Doctrine and Objectivism*

Since law schools were initially designed to impart doctrine or legal knowledge to law students, the definition of doctrine is critical. This definition, however, rests on a theory that has been repeatedly questioned. The theory or epistemology of knowledge underlying this concept of legal doctrine is *objectivism* (Morin, 2000). This is the belief that legal doctrine is objective and can be applied objectively to any new legal situation. This particular epistemology has been disputed but is generally accepted to be the underlying epistemology for the majority of law schools in Canada and the United States.

The concerns about this epistemology fall into the following categories: it tends to make legal education a narrow study of legal rules; it tends to reject values, emotions and beliefs; it tends to ignore human and interpersonal aspects; it tends to cause curriculum overload and it does not permit a constructionist view of learning. Each is discussed here.

*It tends to make legal education a narrow study of legal rules.* Morin (2000) suggests that many of the problems faced in legal education relate to epistemology and our misconceptions about the meaning of knowledge and how it is acquired. Morin refers to the writing of Palmer (1998) and states:

*The dominant mode of "knowing" in traditional education, including legal education is objectivism, which portrays truth as something we can achieve only by disconnecting ourselves from the thing we want to know. Objectivism manifests itself in an educational model where knowledge flows from the top down – from experts (teachers) who are qualified to know the truth to amateurs (students) who are qualified only to receive the truth. (p. 234-5)*

Webb (1996) suggests that this concept of legal knowledge is conceived too narrowly and results in three implications. It causes professors to teach only that law that they deem appropriate for academic lawyers to teach and specifically *small changes in the law*. It causes students and teachers to focus solely on *knowing the law* and thus causes an overloaded curriculum or *creeping core*. Finally it supports the *Life Begins at Law School* syndrome or the tendency of students to exclude the relevance of all other forms of experience when learning the law (Webb, 1996, p. 24). Ball (1981) describes it in the following way:

*...the over-all organization of curricula and detailed patterning of most courses in Anglo-American law schools was based on a conception of law as a mere body of rules, and that legal education's organizing principle was that of legal technicality, with particular subject matters purportedly demarcated and arranged in terms of highly ambiguous, overlapping and contradictory concepts of authoritative myth. (p. 127-8)*

Some have referred to this focus on doctrine as reductionist and suggest that when teaching lapses into teaching only rules, it can only create *lawyers technically accomplished*

in rules (Ball, 1981). Webb (1998) suggests that doctrinalism is useful at teaching substantive law but does not equip law students to locate and apply the law meaningfully:

*Enough has already been said over the years about the limitations of doctrinalism so I will pass over this terrain as quickly as I decently can. ... Basic black-letter scholarship is clearly not without some value. It serves to transfer a degree of substantive knowledge and techniques; it should also enhance the translation of law-as-rules into law-as-system. But this is still rather like suggesting a degree in 'tennis studies' should constitute three years of close, systematized analysis of the rules of the Lawn Tennis Association and its institutions. It neither fully equips one to play nor to locate the rules and institutions meaningfully in the social world. (Webb, 1998, p.137)*

Twining (1997) suggests that doctrinalism leads to rigid thinking and a narrow understanding of other practices such as teaching methods, textbooks and grading.

*It tends to reject values, emotions and beliefs.* Morin (2000) suggests that the current epistemology of law school rejects feelings and values:

*In the law school classroom, objectivism manifests itself in discourse that glorifies linear, logical doctrinal analysis as the primary method of "knowing" the law. We discourage students from talking about what they feel, believe, or value, fearing a descent into "mushy" thinking. In teaching legal advocacy, for example, I hear a tape of my voice coaching students: "The judge doesn't want to know what you feel or believe; she wants to know what the law compels." Of course, this "perspectiveless" view has been criticized by a vast body of critical legal scholarship, but I think it is safe to say that it continues to predominate in most law school classrooms. (p. 235)*

Others feel that this exclusion of values can lead to other problems. Allen (1982) states that law school education ought to be concerned with values. Law schools should be asking, not just how to do it but why we do it and ought we to do it at all (p. 14)? He suggests that *why* questions should be asked not simply because law professors are obliged to be critics of the law and its institutions but because it is the law schools' role and one of its most important social functions. More importantly, law students must question in order to understand what law is about. Allen (1982) says, *[h]ow can law be "known" in any fundamental sense apart from its purposes? And how can the future development of the law*

*be anticipated except by reference to how well these purposes are being achieved and how acceptable they remain to the wider society as the community's needs and perceptions change (p. 14-15)?*

Some have suggested that teaching values is critical to combat the tendency in law school to value an individualistic, instrumental, and technocratic society (Cramton, 1987, p. 513). Cramton (1987) suggests that in neglecting values of love, justice and reality we lapse into and even welcome an empty superficiality and a pretense that we are just *technicians teaching technique in a value-neutral context* (p. 513). To invite values means asking such questions as, Who am I?, What am I doing in the world?, and What do I want to do in this world (Cramton, 1987)?

Morin (2000) suggests that students' values are at the root of all other education and Webb (1998) argues that, *[i]f an education is to be liberal, it needs to be liberating. It needs to create in us the ability and confidence to make judgment calls and to act upon them in the social world* (p. 139).

*It tends to ignore human and interpersonal aspects.* Others have criticized legal education and its focus on rules and its tendency to ignore the human and interpersonal aspects of the law and promote competitiveness and individualism. Webb (1998) suggests that non-legal and human considerations are excluded, clients look two-dimensional and opponents are non-existent. Third party or wider social interests are often ignored and as a consequence students learn early on that their instinctive *moral* reaction of, "but that's not right" is simply not valued by the system. Because of this, he suggests that students, *become detached from the wider non-technical issues and often increasingly passive or plain cynical in the face of attempts to get them to respond to a situation. This is a fundamental failure in any system that proclaims itself to be liberal and humane* (p. 138-9).

Menkel-Meadow (1994) suggests that traditional legal education emphasizes the cognitive and de-emphasizes the affective and normative aspects of being a professional (p. 596). Silver (1999b) argues that all law students could benefit from an understanding of psychological concepts, and suggests that law students and lawyers must be more emotionally intelligent (p. 275-6). Silver's concept of emotional intelligence includes the ability of lawyers to confront their emotions and understand the unconscious impulses that drive their own behavior. She urges law faculties to teach students about human relations and the psychology of law practice (p. 306-8). Franzese (1998) wrote:

*For that matter, the business of legal education too often tends to divorce humanity and, indeed, our own humanness, from the study of the subject matter at hand. This tendency is tragic. Lawyers are not automatons, technicians, or hired guns. We are people, representing people in need. To separate virtue from education sets a terrible example and establishes bad precedent. The separation of heart from mind may explain why so many law students and later lawyers are miserable. (p. 19)*

*It tends to cause curriculum overload.* One of the main impacts of doctrinalism on the law school curriculum is that it overloads the curriculum. Each new judgment adds to the bulk of substantive law that students need to know. LeBrun and Johnstone (1994) suggest that regardless of where law students end up working we must consider whether we need to continue teaching them the *staple diet* of knowledge of the law, particularly since the law changes on a daily basis and many law graduates do not go on to practice law (p. 51).

Although some suggest that the issue of coverage is a modern concern due to the explosion of new laws and increased complexity of the law (Steinzor & Hornstein, 2002, p. 268), the debates began long ago. Indeed, the question has never been whether *all* the law can be taught, because it can not. It has been suggested that law schools are *doomed to failure as soon as they represent that they can teach enough doctrine to equip their graduates for practice in any field without a steep post-graduation learning curve* (Steinzor & Hornstein,

2002, p. 459). The question, which has been constant since the creation of law schools is, Given that law school can not teach everything that students will need, what should they teach?

Law faculties spend an enormous amount of time deciding what courses to include and exclude. Several writers provide long lists of courses that should be included in the curriculum. Steinzor and Hornstein (2002) suggest that given the explosion of law and the rapid changes in the law, coverage problems could be conquered by such things as shortening some mandatory courses and adding elective courses (p. 470).

These debates are compounded by the issue about preparing students for the bar exam. Since American law students are not required to article or attend professional legal training courses much of the burden of legal training and bar exam preparation rests on America law faculties (Steinzor & Hornstein, 2002, p. 469).

*It does not permit a constructionist view of learning.* The current definition of doctrine is seen to be inconsistent with conceptualizations of knowledge that are based on constructionist epistemologies (Webb, 1998, p.147). This is discussed further below under Learning Theory.

Modern learning theories support that idea that meaning and understanding are not passively acquired by learners but are actively constructed by each learner. Webb (1998) describes law student learning as involving so much more than bare knowledge. It involves understanding though cognition, emotion and situational factors and this understanding becomes meaningful through use and how we define ourselves in the world (p. 147).

Palmer (1997) contends that truth is not lodged in the conclusions we reach about objects of knowledge, since the conclusions keep changing. We need to know the current

conclusions in order to get in on the conversation, but truth evolves as a result of a passionate and disciplined process of ongoing inquiry (p. 103-4). Palmer (1997) states that *the only "objective" knowledge we possess is the knowledge that comes from a community of people looking at a subject and debating their observations within a consensual framework of procedural rules* (p. 104).

### *Missing Content*

The focus on teaching doctrine often leads to important content being excluded from the law school curriculum. The overlooked law topics that seem to cause the most concern are legal reasoning or legal problem solving, ethics and judgment.

Feinman (1998) describes the commonly felt conflicting aims of trying to teach legal reasoning and cover the necessary substantive law at the same time:

*The traditional law school was schizophrenic in this respect. On the one hand, traditional legal educators argued that the really important thing students learned in law school was the process of legal reasoning, that substance mattered little, so that all courses were fundamentally the same despite their varying subject matter. On the other hand, they felt it important that students be exposed to a broad range of subject matters, and that "coverage" was important in any given course. The new law school spends a great deal of time teaching the elements of legal reasoning in the first year, does some reinforcement thereafter, but no longer spends three years on case method courses.* (p. 479)

Some reject the idea of doctrine and urge faculty to teach legal reasoning instead (Steinzor & Hornstein, 2002).

There is an ongoing debate about the extent to which ethics education and professional responsibility should be included in law school. Webb (1998) suggests that ethics does not seem to fit within the current epistemology. Many law professors have not only encouraged the inclusion of ethical education in law school but have vigorously debated the content of these courses and teaching methods (Webb, 1998; Webb, 1998; Rhode, 1993; Menkel-Meadow, 1991).

The topic of ethics training rose to its highest point in Canada in 1986 when Cotter was commissioned by the Federation of Law Societies to research the extent to which law schools in Canada were teaching professional responsibility (Cotter, 1992). More recently Morin (2000) suggests that there is a mounting critique about the values underlying legal education and the prevailing model of legal professionalism perpetuated by the traditional law school curriculum. She cites the fact that a majority of lawyers report that they would choose another career if they could, and three-quarters would not want their children to become lawyers (Morin, 2000, p. 238).

Even those law schools that do include ethics education encounter problems in terms of its place in the curriculum and the way it is taught (Steinzor & Hornstein, 2002, p. 465-66). Webb (1998) suggests that legal ethics, unlike professional responsibility cannot simply be added on as another part of *knowledge* and urges educators to teach the capacity to make moral judgments based on the models of moral development as understood by psychologists such as Rest and Navarez (p. 139- 40).

Related to ethics is the concern about limited coverage of legal judgment in the curriculum. Several academics have suggested that legal judgment should be included in the law curriculum (Brest & Krieger, 1994). Legal judgment, however, is a complex combination of cognition and affect. As described by Webb (1998), judgment is not simply a simple application of rules and principles. It involves the exercise of perception and the ability to discern and respond with discrimination to a situation (p. 144). Kronman (1993) describes it as more than a clever knack or skill, an ensemble of settled dispositions, habitual feelings and desires and the trait of prudence or practical wisdom (p. 72-3).



### *Curriculum Reform*

Related to content is the issue of curriculum reform. Recently, Steinzor and Hornstein (2002) blamed many of the problems with legal education on the lack of curriculum reform and were extraordinarily candid about the very practical and human reasons why most curriculum reform in law schools is ineffective (p. 484).

Most law schools have in place a process by which curriculum is periodically reviewed and revised (Steinzor & Hornstein, 2002, p. 473). Often a committee is set up to investigate suggested changes and make recommendations. Usually these recommendations must be approved by the faculty. Very little is known about these various processes and very little has been written about their effectiveness.

Steinzor and Hornstein (2002) identified several reasons why faculty might not be interested in curriculum reform. These include the perception that reform would mean more work, would be a waste of time and was too expensive:

*In our experience, some faculty members are cynical about the efficacy of reform. They argue that the tenure system and academic freedom ensure individual autonomy in the classroom, making curricular reform a waste of time because faculty will continue to do what they wish. Others believe that attention paid to curriculum and pedagogy is a waste of time in any event; they contend that what determines a teacher's success are individual skills and knowledge. Some of our colleagues have argued that curricular reform should not be a priority in comparison to the faculty's scholarly output. Finally, some others have said that curricular reform is too expensive because it is likely to result in more subjects that must be taught. (p. 466-67)*

Others have commented on the difficulty in bringing about changes to the law school curriculum:

*While some law schools have seriously reconsidered their curricula in light of the changing demands of the profession, many others seem quite indifferent to those changes and, more fundamentally, to what their students do after graduation. An astute lawyer-businessman recently observed that "law school progress is disgracefully short of what it should be - exactly as we might expect in institutions*

*enjoying great worldly success and perceiving no external threat” ... (Brest & Krieger, 1994, 528).*

Steinzor and Hornstein (2002) also looked at the role that the law school deans play in the process of reform and how they struggle to balance interests (p. 459).

Although this list of reasons provides part of the explanation why curriculum reform is slow in laws schools, most of these are ungrounded assumptions that if not addressed will continue to stall progress. I suggest in Chapter 7 (Conclusion) that these reasons must be brought to the table for discussion before change is likely to occur.

### *Summary of Content and Curriculum*

The literature suggests that the content and curriculum of legal education is driven by our current understanding about epistemology or legal knowledge. The most prevalent view is an epistemology of objectivism. This means that most law schools view legal knowledge as a body of rules or “legal doctrine” and that this doctrine is objective and can be applied objectively to any legal situation. The following are the identified impacts of this epistemology:

- it tends to make legal education a narrow study of legal rules;
- it rejects values, emotions and beliefs;
- it ignores human and interpersonal aspects;
- it tends to cause curriculum overload; and
- it does not permit a constructionist view of learning.

There is also a concern about the absence of legal reasoning, ethics and judgment in the law school curriculum. Finally, law school curriculum reform is very slow and although causes for this have been identified this issue seems to be at the root of many of the problems relating to content and curriculum.

## Assessment and Grading

There is almost no writing on law school assessment and grading. LeBrun and Johnstone (1994) recently noted the lack of debate on the topic:

*Although law school assessment has been based primarily on the standard, three-hour written examination of hypothetical questions, there has been remarkably little literature written on this type of examination in law by law teachers in Australia. One might well wonder whether the examination format represents the last frontier for exploration and discovery by legal educationalists. The fact that so little work has been done may indicate how difficult (or political) an analysis of examination practices in law is. Perhaps we are concerned that we will have to confront, and deal with, the problems and uncertainty which attend this function. Certainly, if we wish to use examinations to their fullest potential, we will have to learn more about their use in legal education. (p. 203)*

In Canada most of the first year core courses are assessed by way of a two or three hour written final examination at the end of the academic year in April. This exam usually consists of one or two hypothetical situations and students are typically asked to identify the law and solve the problem. Although there is typically a mid-term examination in December, in most law schools students are told that this exam is for practice only.

LeBrun and Johnstone (1994) suggest that mystery and myth surrounds the examination process in law schools:

*Many of us hear from our colleagues, and we ourselves relate, how written law school examinations test the comprehensiveness of our students' knowledge. Many of us are told, or we think, that written exams measure several complex abilities, among them the capacity to: spot issues; use analogy, deduction, and induction; and recognize, describe, and apply legal rules and principles to complex and often novel situations (Kissam, 1989). Many of us believe that written exams measure our students' abilities to write effectively, to plan their answers, to work to a deadline, and to perform under pressure. Many of us also assume that exams assess our students' abilities to organize and manage materials, particularly in closed-book papers. (p. 202)*

The literature relating to assessment tells us that assessment affects students in several ways (Boud, 1990). Exams dictate the way in which students approach their learning, cause

students to focus only on areas which are assessed, even if their interests lie in other areas and can encourage students to play the system (LeBrun & Johnstone, 1994, p. 179).

Although many professors understand the importance of critical analyses in their own work they do not apply their critical eye to their own assessment methods (Boud, 1990). Year after year they set the same "advise John" type of question primarily aimed at the cognitive domain (LeBrun & Johnstone, 1994, p. 180).

The literature generally suggests that these typical law examinations are poor learning tools and can have negative impacts on students. According to Kissam (1989) a law school examination:

*...approximates a strange, one-sided conversation or, at best, a superficial kind of 'instrumental writing' that translates a student's instant thoughts about complex matters into written form immediately . . . [This approach] does not approximate the good 'critical writing' that can help writers develop the analytical abilities demanded by legal interpretation, evaluation, and planning. (p. 455)*

LeBrun and Johnstone (1994) explain how professors rationalize law school exams and why students dislike exams including the element of surprise and the time constraints:

*Some students complain about the element of surprise in the examinations some of us set. We, then, defend our practice by saying that we want to test their abilities to use their knowledge and understanding in novel situations in a controlled environment. This element of surprise can, however, be very stressful and counter-productive for some students. ... The problem is compounded because we often impose severe time constraints on students in written exams. Although time limits do confine the actual amount that students can write on a question and do force students to focus their thoughts (thus helping us differentiate between student abilities), time constraints, particularly when coupled with a lengthy question which is full of complex issues and red herrings may benefit only those students who can recognize issues and apply the requisite issues quickly. (p. 204)*

LeBrun and Johnstone (1994) recognize that this type of exam may benefit those students who can recognize issues and apply the requisite rules quickly and in some cases those students who have only a superficial knowledge of law may fare better (p. 204).

However, these exams seem to benefit law professors and administrators. They are relatively

cheap and easy to administer and can accommodate greater numbers of students (LeBrun & Johnstone, 1994, p. 204).

In one of the rare articles written on law school exams, Kissam (1989) suggests that law school examinations cause students to disengage, and this in turn actually benefits law professors:

*The objectivism of law school examinations allows [us] to limit [our] engagement with both the teaching and evaluation of [our] students. The marked discontinuities between classroom work and examination work and the use of quantitative methods to grade law school examinations are the primary means by which [we] achieve this disengagement. In addition, the use of grading curves discourages [us] from providing much instruction or effective feedback to students on their performance ..., for to provide this guidance would make it more difficult to impose a grading curve. In sum, this disengagement frees [us] to pursue [our] non-teaching interests as scholars, consultants, or professional experts... This disengagement also leaves law students largely without guidance ... While this method helps to test [our] students' capacities for self-study and self-learning, it also results in poor education. (p. 436-437)*

Another criticism of this type of examination format is its masculine nature (Kissam, 1989, p. 456-457). It reinforces competition and creates a sense of isolation among the students.

Many law professors would agree that a general knowledge written exam is not a sufficient way of measuring the competence of law students. As stated by Rhode (1993), *passage of a general knowledge exam may not be the best way to serve broader societal interests. Such admission criteria are neither necessary nor sufficient to secure cost-effective services in many substantive areas (p. 1555-1556).*

The most serious impact, however, as identified by LeBrun and Johnstone (1994) is the impact on student sense of self worth:

*From conversations with our students many of us have come to realize that some (many?) students regard exams as actual, objective indicators of their abilities. Some even regard exams as a measure of their personal identity and self-worth. These*

*attitudes are potentially dangerous when students do not perform as they had hoped.* (p.205)

However, even after raising concerns about law examinations, LeBrun and Johnstone (1994) conclude that it is unlikely that there will be any change to these exams and state that, *[g]iven the current staff-student ratios in many Australian law schools, it is likely that examinations will continue to be regular features of the Australian legal landscape* ( p. 204).

In summary, there is very little research on the effectiveness of law school exams. The literature suggests that exams drive student behaviour and that three hour written assessments are not always an effective measure of ability, particularly given current law school exam constraints. These types of exams and their grading can impact students' sense of self worth.

### **Learning Theory**

There is very little research on how law students learn, or should learn. Indeed it has been suggested that law professors are notoriously ignorant about theories of learning (LeBrun & Johnstone, 1994). LeBrun and Johnstone (1994) suggest that most law professors' approach is *intuitive rather than grounded in an understanding of cognitive processes. It would appear that much of the work of law teachers appears to rely on rules of thumb based on, at times, anecdotal and impressionistic evidence rather than on explicitly designed theoretical models* (p. 56-57). They suggest that an understanding of how students learn should be at the foundation of all education. As suggested by Cervero (1988):

*Learners are at the center of every continuing professional education program. While learners are the key actors in this drama, the script has been crafted ahead of time by educators. Like playwrights, educators stage an educational drama on the basis of their model of professionals as learners. This model is rooted in what they believe about how professionals know, how professionals incorporate knowledge into practice, under what conditions professionals learn best, and what role prior experience plays in learning.* (p. 38)

In this section I describe what I see as the main groups of learning theories: behaviourists, cognitivists, constructivists, and wholists and how they are reflected in legal education.

Because so little has been written about how law students learn, I have tried to identify theories about law student learning from the main teaching methods: the case method, the lecture method and the Socratic method.

### *Behaviourists*

Theories of learning have evolved over the centuries and there is significant research about how we learn. The original theories about learning were developed by psychologists, first behavioural and then cognitive. Merriam and Caffarella (1991) describe how the early research of behaviorists focused on how animals respond or learn from physical stimulus.

### *Cognitivists*

The behaviourists gave way to the cognitive psychologists who were more interested in the mind than behaviour. Cognition, memory and mental activity were seen to be critical to learning (Resnick, 1989; Cervero, 1988). The original cognitivists believed that learning consisted of a shift in cognitive structures. Cognitive psychologists use schema theory to describe how the mind and cognitive structures work to retain, organize and use information. Schemas or internal mental models are developed to help us interpret situations. According to Shuell (1986) learning occurs when new knowledge is rearranged according to various schemas or easily recognized interpretations or models.

LeBrun and Johnstone suggest that the lecture method, the primary teaching method employed in law schools, reflects a cognitivist learning perspective. The lecture method is an authority-oriented learning environment in which the teacher or instructor is in complete charge of the teaching and student learning. The result is a role of passivity or dependency on

the part of the learner. LeBrun and Johnstone (1994) explain the problem with this type of method as it relates to learning:

*Irrespective of what others might have thought about the nature of the human mind and the process of education, students do not enter law schools as empty vessels waiting to be filled with knowledge of the law. Some scholars believe that learners learn differently – in the ways they organise their work, and in the ways they “make meaning” or simply attempt to “reproduce” their work. Some writers argue that, in order to improve learning, we need to focus our attention on how knowledge is constructed by building on previous knowledge in a learning context. (p. 53)*

As previously discussed, Webb (1998) suggests that the doctrinalism employed in most law schools causes several problems.

*Legal education and practice become problematic in this light because they contain within their structures a number of ‘authoritarian’ and other tendencies which potentially reduce our capacity for moral judgment. First there is a sense in which law begs an habitual deference to certain formally legitimate kinds of authority in a way that perhaps restricts our capacity to question its moral legitimacy. Second, there is the extent, as I have said, to which it conventionally objectifies legal problems so as to exclude the emotive and interpersonal dimensions of decision-making from consideration. Third, there is the feeling, at least in some quarters, that the process of legal education and training can actually be antithetical to the development of creative or critical autonomy. (p. 140-141)*

Webb (1998) suggests that law school teaches students to blindly follow rules – no matter what the outcome and by teaching students that rules must be followed, we are indirectly teaching them to be complacent. The critical legal studies movement agreed with Webb’s assertions and suggests that this type of learning is harmful to creativity and autonomy (p. 140-141).

### *Constructivists*

Later theorists believed that learning is less about the transfer of knowledge and more about the construction of knowledge. Almost all modern learning theorists fall within this category called “constructivist.” They believe that knowledge is constructed by individual learners as opposed to being externally imposed. As Fenwick (2000) states, *[a]ll views share*



*one central premise: A learner is believed to construct through reflection, a personal understanding of relevant structures of meaning derived from his or her action in the world* (p. 248). Lambert et. al. (1995) reviewed the various principles of constructivist theory and suggest that knowledge and beliefs are formed within the learner as the learner makes meaning of the experience. They also see learning as involving reflection, metacognition and as a social activity (p. 17-18).

Within this large group of constructivists are various branches of research. Roth (1994) divides them into three different approaches: *cognitive* that focuses on schemas and cognitive structures, *cultural* that focus on the interaction of individuals and their culture and *situated* that focus on the context. Here is a general survey of what we do know about how people learn:

- Learning is impacted by our own unique value systems, beliefs, behaviors prior knowledge and different learning styles (Biggs, 1999; Brookfield, 1990; Cervero, 1988).
- Adults prefer their learning to be problem centered, meaningful to their life situations and with some immediacy of application. Adults exhibit a tendency toward self-directedness in their learning (Brookfield, 1990).
- Learning does not happen in a vacuum. Learning is a reciprocal interaction between cognitive, behavioral and environmental factors. (Bandura, 1986; Magro, 2001)
- Learning involves reflection in context (Schön, 1987).
- Learning happens in cycles with various factors impacting learning such as motivation, adult development, and barriers to learning (Cross, 1981).
- Learning occurs when there is a dynamic tension (Jarvis, 1995).
- Learning is experiential (Kolb, 1984).
- Learning is part of human development and self-realization and involves emotions (Maslow, 1970; Rogers, 1961).

- Learning happens in situations of disorienting dilemmas, critical reflection on one's own assumptions, discourse to validate the critically reflective insight, and action (Mezirow, 1997: 60).

In theory the Socratic approach reflects the learning theories of the constructivists. Although the Socratic method views learners as active participants, the way that it is used in law schools does not seem to accept the idea of the learner as a self-determining agent who actively selects information and constructs new knowledge in light of what he or she already knows (Biggs, 1999). Indeed Webb (1998) suggests that the Socratic method makes learners *theoretical spectators* and fails to allow learners to construct their own meaning:

*First, it encourages a pedagogy in which students are merely 'theoretical spectators'; the teaching is often didactic and the ideas 'challenging' in only the most abstract, intellectual sense of that term. We seldom stop to address how students are to find meaning in that knowledge, make it their own, and use it transformatively for their purposes, not ours. (p.137)*

Some of the modern teaching methods used by law faculty suggest that law students learn by reflecting or constructing their own meanings (Rhode, 1993). It appears that these methods are primarily used in second and third year courses and employed by those teaching ethics and professional responsibility (Webb, 1998). A few of these instructors also view the students as moral citizens whose judgments are based on their moral philosophies.

### *Wholists*

Some recent legal literature extends the idea of the learner as a constructor of meaning to the idea of the learner as a person who makes meaning as they grow and experience the world in their community and the world (Vella, 2002). I have labeled this varied group as "Wholists". Wholists see education as a natural part of human growth and can be transformative (Mezirow, 1997). These theories see learning as the continual

development or evolution of the individual in terms of mind, body and spirit and within the community (Frankl, 1984; Csikszentmihalyi, 1990; Rogers, 1961)

A key component of this mix of learning theories is the recognition that learning is not exclusively individual and takes place within a community where there is freedom to make mistakes (Thomas, 1998, p. 357-8).

Related to this type of learning is the concept of community of truth that views learning as a continuous conversation consisting of shared observations and interpretations (Morin, 2002; Palmer, 1997). Objective knowledge is replaced with a notion of truth as *an eternal conversation about things that matter, conducted with passion and discipline* (Morin, 2000, p. 235-6).

A few articles suggest that law professors should view law school learning as part of students' overall development. These academics tend to see law school as one step on a life-long path and recognize that learning during law school involves significant inner growth (Cramton, 1987; Pang, 1999; Morin, 2000).

Morin (2000) urges legal educators to nurture students' inner professional growth and encourage them to develop their "right livelihood" or life passion (p. 233). She suggests that the teacher's role is to guide students through the process of discovering how the legal profession can best fulfill their need for purpose and meaning in their work. In the process she proposes that:

*... students will go beyond externally-imposed norms of professional ethics, civility, and public service to a state of ongoing vocational integration – a learning process by which they will continue to question how to practice law in a way that is consistent with their deepest held values, beliefs, and goals. (p. 229-30).*

Webb (1998) suggests that the main goal of legal education should be to develop morally engaged individuals who will question whether they have done enough under and beyond the law (p 142).

### *Summary of Learning Theory*

The literature on learning suggests that learning is complex and individual. The main groups of learning theorists shine some light on how learning occurs and factors that can enhance learning. The cognitivists see learners as passive recipients, the constructivists see learners as active players in constructing meaning and humanists see learning is a natural process of development. The primary teaching methods employed in law school appear to reflect cognitivist learning theory. The case method, the lecture method, and the Socratic method appears to view students as passive receptors of information as opposed to constructors of their own meaning or developing humans.

### **Aims of Law School**

The aims of legal education form a critical foundation for all aspects of legal education. Discussions about the purpose of law school have deep philosophical roots and are reflected in everything from curriculum to teaching methods and grading.

The literature indicates that there have been many disputes about aims, however, they take place within certain unchallenged parameters, as suggested by one British professor:

*The modern history of legal education is a story of boundary disputes and skirmishes. Black-letter, contextual, critical and skills-based approaches vie for space. However, these skirmishes have taken place within a broader framework – the notion of the qualifying law degree, to be followed by a shorter period of vocational education – that has remained largely unchallenged for nearly 30 years. This framework, and much of the content has been determined by what Twining (1994) has aptly called ‘a neutral expository, descriptive science of law’ (p. 155). This is hardly earth shattering news, and the expository tradition has been attacked so often that it hardly needs me to stick yet another knife in the corpse. (Webb, 1996, p. 24).*

Discussions about the aims of law school tend to focus on one question: What are law schools educating for? Twining (1997) urged legal educators to redefine the *product desired* by asking and re-asking the following questions: What are lawyers for? What could lawyers be for? What should lawyers be for? (p. 82-83). He felt that legal education should be about preparing law students both for what lawyers do now and also for what they could potentially do.

Therefore, I have grouped this discussion into the following three categories or three “products” of law school: the knowing lawyer, the skilled lawyer and the whole and moral lawyer. I then discuss what we know about the aims of Canadian law schools today.

### *The Knowing Lawyer*

The first law schools in Canada and the United States were aimed at creating an intellectual or knowing lawyer. The first models of legal education were based on a traditional or so-called liberal view of education. As described by Jaquish and Ware (1993), the liberal idea of university education was and is first about intellectual development:

*... most law schools retain the philosophy that law school is an academic enterprise devoted to the theoretical foundations of law. Traditional legal educators contend that law schools are not in the business of training legal practitioners. The traditional presumption is that graduates will be equipped to apply and communicate legal analyses to a variety of situations far beyond the confines of mere practice. (p. 1714)*

By joining the university, law schools necessarily accepted certain responsibilities to the university (Allen, 1982; Olivas, 1993). According to Allen (1982) the very presence of law schools in universities meant that legal education must advance the general purposes of the university and specifically help discover new knowledge; organize and communicate existing knowledge; analyze and criticize values; and cultivate aesthetic sensibility (p. 11). Law school was not intended to replace apprenticeship but rather teach, in a more formal way, the theory or science of law.

Legal education came under attack several times during the 1930s. Jerome Frank, a professor at Yale Law School questioned how well law schools were preparing students for the realities of lawyers' work. He wanted law schools to provide students with more appropriate training in order to prepare them for the public profession of law (Frank, 1933).

Llewellyn (1935) also wrote about what was wrong with law schools and suggested that, *no faculty, and, I believe, not one per cent of the instructors, knows what it or they are really trying to educate for* (p. 653). Llewellyn was a realist who questioned the idea of law as a science or, *a system of rules which are ordered logically within an internally consistent, hermetically sealed legal universe* (LeBrun & Johnstone, 1994, p. 8-9).

In 1955, Griswold (1955) argued that it was, *no longer possible for a student to know all the law* and urged law schools to stop teaching *less and less about more and more* (p. 230). He pointed to the difficulty faced by both faculty and students to keep up on law and all its complexities. He recommended the creation of new materials and new approaches with a focus on the human relations side of lawyering.

Twining (1994) describes the debates as a tug of war between three aspirations:

*In all Western societies law schools are typically caught in a tug of war between three aspirations: to be accepted as full members of the community of higher learning; to be relatively detached, but nonetheless engaged, critics and censors of law in society; and to be service-institutions for a profession which is itself is caught between noble ideals, lucrative service of powerful interests and unromantic cleaning up of society's messes.* (Twining, 1994, p. 2)

Many years ago Twining (1997) suggested that most discussions about legal education were based on two contrasting ideas about purpose of legal education. These ideas were grounded in two very different images of lawyers. The first image was of Pericles, the enlightened policy maker, the law giver, the wise judge. The second image was that of a plumber, a no-nonsense, competent technician concerned with socially useful, but easily

mundane tasks (Twining, 1997, p. 312). Although Twining argued that neither model was appropriate, primarily because each was too simple and too extreme, he provided no new model. Instead he suggested that legal practice is too complex and varied to be reducible to a single model for intending lawyers (Twining, 1997, p. 313). Indeed, Twining suggests that our rigid thinking, about many aspects of legal education, is the Achilles heel of our present patterns of legal education:

*There is a need to break free from the extraordinarily rigid stereotyped thinking that has come to dominate most discussions of legal education: that the cosmos is irrevocably divided into fields of law such as contract and torts; that the only mode of classification to be used in curriculum planning is that of fields of law; that examinations must be three hours in length; that examinations can only test knowledge of legal doctrines and ability to apply rules to hypothetical fact situations; that all courses must be given equal weight; that every course must have a textbook; that every textbook must conform to a standard pattern; that legal doctrine is "the" subject-matter of legal studies; that every lawyer is a private practitioner of law; that there should be a uniform pattern of qualifications for law teachers; that there are accepted and fixed criteria of the suitability of a subject for study in a university – and so on. (p. 83-84)*

Twining (1997) urges law teachers to question their assumptions about what they are teaching and why (p. 83-84).

### *The Skilled Lawyer*

The 1960s and 1970s brought the "skills movement" and a wealth of literature about whether and how to bring legal skills into the law school. The movement was driven primarily by increasing increased public scrutiny of the legal profession and questions about the ability of lawyers to provide legal services, especially to the poor (MacCrate, 1994, p. 519). Several judges and academics questioned the law schools' role in educating lawyers.

The skills movement was lead by legal academics who were often practising lawyers, who felt law schools should teach layering skills. In Canada, years of debate were lead by

Gold and a handful of professors and professional legal trainers (Gold, Mackie & Twining, 1989). A similar wave of debates took place in Australia (LeBrun & Johnstone, 1994).

Edwards (1992) became a leader in this discussion when he stated that *too many law professors are ivory tower dilettantes*, and accused the academy as a whole of harboring a *disdain* for the practice of law. He challenged law faculty to eliminate the *growing disjunction between legal education and legal practice*, by focusing on both classroom education and the scholarship that informs legal education. He suggests that many law schools have abandoned their proper place, by emphasizing abstract theory at the expense of practical scholarship and pedagogy (p. 35).

The peak of the “skills movement” was reflected in the culmination of the MacCrate Report (American Bar Association, 1992). The MacCrate Report sparked years of debate about the purpose of law school, most of which became known as the so-called vocational vs. academic divide. Some suggested that law schools are primarily for educating lawyers (vocational) while others suggest that law schools are for educating about the law generally – but not limited to educating for the practice of law (academic). LeBrun and Johnstone (1994) summarize this debate (p. 52).

In addition to teaching skills, many law schools began shifting their aims slightly to include ethics (Rhode, 1993; Webb, 1998; Cotter, 1989). This was driven in part by pressure from lawyers and judges to teach professional responsibility and specifically legal judgment.

Menkel-Meadow (1994) suggests that a major weakness of legal education is that it is based on the model of the lawyer as adversary. She recommends a better model of a professional with a wide range of skills but also a human being who exercises judgment, cares for her fellow human beings and who has a vision of what professional work should be that goes beyond litigation (p. 595).



*The Whole Lawyer*

There is a small but growing body of literature that suggests that the main aim of legal education should be the creation of whole lawyers and legally trained professionals.

Fox (1994) and Morin (2000) argue that educators must accept responsibility for nurturing students' *right livelihoods*. They suggest that the first task in remodeling education is to understand that education is for work and not merely jobs. Cramton (1987) suggests that law school has a much broader function than simply skills training. He suggests that legal education should involve education on such topics as justice, beauty, truth and goodness (p. 510).

This aim would include moral education including values and virtues. In her recent article, Franzese (1998) urges lawyers to recapture the virtues (dignity, mutual respect, cooperation, peacemaking, independence, and prudence) and to hold them out to an increasingly troubled world (p.21).

There are several overlapping movements that support this aim. These include professors promoting the concept of therapeutic jurisprudence (Wexler, 2002); humanization of legal education (Krieger, 2002); and comprehensive law (Diacoff, 1999). Each of these movements indirectly suggest that legal education should pay more attention to the human side of law, legal education and law practice – particularly since lawyers are burdened with dealing with life's most important issues (Pang, 1999, p. 274).

Although some have suggested that law schools are not the place for this type of education, here is one response:

*One may ask, "But why the law school? Send them to the chaplain." My response is simply that law school and the law are instruments of a much larger enterprise. The spiritual offers a glimpse of and an explanation for this enterprise. If one goal of legal education is to develop great human beings who practice law, professors need to assume some responsibility for maintaining the human and the humane in our*

*beings. ... I believe that lawyers need to develop the habit of reaching their own higher ground in order to do the same with their clients. If we rarely scale the heights to which our spiritual dimensions point us, we are less able to genuinely share with clients the vision and aspirations gained on higher ground. (Pang, 1999, p. 278- 81)*

### *Aims of Canadian Law Schools Today*

Very little is known about the aims of Canadian legal education. The most recent article on the topic was prepared for a 1984 conference on legal education, Charles (1987) attempted to identify the aims of law schools by looking at the most recent research (Arthurs, 1983) and law school calendars. He suggested that legal education in Canada is the product of two major influences. The common law legal system is primarily based upon English law and the educational system has been based on the American model (Charles, 1987, p. 187). Charles concluded, much like Arthurs (1983) that the main goal of Canadian law schools, much like United States law schools, was to train lawyers with the knowledge that a growing proportion of law graduates will, after graduation, become involved in occupations other than the practice of law but which involves utilization of legal knowledge training (p. 187).

However, both Arthurs (1983) and Charles (1987) identified a division in aims. According to the Arthurs report, fifteen faculties emphasized the training of students for the practice of law and ten sought to provide students with an understanding of the relationship of law and society, and to attempt to develop the students' interest in law as a scholarly discipline. Charles (1987) describes the split between liberal and professional goals as schizophrenic (p.190).

There is no current research on the aims of Canadian law schools or the courses being taught (Charles, 1987). Charles (1987) reminds us that, in addition to the objective of providing an adequate legal education, it must be remembered that law schools see themselves as creators of legal research. Although the aims of legal scholarship have been

criticized (Arthurs 1983; Kronman 1993) it remains as a critical part of university based-legal education. (Charles, 1987, p. 191).

### *Summary of Aims of Law School*

The aims of legal education underscore all educational practices, from teaching methods to grading. The espoused aims of law school are often debated but tend to be narrow. The literature suggests that there are three categories of aims: the knowing lawyer, where the primary aim is to provide black-letter law to students; the skilled lawyer, where the main aim is to prepare students to be skilled lawyers; and the whole and moral lawyer, where the aim is essentially to produce moral citizens who may be lawyers.

### **Summary of Literature Review**

This chapter consists of a literature review on the various impacts of legal education on law students and the educational practices that impact law students.

### *Impacts of Legal Education*

The current literature describes many impacts of legal education. I divided these impacts into four categories. The first is psychological distress. Research in this category suggests that law students suffer from a sense of alienation and withdrawal from law school and elevated emotional distress such as anxiety, hostility and depression. The second category is disengagement and spiritual distress. The relevant literature indicates that during law school students experience an increased sense of insecurity and fatalism about the future; a general loss of hope; resignation to having no control; emotional detachment; devaluation of personal convictions; stifled imagination; suppressed creativity; detachment from pre-law self; and loss of connection with feelings, personal morals, values and sense of self. The third category, reduced sense of well-being, indicates that law students experience a

loss of sense of purpose and direction; a sense of isolation and a decrease in life satisfaction. The final category, underdeveloped professionalism, suggests that law students experience suppressed moral reasoning, reorientation from positive personal values towards more superficial rewards and image-based values; decline in civility, increased competition; emphasis on materialism and loss of morality and sense of values.

Some of this literature alludes to causes or reasons why these impacts occur. However, there is little empirical research that links these impacts to the educational practices employed in law schools.

### *Educational Practices*

The literature on law school educational practices has been divided into the following five categories: teaching methods; content and curriculum; assessment and grading; learning theory; and aims of law school.

*Teaching methods.* The three main teaching methods used in law school are the appellate case method, the lecture method and the Socratic method. Although all three methods are considered by many to be effective at teaching law students the following concerns have been raised.

The appellate case method is not useful in teaching legal judgment, it emphasizes adversarial aspects of law and categorical thinking; it teaches only the common law with little attention to policy, jurisprudence, critical analysis, or moral reasoning; and it trivializes our human side. The lecture method is useful at conveying small amounts of information; is not useful at stimulating thought or fostering higher level thinking and is not effective for long term retention. The Socratic method produces widespread acute psychological distress and anxiety among first year students, often resulting in attitudes of emotional detachment or alienation; it emphasizes analytical rigor, toughness and quick thinking and defines

successful performance as “fighting to win”; and it fosters adversariness, argumentativeness, and zealotry.

The literature also suggests several reasons why so few teaching methods are used in law school.

*Content and curriculum.* The literature suggests that the content and curriculum of legal education is driven primarily by the current understanding of epistemology or legal knowledge, which is an epistemology of objectivism. This means that most law schools view legal knowledge as a body of rules or legal doctrine and that that this doctrine is objective and can be applied objectively to any legal situation. This epistemology has several negative impacts. It tends to make legal education a narrow study of legal rules; it rejects values, emotions and beliefs; it ignores human and interpersonal aspects; it tends to cause curriculum overload; and it does not permit a constructionist view of learning.

The literature reflects some concern about the absence of legal reasoning, ethics and judgment in the law school curriculum. It also indicates that law school curriculum reform is very slow and suggests many pragmatic reasons why this is so.

*Assessment and grading.* There is very little research on the content, form or effectiveness of law school exams. The literature generally suggests that exams drive student behaviour and that three hour written assessments are not always an effective measure of ability, particularly given current law school exam constraints. These types of exams and grading can have detrimental impacts such as impact on students' sense of self worth.

*Learning theory.* The literature on learning suggests that although learning is complex and individual there is important research about how learning occurs as well as the factors and processes that enhance learning. The cognitivists theorists see learners as passive recipients, the constructivists see learners as active players in constructing meaning and

humanists see learning is a natural process of development. The primary teaching methods employed in law school appear to reflect cognitivist learning theory. The case method, the lecture method, and the Socratic method appears to view students as passive receptors of information as opposed to constructors of their own meaning or citizens who are continually developing.

*Aims of law school.* The aims of legal education underscore all educational practices, from teaching methods to grading, and are often debated. The literature has been divided into three categories of aims: the knowing lawyer, where the primary aim is to provide black-letter law to students; the skilled lawyer, where the main aim is to prepare students to be skilled lawyers; and the whole and moral lawyer, where the aim is essentially to produce moral citizens who may be lawyers.

I the next Chapter I describe the research methods used in this study.

## CHAPTER FOUR

### RESEARCH METHODOLOGY

In this chapter I describe the research methodology and specifically the research design; the participants and focus of the study; data collection; the sample; data analysis; and risks and limitations.

#### Research Design

The design of this research and the specific research methods were driven to a large extent by the ultimate goal of this study. The original goal was to better understand the experiences of law students in relation to the educational practices employed in first year law school. Specifically, I was interested in how law students would describe their thoughts and feelings about first year educational practices.

Since so little was known about legal education, I decided to conduct a qualitative study. As described by Morse (1991) a qualitative approach is best in the following situations:

*Characteristics of a qualitative research problem are: (a) the concept is "immature" due to a conspicuous lack of theory and previous research; (b) a notion that the available theory may be inaccurate, inappropriate, incorrect, or biased; (c) a need exists to explore and describe the phenomena and to develop theory; or (d) the nature of the phenomenon may not be suited to quantitative measures. (p. 120)*

I decided to conduct in-depth interviews and used a qualitative research method with a phenomenological approach. This type of qualitative study results in descriptive as opposed to numerical data; is inductive and not intended to prove or disprove a theory; and uncovers the underlying meanings about how people make sense of their experiences (Bogden & Biklen, 1998 p. 4-7). Researchers who use a phenomenological approach, *attempt to*

*understand the meaning of events and interactions to ordinary people in a particular situation* (Bogden & Biklen, 1998, p. 23). Phenomenologists do not assume they know what things mean to the people they are studying and begin their enquiry with silence (Psathas, 1973). A foundation to this method is the belief that there are multiple ways of interpreting experiences and that reality only comes to be understood in the form in which it is perceived (Bogden & Biklen, 1998 p. 25; Gubrium & Holstein, 1994).

As stated by Oritz (2003), *interviews give researchers unique insight into the lives and experiences of the individuals most affected by the educational problems and issues under study [they] allow the researcher to explore a topic in a way that yields rich data impossible to obtain through surveys, document analysis, or observation* (p. 35).

My theoretical orientation, which impacts the design of this research (Bogdan & Biklen 1998), has its roots in the concept of socially constructed knowledge (Lincoln & Guba, 1985).

The framework for my research originated in the five categories of educational practices identified in the literature review. From these five categories, I drafted the following questions to focus my interviews:

- What are the teaching methods and instructors' roles in first year law school?
- What is the content and curriculum of first year law school?
- How is learning assessed and how are students graded in first year law school?
- What is the learning theory embedded in the first year law school curriculum?
- What are the aims or purposes of first year law school?

I prepared the interview protocol and piloted it with two lawyers to receive feedback about the clarity of the questions, flow of the questions, and my skill and technique. The final interview protocol is in the Appendix.



### Participants and Focus of the Study

The participants in this study were graduates of law from the University of British Columbia (UBC). The focus of the study was their first year law school experiences and specifically in relation to the five “core” courses taught in first year law school (Contract Law, Criminal Law, Tort Law, Real Property Law and Legal Institutions).

I interviewed 19 law graduates who had completed law school at UBC a few months earlier. Their first year class size was approximately 200 students. At the time of the interviews they were attending the full time Professional Legal Training Course (PLTC) offered by the Law Society of British Columbia.

I selected UBC as my site because it is one of 16 Canadian *common law* law schools and offers a full time first year curriculum consisting of five mandatory first year “core” courses, much like other Canadian law schools. The University of British Columbia was most convenient for me since I live in Vancouver.

I selected graduates, as opposed to current law students, for many reasons. The literature and my findings suggest that while students are in first year, they are often unable to understand or articulate what they are experiencing. Indeed, the literature suggests that they are being *institutionalized* and may be in the midst of a serious transformation (Anonymous, 1998). Also, by graduation I believe that students have a better perspective on their education in terms of comparing it to others courses and professors, understanding how the first year fits into the rest of legal education and assessing its relevance to the rest of law school and perhaps law practice.

I chose the first year curriculum as the focus of this study for several reasons. First, most the literature suggests that the first year of law school impacts students most. Second, because all first year students are required to take the same courses, which are taught and assessed in a similar manner, student experiences could be compared more easily without having to adjust significantly for differences in courses, professors and grading methods. It was for this reason as well that I chose to focus only on the five “core” courses taught in first year and not other first year courses such as legal research and writing or legal perspectives.

Finally, I wanted to results of this study to be beneficial to many people. Since the first year curriculum is similar in many law schools in Canada, the United States and Australia, what is learned here will benefit those around the world.

### **Data Collection**

I posted two notices at the Professional Legal Training Course (PLTC) on the second floor in the Law Society building at 845 Cambie Street, Vancouver, Canada. A copy of the posting is in the Appendix. The postings were up for about two weeks. I set up a table for one hour on June 6, 2005 so students could sign up for interviews. Several PLTC instructors made announcements to their classes about the research and told students where to sign up.

I contacted each graduate by e-mail and sent each a *Letter of Initial Contact* and *Consent Form*. I then contacted the participants either by e-mail or telephone to arrange a date for an interview. At the beginning of each interview I reviewed the *Consent Form* and each student signed one. A copy of the letter and form are the Appendix.

The interviews took place between June 16 -28, 2005. I conducted face-to-face in-depth one hour interviews with 19 graduates. The research protocol is in the Appendix.

I interviewed all students in a private meeting room in the Law Society Building at 845 Cambie Street, Vancouver. In the interviews I asked mostly open-ended questions. I opened with broad open-ended questions and probed only when necessary (Rubin & Rubin, 1995; Spradley, 1979). After each interview was completed I reviewed my notes and added things I missed. I took detailed notes at each interview and audio taped, and transcribed the interviews for analysis.

### **The Sample**

I used a *purposive sample* and *maximum variation sampling* (Patton, 2002). I interviewed as many students as needed to reflect the variety of perspectives of law graduates, about their experiences in first year law school.

I employed the constructs of *sufficiency* and *saturation* in determining how many students to interview. I felt that 11 interviews were sufficient to reflect the range of experiences I was investigating. I reached saturation at about interview 15 when I began hearing the same information repeatedly throughout the interviews. At that point I felt I was not learning much new. I continued to interview 19 students since I had arranged the interviews, but nothing significantly different emerged in interviews 16 through 19.

In an effort to attract a representative sample I paid each of the students \$25 for the hour interview. To ensure I had a mix of students with various grades, I asked each graduate whether their first year marks were in the top quartile, top half, top three quarters or bottom quartile. Seven had marks in the top quarter, nine had marks in the top half, one had marks in the bottom half and two had no idea. The gender split was ten males and nine females

## **Data Analysis**

The words of the students were my primary source of data. There was no numerical or quantitative data collection or analysis. This research was inductive. I did not predetermine what I hoped to find and I remained open to all possibilities about the experiences of law students. My goal was to reduce the data from the interviews into meaningful constructs that best represent the experiences and understandings of these law students.

Qualitative researchers need to find patterns in their data that fit together or express a theme (Schensul & LeCompte, 1999, p. 150). To identify patterns it was necessary to code, categorize and re-conceptualize themes as they came to light. Structures only begin to emerge and coalesce after I had read and re-read, organized, and re-organized the data many times. As stated by Fetterman (1998) the researcher must compare, contrast and sort through the data until patterns of thought or behaviour emerge.

I isolated the themes into meaningful pieces and organized them into categories that reflected the emerging themes. I developed the categorization by comparing pieces of data to other data. I placed non-fitting pieces into a miscellaneous category. I sorted related items and organized them into categories and sub-categories while attempting to link the relationships between each. This constant sorting was both time consuming and mentally taxing. For example, the raw data from the students cut across and overlapped all of the five interview questions and the first categories that emerged related most to impacts and not the initial five educational practices. Indeed it was not until the final stages of analysis and the final writing of this thesis that I realized that my initial five-part categorization was most appropriate for articulating the results of this study.

The quality of qualitative research and the ways of determining validity and reliability of this type of research is somewhat controversial (Seale, 2003, p. 169). The search for criteria for judging the quality of qualitative research has been ongoing (LeCompte & Goetz, 1982).

Lincoln and Guba (1985) propose a four-point criterion list to assess the quality of the research: credibility, transferability, dependability and confirmability. They have recently added a fifth criterion of authenticity (Guba & Lincoln, 1989, 1994).

To establish *credibility* the researcher needs to prove that the research was conducted in such a manner as to ensure the research subject was accurately identified and described (Lincoln & Guba, 1985, p. 314; Marshall & Rossman, 1999, p. 192). It is concerned with the truth of the data. The credibility of this study comes from my having the necessary qualifications to conduct research on legal education, from selecting participants who could describe their experiences in a rich and authentic manner and from capturing numerous quotations from the interviews that reflect not only the individuals' experiences but the connections between the experiences of many students. As for my credentials, it is important to note that my experiences as a law student twenty years prior, as a law instructor and as a policy lawyer undoubtedly impact this study in many ways. I believe that these experiences also enhance this study in many ways. It enabled me to understand the context and understand most of what students were saying. I was blessed by the rich and lengthy comments of graduates and included in this thesis almost everything that they said. I think that my own legal training which teaches us to focus on clear evidence helped me to keep separate my personal opinions. I can only hope that my heavy reliance on the evidence (their words) will balance the possibility of any leanings I may have.

*Transferability* refers to the usefulness of the findings to others or external validity as conventionally conceived. The transferability of this study rests primarily on my decision to study the first year law curriculum. Because many law schools in Canada and the United States have a similar first year curriculum, this data will in many ways be transferable or at least useful in understanding better the thoughts, beliefs and experiences of first year law students.

*Dependability* refers to consistency or reliability as conventionally conceived. This would typically be fulfilled by peer audits. In this study dependability comes from the rich descriptions provided in the interviews.

*Confirmability* refers to neutrality or objectivity (Marshall & Rossman, 1999, p. 194) and relates to the extent to which the findings could be confirmed by others (Lincoln & Guba, 1985). Although qualitative studies by their nature cannot be replicated the confirmability in this study relies on the details of the research methods and the interview protocol. The research is described in sufficient detail to enable others to duplicate or test it.

*Authenticity* is demonstrated if researchers can show they have represented a range of different realities (Lincoln & Guba, 1994). In this study, authenticity is reflected in the range of experiences reflected in the interviews. This study provides a more sophisticated understanding of law school and provides a wide variety of viewpoints.

### **Risks and Limitations**

All names of participants have been kept confidential. In those situations where students mentioned specific names of other students, faculty or staff, these names were deleted. Because there are so few first year law classes and so few professors teaching these classes, certain examples necessarily identify various professors. For example, two professors

used such unique practices so that, although I have not mentioned their names, a reader may be able to guess who that professor might be. I have tried my utmost to keep the identity of all persons confidential.

There are a few limitations with this research. Because I am the person both conducting the interviews and analyzing the data, there is a possibility of personal bias. My experiences as a law student, a graduate law student and as a lawyer undoubtedly impact this research. This is described above. Although I felt my prior knowledge enhanced this study, particularly in understanding the language and the peculiarities of law school, I am aware of the possibility of bias. To combat this I have tried to be conscious of the perspectives I might bring to this research, both from my own personal experiences as well as from my reading of the current literature – much of which highlights the negative aspects of legal education. My potential bias is limited somewhat by the fact that I am independent of the university and the regulatory body of lawyers. I am partially funded by a neutral funding body: the Law Foundation which supports independent research. I have limited my possible bias by recognizing its potential and by building in controls into my methods, such as open-ended questions.

Another limitation is that I only looked at the experiences of students from one law school. The experiences of law students at UBC may or may not reflect the experiences of law students at other universities. Another limitation is that I interviewed only 19 law graduates. Although I am confident that this number is sufficient for purposes of this study, more interviews might have uncovered more data. One final limitation is the fact that the graduates I interviewed were speaking about their first year experiences that happened almost three years ago. Although I was surprised that they recalled so much about first year, I am aware that over time, memories will fade somewhat.

### **Summary**

In this chapter I describe the research methodology used in this study. I describe the research design and explain why I decided to use a qualitative study and ethnological interviews as the data collection method. I explained why I selected UBC law graduates as the participants of this research and why the focus of the study was on the first year of law school, and specifically the five “core” courses taught in first year. I described how I collected the data and the sample I employed. I described the way in which I analyzed the data and discussed the quality of the qualitative data collected. Finally, I discussed some of the risks and limitations of this study.

The next chapter describes the results of this research.



## CHAPTER FIVE

### RESULTS

In this chapter I discuss the results of the research. The data are presented in the following categories, which generally correspond to the literature review and to the interview questions:

- Teaching methods
- Courses, content and materials
- Assessment and grading
- Learning and development
- Aims of first year law school

Under each of these headings I address the two main research questions which are:

- How do law school graduates describe the educational practices they experienced in first year law school?
- How do law school graduates perceive the impacts of these practices on themselves as learners?

#### Teaching Methods

In the interviews I asked graduates to focus on the five “core” courses in first year law school and tell me what they recalled most about the teaching methods and the professors. I then asked how they felt (then and now) about the teaching methods and professors.

##### *Teaching Methods Described*

*The five core courses.* Each of the 19 law graduates I interviewed was able to quickly recall the five first year “core courses” and the professors who taught them. In their particular year the core courses were Contract Law, Criminal Law, Tort Law, Real Property Law and Legal Institutions. All first year law students were required to take these five courses and

were assigned to specific sections. Students did not choose the courses or their timing. Four out of the five courses were taught in large groups with approximately 70 to 100 students in each class. One of the five core courses was taught in a small group of about 20 to 25 students.

*Different from class to class.* The initial response of most of those interviewed was that the teaching methods in first year law school were different from class to class, and professor to professor. Several said that some professors were better than others.

*Well they were certainly different from class to class and it sort of operated on the spectrum. You know, so you had some, professors who really left the majority of it up to you. ... Yet other professors, who literally walked you step by step through every single case reading that was assigned and, depending on the area, sometimes I appreciated that. In Property Law, for example, I was very spoon fed and it's a good thing, from my perspective because it wasn't going to come intuitively to me. (Interview #1)*

A few respondents described each course one-by-one. Most, however described them together identifying the similarities and differences among each.

*The lecture method.* According to all those interviewed, each of the large group classes was taught by the lecture method. This was often described as a professor talking and students taking notes. The typical class would consist of a professor reviewing the assigned cases while focusing on the judge's ruling (i.e., the ratio or holding) of each case. Here is a typical comment:

*The teaching methods were a lecture style. That included the course I took a small group in, which was Contracts. Generally, the teacher would discuss whatever we had been told to read which was usually a number of cases relating to some topic that was important to that area of law. I believe that the teachers would go through the readings and discuss the cases. Some teachers exclusively limited their lectures to that. Others asked more questions. The casebook, I think, was basically what guided the teachers in their teachings. (Interview #3)*

Some professors asked questions and engaged in brief discussions with students or, as one student said, *I wouldn't call [it a] discussion, it would just be clarification of some things that we were talking about* (Interview #3). The type of questioning was described as follows:

*Oftentimes the professor would ask, you know, who can tell me what happened in this case? Somebody would start it off, you know, give a basic description of the facts. Perhaps somebody else might, you know, put up their hand and add something else that was important. The professor would then pose some questions. Well, what were the main issues? Somebody else would answer that. ... I still would consider, in many ways, just a lecture format. It wouldn't qualify as necessarily a real discussion.* (Interview #4)

The lectures followed the course syllabus and covered the related course materials.

Two graduates referred to the lecture notes that some professors taught from as *playbooks* as reflected in the following comment:

*[The teaching methods] all seem to conform. A lot of them play from the same playbook, so a lot of them are, whether you are in one person's class or another, they're all working off the same material. But, for the most, it's a bunch of basics on a topic and reviewing cases, and there is a large group trying to figure out the ratios and do some applications.* (Interview #1)

Although most professors used questions and answers there was a general sense of minimal student participation.

*Other teaching methods.* There were two anomalies in teaching methods. One was a Property Law course taught by a lawyer, as opposed to a professor. This instructor used practical problems, videos and novels. The other was a Criminal Law course in which the professor used criminal law textbooks. The following comments demonstrate how different this course looked to law students:

*The case books she assigned were real Cole's notes, they weren't case books; they were just legal type books, but real Cole's notes versions, with very little description of the actual cases that made up the law. And then, raised social type issues for each of the general topics, whether it was sentencing or whether it was, in criminal procedure ... She was the only one, in first year, that took a less case-by-case approach and expressly said, rather than give you a casebook with 120 cases, we're*

*going to cover them, but in a different way, we're going to cover them through these two textbooks. (Interview #1)*

*The Socratic Method.* Although many professors asked students questions during lectures, only a couple of professors used the so-called Socratic method. This method was described as follows:

*[The professor] used the Socratic method, as he called it. He picked out names alphabetically, [and]... he would, yeah, just introduce a case and then say, okay, who's going to tell us what this is about, call Timothy Anderson, or whatever, and then say, okay, what is the ratio in this case? (Interview #5)*

One professor used a so-called "soft" Socratic method and let students know in advance that they would be called upon and in what order.

*The small group.* As stated, one of the five core courses was taught in a small group setting. Each student in first year was assigned to a small group class of about 20 to 25 students to learn one of the five core courses. According to graduates, the teaching methods used in the small group were primarily the lecture method with a bit more interaction. Most graduates told me that more discussion occurred in the small groups than in the large group classes. Like the large group classes, many of the small group classes were spent briefing cases or summarizing the facts, issues and holdings of the assigned cases.

*Outside class teaching.* Teaching also occurred outside of classes. The most common method was students asking questions immediately following the class. Many graduates told me they approached professors after class. Some suggested this avoided possible embarrassment by asking questions in the larger group setting.

Some students visited professors during office hours and a few e-mailed their professors. Almost every graduate mentioned that the professors kept strict office hours. Most said they had minimal contact with their professors outside of class time. A word frequently used to describe the relationship students had with their professors was "distant."

Although most told me that first year law professors were both available and accessible, about half said they felt intimidated by their professors.

*CANs.* All but one graduate used course summaries called CANs (Condensed Annotated Notes). These were course notes prepared in prior years by law students who had completed first year law school in a prior year. Many of these CANs were created for specific courses taught by specific professors. A few graduates told me the CANs would even include jokes that professors would tell during a class, year after year. All but one graduate used CANs in some form, most for use in studying for the final examinations in April.

### *Impacts of Teaching Methods*

*Lectures convey information.* The main theme that emerged in relation to the impacts of teaching methods was that the lecture method was generally good. Almost every person interviewed was glad to be taught by the lecture method. Most gained comfort knowing what was going to occur during the lecture and were pleased to know that, generally speaking, they would not be required to play an active part in the lecture.

Many graduates felt that the lecture was an effective way to get through the large quantity of materials. Most graduates told me that they used the lectures to help them determine what they needed to read. Due to the volume of materials and the difficulty in reading the cases most students relied on the lectures to help them find out what was important. Several graduates described the technique as going to class before doing the readings. As one student stated, *it was much more efficient for me to do readings after class, because then you already had an idea of what was going on. You know, time was very much at a premium* (Interview #4).

Almost all graduates suggested that the purpose of the lecture was to convey information. As described by one student, *[t]he professors were there to relay the information ...to give their lectures. They stood up and did the job* (Interview #16).

Although most graduates suggested that the lecture method was fine, they emphasized that it was fine, given the particular content. As stated by one student, *the methods were absolutely fine given that the content of the course was stuff out of casebooks... Whether what we were being taught was suitable is another question* (Interview #3). Another student described it as follows:

*I liked [the teaching methods] I thought they were effective. ... I didn't know or realize at the time that perhaps what we were learning wasn't useful or effective, but those teaching methods were effective and most of the teachers knew what they were talking about. That's my perspective. Someone else might tell you that they were simply regurgitating the text and that doesn't involve much effort on their part.* (Interview #3)

This concern about what students were learning is reflected in the following comment:

*I felt that the professors were comfortably fulfilling the job requirements but not doing an effective job at preparing us for the profession. The teachers being lecturers were not giving us ... an opportunity to have practical experiences. They were not giving us an opportunity to question the givens in law, to have discussions, philosophical discussions or critical discussions. Those types of things, I would have enjoyed a lot, so, I think that they, being conveyors of the knowledge, failed to implement their role.* (Interview #3)

Importantly, every student mentioned that lectures were the main way for them to find out what was going to be on the exam. All graduates wanted the professor to tell them this. Almost all graduates stated that the entire focus was on teaching to exams.

A few graduates were surprised when professors used the lecture method in the small groups. One suggested that the professor in the small group could have built better

relationships with students and could have helped students organize and prioritize their studies:

*Despite the fact that it was our small group and there was only 20 people, it was very lecture minded because I guess I was surprised at, I thought that they would have taken advantage of the small class size. All the other classes are big and you can't really do much in terms of activities or anything else beside lectures basically. (Interview #6)*

*Professors are experts and want students to learn.* The professors were always seen as experts in their particular subject areas. They were also generally seen as enthusiastic, as indicated in these typical comments:

*...the professors seemed to be sort of like a beacon of knowledge, they knew everything about law and you know nothing about it and you have to learn from them and they're not going to make any mistakes and I had excellent profs, so all of my profs I can honestly say were if not the best profs in the school for that subject, very close to the best. They were all very knowledgeable and I don't think I ever asked a question which they couldn't answer. (Interview #10)*

*...for the most part, I had professors that were very interested and enthusiastic about what they were teaching, and very, very knowledgeable, ... I felt that the professors I had were really interested in their topic and they really got it and if you asked them a question or if they got stuck, you could always count on the vast majority of them heading back to their office, figuring it out and then getting back to you, so they were excited about it. (Interview #1)*

Several graduates felt that most of their professors wanted them to do well as described in the following comment:

*I think that the impression I had in first year was that they [the professors] did care and they did want you to succeed. They wanted you to understand the material and if you had questions they would, they wanted, you know, they wanted to answer them for you. I never felt like they particularly cared to meet many of the students in their classes. You know, really engage a whole lot outside of class, but I, I mean, I think that they certainly went to the effort to try and communicate the issues clearly. (Interview #4)*

Although most students told me that their professors were available, several suggested that they were intimidated by them and thus tended not to want to speak up in class or approach them. Here is a sample comment:

*I always felt intimidated though by all of my professors. ... You feel like they have so much power over you and ... like these are the people that are your only teachers, like they can give you references and stuff for your job and if you say something dumb in front of them or ask them the wrong question then maybe they're going to think less of you. Meanwhile they don't even know your name, they have no clue who you are and they don't really care so. ... You just feel like a number, not even a number, you just feel like another person with no personality whatsoever. (Interview #10)*

*Professors prepare students for exams.* Several graduates said that the role of the professors is to help them learn what they need for exams – like a guide through the materials to writing the exam, to succeed in the course. The emphasis on preparing for exams came from both the professors and the students as reflected in the following comment:

*You would feel you were learning through exams and doing well on the exams instead of learning for the sake of learning or understanding. Exams are great at times but they are a crutch for learning. (Interview #6)*

One student recognized that professors were also in a *difficult position* because many of the students were more interested in doing well on exams than they were in learning or understanding.

A few graduates suggested that they felt that the professors tended to emphasize research rather than teaching or that their teaching role was secondary to their role as academics.

*I'm not sure that they perceived their role, particularly to be great teachers. It seems to be the common impression with universities, you know. ... Often, I think often, they perceived their role as to be more of researchers, whereas the teaching was more on the side. (Interview #4)*

Most graduates suggested that the law professors' role did not include giving students advice about anything non-law specific such as other aspects of law school, how to read cases or how to manage. One graduate seemed concerned that professors, while focusing on teaching the law are not attentive to students' overall experience.

*I think they should do a better job of making sure that the students not only learn the law but also come out of it with a favorable experience. I think they don't address that*



*part enough. Maybe they're just fulfilling their duty of teaching the black letter law and not necessarily being attentive to what the students feel about the whole process. (Interview #19)*

One student was surprised that no professors mentored her. Although graduates mentioned that the professors had office hours, they did not tend to consider the professors very approachable and tended not to go to the professor unless they had serious concerns about the specific subject matter. One student described the impact of this narrow role as making him feel unimportant.

*I felt a little unimportant. The focus was not on the students. And now, I feel jaded I think. ... Most of the full time members seem to be although there are exceptions, most of the full-time faculty members seem to care more about research than teaching. .... I mean unapproachable and perhaps not spending, not putting too much effort in to their lectures. ... I guess perhaps I could feel it from reluctance to meet with the students or to receive emails. ... For instance like restrictive office hours. Don't come to see me unless it's Wednesday 1:30 to 3 where you know when you also have these other class to go to. (Interview #17)*

One comment that was made consistently is that the professors barely know students. One referred to law classes as a "sea of faces" for the professors (Interview # 8). Several graduates said they felt anonymous.

*Questions were not appreciated.* Although only a few professors used the Socratic method, students who were in those classes generally did not like it, for several reasons. They did not like having to prepare for classes, particularly given the volume of readings and the difficulty in reading and understanding cases and they felt uncomfortable being put on the spot. One graduate said it detracted from her learning:

*It really detracted from my learning experience I found because I was always so concerned about whether I was going to get called on ... It was actually really traumatizing because you're rambling on to people you don't know and they're all listening to your answer and you can be wrong and then the teacher will contradict you and then you'll look stupid and it's such a competitive environment that it was really scary and I think they also claimed that they did it to make sure that people would talk and get used to speaking in front of other people but it just really, I found it really ineffective. (Interview #10)*

Most of all, students disliked being called on in front of their peers, usually for fear of looking stupid. One described it as scary.

*Well some teachers did the Socratic Method and that was a little overwhelming in that you never knew when you were going to be put on the spot. Sometimes I actually saw the students being scolded by the teacher you know when they didn't bring the materials to class and the teacher would say well if you were in court this would be a big embarrassment. It was only first year. (Interview #17)*

Most graduates did not generally want to hear from other students during class time.

Almost every student said they disliked the question and answer periods. The following describes the frustration students felt:

*At times I found it frustrating when the discussion would get a little bit out of control in my mind. There was, in first year in particular, a whole lot of random hypothetical that would often be thrown out. You know, what happens if the fact was a little bit different than this way and they would entertain that for a long period of time and oftentimes that got a little frustrating. To be honest, I am someone who actually likes the lecture format. I don't, you know, I find that I learn best by reading and just kind of taking the time on my own to sit and think about things rather than discussions and so on in class, so I like just being there taking down the notes and then going home and thinking about it afterwards. So I might be more in a minority that way but I like lectures. (Interview #4)*

One student described the question and answer aspect of lectures as requiring minimal brain use. She felt that the professors were asking questions to check up on students or scare students, not to stimulate any thinking (Interview #6). A few graduates said they appreciated questions in that they encouraged students to come prepared for class, but felt that it caused too much stress.

*Lectures were not engaging.* Several graduates mentioned that the lectures were not engaging and did not encourage participation. As one student explained, the professors *came in, they lectured on the material, some would ask questions, some wouldn't, and some would*

*lecture the whole time...they would have no idea who anyone in the class was, like, they would have no interaction* (Interview #4).

One graduate described the professors as *reciting rather than communicating or engaging*. Although most graduates accepted this role as sufficient and satisfactory, a few mentioned that it caused them to “zone out” in lectures (Interview #15). One graduate told me that some students would play computer games during lectures. Some stopped attending lectures when they knew what was going to be covered. Several graduates felt that professors could put in a bit more effort into making them more exciting (Interview #5).

One theme that emerged was the fear of asking and answering questions in the large group setting. One student told me that he avoided asking questions because it might make him look stupid and might slow the rest of the class down:

*With the 25 person class, you had a much greater opportunity to ask questions, uh, without feeling like you were, uh, slowing down a class of 200. Uh, I don't have trouble, speaking out, but of course, some do, right? So, it's easier to, sort of, even the timid, to just say I have a question in a group of 25 rather than put up your hand in front of 200 people – especially if you don't know what you're talking about, it can be intimidating. So, the small group is much easier to interact with the instructor.* (Interview #1)

*Modern methods were criticized.* It seemed that most graduates were quite concerned with getting *solid answers* from their professors and those professors who tried non-lecture techniques were usually criticized. This could be because students were comfortable with the lecture method.

Several graduates questioned the use of more modern techniques for teaching. In one large group setting, a professor asked students to form small groups of two or three students and discuss a particular issue. One student described this method of teaching as, *avoidance of their teaching job* (Interview #3).

Several graduates mentioned one Real Property professor who used different teaching methods. Each said they did not appreciate the value of the methods at the time, but now realize they were useful and practical. At the time they felt that learning through such things as novels and videos were not as effective. They were more interested in learning the rules of law and the correct answers (Interview #5). One student said that although she did not like the use of these other methods, upon reflection she realized their value (Interview #15).

A few students, however, felt that more engaging teaching methods could result in better learning. Here is a sample comment:

*There was this trade off, the more work you have to do it seems like the better you learned. When you go to class and sit there for a lecture and take 100% exam isn't a whole lot of work you have to do whereas if you [have] assignments, activities, exercises, discussions, you are forced to participate, it is a lot of work and you hate it but... it does make you pay attention. (Interview #6)*

Two graduates told me that they would prefer more active teaching methods, such as small groups and more interaction with the professor. However, they were quick to state that other students would not support this. These graduates told me that although they knew that other teaching methods might enhance their learning the lecture method was the least “painful” for preparing to write exams in April.

*Lecture notes were appreciated.* Almost every student described a professor or two who was exceptional. One thing that tended to distinguish these professors from others was that they provided students with lecture notes or summaries of what was to be covered. The following comments reflect the importance of these notes to first year law students and the impact it had on their views of the particular professor:

*[One] Prof I had was absolutely fantastic, too. She had a very distinct teaching method; she put everything on the Internet for us on her web site. She made a case chart which was probably about maybe 20 pages long where she gave the case name, the ratio and like a couple quotes, I mean she basically got your exam ready for you and so by that point when you wrote the exam it was all on you to be able to*

*synthesize and write which I thought was very important because it's one thing to memorize all that stuff but she just taught us how to organize ourselves and you know that's something that carries on later because then you make case charts in other classes because she taught us how to do it. She didn't treat law as though it was some crazy mystery that you could never possibly get the key to; she helped you find the key. (Interview #15)*

*She made lecture notes ahead of time. You knew what she was going to lecture on. She stayed to course and she knew the points she was going to make and she gave you handouts so you didn't have to go like mad writing in class. You know, I don't understand if all the teacher wants you to do is take notes in class, they'll make great legal secretaries because I can write really quick, thank you very much, and write things down, but if you want a legal mind, maybe you could give me the information and I could be thinking about it in class, not just writing like a mad man. (Interview #2)*

*Unsure of learning.* Almost every graduate mentioned that they did not really understand what they were learning. This is discussed further under Learning and Development. Here are some typical comments:

*Looking back I didn't know what I was learning, I didn't know if I was learning. I felt I was learning a case, a ratio and then another case and a ratio and I felt that's all I was learning. I felt I wasn't getting any big picture. Now, I think that I needed to get that first in order to be able to get the big picture later. But I don't think it's anything that was taught, I think it's almost something you need to learn yourself, I don't think it's something that law school actually teaches you. (Interview #11)*

*Honestly in first year you don't know anything about law school or what you should be learning or what you should be concentrating on or how you should be doing it for that matter and it only comes to light in second year and maybe even in third or maybe even afterwards. (Interview #13)*

Most said they could have benefited from some direction from the professors or through the materials. Several graduates mentioned that feedback would have been useful. One student felt that the lack of feedback made it difficult to know what she was learning and suggested this was a lazy way to teach (Interview #4).

## **Courses, Content and Materials**

In the interviews I asked graduates to focus on the five "core" courses in first year law school and tell me what they recalled most about the courses, content of those courses and teaching materials. I then asked how they felt (then and now) about the courses, content and teaching materials

### *Courses, Content and Materials Described*

*The core five and black-letter law.* Every student was able to list the five "core" first year courses: Tort Law, Contract Law, Criminal Law, Real Property Law and Legal Institutions. Each of the five core courses had a syllabus that described what was to be covered by the students on a week-by-week basis. Each syllabus listed the topics to be covered and the expected readings for that course and included a list of supplementary readings that was usually a list of textbooks or articles.

Most of the graduates described the first year curriculum as a study of black-letter law or a broad overview of the law.

Legal Institutions was always described as the course that was not like the others. It was often described as a *first year political science course*. About half the graduates interviewed found it useful, the other half found it, *a waste of time*.

*Teaching materials.* When asked to describe the course materials almost every student mentioned the *400 or 800 pages of hole-punched photocopies of cases*. These so-called casebooks consisted of hundreds of court cases or judgments that dated back to the 1800's. They also included a table of contents, case excerpts, case annotations and some journal articles. The most consistent theme relating to the description of materials was the

large quantity of cases that students were expected to read. One student mentioned that they were expensive.

Other teaching materials included journal articles, textbooks, lecture notes and summaries prepared by professors. A few professors posted their lecture notes on a website.

A few graduates mentioned that they used textbooks but usually only in those courses where the professor specifically told them to do so. A few graduates said they could hardly keep up on assigned readings so did not have a chance to look at the list of supplementary readings that included textbooks.

*CANs*. Every student had access to several different sets of course summaries from prior years called *CANs*. They were available on disk and come specific to each particular class and professor. Their value was described in the following way:

*It had gotten to the point where you if can get a good CAN for the course you're in, with the professor you have, and you can trust it then you've got a real gold, serious gold going on. Not only do you have the cases that are briefed, and just what you need, you've also got the instructor's commentary. And, if the instructor is working from the same book that she or he used the year before, you've got their quotes, I mean, you know. And I think, and some people view that as a very negative thing? (Interview #1)*

### *Impacts of Courses and Content*

*A good summary of the law.* Most graduates agreed that the course content of the core five was a good general summary of the five areas of law. All graduates felt that the first year courses were well organized. Every student emphasized that all of the course syllabi were clearly laid out. Most indicated that the course outline was logical and provided a step-by-step outline that matched the course materials. They found this very helpful given the quantity of materials.

*I think that the syllabus for each course was laid out very clearly, so you knew what topic you were in, you knew what was coming up next, and you always knew where you stood week to week. (Interview #1)*

A few students mentioned that the curriculum was skewed toward the common law even though much of the law today consists of statutes in combination with common law.

*Too theoretical, not practical and some bias.* Several graduates described the curriculum as being too theoretical and not very practical. As one student said, *there wasn't much practical application so it was very theoretical and it was hard to see how things could be used in real life* (Interview #17). Others described it as, *just theory not much application ... abstract, ethereal, historical information [and] very academic* (Interview #3). Here are some typical comments:

*Back then, when they were teaching, they seemed like they were teaching stuff that was going to be very useful for the practice of law and that they were really establishing what law was really going to be and but now, I realize that it's very academic what they taught and their I think views on the whole five core courses was purely academic ... You really don't know anything else so you just take everything at face value and you just accept what they're teaching you.* (Interview #19)

*...in law we're talking about the rules that govern our society, you're talking about the very real things that affect people's lives on a daily basis and the law school doesn't seem to be covering how any of this really impacts us in any real way. It just sort of well there's this principle over here but then this principle over here and [it] ... really didn't engage the students.* (Interview #16)

Several graduates felt that first year law school could be much more practical.

*I think that it needs to be seriously changed. ... This is the opportunity to teach students what the profession is all about. What they should expect and what options they have and what kinds of skills are useful. That's not what they're learning. They're learning abstract principals from case law. This is a trade, the legal profession.* (Interview #3)

A few students mentioned that there were not very many exercises to help them apply what they were learning. As a result they did not feel their minds were too active. Several graduates felt that this lack of real-life scenarios caused them to forget much of what they learned. As stated by one student,

*It could be more effective if the teaching method was one in which you have practical problems to solve, you were doing things. ... Frankly if law school was incorporating*



*that to some degree, and you were working through problems and assignments and things throughout the year, I think it could be a very different experience. (Interview #16)*

Several graduates mentioned that they no longer recall what they learned primarily because they did not use any of their learning after completing first year. One student, reflecting back said that although it seemed fine at the time it is a *great disappointment* that students did not learn more (Interview #17).

A number of graduates were concerned about the *bias* of certain professors and their tendency to lecture about policy. Several graduates mentioned that a few professors only covered the areas they were most interested in, to the detriment of the rest of the course content. Two students felt strongly about the professors who *pushed their one sided policy* on students.

*I thought some of the Profs; their role was to push UBC law policy on you. They didn't give a damn about the law, they didn't give a damn about the educational experience, they just wanted to make you, in their eyes, a better person because you were left wing. (Interview #3)*

*Why the core five?* Several graduates mentioned that they were initially not sure why the five core subjects were selected for the first year curriculum. Almost every student told me that they did not completely understand why Real Property Law was still included in the five core courses.

Several graduates spoke disparagingly about Legal Institutions and questioned why it was one of the core five courses. As stated, some found the course quite useful while others felt it was a waste of time. Although several students told me they enjoyed the course, one student said, *Legal Institutions was just a joke. That was social studies eleven ...I don't even consider it one of my law courses (Interview #2).*

A few graduates wondered why first year did not include a civil litigation component. These graduates felt that such a course would have provided a context for the other first year courses and would have assisted them in understanding where the cases originated.

A few graduates told me that they eventually figured out the relevance of the five courses and understood why the five courses were being taught. Here is a typical comment:

*I think it happened towards the end of first year, it was almost like there was a light bulb and it was like oh so this is how it all fits together. At the beginning of first year I just thought okay so there are these five totally separate subjects and I had no idea how it all fit together. It took sort of towards the end of first year and then into second and third year to actually figure out how it all fit together. (Interview #11)*

*Not sure how cases fit together.* Most graduates had very little idea about how all the cases fit together. This sense about not knowing how the cases fit was one of the most articulated themes within the interviews. Almost every student told me that they did not know why they were reading the cases, how the cases applied to each other, how the cases related to the law as a whole and how they would eventually use these cases. Here is a typical comment:

*Then I felt, I found them difficult trying to see how the cases fit together. ... For some of the older cases say 1800's cases I found extremely hard to understand the underlying facts and then understand what the court's position was. I felt that the content was quite dense. It was a lot. (Interview #17)*

One student suggested that there was no framework:

*Sometimes it felt like there was just this mushy mould and there was no skeleton and that if they didn't give me no skeleton there was no form and then they were just giving tons of theory and nothing was placed into context. (Interview #8)*

Most students had very little idea about why they were reading the cases, as reflected in the following comments:

*Well, the whole thing was a disaster. ...it didn't seem to make sense, why would, why we were studying what we were studying, and it didn't seem to make sense why we had to go through all of it twice to get out one sentence and the stuff may have been interesting, but that's not what they wanted us to know. You know, that it was*

*everything and we were expected to know a sentence. So, that was all very confusing for a lot of people, for myself. (Interview #3)*

### *Impacts of Course Materials*

*Too much reading.* Every student indicated that there was too much reading. All of the graduates described the casebooks in disparaging terms. Almost every graduate laughed when I asked them to describe the course materials. They would then typically say something like, *you mean the 400 or 800 pages of photocopies that we had to buy in the first week of classes?* Here is a typical perspective:

*[The casebooks consist of] ... just 100 old cases that no one even cares about anymore. It's interesting because in first year you think it's so bizarre that you're learning from these photocopied packages that you have to pick up in the distribution centre in the law school, you don't even go to the bookstore ...not having a textbook is good I guess because you don't have to spend the money. But I personally would prefer more textbooks; we didn't use a lot of textbooks at all actually. (Interview #15)*

One student described the readings as intimidating. Several graduates mentioned that the workload was heavy, but manageable.

*Some irrelevant reading.* The large amount of reading was compounded by the growing sense that many of the reading materials were not relevant. Every student interviewed eventually formed the opinion that much of the reading was irrelevant, and relevance was measured in terms of useful for obtaining high marks on the final exam. For most, *the light went on* after Christmas exams when most students gained a sense of what the final exam would be like.

*...what sticks out most in my mind is that at some time, someway through first year, I decided that I did not need to read the casebooks at all ... And the contents of the exams made it very apparent that we did not need to know the details to the extent that it was printed in the materials. Basically, just to have a general understanding of that information which we could have easily obtained by listening in class. (Interview #3)*

One of the most common phrases I heard in the interviews was: *why do we need to read all these cases to just extract one paragraph* (Interview #15). This feeling is reflected in the following comments:

*I feel like there was, it was in many ways a very inefficient way to teach a lot of the stuff. You would get cases, particularly in torts, there was a 40 page case where it was really the point of it was to, you know, extract one main principal. And I think that that's, in many ways, a waste of time.* (Interview #4)

Many students shifted their study behaviors in January. Some graduates said they eventually acquired the skill of sorting through what was important. Others said they eventually got used to it. Some described the ways in which they adjusted such as by using headnotes (case summaries) that were available through QuickLaw, an electronic legal database or by relying more on CANs.

Only one student said she enjoyed reading the cases. She described the readings as useful and said she learned how judges made decisions, learned about key cases and enjoyed the stories (Interview #3).

*Difficulty reading cases.* Almost every student had difficulty reading the cases. Most graduates told me they had no idea how to read cases and found the cases confusing – especially the older cases in Real Property. One student suggested that the cases were hard to read because they were old and used old language and because the facts were hard to find because the cases were all appeal cases and the facts were not readily apparent.

*I think jumping into the cases was the hardest part, the cases and statutes. In having little guidance on it. I mean we can all read but it is some kind of reading and the amount of reading that is overwhelming ... I am used to reading a lot but I am not used to reading cases and judgments and statutes so that took a while to learn how to read and I learned on my own because it was not really spelled out at all.* (Interview #6)

Several graduates mentioned that the cases were easily forgotten because they were not relevant in this modern age and students can't relate (Interview #15).

Others suggested that the cases could have been edited. As stated by one student, *the criticism is that there's no time to read so they just don't read anything. So maybe if they had them edited a little better, people would actually read them* (Interview #17).

Several graduates felt that guidance from professors about how to read cases and statutes would have been helpful. A few students said the professors try to shock students with volume and throw students in without much guidance. Here is a typical comment.

*A lot of cases, a different kind of reading than most people ever do before they go into law school. That was a bit of shock I guess. We were not given much guidance. It would be just here are your readings and they would be six cases and we had never read cases before so you would not know how to read them and it would be like judgments are structured in certain ways. ... for me it would have helped [to know] how to read a case, how to read a statute, statutory interpretation. Because the writing in law is very different than any other reading we do.* (Interview #6)

A few graduates suggested that there should be specific instruction in the first few weeks about how to read a case.

*Lectures, CANs and textbooks.* Most graduates told me that they eventually stopped reading the cases and either began to rely more heavily on lectures, CANs or textbooks.

About half of those interviewed told me that they needed to attend classes to figure out why they were reading the cases. Several students decided at some point it was more efficient to read the cases after the class, once they knew what they were looking for.

*I think that was perhaps one of the smartest things I did, was to start relying more on what they said in lectures, going through the reading material just to figure out the things that were confusing, that didn't quite add up, and... And I stopped reading, because it was a waste of time.* (Interview #4)

The reading burden led many students to resort to CANs as indicated in the following comments:

*Ultimately, what everyone ended up doing is just picking up a CAN ... you have 400 pages of notes, you can read through it, or you can pick up someone's 40 pages ... Well, what are you going to do, right? You pick up the 40 pager.* (Interview #2)

A few graduates mentioned that first year law professors generally do not approve of CANs, as reflected in the following comments:

*Some profs view them very negatively and, and they're just the worst thing that ever happened in law school. I like it because I can go to class with a laptop... I can pull it up and I don't need the stress about getting every word that she said down. I've got it in front of me, I've read it, it's easy to read, it only takes a few minutes to get through the section, then I can actually listen, and if anything new comes up, I can add to it. ... So I'll take two or three, put them together, add my own notes, and by the time I'm done, they're 110 pages. Still better than 800 pages of reading. (Interview #1)*

*And then they [the professors] also lie about CANs. CANs are dangerous because they miss areas of law and when you miss areas of the law you look like a fool on the exam, so you should read up on all your cases. Well, who has time to read up on all these cases. It's not good time management. But in first year, I took the hybrid strategy because I could cover my bases. I read cases and I used CANs, which is ugly. (Interview #2)*

Several graduates told me that briefing the cases was a lot of work and that although CANs were good, they did not feel comfortable relying on them.

Many graduates mentioned that textbooks would have been preferable to reading all the cases. As one student said, *you know, I just want the quick summary, right?* (Interview #2).

A few graduates pondered why more textbooks were not used if the point was to learn the legal principles.

### **Assessment and Grading**

In the interviews I asked graduates to focus on the five "core" courses in first year law school and tell me what they recalled most about the assessment and grading methods used. I then asked how they felt (then and now) about the assessment and grading methods.

### *Assessment and Grading Described*

According to those interviewed, the grading and assessment of the five core courses consisted of two assessments: a Christmas exam and a final exam.

*The Christmas exams.* The Christmas exams were one-hour written exams on each of the five core courses. The exams were written during one week before Christmas holidays. It typically consisted of a fact pattern or essay and students were asked to identify the issues and solve the problem or write about the situation. According to graduates it had the same look and feel as the final exam, but was shorter. In January students received a grade and some written feedback on their exams. Here is a description of these exams:

*[The Christmas exam] was a practice exam. It was based on the first term materials, it was a one hour exam for each course and it was, we were told, that it was an opportunity to see what a law school exam would be like. And then, I guess, we got it back. It was our only chance we would see our exams back. ... On that occasion, we did get the exams back. I don't remember going through in detail what the teacher, what would be a good answer, you know, what it was comprised of other than a minimal explanation of it. So, it was a chance for us to see what a law school exam was like. But that didn't help me at all. (Interview #3)*

Apparently the grade from the Christmas exam only counted if the student wanted it to. Almost all of the graduates I interviewed told me that Christmas exam was just a practice exam and did not count towards their final mark.

*The 100% final exams.* The final exam was a two or three hour written exam. It covered all the learning from the prior eight months and accounted for 100 percent of the students' first year grade. The final exams were written over a two week period or almost every second day. Here is a description of the final exams.

*[The exams] were worth the full grade for most courses. The full year you had spent came down to that one exam. They were written exams in a very formal setting at a specified day and time, they were timed and monitored. Each teacher would select their idea of an appropriate question or, you know, a series of questions, short answer or long answer. Some were long answer questions, fact patterns that we had to apply what we had learned in the class. (Interview #3)*

Exams were either open or closed book and almost all first year exam questions were in the format of hypothetical fact scenarios or fact patterns. The following is a description of the type of fact patterns:

*...for the most part you would have an exam that had maybe four or five questions, they would set out a hypothetical fact scenario. You know, Joe slipped on some ice on his neighbor's balcony, fell down, broke the car, you know, a variety of things that would go wrong and then you would have to try and figure out what the important issues are, apply the law that you learned throughout the year and come to some conclusion about what the legal outcome would be. Some professors would occasionally throw in essay questions. Which looked more as, you know, describe the evolution of the law over the last 20 years, that type of thing, or how did this case change things from how they were before. You didn't get a lot of that but sometimes you did. (Interview #4)*

One graduate described the exams as pretty horrible fact patterns with just the nouns changed.

Students could review old exam questions. Some of the old exams were in the library while others were on the UBC library website. As one student noted, *when you looked at the old exam, you see what cases that the Prof. really grills you on, how its fact patterns look, whether they're big or small, whether they're more fact based or law based, or do you have to argue policy, that sort of thing (Interview #2).*

Almost every graduate mentioned that they did not have access to old completed examinations. One student who received a completed exam from a friend described the situation in this way:

*...they don't really give you an opportunity to see a lot of answers for good exams, right? So, what are you basing your work off of, right? It's just something more tangible. So, having seen that old exam was useful because I had something to base my word product off of after that. (Interview #2)*

*The curve and ranking.* All of the five core first year courses were marked on the curve. The exams were graded on a bell curve with a forced average of about 72%. Using



this type of curve means that the marks in each class were spread over the range of marks given with most of the students falling in the middle range as described here:

*You're ranked on a curve. So it's easier to do average but difficult to do bad and difficult to do well. And because there was 100% exam, nobody really paid much attention to participation marks. Being graded on a curve I think also led to develop a more competitive nature of students so it wasn't really as collegial I would have liked it to be. (Interview #12)*

It meant there were few high and very few low marks. All of the grades were apparently compiled at the end of the year and students were ranked and assigned a number from first to last in the entire first year law class. Those students who ranked in the top 10% received their ranking on their transcripts. All other students could request a letter indicating their rank if they wished.

#### *Impacts of Assessment and Grading*

*Incredible emphasis on grades.* Every single student I interviewed emphasized repeatedly that there was an incredible emphasis on grades. Several graduates began the interview describing the impact that grades and the curve had on their overall impression of first year. It was definitely the item that came up most often in interviews. Here are some typical comments:

*What I recall most is the incredible emphasis on grades. (Interview #1)*

*100% exams were overwhelming. I had never done that before. (Interview #6)*

*It is beaten, absolutely beaten into you over the head ...It's the culture of the law school. ... All of a sudden, I get dropped into this law school environment and from the very first hour, its marks and it was weird. ...everything was about preparing for the exams. It was all about exam preparation; it was 100% exams; it was the first time that most of us certainly experienced 100% exams; and it was all about preparing for the exams. (Interview #1)*

The message seemed to be if a student did poorly on exams he or she would be a failure as a lawyer, as reflected in the following comments:

*You were constantly told if you weren't in the top 25% you were not going to get any jobs, you were never going to get anywhere and you were basically wasting your time at law school, which certainly shouldn't be held out that way but this academic kind of stuff was everything. ... But you know there was just immense pressure and constant, got to be the top, got to get your marks, got to do this but you're on a curve so you can't, it's next to impossible to do that well. (Interview #16)*

This message was apparently introduced in the first few days of law school and reinforced in many different ways. Several graduates said they learned this from upper year students, professors and lawyers who were recruiting at the law school. Here are some representative comments:

*I guarantee that one of the first ten words was marks, grades. You get an orientation with various instructors, and it won't be a few minutes before they reference the 100% exams and your marks in first year. You then have industry people come in the first week and they talked about summer jobs and the interview process and it's all about grades. It's to the point where there's so much lip service paid to, like industry recruiters will come and say, we look at other things, it's not just about grades. And even that, it's so lost that you know it's just not true. It isn't impossible, of course. We have examples of someone with a great resume or otherwise who was able to land a job with poor marks, but they just absolutely drill it into you. So, when I left – obviously I'm harping on it, that's what I remember most. Then you mix that in with 100% exams. (Interview #1)*

*But, the Profs were full of it. On the first day, they said grades don't matter. You can find ways to do well without grades. And it's like, B.S. Like, no, grades do matter; you're just saying that so we don't become over competitive but we're going to do it anyways, why do you have to lie? (Interview #2)*

Two of the most common comments made were, *one bad day could impact your whole life* and *what if you were sick on that day?* The following comments describe the combined impact of several factors including grading:

*Well, you basically spent eight months learning a topic you don't know anything about, in an area you don't know anything about. You don't have any idea how to write a law school exam. You're told, basically, all year that everything, your career depends on your grades in first year. So, you spend this whole year feeling paranoid that if you don't do well, you're setting yourself up for, you know, a future of failure. Or if you do well, you've just got the golden gate open, you can do whatever you want and you have no idea how you're going to do on these exams until, you know, you eventually get those marks. It's very disconcerting you know, especially because everybody goes into law school, they've got these fantastic grades and you know that*

*everybody else got fantastic grades and that not everybody else can come out with fantastic grades at the end of those exams. (Interview #4)*

*Do not know exam expectations.* All of the graduates told me that they although they knew what to expect on the exams, they had no idea what the professors were looking for in terms of an answer. Almost every student told me that they knew what the exam questions would look like, but did not know how to write an exam. Here is a typical comment:

*I wasn't surprised when I saw them. I think they were, well, you know, a question put to you, any question is a fair question, I think, you know, you just have to figure out what the answer is. But, the method of answering was a struggle for many people. What exactly were they looking for? This was never clarified. (Interview #3)*

Most graduates had looked at sample exams in the library and had attended a class or two where a professor had reviewed sample examination questions. However, all but one student said they had no or almost no idea about the expectations of the professors. As one student put it, *I have no idea what was expected of us. Not a clue, even today. I think it was all a big mystery (Interview #3).* Several told me they never learned how to write a law school exam, even to this day.

This sense of not knowing expectations was directly linked to the grades that students received on both the Christmas and final exams. One of the most repeated phrases was, *my grade was the opposite of what I expected.* In other words, the grade did not reflect what the student knew or how good the student felt about his or her written answer. Several graduates referred to this as *disconnect*. As stated by one student, *you can almost guarantee that it won't just be wrong, it'll be opposite. What you think you did worst in, you did best in (Interview #1).* Several graduates described the experience as a shock, as described here:

*...when I wrote my torts exam, I got a major shock. I was absolutely blown away. I mean, I wrote what I thought was a pretty messy, discombobulated exam. I covered a lot of issues, but it came off, I thought, pretty poorly, and it was my highest mark. ... I wonder what goes on in that back room. (Interview #1)*

Several graduates mentioned that there was no teaching on how to write an exam. A few students told me that prior to writing the exam, they had no opportunity to practice answering an exam question.

There were essentially three ways to discover professors' expectations – by attending lectures, by receiving feedback on the Christmas exams and by reviewing old exam questions.

As for attending lectures, most graduates recalled several of their professors discussing sample exam questions. A few graduates remembered a couple of professors reviewing old exams during a lecture close to exam time. Only a few recalled the professor telling the class exactly what he or she expected.

*A couple of professors, I think, in class, went through an exam problem which was helpful because you'd know how they were looking at, when they, or how they'd want an answer to look, but no, we never went through a whole entire exam where they said this is an 80% answer or this is exactly how I want it. (Interview #5)*

One student remarked that the professors certainly didn't encourage student visits and felt that student visits would place quite a load on professors' time.

As for Christmas exams, all the graduates interviewed appreciated the opportunity to write a practice exam. However, they tended to feel that not enough feedback was given, particularly since this was the only opportunity to get feedback on exam writing in all of first year. Students did not receive feedback on their final exams in April unless they requested it. Almost every student mentioned that more feedback would have been helpful

*... if there was more things throughout the year that you did instead of one big exam at the end, you would be able to get feedback on it, like for example, assignments, mid-terms, and papers. (Interview #6)*

Although most students reviewed the old exam questions that were in the library, only one student told me that he also was able to review an exam with the answer provided

(Interview #2). He got it from a friend who had been an A student and felt that it really made a difference to his exam writing ability. A few graduates said that they went to a few professors' offices to review their Christmas exams.

The subtle impact of this disconnect became more apparent when one student told me that she was afraid to check her grades in the spring:

*And actually when the grades were posted in the spring, it took me five days to actually click on and figure out what my grades were because I didn't want to know in case they were bad. It was almost the same thing I felt with the ranking, I just I almost didn't want to know in case it was bad because you have no idea where you stand. (Interview #11)*

*Examined things that were not taught.* Several graduates suggested that the exams actually test something that is not taught. Several graduates mentioned that the first time they were asked to apply the law to a situation was on the exam. During classes and through readings students learn the black-letter law of cases and statutes. All year long students learn about the facts and ratios of cases but, as one student said, one week before the exam, *the teacher tells you, you know in the exam, don't just tell me what the cases say, tell me how it applies to the facts and you won't get any points for reciting the law. We felt like that was all we were doing year round (Interview #17).* Several graduates said they were not taught how to apply the law. Here is how one student described it.

*... the material seemed easy but applying it is really hard and it's really hard to find a good way to apply it. ... but in terms of the lecture, that's not touched once. That's what they expect you to do on the exam, but they never teach you how to apply ... we'll just tell you what the tools are and we'll give you the exam on how to use the tools, but we'll never teach you how to use the tools. And it's like, well, what good is that going to do? (Interview #2)*

One described it as, learning from the opposite direction:

*You certainly spend the eight months learning cases ... from the opposite direction, unfortunately, throughout the year, you know, you're learning, basically, what the outcome is and how the facts kind of lead to that, and then in the exam you have to try*

*and do it the opposite way around. But, I think that certainly eight months of reading cases goes a quite a long way to teaching you how to do it. (Interview #4)*

One student noted that she did not learn how to identify issues, because professors did this for her. She said, *as far as interpreting cases, you know, you never really had to read a case. You never really had to figure out a case because in class the Prof. would give you the issue, right? (Interview #2).*

*Not an accurate assessment of ability.* One of the main concerns, voiced by every student interviewed, was the sense that the exams did not provide an opportunity to demonstrate what they really knew. A three hour final exam could not measure all of the things that students were able to do, such as the ability to analyze or the ability to write. Here are some typical comments:

*I hate the 100% exams, I don't think it's too much to ask the Profs to break the mark up a little bit and have a memo for every class. ... I just think there's so many skills that they're trying to teach you as a lawyer or an advocate or whatever that 100% exams doesn't catch them all. And I think it's stressful. I have really bad stress and so for me I really don't, it's not helpful for me to know that my whole balance of my grade is hanging on that three hour exam. (Interview #15)*

*I don't think that the mark you got was a reflection of anything. Secondly, this idea of putting students in a room for two hours and scaring them to death and making 100% of their mark on what, whatever they put down on the paper, is a terrible way of obtaining a sample of knowledge. There must be some other way. And there is. I'm sure there will be many excuses, but I think there is better way of getting at how much a person knows. (Interview #3)*

Several graduates were concerned that students only had one opportunity to demonstrate their knowledge and if they blew it, it would be terrible. As stated by one student, *I sure would have appreciated a few more steps to assess my performance ... the 100% exam approach, combined with the apparent all importance of grades, seems a little asinine to me (Interview #1).*

Several graduates mentioned that the 100% exams forced students to memorize which resulted in low retention, for example:

*The biggest problem with 100% exams, and I'm guilty of this especially in later years, is you practise to pass the exam, so you just try and memorize the phrases and key little things that the Prof liked and you try and stick to that bias. So you're not actually learning Contracts or Criminal Law or Torts, you're learning what and memorizing what you think the Prof wants to hear said back. And that is a problem. And that is because it doesn't really matter if you necessarily understand the principles. Did you recite it back the way they want it. And that's the biggest glitch with it. (Interview #16)*

Several graduates said that they crammed for the exam and simply recited back the way they wanted it. The tendency seemed to be to memorize a list of ratios and then forgot them, as described here:

*We didn't have much of an opportunity to learn and develop anything. I had an opportunity to commit to memory various legal ratios. ... You know, a list of ratios from the famous cases, but that's not what comprises a person who's learning or development. That's someone that is a sponge and it is also ineffective because people aren't sponges. I don't remember any ratios anymore from first year. (Interview #3)*

A few graduates described the final exams as *regurgitation and application*. A few told me that they wrote so quickly they felt that they were writing like children.

A few graduates mentioned the timing of the exams. The exams are written over very short time periods which did not allow a rest or time for preparation in between. One student said that she was so exhausted after the fourth examination that she did not care about how she did on the fifth exam.

A few graduates complained that the exams did not assess many of the things that *were* taught such as history and policy.

Very few graduates questioned the exams while they were in first year. All seemed to feel they had no choice. Several explained that although they did not like the final exams, they could not think of a better way to do things. Now, however, graduates seem more

concerned about the exams and question why the professors did not give more feedback.

Here is a typical comment:

*I didn't really question [exams] that much, I mean I think in the back of your mind it's irritating ... I still think it's a stupid idea to have 100% exams and I don't think that the profs are that busy. I think they can afford the time. They certainly aren't spending their time networking with students and mentoring students so I just think they have the time to mark more assignments ... It's mildly irritating but you do it because that's law school and I think now I'm just really aggravated about it. I think back to my comment that I said I would never encourage my own children to go to law school. I wouldn't want my kids to have to have the stress of the 100% exam. (Interview #15)*

One student recalled a conversation he had with one professor about the exams. The professor admitted that the 100% exams were artificial and explained they are a *compromise* since it is too difficult for professors to mark 70 midterm exams or papers (Interview #14).

Several graduates suggested other ways to assess, such as mid-term exams. A few recognized that this would mean more work for them and more work for the professors. Here is a typical comment:

*I am guilty of being one of the ones that would have hated that because it would have been more work and you would have had to keep on top of things, but at the same time you would have been able to gauge - ok do I know this stuff, instead of at the end of the year just cramming for one big exam. That would have been more helpful and constructive even though it would have been more work for them as well as for us and it probably would have been a more accurate gauge of what we had learned, when the 100% exams - can't say they reflect anything or very much. (Interview #6)*

*Arbitrary marking.* One thing that every graduate was bothered by was the *arbitrariness* of the exam marking. Even though graduates were recalling events from over three years ago, most seemed quite emotional when describing their feelings about grading and assessment. The emotions reflected in student's comments included surprise, frustration, anger and resignation.



One student described the situation as being similar to judging Olympic gymnastics or international figure skating. The audience has no idea how the judges allocated their marks to the athletes and were surprised by the differences among the judges.

The main feeling of arbitrariness arose from the sense that it would be impossible for any professor to distinguish between so many exceptional students and to attempt to do so was not *honest*. As described by one student, *I recall it being extremely arbitrary. ... I cannot see how they could have accurately distinguished between examinations and I am certain that they didn't. There's no rhyme or reason to, to the marking, in my view* (Interview #3).

Here are a few more comments:

*It would be very interesting to know they actually mark the exams. I mean, you get no feedback on how they came to the mark that they actually assigned to your exam paper unless you enquire about it and hopefully get a reasonable explanation of why you ended up with the mark that you did.* (Interview #4)

*I say they're arbitrary because I think everyone was intelligent and how can you decide what, how well someone did against another person? Why is it that one person got this mark and the other person got the other? I think when you look at the actual exams, you might find that there no real clarity to the marks, the marking method.* (Interview #3)

As one student put it, *I really wonder if all of them have that kind of an answer key that they're working from because it seems relatively subjective* (Interview #4).

As mentioned, almost every student told me a story about how he or she had written a good exam and got a low mark and how they had written a bad exam and got a high mark.

Almost every student told me that they were surprised by the marks.

A few graduates provided me with examples of situations in which they received exam feedback from professors. They were generally not satisfied with the feedback, as reflected in the following comment:

*I went and saw a couple of professors to go over problems in exams. And that was useful, but sometimes your answers just aren't justified. Like, you want to find out*

*why did I get a 74 instead of a 77, and of course they can justify the denial of three marks but you're not, it doesn't really satisfy you when, you know, the marking is so arbitrary. That's what I thought and it's still what I think. (Interview #5)*

*So I didn't find the exams were a learning experience. And when I did meet with a professor, the comments were like, well you know, you didn't do anything wrong, you got a C but you didn't do anything wrong and how could I get a C then? Well other people did a little better I guess. So I found that you were at the professor's whim where you get the grade. And you know from that C in December I went to an A in April and I have no idea how that happened. No idea. I mean I didn't study any harder. It was the same thing. (Interview #17)*

*Curve and ranking were not fair.* By far and away graduates seemed most distressed about the curve and the ranking system. No student enjoyed being marked on a bell curve with a forced average and only a few appreciated being ranked against the other students.

*... we're getting compared relative to each other and that's not really reflective of how well you're doing as an individual and how well you know information, or how well you know an area of law. I mean, you could know something 100% and if everybody else knows 100% you all get 72, which doesn't really mean much. (Interview #5)*

Every student mentioned that they were told very early in first year that they should not get their hopes up because they were not likely to get the type of marks that they had received in their undergraduate courses. One student described it as *depressing and discouraging* and a type of *psyching up or psyching down*. Here are some of the comments:

*Oh yeah, they're clear on that from day one, don't expect marks over 70. You know, you will be happy if you get the average marks because half of you won't, basically. (Interview #4)*

*You were pretty much prepared to have your marks dropped by a significant amount. I mean, you know that there are a lot of intelligent people in law school so you don't feel too bad when you get 72 or 75, or whatever. (Interview #5)*

*The forced average has never been explained totally to me in a way that I would understand. (Interview #6)*

Every student indicated that the curve was not a fair grading method. One called it *academically dishonest* (Interview #15). Most mentioned that because most of the students

who get into law school are already high achievers that the inability to get a high mark from the very start did not seem right.

*I remember the shock in the first week when an upper level student told us about the curve. I didn't know about it until first year of law school and he said you know if you're used to getting 80's and 90's in your undergrad don't get used to it. Don't expect that in law school. And he told us about how only 10% of the students will get A's and most people probably will be average. I guess he basically was implying there's really not much point in trying too hard. That was a bit of a shock to me. (Interview #17)*

*If I put that kind of effort in my undergrad without the curve, there was no question I would have had an A. But on the curve, you work your butt off and everyone's working their butt off and you all get between 70 and 74. (Interview #16)*

*... the thing I hate the most about assessment [is that] no one can get above 90% ... I don't think it's academically honest to have a fake curve like that and in my faculty in undergrad if you got 90% you got 90%. If you wrote a 90% paper you got it. I just think it's really artificial ... I have such mixed feelings about it but it drives me insane. (Interview #15)*

Another common concern related to the difference that a small change in marks could make on the curve. Several graduates mentioned that the main purpose of the curve and ranking was to help lawyers when recruiting law students. It was an easy way to distinguish students.

*The grading, I can't believe how much that was a factor in jobs, in interviews, it just seemed like an easy short handed way to separate out people ... I was not always convinced that that was an accurate measure of how well we knew our stuff, how well we understood the course. (Interview #6)*

On the flip side, two graduates indicated how ranking can be helpful in understanding how well they are doing against their peers and as a way of distinguishing themselves in job interviews.

*I think ranking is fine, but you know I'm so biased because I did so well in first year and so it was nice for me to be able to put it on my resume and everything. It was helpful. There was no ranking in my undergrad and I always felt bad about myself but I did exceptionally well and my mom always said it's just too bad you don't know where you are in relation to everyone else because I bet you'd be surprised, I bet you're doing better than you think and I do think it's useful. (Interview #15)*

*Christmas exams were fine.* Most of the graduates appreciated the Christmas exams. The main benefit was being able to see what a real law school exam looked like and have the opportunity to write one without having it impact the final mark.

This helped students get a better sense about exam expectations and gave them a sense about their understanding of the materials. A few graduates remarked that these exams *forced* them to keep on top of their readings. Another benefit was that students were able to receive feedback on the exams, as described here:

*... The nice thing about the Christmas exams and the majority of the profs actually did this; they actually put some feedback on the exam. On each individual exam they were supposed to write in some feedback. Some different profs did more than others. ... So that feedback certainly was great because it was the first time you actually hear anything back about your work. (Interview #16)*

One student said that these exams were not very helpful because they were too short. A few students felt pressure around these exams since summer jobs depended on Christmas exam marks.

*Exams were easy for some.* A few students did not seem to mind the 100% final exams. One told me that he had figured out how to write exams and since he was (admittedly) lazy, these types of exams required a minimum amount of effort. Here are his comments:

*[The 100% final was] great. I mean, it saved you a lot of headaches. I mean, I'm not that diligent a guy and I'm kind of lazy so I like to just cram at the end and then have, like five months of free time than I would all these little annoying assignments, right. It's like, get off my back, right? ... 100% marks are the best from the lazy student point of view. You know, that's what gives you the maximum amount of return for minimum effort. I mean, all you want is your damn degree with a couple good grades on it. (Interview #2)*

This student was the only one who had seen a prior completed marked exam. He told me that this really helped him know what was expected. A few said that the final written

exam favored those who like these types of exams and suggested that a 100% exam can be comforting in knowing that it will all be done in three hours and you can prepare for the exams in a relatively short time. Here are some representative comments:

*I know with the 100% exams that some people really favour it because then you don't have to, technically you don't really have to keep up all along if you don't want to, and that was true for me too, I wasn't anal about doing all my readings and really doing them all at the time, although I ended up doing everything by the end, but I mean the 100% exam does do that, you don't have to do assignments all year long or whatever. (Interview #15)*

*Like, cramming, regurgitation, sort of stuff, that's for five days then it's over and doing it all in three hours, as fast as you can, you know, to me, it was fine because I was on an even playing field, which I like. Whereas on a paper someone could spend eight more hours on it than me proofreading and they would get a better mark because they put those extra eight hours in. Whereas on an exam you study for eight hours and you still have only three hours to write it. (Interview #8)*

One other student said he liked the 100% finals although he thought they were not very effective for retaining knowledge. Here are his words:

*I loved them at the time, I thought they were the greatest thing because you had a really flexible lifestyle, you could study whenever and if you fell behind for a couple of days you could make up for it on the weekend and it was ideal for that but looking back now in PLTC I really feel that they didn't teach us much ... you really haven't retained it because the only reason to retain it is for the exam. (Interview #14)*

This problem of low retention was mentioned by several students. Here is a typical comment:

*And I didn't feel like anything that I learned first year was useful for anything after that. I didn't need to know any of it, which is good. The second I wrote my exams I forgot everything. (Interview #10)*

### **Learning and Development**

In the interviews I asked graduates to focus on the five "core" courses in first year law school and tell me what they recalled most about their own learning and development in first year. I then asked how they felt (then and now) about their learning and development.

### *Learning and Development Described*

*Learned a lot.* Almost every student emphasized that they learned a lot in first year, particularly lots of case law. They learned about hundreds of cases and ratios and learned a significant amount of black-letter law in four main areas: Torts, Contracts, Criminal and Real Property. Several said they learned more in first year than in any of their other years.

A few graduates told me that they learned how to identify legal issues and make arguments. One student described this learning as follows.

*I actually feel like I learned a lot in first year. Not just with the substance of the material but the way to think and the way to pick out the important issues, the way to identify strong arguments and weak arguments. I feel like I, you know, learned as much in that first year as I probably did, certainly in the last couple of years of my undergrad degree. (Interview #4)*

One student felt she learned how to look at things differently and a new way to approach legal problems.

*But a lot of it is so like I mentioned before, is so subtle, or it becomes a part of you and the way you think and the way you ask questions or have conversations or the way you look at things or analyze the problems. I guess I did not feel like I learned too much substantively but in hindsight I guess I learned a lot in the way I think and approach problems. (Interview #6)*

Several felt they had gained a good conceptual base. However, when asked how they feel now, many graduates felt that they had not learned very much. One student described his learning as *only an inch deep* (Interview #7). One said that he felt like a, *sponge- memorizing legal ratios* (Interview #3). Many felt that the learning was very basic. A few graduates felt they could have learned a lot, as indicated here:

*I think that I often say actually that I learned the most in first year. It's kind of weird cause... I do remember sort of at the end of it thinking well I didn't really learn. You know I think I thought I would learn more than just that in first year and it's funny to say that now because it's quite a bit, you learn quite a bit but I think I was expecting more lawyer stuff. I don't know really what I thought. (Interview #15)*

*Case reading skills.* Most of the graduates indicated that they had learned reading skills and specifically how to read a judgment or case. Students learned how to spot issues, locate a ratio and understand a case's precedent value. Here is one student's list:

*I didn't know how cases work; how judges write, little basic things like that; about what basis cases would be overturned; the rule of precedent; how jurisdictions are binding; cases in jurisdictions are binding and some other cases are only persuasive; how to cite cases. (Interview #17)*

One student felt that she was *forced* to learn how to read cases but not develop other practical skills:

*...in terms of skills I did not feel like I learned any. There was nothing like, law school is not very practical or applicable or hands on. There was no skill development, there was very little, a legal writing class and that was it. Otherwise they were all lecture courses, all 100% exams and I did not feel like I actively developed any new skills. I think I was forced to learn how to read cases and statutes and I don't know what else. (Interview #6)*

*Personal growth and coping skills.* Several graduates told me that they experienced personal growth. A few mentioned that they learned through new people and new experiences. Here is a typical description:

*I think I grew as a person ... I think in many ways, is a rite of passage, to learn how you can deal with that kind of volume of material. I think it is valuable, just because of the type of profession. ... I just think that first year is such an overwhelming experience. Just in terms of there being a new environment, all new people, you've got just an enormous volume of material to get through. Some of it, you just don't understand. I don't think that the law school material is hugely complex as a general rule. I think that for the most part it's relatively straightforward, but you know, when you don't have time to be learning as effectively as you necessarily want to be, it can be hard at the time. (Interview #4)*

A few graduates mentioned that they learned how to deal with the volume and with stress. One student told me that stress brings out the worst in people. Others learned how to be diligent and organized and how to prioritize (Interview #18). One said he learned how to work 20 hours a day. Here is what one student said:

*I just could not believe that I made it out of there alive so I guess I developed personal development in terms of perseverance and learning how to suffer. I guess making it through that on a personal level is like I can make it through whatever is coming. Learning, I did not feel like I learned too much substantively. Because everything is basic in first year but I guess the learning I did, I mean of course, I learned but it did not feel like I learned a lot. (Interview #6)*

*Learned the system.* Several graduates said that their learning improved over the year as they learned how to work with the system and how to get better results.

*I got better and better. As a learner, I mean, for me, I think learning is just working within a system, right? I mean, you find out the rules and you work to find out how to get the right results out of that, so it's just one of those rules. I mean, I did an English undergrad and just found out how to formulate an essay and all of a sudden you get good marks in essays. So, I mean, I thought it was the same thing here. (Interview #5)*

One student described how he learned how to play law as a, beautiful thing as follows:

*The way I played law school, actually pretty much from the second half of first year on, was to get a good CAN, know it cold, take a prof. who knew black-letter, not policy, then ask the questions about it for clarification before the exam. And, its a beautiful thing. It was. It didn't take a lot after to crank out good grades and you did have to, there were not a lot of worries. (Interview #2)*

### *Impacts of Learning and Development*

*Sense of accomplishment.* Almost every student told me that first year law school was quite an accomplishment, particularly in terms of having learned so much, as reflected in the following comments:

*...the first thing that comes to mind is that it does feel like quite an accomplishment ...I might even consider it sort of a rite of passage. ....I went into first year thinking ah, you know, I've been to school before, I can handle anything they throw at me, but I was surprised I suppose, by the volume of it. At the same time, I felt and actually – and this is a quote that I know I have said a number of times before - I felt like I learned more new material in first year than I had in all my previous education. (Interview #1)*

A few graduates felt very satisfied. One repeated statement was, *I learned a lot!*

Several said they enjoyed law school. One said that she felt a sense of belonging to a club.



*I remember being particularly satisfied at the end of first year ...I really felt like I had learned a lot. (Interview #3)*

On a less positive side, one student described first year as, *a lawyer factory*. (Interview #18). Another suggested that law school, *stunted her* (Interview #12). One student felt that first year was, *not really an opportunity to learn and develop* (Interview #3). Finally, one said that it forced him to *put his idealistic goals on the back-burner* (Interview #18).

*No clue what was happening.* Most graduates indicated that they had no idea what was happening to them while they were going through first year. As mentioned previously, students were unsure of their learning (see Teaching Methods) and not sure how cases fit together (see Courses, Content and Materials). They did not know what they were learning or why.

*First year I found was very confusing and overwhelming because I felt like we were being thrown into something that was extremely new for everyone without a really good introduction. We got a one week orientation but I didn't feel like it was enough and then we were thrown into it. (Interview #17)*

A number of graduates said that they did not really know what they were doing in first year and this was disorienting. One student described it as *acquiring little bits of information all the time and not knowing exactly how to connect them* (Interview #17). One student described it as a rollercoaster, where one day you felt you knew it and the next you had no idea:

*At a more personal level, it was very much a rollercoaster, emotionally, in that there were times where you felt like, you know, you knew so much about an area because you were particularly well prepared that day, for example, and then there were other times you felt so stupid like you just did not deserve to be there. I think, at least a number of people that I spoke to, definitely went through those highs and lows where you just looked around and thought everybody understands this so much better than I do, you know, is this really what I should be doing with my life? (Interview #4)*

Several said they got a better idea about what was happening after Christmas exams.

Others were concerned that the professors did not tell them what was happening, as reflected in the following comment:

*[I would have benefited] if I knew more about what I'd be going through in second and third year. If I had more assurances than I did, more practical, hands-on advice and instruction, I might have been less anxious in first year. You know, and I wasn't terribly anxious but as I went through it, I might have been more patient with the black-letter, substantive legal theory and sort of a non-practical approach, the all appellant case approach. If I knew this is just how you're getting started, and I could probably get a sense of that, but I think it goes back to the role of the instructors. I think the instructors could have given us a better idea of where does this fit into legal education. (Interview #1)*

*Learning more difficult than necessary.* Almost every student told me that in hindsight the learning in first year law school was more difficult than it needed to be. Here are two typical comments:

*With hindsight, I mean, the things I learned it seems were a bit simple and it doesn't, doesn't look as hard, doesn't seem as hard as it could have been as it was when I was learning it. (Interview #5)*

*I feel that [my first year learning] was inadequate. I feel that getting the basics and ... getting the core, this core knowledge, didn't require the amount of materials we were asked to read or the amount of lectures we were asked to attend. It was very basic stuff and I don't think it was an effective to, anyhow, to give us the basics for understanding these concepts. It was, like I said, that doing well on the exam meant how do you word the ratios and that had nothing to do with learning, absolutely nothing. (Interview #3)*

A few felt that they learned a lot of unnecessary stuff and several reiterated that the knowledge they gained did not require the amount of materials they were required to read.

*...UBC law is a bit of a crock, like you just memorize the CANs and you go out and you regurgitate on the exam. Like, there's nothing really magical about it and you know, maybe it's my naiveté in the first year, but it was like, I thought that there was, you know, there was more to it. Like, you think, like oh, what am I learning, right? And then you realize that what you're learning is just some old notes that Profs read out, you just regurgitate out. There's nothing magical about it. Like, I could have done it out of high school. I could have done it in Grade 11. It wasn't like it was any real substantial accomplishment, I didn't think. So, that was a bit of a downer; that realization didn't hit till second and third year. (Interview #2)*

A few graduates felt that they had learned through *osmosis*. They eventually figured things out on their own, without much direction from the professors. One student said she learned things very slowly, partly because she was afraid to ask questions.

*On my own and competitive.* Several graduates told me that they learned how to do most things on their own. Several said they became self learners and much more self-sufficient.

Many, however, suggested that there was not enough support from professors. A few graduates said they felt they were expected to *sink or swim*. A few graduates told me that one professor stood out among the others because she said hello to students. It made them feel less anonymous. Here is a sample comment:

*[One prof] ... could recognize anyone from her class in the hallway at any time. She'd always say hello to anyone, you could go to her office and she would recognize you. She wouldn't know your name necessarily if you hadn't answered a lot of questions but she would definitely recognize you from her class and that's different too because there was people, like the prof who wouldn't know you from Adam if he ran into you in the hallway so that's a really important thing. Although it's not necessarily academic but it's important to be recognized by professors. (Interview #15)*

Many students alluded to the sense of competition they felt, particularly after the Christmas exams. Here are some comments describing this:

*...it was really sad that for the first four months from September to the end of December everybody is equal and happy and everyone's a little bit nervous that they're not smart or that they're the dumbest ones or anything, but as soon as Christmas exams rolled around and people started talking about their marks and things, it all changed and suddenly there's this competitive attitude and it was sad that, I feel that reflected in what the classes were like. I noticed a shift that some people who didn't do well in their Christmas exams who were asking questions before, stopped asking questions. (Interview #14)*

*People wouldn't help...they wouldn't give notes, I know that. I remember people were always so surprised when I would offer my notes to them because nobody else would do that and I have friends that to this day always say thanks for that and I actually got a few people through some courses because they couldn't come to them ... I'm not competitive like that. I don't think it's fair to get ahead by studying and hurting*

*other people, I just think that if I do well for myself then that's good enough. So yeah, I had a hard time with it. (Interview #10)*

Although several students said they valued the friendships developed during first year only one student spoke about the positive social environment. Here is what she said:

*It was quite social, the social aspect was amazing, how we had to attend all the classes together, how we had breaks together and we had to hang out between the classes together, that was something that was never repeated in the next two years and I missed that a lot. (Interview #13)*

*Discouraged.* A few graduates told me that they came to law school very optimistic and this shifted for them in first year. One student said she came out of law school very discouraged, lost, and negative and in a bit of a crisis about whether she had made the right decision. Here are her words:

*I am not sure when in that year I began to feel that way. I do remember holding out hope for a while that perhaps I was just adjusting to the new situation, but it was not a very good experience. Socially, academically, not a good experience in general. ... My first year experience is an atmosphere where students are scared, made scared to death, made to feel as though they need to be highly competitive and I think a negative experience for many. My impression of it was not good. (Interview #3)*

One student said that she felt that she was continually being told that she was not good enough and she considered this to be *low grade abuse*. Here are her comments:

*We used to have this line that we used to joke about and we used to say that first year law was just one whole bunch of low grade abuse over and over and over again telling you that, not that anyone specifically tells you that you're not good enough but it's just such an odd unique environment and I think that's why a lot of law students go out every single Friday and Saturday night and drink to excess. (Interview #15)*

She felt that she began to feel *stupider* and defeated. She said:

*...law school is just about trying your hardest and then being told that that's not good enough via the 100% exam. I just think that by the end of law school too I just got tired of trying any more really as hard as I did in first year ...I tried my absolute hardest and I did well but then just I think that how hard you try often isn't commensurate with your grade in law school. (Interview #15)*

There were many similar comments about the growing sense of feeling stupid or not able to do anything right. For example:

*It's not healthy I don't think. I don't think it's normal to have to go into that sort of environment and then get graded in that way, and be taught in that way and just be really put through a mill and be kind of ground into a pulp and feel like there's no way you can do well at all. ... I feel like I know less about law now than I did.*  
(Interview #10)

Several students described the situation as demoralizing. When their efforts were not rewarded they became discouraged and resigned to the way things were.

*Well then I felt that my efforts weren't rewarded the same way they were in my undergrad where I studied for an 80 and I got an 80 so I'm in law school I found that, I felt like it didn't matter how hard I worked, although that didn't mean I wasn't going to work hard right but it demoralized me. ... I went through that so many times now that I am a little jaded. It just doesn't, I just feel that it's the way it is but I would like to see it change.* (Interview #17)

*There was nothing you could do about it, so you might as well just accept it, not take on the stress of it and just, that's life, deal with it. It wasn't that I was burnt out after the one in the spring, it was just this is life, I've already done four, and what can you do. This is law school so you write the exam and you study the best you can and that's all you can do.* (Interview #11)

The impact of this on the graduates I interviewed was reflected in the comments about not wanting to go through law school again and not encouraging others to go to law school. For example:

*Now that I've been through it, I wouldn't go through it again. That's the thing I would tell people, if you want to go to law school do something else. ... I feel old now and I used to be so jovial and always positive and now I feel sort of like jaded and negative and I don't like it.* (Interview #10)

*Questioned why I am doing this.* A couple of graduates said they had internal questions about whether the practice of law is what they wanted for a career. Here is a rich description of one student's thoughts in first year:

*I think that a lot of people had a major crisis in first year, a major identity crisis about what, have I made the right choice? Is this the profession I want to be in? What is this profession? Where do I fit in it? How do Contracts, Torts and Real*

*Property translate into the career I chose? Where does it fit in and how do these ratios from cases, what do they have to do with anything? What is law practice going to be like, what are my options in law practice? You know, we have a career services centre, but I think most people were lost. I personally had a major crisis and I think that it had an impact on my whole life. At the time, I was depressed. And they say that here, a week ago, that over 40% of law students have depression. Well, it can't be that 40% of people who end up in law school have a natural propensity or natural chemical imbalance, it's because of their environment. (Interview #3)*

One student said she questioned whether this is how she wanted to spend her life.

*When you realize just how much you have to work to get it all done and, you know, you look ahead for the next 30 years, if you're actually going to be in private practice, that doesn't change. You know, and I think that many people, at least I had a sober second thought of, you know, do I enjoy this enough? Is this how I want to spend my life? (Interview #4)*

One student suggested that professors could do a better job at telling students what law school is all about and how law school helps you when you go out into the world.

*I think that there needs to be a concerted effort on the part of the professors as well as the process of the orientation to give a broader of what law school is all about. Nobody ever said to us, ever, that at the end of this degree you're going to have an LLB. You're going to have a bachelor of laws and then you're going to go out into the world and you're going to work. One of the things you can do is practice law, but you don't have to and, in fact, 50% of us don't. Nobody ever says that and there are sessions about what else you can do with a law degree, etc., but it's all about getting that articling position and getting your license and the only way to do that is to get grades so be scared now, starting day one. (Interview #1)*

As explained by one student, the focus was just getting through it, and that is a shame:

*Well back then...a major component was just getting through it. It's just getting through first year and getting it done and over with, which leads to god I can't wait to get out of law school because some of these people are just wackos. Looking back at it, I think it's a shame that I had those kinds of feelings at the time and I think it's a shame that the course or school is structured that way, so I think that the learning aspect could have been a much better experience. (Interview #19)*

### Aims of First Year

In the interviews I asked graduates to focus on the five "core" courses in first year law school and tell me what they recalled most about aims of first year. I then asked how they felt (then and now) about the aims.

#### *Aims of First Year Described*

*Not a clear idea.* When I asked graduates about the aims of first year law school, most graduates said they had no idea. Several asked me to clarify the question. Several graduates said they were never told what the aims were, either at a faculty level or at a class level. As stated by one student:

*I don't recall at the start of a course the professor saying at the end of this course we want you to understand this, this, that and this. ... You know, it might have been good to have, you know, a little road map of where we're going to go at the start.*  
(Interview #5)

One student said, *if I can't tell you what they are now, obviously they didn't communicate them to me ... I wish I knew actually* (Interview #15). Here is a typical comment:

*I didn't realize there were aims. I didn't know, to that extent it's sort of like you're handed your schedule, you're told here's your professor, you're told to buy this material and you're given a syllabus and you're told to read them. And when you read the objectives for the course on the syllabus, you have no idea what it means in real life. You have no idea what you're actually going to be learning. Maybe it would help to actually put up an exam question on the first day and just put it up there and say by the end of the course this is what you're going to be answering.* (Interview #11)

I could tell from the look on graduate's faces that most were seriously contemplating this question, as if for the first time. They often had a look of intrigue or curiosity as they thought about what the aims could be.

When prompted, some graduates guessed. One student suggested that the main goal was to simply get from first year to second year. One thought it was to make money for UBC law faculty. One thought there was a hidden conspiracy to force left wing policy on students. One student thought that an aim might be to learn how to write a law school exam. One student thought that the aims were to teach students what famous cases had to say.

Several graduates felt that, not only were there no aims, but that the law faculty does not know what the aims are. As described by one student:

*I don't think they know what they're doing. ... I don't think they know if they're trying to put good lawyers out in society, good people, good, I don't think their vision is coherent and I think that, as I said, I don't think it's even been revisited. (Interview #15)*

Several graduates were concerned by the lack of aims and suggested that they should be better thought out. One questioned whether it was faculty's intention to produce people who could apply a list of ratios to a fact pattern. Here are her words:

*I can't imagine if someone who thought about this [aims] even a little would have thought that it was okay to teach us what we learned as a basis for getting us ready for a profession. Their aims were not well thought out. The effect of the way that the teaching was administered on the students produced people who could apply a list of ratios to a fact pattern. I'm not sure if that was the aim, but that was what we were learning, and that's what they had been teaching for years. Black-letter law, as some people say, is not applicable stuff. (Interview #3)*

Every graduate felt that it would have helped to have had some articulated goals. One student suggested that law schools have bi-polar disorder and they should be clearer about whether they are academic or professional, particularly given the rising cost of tuition. Here are some of her comments:

*I think UBC, well I guess all law schools maybe, they're just, they have bi-polar disorder with whether or not they want to be academic or professional and I just think that someone needs to make a decision whether or not, what they're going to be. (Interview #15)*

One student felt the aims were too academic:



*For the school itself, it certainly seemed to be very disconnected from the practical realities of the practice of law. It seemed much more academic I guess would be the best way to put it. (Interview #16)*

*An introduction to five basic areas.* A few graduates thought that first year law school was a basic introduction to the five key areas of law. A few described it as an *introduction to law and the profession*. Several thought the aim of first year law school was to give students a solid foundation of black-letter law. Here are a few comments:

*We were learning about the development of law in each area. That's basically it. (Interview #3)*

*... it certainly felt like an introduction to sort of, I guess you'd call it the bread and butter, the five core areas. So, the aim of it, it felt like the aim was to give us a solid foundation. (Interview #1)*

*Just to give a basic understanding of the basic principals... To learn more sophisticated principals in second and third year, I think. (Interview #5)*

*The aims were, was, just to get a CAN to the students ... They wanted to give us a solid foundation in the fundamentals of law and legal analysis. And they wanted to teach you a foundation, building blocks, legal principals, right? Like, you'll always have your Contracts. Certain discreet areas, right? (Interview #2)*

*To think like a lawyer.* A few graduates thought that the aim of first year law school was to teach students how to think like a lawyer. They described this as analyzing legal cases, distinguishing cases on their facts and making an argument. One student described it as follows:

*I think they tried to teach us legal analysis, right? Like, how do you deal with, you know, Judge One says this, Judge Two says this, they're completely different but they're both persuasive. What do you do? How do you argue that? So, they taught us how to argue on the law and then they taught us how to argue on the facts, right? (Interview #2)*

One student described this as learning how to *think in a box* as follows:

*Which is funny because when I talk to practitioners now, one of the things they look at for associates is whether or not they can think outside of the box. And yet law school teaches you to think in a box form. Number one, sub a, sub b, sub c. Number two, sub*

*a, sub b, and sub c. But yet when you go out there, that's not what they want.*  
(Interview #12)

Several graduates wondered whether this aim was being accomplished. They did not feel they had been taught how to think like a lawyer in first year law school. Indeed, one student suggested that students were not encouraged to think at all. Here is a comment about the role of a university law program in teaching students how to think:

*I always felt that in university they're not to be teaching you information; they should be teaching you how to think properly and I felt that the method that they used did not achieve that objective because it was just teaching us case law. That was it. Not how to think, not how to apply it, not how to reason over it, not how to arrive at an understanding on how the judge came to a decision. We were learning what the case law was and that doesn't help me at the end of the day.* (Interview #3)

One student thought that if the aims had been clearer, instructors would not have made students read so many cases. She felt that professors had been more effective and efficient she could have learned so much more (Interview #4).

#### *Impacts of Aims*

*Lack of sense of direction.* Almost every student told me that they had very little sense of direction in first year law school. This theme has been repeated several times in these results. Students did not really have sense about what they were supposed to learn over the year and how that might fit into the next two years of law school or their career. Several graduates mentioned that they just did what was expected but really had no idea how it all fit together. The following comments provide a sense of the combination of factors that led to a general sense of confusion or distraction.

*I think that as a first year student, you, first of all you're so distracted by everything else that's going on. Be it the work volume and the crunch for exams and the importance of grades ... The instructors, I don't think do enough to tell us about what's going on, what to expect in second and third year and I don't think telling us, they just told us once, maybe they told us twice, but because of that context, because you're so distracted, um, I think, uh, a concerted effort to continually touch on here's*

*what you're doing today and this week and this year, here's what fits into what you'll be doing in second and third year. (Interview #1)*

Several graduates thought that the professors could provide more guidance about what law school is about and what to expect in the next two years.

*I think that the one thing that was missing was a little more guidance about what law school is about. ...I wish that each one of our instructors, maybe with our small group instructor, the one you have the most contact with, could have got a lot further in giving us a better snapshot of what to expect in the next two years. What are we doing here, in first year? Why are we just doing these appellant cases? Why are we doing these five basic areas and what can we expect as a difference or a change in second and third year? (Interview #1)*

One student suggested that one of the aims of law school should be to, *help students learn whether they choose to go into law practice, into academia or go do another degree and become a high school teacher (Interview #15).*

*Rite of passage.* About half of those interviewed specially mentioned that first year is a *rite of passage*. One student referred to it as indoctrination. Here is a typical comment about rights of passage:

*I think in many ways, it's a rite of passage that everybody has to go through. I mean, some of the things that would cause me anxiety then now are so easy. You know, you figure out the system, how to actually get things done, how to do things much more quickly than you did before. You have much more confidence in yourself, in your own ability, and you realize that other people don't know everything either, you know. (Interview #3)*

One student felt that the law school was trying to weed students out, or to ease them in:

*Well there is the sort of weeding out function of first year. I don't know if that is true but they say it is so hard because they want to weed out the people that can't cut it. Look on your left, look on your right; someone is not going to be there at the end of the year. (Interview #6)*

Most several graduates described it as "just the way things are."

## Summary of Results

In this chapter I describe the results of this study and the information gathered during interviews with 19 UBC law graduates. Given the richness of the data, it is difficult to summarize. Having said this, I have compiled the following list of findings to provide a quick overview. In the next chapter I will discuss these findings in detail in relation to what we know from the literature.

### *Teaching Methods*

- Most graduates felt that the lectures were effective for conveying the information necessary to pass exams.
- All graduates saw their first year law professors as experts who generally wanted students to learn.
- Most graduates saw the role of first year professors as helping students prepare for exams.
- Most graduates did not enjoy the question and answer period in lectures.
- No graduates liked being called on in lectures (the so-called Socratic method).
- Almost all graduates did not find the lectures engaging.
- Several graduates criticized modern teaching methods.
- All graduates appreciated receiving lecture notes and summaries from their professors.
- Most graduates were unsure of what they were learning and why.

### *Courses and Content*

- Most graduates felt that first year law school provided a good summary of the law in five areas.
- Most graduates thought that the curriculum was too theoretical and not very practical.
- A few graduates felt that some professors were *pushing policy*.
- Most graduates did not understand why the first year curriculum consisted of the particular five core courses.
- Almost all graduates were not sure how the cases fit together.

*Course Materials*

- All graduates felt there was too much reading.
- All graduates found some of the reading to be irrelevant.
- All graduates said they had difficulty reading the cases.
- At some point in the year, most students began to rely more heavily on lectures, CANs, and textbooks, rather than reading cases.

*Assessment and Grading*

- All graduates felt an incredible emphasis on grades.
- Almost all graduates did not know professors' expectations for exams.
- Many graduates felt the exams assessed a skill that was not taught.
- Most graduates felt the exams were not an accurate assessment of ability.
- All graduates felt that exam marking was arbitrary.
- Almost all graduates felt that the curve and ranking were unfair.
- Almost all students thought the Christmas exams were a good opportunity to practice writing an exam.
- A few liked the exams since they permitted cramming and were over quickly.

*Learning and Development*

- Most graduates learned a lot of black-letter law.
- Most graduates learned how to read, analyze and summarize cases.
- Most graduates grew personally and developed coping skills.
- Several graduates learned *the system*.
- Almost all graduates felt a sense of accomplishment upon completion.
- Most graduates said they had no clue what was happening at the time.
- Most graduates felt that learning was more difficult than it needed to be.
- Most students felt they were on their own and that law school was competitive.
- Many students became discouraged during the year.
- Several students questioned why they were going to law school.

*Aims of First Year*

- Most graduates had no idea about the aims of first year law school.
- Most felt the main aim was to provide an introduction to five basic areas.
- A few graduates felt an aim was to teach students to *think like a lawyer*.
- Most graduates felt a general lack of sense of direction.
- Many graduates felt that first year was a rite of passage

In the next chapter I discuss and interpret these results as they relate to the literature.

## **CHAPTER SIX**

### **DISCUSSION**

In this chapter I provide a critical assessment of the results. I discuss the results of this study in relation to what we know from the literature and demonstrate how this research contributes to what is already known.

The literature suggests that law students are negatively impacted during first year and that educational practices such as teaching methods and grading practices are partially to blame. The results of this study uncovered two things: the current educational practices currently employed in first year law school and some of the impacts of these educational practices.

Below I discuss the literature and results under each of the original five educational practices: teaching methods; content and curriculum; assessment and grading; learning theory; and aims of law school. I then discuss the combined impacts of these practices on first year law students.

#### **Teaching Methods**

This study indicates that the teaching methods used in law school are not particularly effective or efficient for student learning. Among other things, the case method makes learning difficult and slow, the lecture method does not promote deep learning, the question and answer technique intimidates students, and student one-on-one contact with professors is rare. In combination, these teaching methods seem to cause students to feel overworked, generally confused and ultimately cynical. Each of these is discussed here.

### *The Case Method*

The literature suggests that the case method was originally designed as a way to help intending lawyers learn the *science* of law. Appeal cases were seen to be the best subjects of study from which students could extract the law from court decisions. By reading and analyzing cases students would learn not only the substance of the law but also the technique of legal reasoning employed by judges. Criticisms of the case method suggest that it is not effective at teaching the bulk of the substantive law (Eagar, 1997); is not a useful way to help students develop legal reasoning (Brest & Krieger, 1994); and leads to excessive workloads (LeBrun & Johnstone, 1994). The case method has also been accused of being too academic, not practical and out of context (LeBrun & Johnstone, 1994).

This study is consistent with this literature and suggests that although the teaching methods used in first year are somewhat effective at teaching substantive or black-letter law, they are not efficient at teaching this or legal reasoning. In addition they appear to cause student workload issues; cause students to feel that the topics are more difficult than they actually are and cause students to become confused and cynical.

*Substantive law.* This study suggests that the case method, as used by the faculty in this study, is only somewhat effective in teaching substantive law. The results show that first year law students eventually *got it* after several months. Most graduates said they eventually figured out how to read and analyze a case and more importantly, locate the legal principle in each case. However, most of this learning appeared to be difficult, slow and often by way of osmosis.

This study indicates that first year students are required to read a huge amount of cases without much direction on how to read them. Most students had difficulty reading the



cases and found the cases confusing – especially because they were old and appeal cases, without many facts or context.

Reading was made more difficult because most students did not know why they were reading the cases and did not know how they would eventually be used. As a result, students found cases difficult to understand, difficult to put into context, and difficult to remember. When looking back on their experiences of first year, graduates view these cases as a collection of old overturned cases, lacking in facts that might provide context and narrow in not providing a broader context. This reflects the literature that suggests that the case method is not practical, too academic and out of context.

Once students realized (usually after Christmas exams) that they were primarily being tested on their quick recall of legal rules they, quite understandably, began resorting to textbooks and CANs to obtain succinct summaries of black-letter law.

This study also suggests that the case method does not teach all the necessary substantive law. The first year curriculum consists of an historical foundation in five narrow topics. Only a small part of the content is directed at current case law or statute law, which makes up the majority of the current law.

*Legal reasoning.* Like Brest and Krieger (1994) this study suggests that the case method is not a useful way to help students develop legal reasoning. Although students eventually learn how to read, analyze and compare cases, this does not appear to amount to the complex skill of legal reasoning. Because appellate cases come with their facts all *neatly bundled* in a few paragraphs and their legal issues previously identified, students do not learn how to analyze facts or identify legal issues (Brest & Krieger, p. 532). Nor do students learn how to determine the relevance of a case; how to synthesize a group of apparently inconsistent cases; or how to apply the law to a new situation. One common complaint made

by graduates was that exams tested the ability to reason or problem solve, yet these skills had not been taught in first year.

This is supported somewhat by the fact that lectures tended to be one-way and thus could not effectively develop these complex intellectual skills. It seems that the learning of legal reasoning got lost under the weight of the cases and the learning of substantive law.

*Workload.* This study indicates that the case method causes workload issues and this has several impacts (Morin, 2000). Although students were generally able to manage the workload, all felt they were required to read too many cases.

All students resented the *400 or 800 pages of hole-punched photocopies of cases* when they eventually learned that they did not need to read them. Students were less concerned about the number of cases than they were about the irrelevance of these cases. Every student indicated that they worked harder in their first year than ever before and were somewhat comfortable doing so. It was the sense that they were being asked to do something that was not useful that bothered them most. One of the most common phrases I heard in the interviews was, *why do we need to read all these cases to just extract one paragraph?* Being required to read irrelevant cases lead to cynicism.

This study indicates that learning in first year law school was more difficult than it needed to be. Many graduates felt that they learned a lot of unnecessary things and several suggested that the knowledge they gained did not require the volume of material they were required to read.

*Confusion.* This study is consistent with the literature that suggests students in first year are in a general state of confusion (Roach, 1994; Anonymous, 1998). Even now, two years later, most graduates in this study do not entirely understand what first year was all about. The case method seemed to be the cause of much of this confusion. This was

compounded by the lack of direction or context provided in the lectures. Most graduates had very little idea about how all the cases fit together. This sense about not knowing how the cases fit was one of the most frequently expressed themes in the study. Almost every student indicated that they did not know why they were reading the cases, how the cases applied to each other, how the cases related to the law as a whole and how they would eventually use these cases. There was no framework.

As stated by one graduate, *I felt I was learning a case, a ratio and then another case and a ratio and I felt that's all I was learning. I felt I wasn't getting any big picture.* At a more general level, most participants in this study did not really know what was necessary, what was important, what they were learning, what they should concentrate on or how they should be doing it. Indeed most said they did not *figure it out* until near the end of first year or in second and third year. Most said they could have benefited from some direction or feedback.

Although the case method appears to be the main problem, the way in which each professor applies this method in practice undoubtedly contributes.

### *Lecture Method*

The literature suggests that the lecture method is effective for some learning and ineffective for others (Bligh, 1972). As stated by LeBrun and Johnstone (1994) the lecture method *is based on the assumption that teaching involves an expert providing pre-packaged knowledge to students* (p. 258). The lecture method is not very useful for stimulating thought or developing higher level skills and can cause students to disengage (LeBrun & Johnstone, 1994, p. 259). This literature is supported in this study.

This study showed that the core classes in first year were taught by the lecture method, interspersed with a few questions. Although the small group classes involved more discussion, the main technique employed was didactic lectures.

This study suggests that lectures were effective at providing students with the information they felt they needed. Students generally appreciated the lectures for several reasons. Lectures helped students sort through the vast quantities of reading so they could focus their studying on what was important. They helped students identify the important aspects of the cases, extract legal principles and identify what might be on an exam. The main focus for students was on gathering the necessary information to pass the exams. Students appreciated the predictability of lectures, particularly those that did not require any student participation.

Given that law school is so new to so many, it is not surprising that lectures were comforting to many students, especially since they placed few demands on students. Given the amount and difficulty of the readings, the lecture was like a life raft in a rough sea. It also provided clues to the exams.

This study showed, however, that the lectures did not stimulate much student thinking. Professors tended to read from their lecture notes and this caused some students to *zone out* in lectures. Some stopped attending lectures.

This study indicates that lectures did not encourage participation. Students did not like to participate and felt vulnerable in the large group. Students were generally afraid to ask questions in lectures, either for fear of looking stupid or for not wanting to slow the class. For this reason, many students preferred to ask the professor questions after the lecture. This study supports the literature that describes first year students as vulnerable and intimidated (Anonymous, 1998).

Although most graduates suggested that the lecture method was fine, they emphasized that it was fine, given the particular content. As one student said, *whether what we were being taught was suitable is another question*. Several students said they later realized that what was being taught was very basic.

### *The Socratic Method*

The literature suggests the Socratic method is commonly employed in law schools and that this method has negative implications for students (Menkel-Meadow, 1991; Webb, 1998). The method had been accused of being overly rigorous and competitive, too directed toward linear reasoning, and adversarial in nature (Menkel-Meadow, 1991; Gunier, Fine & Balin, 1994). It has also been blamed for causing student anxiety (Stropus, 1996).

This study shows that the strict Socratic method was not used in this first year class. The Socratic method described by graduates in this study was the technique of professors calling on students by name to answer questions. The type of questions asked by professors, unlike the true Socratic method, did not appear to stimulate deep thinking (LeBrun & Johnstone, 1994, p. 282).

This study does show, however, the impact of the technique of calling on students in a large group setting. Those students who experienced this method felt it was not useful and generally intimidating. The main reason why the Socratic method was disliked did not have to do so much with its rigor or adversarial nature as much as it did with students' fear of appearing stupid in front of their peers. Like Stropus (1996) this study found that the questioning method caused students to suffer anxiety at the realization that law is not as certain, predictable and ordered as students expect and that students often go unrewarded for their insight (p. 458).

This study seems to support Roach (1994) and Stropus (1996) who found that the combination of the case method and the questioning technique emphasized logic over emotions and threatened students' personal values. Roach (1994) found that this resulted in emotional detachment or alienation (p. 670-671). In this study students were rarely sure about their thinking and did not want to risk embarrassment in front of the professor and their classmates. Being put on the spot traumatized some, detracted others from their learning and increased in some a sense of vulnerability. Later I discuss the detachment felt by students.

Students' desire to excel on the final exam also explains why students did not like questions or the Socratic method. This method interfered with their desire to learn the black-letter law and legal principles for the exams.

#### *One-on-One Method*

One-on-one teaching methods are seen as very effective ways to promote student learning (Bligh, 1972). However, this study showed that this method was rarely employed, for several reasons. Although this study showed that most professors were generally available, there was a sense that professors were only to be approached when students were having difficulties. Many students felt a general sense of intimidation and thus tended not to speak up in class or approach professors individually. This intimidation appears to have its roots in a deeper sense that professors have enormous power over students' futures through grades and possible references. This study also showed that many students thought that the first year professors were there only to provide substantive law advice. This seemed to contribute to the sense of isolation and confusion.

## Content and Curriculum

The first law school curriculum was created over one hundred years ago, yet it looks strikingly similar to the one described in this study. The original curriculum taught prospective lawyers about black-letter law, legal institutions and some legal procedures.

This original curriculum was based on a theory that law is objective. This study suggests that the modern curriculum is also based on objectivism. This theory has been criticized in the literature. Objectivism has been accused of reducing legal education to a narrow study of legal rules, causing curriculum overload and not permitting a constructionist view of learning (Webb, 1996). Objectivism as an epistemology also rejects values, emotions and beliefs and ignores human and interpersonal aspects (Morin, 2000). This literature is reinforced by this study.

### *A Narrow Study of Rules*

This study shows that teaching methods, the curriculum and grading methods are all directed at teaching law as a narrow study of rules.

Through the case method, first year students are asked to read hundreds of decided cases that describe the law as it is, rather than how it should be. The content of first year looks like the study of the evolution of the law or the study of the development of the common law in five distinct areas or an accumulated history of law consisting of a long list of cases that overturn each other. To the chagrin of students, many of these cases are overturned by a statute, but this is rarely mentioned in first year.

This focus on learning legal rules is reflected in lectures where black-letter law is fed to students as a set, predetermined thing. It is also identified in students' dislike of teaching methods that require them to do more than absorb facts and information.

Graduates did not like *modern* teaching methods that stimulated deeper thinking. This was directly related to their desire to learn the legal principles needed to pass the exam. Students also seemed to resent active student involvement since, as one student said, *at the time we were more interested in learning the rules of law and the correct answer.*

This objectivism and focus on narrow rules is also reflected in the examinations. For the most part, the examinations test the ability to recall and apply relevant legal principles to factual situations. Students learn this when they write the Christmas exams. Shortly after writing the exams, the *light went on* for many students. It was at this point that most students realized that the main thing to know was the set of legal rules or principles for each course. This explains why so many graduates said that the best learning tools were either a good set of CANs or a law textbook. As stated by one student, *you know, I just want the quick summary, right?* Several students said they could have learned much more effectively and efficiently through textbooks than through cases.

Finally, this focus on rules is reflected in the fact that students are never taught directly how to read a case. This lack of instruction was a major source of irritation for many students. This seems to suggest that this skill of analysis is not seen to be as important as substantive law.

#### *Causes Curriculum Overload*

This study supports the view that the epistemology of objectivism causes curriculum overload (LeBrun & Johnstone, 1994). Many of the debates about legal education are about the *creeping core*, and usually include lengthy discussions about what courses to include and exclude from the curriculum (Steinzor & Hornstein, 2002).

The sheer volume of cases reflects this as does the sense that so many graduates felt that the eight months of learning covered just the basics and not much else.



The cases are so numerous that only a few students actually read all the cases. There was a sense that the sets of course materials grew each year to the extent that new cases were decided. If this is true, the number of readings and topics will never decrease and the curriculum will keep expanding.

This study indicates that there was no room for learning anything else in first year. Students learned the basics and this took eight months. Although students learn how to analyze cases, they do not learn how to legally reason. Although they learn how to read cases, this learning seems almost like a side effect of reading cases. There is simply no room for the learning of these and other legal skills in first year.

#### *Does Not Support Constructivist View*

This study supports the literature that suggests the law curriculum does not seem to permit a constructivist view of learning (Webb, 1998). Students appear to be given the law as a set of rules or instructions about how the law works. There did not appear to be much *meaning making* on behalf of students. Indeed this was a big issue for graduates. The content of first year law courses was not placed in a context that made it relevant to students. This made the content more difficult to learn and to remember.

One of the main complaints about the curriculum was its lack of relevance or practical application. Most graduates described the curriculum as being too theoretical and not very practical. One person described it as a *principle over here and a principle over there*. There were only rare opportunities to apply learning. A few considered this impersonal approach to law odd, considering that law impacts people on a daily basis.

#### *Excludes Values and Human Aspects*

The literature suggests that the underlying epistemology of objectivism rejects values, emotions and human aspects (Webb, 1998; Cramton, 1987). It has been suggested that the

curriculum forces students to exclude the relevance of all other forms of experience when learning the law (Webb, 1996). Webb (1996) calls this the *life begins at law school syndrome* (p. 24). Palmer (1998) suggests that by removing values in an attempt to be objective, students disconnect themselves from the very things they want to know and understand. This literature is reflected in this study

This study suggests that the case method is the study of dead cases. These old appellate cases felt impersonal, lacking in relevance and thus difficult to learn and remember. The cases appeared to have had their human aspects removed both in the sense that the parties did not seem human but also in the sense that all other human aspects of the dispute including any attempts at reconciliation and the process and consequences of the litigation are absent.

According to this study, law lectures also do not permit much human connection. There seems to be little room in lectures for sharing or integrating students' values, beliefs or opinions. Professors instruct students to find the bald facts and the ratios. Those professors who do discuss policy are not viewed in a positive light by students since students come to know that policy is not entirely relevant on examinations.

This study supports the literature that suggests that the exclusion of values and lack of student participation seems to be related to student detachment, passivity and cynicism (Webb, 1998). Cramton (1987) suggests that in neglecting values such as love and justice we lapse into an *empty superficiality* and a pretense that we are just *technicians teaching technique in a value-neutral context* (p. 513). This study showed that at some point in first year, students become detached and disengaged. This is discussed further below.

### *Basic Learning*

One interesting impact of objectivism and the tendency to see law as a narrow study of rules is that it caused graduates to feel that they learned a lot of content but not a lot of substance. Almost every participant felt they learned a lot in first year, particularly lots of content. They learned hundreds of cases and ratios and learned a significant amount of black-letter law in a few main areas. Although almost every graduate mentioned that they learned more in first year than in any other years, upon reflection, most seemed to view this learning as fairly basic and more difficult than it needed to be. One student described his learning as *only an inch deep*. As students distilled their learning into CANs they began seeing their learning as somewhat basic and not entirely relevant. As suggested by Pang (1999) this may be the reason they became *demoralized, dispirited and profoundly disengaged* (p. 271).

### **Assessment and Grading**

This study shows that grading and assessment methods impact students in many ways. This study supports the rare research on law school assessment that suggests that exams drive student behaviour (Boud, 1990) and have detrimental impacts on students (Kissam, 1989).

This study shows that students become aware of the grading practices within the first week of law school. They are told specifically about the curve and not to expect high marks. Every graduate emphasized repeatedly that there was an incredible emphasis on grades.

This concern over grades is related most to the sense that grades will determine the future careers of law students. Students come to understand, through professors, upper year students and rumors about the legal recruiting process that good jobs in law are few, that they will all be competing for a few jobs and only those who are in the top 25% of their class will

have a chance at these jobs. The combined message seemed to be that if a student did poorly on exams he or she would be a failure as a lawyer.

This study shows that over time, students develop fundamental beliefs about grading and assessment and these beliefs cause them to feel betrayed and cynical. Students came to believe that exam expectations were not clear; exams assessed things not taught; exams were not an accurate assessment of ability; exam marking was arbitrary and the curve and ranking were not fair.

#### *Exam Expectations Were Not Clear*

This study shows that most students generally knew what law exams look like but did not know what to expect on exams. Students had no idea what the professors were looking for in terms of an answer. Even though every graduate had reviewed several sample exams and attended classes in which professors reviewed sample examination questions, all but one said they had almost no idea how to write a good exam, some even to this day.

This sense of not knowing expectations was derived entirely from graduates' experience with the marks they received on the Christmas and final exams. One of the most often repeated phrase was *it was the opposite of what I expected*. In other words, the mark did not reflect what students knew or students' personal opinions about how well they wrote on that day. Several graduates referred to this as a *disconnect*.

#### *Exams Assessed Things Not Taught*

Students also began to believe that law school exams tested something that was not taught. That is the skill of applying law to a new situation. Lawyers call this skill problem solving or legal reasoning. It is quite different than case analysis, which is taught. During the year, students learn black-letter law through the study of cases but their first attempt at

applying the law to a new situation happens in the examination room. One described it as *learning from the opposite direction*.

#### *Exams Were Not an Accurate Assessment of Ability*

This study showed that students came to believe that exams did not provide an opportunity to demonstrate what they really knew. All graduates felt that a three hour final exam did not and could not measure all of the things that students were able to do. As suggested by Kissam (1989), these types of exams are poor learning tools and do not measure analytical abilities or critical writing demanded by legal interpretation (p. 455).

Students appeared concerned that they had only one opportunity to demonstrate their knowledge and if they *blew it*, they would be a failure. Others felt that the pressure of 100% finals and the timing of the exams caused them to perform badly, promoted unhealthy competition and impacted their motivation to do well. This study indicates that these exams resulted in low knowledge retention. This seems to be related to the fact that much of the preparation for exams involved memorization for quick recall and also because, as several graduates said, the learning was not used after first year.

#### *Marking Was Arbitrary*

Perhaps the thing that seemed to bother students more than anything else in first year law school was the *arbitrariness* of the exam marks. Even though graduates were speaking of events from over two years ago, most seemed quite emotional when describing how grading and assessment felt. The emotions that were reflected in student's comments included surprise, frustration, anger and resignation. One student described the situation as being similar to judging Olympic gymnastics or international figure skating. The main feeling of arbitrariness arose from the sense that it would be impossible for any professor to distinguish

between so many exceptional students and any attempt to do so was not *honest*. Students were often surprised by their marks.

This study indicates that students disliked and were distressed about the curve and the ranking system. No student enjoyed being marked on a bell curve with a forced average and only a few appreciated being ranked against other students. Students learned not to *get their hopes up* because they were not likely to get the type of marks they had received in their undergraduate courses. This seemed to cause students to become depressed and discouraged.

This study suggests that students perceived the curve as an unfair grading method. One called it *academically dishonest*. Because most of the students who get into law school are already high achievers, the inability to get a high mark from the very start did not seem right. Another common concern related to the difference that a small change in marks could make on the curve. Most graduates knew that the main purpose of the curve and ranking was to help lawyers when recruiting law students. This made the exams seem even more important.

This study showed that a few students did not mind the 100% final exams. They felt that the exams required a minimum amount of effort during the year, could be prepared for in a reasonably short period of time and would be over in three hours. This supports the research that these types of exams can benefit students who only have a superficial knowledge of the law (LeBrun & Johnstone, 1994, p. 204).

#### *Why Exams Remain*

LeBrun and Johnstone (1994, p. 202) suggest that law school exams stay the same because of the myths that surround them. Many professors believe that these exams actually measure several complex abilities such as spotting issues. Some believe these test students' ability to write effectively, plan their answers and work to a deadline (p. 202). Kissam

(1989), on the other hand, suggests that these exams are part of a larger campaign to disengage students so that professors are free to pursue their non-teaching interests. Although this study does not provide any information about the reasons for retaining these types of exams, this topic becomes relevant when considering change. This is discussed in more detail in the final chapter.

### **Learning Theory**

The literature on learning theory in relation to legal education is extraordinarily rare, however the general research on how students and adults learn is vast. It has long been established that an understanding about how students learn should be at the foundation of all education (Cervero, 1998, p. 38). The cognitivist theorists taught us that learners use mental schema to retain, organize and recall information (Shuell, 1986). The constructivists taught us that each person learns differently and tends to construct their own knowledge or make meaning based on their own unique experiences (Fenwick, 2000). The wholists taught us that we learn as we develop as human beings in the social context (Mezirow, 1997; Thomas, 1998).

LeBrun and Johnstone (1994) suggest that the lecture method used in law school reflects a cognitivist learning perspective and results. They also suggest that the lecture method is not effective, primarily because students do not enter law school as empty vessels (p. 53). Webb (1998) suggests this technique, by being so authoritative, excludes our own experiences and values and thus reduces our capacity for judgment and creativity. It teaches students to blindly follow rules.

This study shows that law school lecture consists of authority-oriented learning environments in which the teacher is in complete charge of teaching and learning. These

lectures typically involve downloading information from the professors and only rare student participation or reflection.

The case method also tends to view students as passive receptors of information, or empty buckets waiting to be filled. It requires straight-forward reading about the law as it has been laid down by judges. There appears to be no interaction or conversation between the content being learned and students. Their opinions and perspectives appear to play almost no role in their first year experiences.

Nor do the exams appear to ask students to share their personal perspectives. This study suggests that students are encouraged to be objective and keep their opinions to themselves. The exams seem to ask students to state and apply the law in a *neutral* manner.

It would be fair to say that these educational practices do not tend to view students as constructors of their own meaning as constructivist theorists do, or as fully developing human beings or moral lawyers as wholist theorists do.

### **Aims of Law School**

The literature tells us in no uncertain terms that the aims of legal education drive all other aspects of education—from content to assessment methods (Twining, 1997; Webb, 1996). Aims provide a clear direction to the curriculum and help professors and students understand what they are learning and why. Aims often describe the *outcome* of the educational process and thus provide an accountability tool or a means of measuring the success of an educational program (Twining, 1997). A lack of clear aims can result in all sorts of problems, as indicated in this study.

The literature also suggests that law schools are primarily academic. Law schools see themselves first as developers of intellect or as academic enterprises devoted to the



theoretical foundations of the law (Jaquish & Ware, 1993). This academic focus is reinforced by the university that views law faculty as discoverers and disseminators of new knowledge (Allen, 1982).

This study suggests that the aims of first year law school are unknown to students, and unarticulated by teachers. I attempted to elicit some aims from the other results of this study. I concluded that the aims of this particular first year law program were to teach students the historical foundations of common law in four areas of the law and provide basic information about the Canadian legal system. Less obvious aims appeared to be to help students self-learn during such activities as reading cases, summarizing cases and analyzing cases.

Although the literature indirectly suggests that one of the aims of first year is to teach legal reasoning, this is not reflected in this study. This study indicates that first year students do not learn how to analyze facts, identify legal issues or apply the law to a new situation – all of which are skills required in legal reasoning. This became most apparent from graduates' comments about how the exams tested these abilities that were not taught.

The results also suggest that the aims of first year do not include the aim to help students think like lawyers or solve legal problems. As one student suggested, it may be that first year law students were not encouraged to think at all, but rather to simply learn what the law is, without questioning it.

This reflects the literature that suggests that law schools see themselves first as developers of intellect or as academic enterprises.

At first blush this academic aim appears to conflict with the aim that law schools are for the primary purpose of educating lawyers. This is a false dichotomy. This conjures up the contrasting images created by Twining (1997) of Pericles, the enlightened policy maker, and

the no-nonsense technically competent plumber. This so-called academic/vocational divide is a myth that keeps us from thinking creatively about legal education. As stated by Twining (1997), it is the Achilles heel of our present patterns of thinking about legal education and must be toppled by questioning our most basic assumptions about all of teaching, learning and assessing (p. 83-84).

A lack of clear aims appears to be at the root of many of the problems identified in this study. The absence of clear aims is not only reflected in the comments of graduates about the lack of aims but also in the problems identified in the results, ranging from the selection of first year courses and teaching methods to curriculum overload.

### **Combined Impacts of Educational Practices**

Although many of the impacts that students felt in first year could be attributed to a particular educational practice, a number of impacts seemed to result from a combination of these practices. This study suggests that many first year students feel isolated and disoriented. Eventually they became disengaged and resigned to having no control.

#### *Isolated*

The literature suggests that students suffer isolation in first year (Roach, 1994). Students are isolated from themselves, each other, their professors, and others outside university, causing students distress (Roach, 1994). Roach found that much of the distress felt by first year law students resulted from the lack of context within which they were operating. They were completely isolated from any direction, modeling, or explicit instruction about what specifically is expected of them during their first year (p. 672). This statement was confirmed repeatedly in this research.

This study shows that first year students feel very much alone. Most study on their own and quickly learned how to be self-learners. Several participants said they became much more self-sufficient. Many suggested that there was not enough support from professors. One student said she felt she was expected to sink or swim.

This sense of isolation was reflected in comments about feeling anonymous, not valued and invisible. One student said she felt like one face in a *sea of faces* and another said *they don't even know my name*. A repeated comment was about professors' barely knowing students or their names. Professors did not appear to be attentive to what students' were experiencing. Indeed the one professor who spoke to students in the hallway and recalled their names was seen to be quite unique.

Finally, the general atmosphere at law school seemed fairly impersonal. This is reflected in the combined set of circumstances such as workload, competition and the stress of the 100% exams, tending to make students less social and less likely to pursue interpersonal relations.

### *Disoriented*

This study supports the literature that suggests students are disoriented in first year (Anonymous, 1999). As mentioned previously, most graduates said they had very little sense of direction. They did not really have a sense about what they were supposed to learn over the year and how that might fit into the next two years of law school or their career. Several participants said they just did what was expected but really had no idea how it all fit together.

This study indicates that many students had no idea what was happening to them so did not really know what they were doing in first year. This seemed to be disorienting for many. One student described it as acquiring little bits of information all the time and not

knowing exactly how to connect them. One student described it as a rollercoaster, where one day you felt you knew it and the next day you had no idea.

### *Disengaged*

This study supports the literature that suggests first year law students feel disengaged, alienated, resigned and discouraged (Watson, 1958; Anonymous, 1999). Glennon (1992) suggests that this disengagement comes primarily from the sense of disconnect caused by the exams and the loss of a sense of control or meaning. Anonymous (1999) suggests that students feel insecure and fatalistic about the world and their future in it.

The word that best reflects the general attitude of graduates about first year is *disengaged*. This study indicates the disengagement is caused by many factors and particularly the lack of human connection in almost every educational practice, from teaching methods to assessment methods. There is also extraordinarily little formal human interaction in first year other than the lectures.

This study shows that ideals and values are absent from the curriculum and there was almost no invitation to include any student prior learning, values or beliefs into what was being learned. This *valueless* curriculum reflects the one described by Cramton (1992) and appears to cause students to disconnect.

This study suggests that many students came to feel that their learning was irrelevant and in some cases inconsistent with their prior beliefs. As a result, they seemed to go into automatic pilot. They appeared to detach themselves, turn themselves off or become pacified because, as stated by one student, *what else can you do?*

I would surmise that students arrive at a point during first year where they feel they have two choices: either believe what you already know from your own life experiences and intuition or believe what we tell you. Included in this set of beliefs is that students are not as

smart as they thought they were before coming to law school and that fairness and justice are not entirely relevant in law. When push comes to shove, it seems that many students close off an aspect of themselves and as a coping mechanism, begin to rationalize their new way of being.

### *Resigned*

The pacification that Anonymous (1998) speaks of is definitely reflected in this study. Although all graduates seemed to have coped fairly well on the surface, they all said it was a difficult year. Although some referred to it as a year of tremendous growth, none suggested that the growth came about in a positive way. Most referred to first year as a rite of passage. Students seemed to conclude that pain was a necessary cost of becoming a lawyer. One graduate referred to it as indoctrination.

This study seems to indicate that students come to law school very optimistic and this shifts for them in first year. One student said she came out of law school very discouraged, lost, and negative and in a bit of a crisis about whether she had made the right decision.

Several graduates alluded to the continual sense that although they tried so hard, they were still told they were not good enough. One called it *low-grade abuse*. Similar comments were made about the growing sense of feeling stupid or not being able to do anything right. Several graduates described the situation as *demoralizing*. When their efforts were not rewarded, they became discouraged and resigned to the way things were. The impact of this on the graduates I interviewed was reflected in the comments about not wanting to go thorough law school again and not encouraging others to go to law school.

A couple of graduates said they had internal questions about whether the practice of law is what they wanted for a career. Two graduates said that they would not encourage their

children to go to law school. As explained by one student, the focus was just getting through it, and that is a shame.

### *Resilient*

What was most remarkable to me was the resilience of these graduates. Although all told of their experiences with and concerns about first year, most said they felt that they had accomplished a lot. They felt that first year was generally a success. Several students began the interview with comments like, *it was fine* or *it was fine, given the circumstances* only to tell me later, in detail the many ways that it was not fine.

Almost every student told me that first year law school was quite an accomplishment, particularly in terms of having learned so much and having handled everything. A few graduates felt very satisfied. A repeated statement was, *I learned a lot!* Several graduates told me that they experienced personal growth. A few mentioned learning through new people and new experiences. A few graduates mentioned that they learned how to deal with volume and stress and how to prioritize. Only one said that it stunted her development, although all demonstrated a sense of cynicism.

One of the most intriguing results was that so few students questioned what was happening to them at the time. They accepted the materials, the lectures, the professors, and the exams, both at the time and, to a large extent, now. All seemed to feel they had no choice, that there was nothing they could do about it, that it's just life.

But even more intriguing was the graduates' rationalization of the way things were. I am not a psychologist but it looked as if they were trying to make sense of the whole experience. Many graduates described what was wrong with law school and then provided their opinions about why things were the way they are. Several graduates said things like, *what more could the professors do?* Many suggested that given the size of the class, the only

option was to have large group lectures and 100% exams, otherwise there would be too much pressure placed on faculty. Several explained that although they did not like 100% finals, they could not think of a better way to do things. Several suggested that the system was impossible to change.

What saddened me most was the sense of hopelessness that these graduates seem to have acquired during their first year. Many gave me the impression that they had given up hope on law school and especially first year. But more disturbing was the cynicism they held about lawyers and the practice of law, that seemed to manifest itself in first year. Several said that first year was good preparation for practicing law because *the practice of law is so difficult*. I wonder how these graduates, who have not yet practised law, come to believe that practicing law is so difficult. More significantly, I wonder how this accumulated collection of beliefs arising from their first year experiences will benefit them as they embark on a career in law.

### **Summary of Discussion**

This study is consistent with the current literature and provides new and important information. We now have a better understanding of current educational practices used in first year law school and how these practices impact students.

Prior research showed that students are negatively impacted during first year. This research describes current educational practices and the extent to which teaching methods; content and curriculum; assessment and grading; learning theory and the aims of law school impact first year law students.

This study confirms the literature that suggests that the case method and the lecture method used in first year are not entirely effective or efficient for teaching substantive law or

legal reasoning. The case method makes learning more difficult and slower than it needs to be. Because the case method requires that students read irrelevant cases, students appeared to grow cynical and confused.

Also as suggested in the literature, the lecture method was useful in providing information to students. This information helped students focus their studies and provided insights about the final exam. However, these typically didactic lectures did not appear to engage students or encourage deeper learning.

As suggested in the literature, the question and answer technique used in some large group lectures intimidates students and appears to interfere with learning. This study shows that student one-to-one contact with professors is somewhat rare and thus does not have much impact as a teaching method.

This study is consistent with the literature that suggests that the law school curriculum is based on an epistemology of *objectivism* and that this causes several problems. It causes first year law school to become a narrow study of legal rules; it causes curriculum overload; it does not support constructivist learning; and it tends to reject human aspects of law and learning.

This study supports the literature that suggests that law school examinations impact students in many ways. Students quickly come to believe that exams are everything and then slowly begin to feel betrayed and cynical when they discover that exam expectations are not clear; exams assess things not taught; exams are not an accurate assessment of ability; and marking is arbitrary. This study indirectly supports the literature that suggests that exams drive how students study, their attendance at classes and their relationships with their professors and other students.



This study confirms that the combination of educational practices used in first year makes students feel isolated, disoriented, disengaged, and ultimately resigned to having no control. Yet first year law students show extraordinary resilience.

In the next chapter I summarize this study, draw some conclusions about this research and make recommendations for further research.

## CHAPTER SEVEN

### SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

In this chapter I summarize this study, paint a modern picture of the experiences of first year law students; draw some conclusions and suggest areas of further research and practice.

#### Summary of Study

The purpose of this study was to discover more about the educational practices used in first year law school and the impact of these practices on students. Prior research showed that students are negatively impacted during first year and that educational practices are somewhat to blame. This study is consistent with this literature and provides new and important information about the extent to which teaching methods; content and curriculum; assessment and grading; learning theory and the aims of law school all contribute to the experiences of law students.

The research method in this study consisted of in-depth interviews of 19 University of British Columbia law school graduates who had completed law school a few months earlier. Graduates were questioned about their perceptions of both the first year law school educational practices and their impacts, specifically in relation to the five *core* courses taught in first year law school. These interviews were recorded, transcribed and analyzed.

#### A Modern Picture of First Year

The results of this study paint a new picture of first year law school. This is the updated picture that emerged.

Students arrive in September excited and a bit anxious. They are told to purchase huge sets of photocopied cases and told to show up for lectures. They receive a brief

orientation. They are then told, directly and indirectly, that the only thing that really matters in first year is the final examination in April. They are told that the marks are on a forced curve with an average of 72%. Since most law students are smart, students conclude that their marks will be lower than those achieved previously. They begin to believe that their success as a lawyer depends on these marks.

At the beginning of the year students diligently attend all classes, which mostly consist of large one-directional impersonal lectures. Sometimes professors ask questions but students prefer not to answer for fear of looking stupid in front of their peers and the professors. Students spend many hours reading hundreds of cases which do not seem to make much sense.

After students write the practice Christmas exam, many experience a sense of shock and disconnect when their marks do not reflect their ability, their efforts or their feelings about how well they wrote the exams. Students believe that this is because they were either not taught how to write an exam or, worse yet, that the exam is testing something that they have not learned – like legal reasoning. They get discouraged and begin to believe that the marks are a reflection of them personally. They begin to disengage.

Sometime after Christmas exams, the lights go on. At this point most students realize that the only thing they really need to know to pass the final exams is a complete set of legal principles for each of the five core courses. Students adjust accordingly, stop reading most cases and go in search of a good set of CANs.

Even though some students begin to feel more comfortable knowing that first year is not as hard as they initially thought, they still find learning difficult. This is because they never really get the big picture. They never understand what they are learning (other than cases, ratios and legal principles) or why. To compound matters, they never get a clear sense

about how they will be using this learning and are not given any opportunity to apply what they are learning, other than in the Christmas exam.

This is emphasized by the sense that their learning is irrelevant to them personally and academically. They have difficulty reconciling their prior experiences, beliefs and learning with their current learning and much of the learning simply does not make sense.

This lack of context, combined with the disconnect caused by the Christmas exams begins to cause students to feel isolated, disillusioned and resigned. Students begin to disengage a bit more and become discouraged.

At the same time, students become increasingly suspicious of law professors who told them that examination marks do not matter, that they really do care, that students must read all the cases and that CANs are dangerous. At this point many students become more disillusioned and question their decision to come to law school.

Students go into final exams hoping that they can survive by regurgitating everything they know. By the last exam they are so exhausted they simply lose interest.

Many students fear looking up their marks after finals in anticipation of a negative result. Most students know they worked as hard as they could and their marks do not reflect this. The experience begins to feel like low-grade abuse.

When it is done students feel an enormous sense of accomplishment, for simply having survived. Most are relieved to have first year over and most would never want to do it again.

In summary, these results show that the general feeling of law students in first year is that they are in a race for their lives. The whole experience feels like a serious competition that if won, will result in grand rewards. The only difficulty is that once they are in the race, they come to realize that the rules are not fair and that all their prior beliefs, experiences and

training are irrelevant. Still they feel committed to finishing, even if the price is somewhat high.

### **Conclusion**

It is clear from this study that students found first year law school problematic in many ways. If the perceptions of students accurately reflects what happens in law school then it would appear that many educational “best practices” were breached. The teaching methods used do not appear to be effective or efficient at what they are trying to teach; the curriculum is based on an epistemology of objectivism that seems to be causing all sorts of problems, such as curriculum overload; the grading and assessment methods do not appear to assess learning and are unanimously deemed unfair by students; the learning theory reflected in the educational practices suggests a cognitive approach that does not view learners as meaning makers; and the aims of first year law school do not appear to be well defined.

Although the results are negative, this study begins to explain the complex connections that hold things steady in law schools and make them resistant to change. It also demonstrates the power of the hidden culture of legal education – and perhaps the legal profession. This study shows that the reasons for the problems are complex and interdependent.

Although law professors are the most obvious target, they are not entirely responsible. However, unlike students and those outside the faculty, they have significant influence over what happens at law school. Although professors are well regarded by students and there is no suggestion of any negative intent on the part of law professors, each plays some role in maintaining the status quo. The caring and concern of professors reflected in this study does not seem to be enough to reduce the negative impacts of current educational practices.

Since so many factors are at play, a single change, even by professors, may not have the impact needed to shift a firmly entrenched culture. The culture is so deeply embedded and hidden that this study has just begun to turn up the edges. Not only are the educational practices and impacts explored in this study interdependent, they are also related to things not mentioned in this study. This includes stakeholders such as governments, funders, the academy, practicing lawyers, regulators of lawyers and, of course, students. Still, I have high hopes, as indicated in the recommendations below.

### **Recommendations for Future Research**

This study is one of the few empirical studies of law students' experiences, but it is just one study. It only begins to shine a light on the experiences of law students. I recommend three areas of future research.

The first involves testing these results. This means looking at the extent to which these law student experiences are true in other contexts and other locations. It would be useful to build upon this study by surveying a larger group of law students about these findings. A questionnaire could easily be developed from the results in this study. This would enhance the validity of this research and would delve into the deeper reasons for these findings. For example, it would be useful to measure the extent to which students feel anonymous, when this tends to happen, what causes it, and how to prevent it.

My second recommendation is to determine whether such factors as gender and cultural background make a difference in how students experience first year. This would build upon the research by Guinier, Fine and Balin (1994).

My third recommendation involves professors. It would be beneficial to gather information about professors' opinions, attitudes and experiences to round out this research.

At a basic level this would involve asking them the extent to which these findings reflect their own experiences. How do they feel about this study and these findings? Do they perceive things in a similar fashion? What are the impacts of the educational practices on professors? What are the pressures they face? How could things be improved?

### **Recommendations for Practice**

One question remains: Why has legal education stayed the same for so long, particularly in light the literature that suggests that things are not good?

As suggested above, there are many contributing factors that account for the resistance to change. The literature also identifies several reasons why there are so few teaching methods employed in law school and describes the many problems with curriculum reform (see Chapter Three). Jaquish and Ware (1993) suggest that *tradition, inertia, and utilitarianism combine to produce a habitual approach* (p. 1713). Others suggest that law professors are not skilled or able; are not interested; have more pressing interests; and cannot be held accountable.

Steinzor and Hornstein (2002) blame almost all the problems relating to legal education on the lack of curriculum reform. They suggest that some members of faculty are cynical about the efficacy of reform, others feel that tenure and academic freedom make curricular reform a waste of time. Some believe that reform is not a priority compared to scholarly output and others think that curricular reform is too expensive because it is likely to result in more subjects being taught (p. 466-67).

Although this study provides no information about why change is slow in legal education, these reasons undoubtedly are related to why things have not changed over the years.

I have three recommendations for practice. First, this research should be widely disseminated to legal educators. This means sending a copy of this thesis to law deans in Canada and the United States. This means ensuring an article is published reflecting these findings.

Law faculties around the world would benefit from a better understanding of what law students are experiencing. Often these perceptions are hidden from faculty and sometimes they are difficult to appreciate or understand. The more educators know about what is happening to students, the better they are able to improve conditions for learning and growth.

Discussions about this study, however, must be constructive and forward looking. The exercise should not be to challenge or condemn these findings – although there is a place for this – but rather to use these findings as a starting point for further investigation and improvement. Law faculty need to have an open dialogue about what is good and bad about legal education with the sole goal of making things better.

Second, the reasons for lack of change, described above, must be openly discussed. The way to do this is by creating a safe place to have a courageous conversation. It means bringing out the *rhinoceros from under the table* and describing it in a way that makes it less threatening. The concerns of law professors are grounded in their own experiences and thus form the basis of these perceptions. These negative assumptions must be replaced with more positive ones or attempts at change will be sabotaged by this thinking. Without discussing these things openly, the results of this study will have minimal impact.

Third, I recommend that all law faculties create a new vision of their law school if they have not already done so. This study shows that the major areas of irritation appear to be related to 100% exams, the marking of exams, the curve, ranking, workload, lack of direction



and lack of context. Because all of these are tied to the current epistemology of objectivism and the historical aims of law school, these must be replaced with a new foundation and vision about what law schools are trying to accomplish.

The easiest way to do this is by creating a shared picture of how law school could be – a description of the enlightened or ideal law school. This would be a law school where among other things, professors are excited to go to work, where students are stimulated to learn every day, and where staff feel valued. It is a place that invites all opinions and differences. It is a program from which students graduate with a deep sense of pride and satisfaction, having learned and grown in wonderful ways over the three years.

This new vision would help law faculty members to look forward to what is possible.

### **Closing Comments**

This study feels like a life-long journey, beginning with my entry into law school over 20 years ago. Each of my life experiences has in some way led me to this place. I am thankful for having the opportunity to investigate this topic. I am thankful to the graduates who participated in this study. They were candid in responding to my questions and were able to articulate their perceptions so eloquently. I am thankful to all those who supported me in this sometimes difficult journey.

As a lawyer and academic, I am pleased to be able to contribute to knowledge that might ultimately lead to improving legal education. I welcome the opportunity to share this research with law faculty and others who might benefit.

## REFERENCES

- Allen, F.A. (1982). *Humanistic legal education -The quiet crisis*. In N. Gold (Ed.), *Essays in Legal Education* (pp. 9-22). Toronto: Butterworths.
- American Bar Association (1992). *Legal education and professional development – An educational continuum. Report of the task force on law schools and the profession* (referred to as the MacCrate report). Chicago: American Bar Association.
- Anonymous (1998). Making docile lawyers: An essay on the pacification of law students. *Harvard Law Review*, 111, 2027-2044.
- Arthurs, H. (1983). *Law and learning – Report to the Social Sciences and Humanities Research Council of Canada by the Consultative Group on Research and Education in Law*. Ottawa: SSHRC. (referred to as the Arthur's Report).
- Arthurs, H. (1998). The political economy of Canadian legal education. *Canadian Journal of Law and Society*, 25, 14-32.
- Backhouse, C. (2001). The changing landscape of Canadian legal education. *Windsor Yearbook of Access to Justice*, 20, 25-34.
- Ball, M. S. (1981). *The promise of American law: A theological, humanistic view of legal process*. Athens, GA: University of Georgia Press.
- Bandura, A. (1986). *Social foundations of thought and action: A social cognitive theory*. Englewood Cliffs, N.J., Prentice Hall.
- Beck, C. J. A., Sales, B.D., & Benjamin, G.A.H. (1995). Lawyer distress: Alcohol-related problems and other psychological concerns among a sample of practicing lawyers. *Journal of Law & Health*, 10, 1-94.
- Benjamin, G. A. H., Kaszniak, A., Sales, B. D., & Shanfield S.B. (1986). The role of legal education in producing psychological distress among law students and lawyers. *American Bar Foundation Research Journal*, 225-252.
- Benjamin, G. A. H., Darling, E.J., & Sales, B. D. (1990). The prevalence of depression, alcohol abuse, and cocaine abuse among United States lawyers. *International Journal of Law and Psychiatry*, 13, 233-246.
- Biggs, J. (1999). *Teaching for quality learning at university: What the student does*. Philadelphia: Society for Research into Higher Education: Open University Proess.
- Bligh, D.A. (1972). *What's the use of lectures?* Hammondsworth: Penguin.

- Bogdan, R.C. & Biklen, S.K. (1998). *Qualitative research for education: An introduction to theory and methods*. Boston: Allyn and Bacon.
- Boud, D. J. (1990). Assessment and the promotion of academic values. *Studies in Higher Education*, 15, 101-122.
- Brest, P. & Krieger, L. (1994). On teaching professional judgment. *Washington Law Review*, 69, 527- 560.
- Brookfield, S. (1990). *The skillful teacher*. San Francisco: Jossey-Bass.
- Bucknall, B.D., Baldwin, T.C.H., & Lakin, J.D. (1968). Pendants, practitioners and prophets: Legal education at Osgoode Hall to 1957. *Osgoode Hall Law Journal*, 137-229.
- Cervero, R. M. (1988). *Effective continuing education for professionals*. San Francisco: Jossey-Bass.
- Charles, W.H. (1987). Objectives in legal education. In R.J. Matas & D. J. McCawley (1987). *Legal education in Canada, Reports and background papers of a national conference on legal education held in Winnipeg, Manitoba, October 23-26, 1985* (pp. 186-213) Montreal: Federation of Law Societies.
- Clark, M.C. (1993). Transformational learning. In S.B. Merriam (Ed.), *An update on adult learning theory. New Directions for Adult and Continuing Education* (Vol 57, pp. 47-56). San Francisco: Jossey-Bass.
- Cotter, W.B. (1992). *Professional responsibility instruction in Canada: A coordinated curriculum for legal education*. Montreal: Federation of Law Societies.
- Coquillette, D. R. (1994). Professionalism: The deep theory. *North Carolina Law Review*, 72, 1271-1277.
- Cramton, R.C. (1982). The current state of the law curriculum. *Journal of Legal Education*, 32, 321-335.
- Cramton, R. C. (1987). Beyond the ordinary religion. *Journal of Legal Education*, 37, 509-518.
- Cranton, P. (1994). *Understanding and promoting transformative learning: A guide for educators of adults*. San Francisco: Jossey-Bass.
- Cranton, P. (2002). Teaching for transformation. In J. M. Ross-Gordon (Ed.), *New Directions for Adult and Continuing Education* (No. 93, pp. 63-71). San Francisco: Jossey-Bass.
- Creswell, J. W. (2003). *Research design: Qualitative, quantitative and mixed approaches* (2nd ed.). Thousand Oaks, CA: Sage.

Cross, K.P. (1981). *Adults as learners: Increasing participation and facilitating learning*. San Francisco: Jossey-Bass.

Csikszentmihalyi, M. (1990). *Flow: The psychology of optimal experience*. New York: Harper & Row.

Culp, D. R. (1994). Law school: A mortuary for poets and moral reason. *Campbell Law Review*, 16, 61-101.

Diacoff, S. (1997). Lawyer know thyself: A review of empirical research on attorney attributes bearing on professionalism. *American University Law Review*, 46, 1337-1428.

Daicoff, S. (1998). Asking leopards to change their spots: Should lawyers change? A critique of solutions to problems with professionalism by reference to empirically-derived attorney personality attributes. *Geo. J. Legal Ethics*, 11, 547- 595.

Dammeyer, M. M., & Nunez, N. (1999). Anxiety and depression among law students: Current knowledge and future directions. *Law and Human Behavior*, 23, 55-73.

Dhanaraj, S. (2001). Making lawyers good people: Possibility or pipe dream? *Fordham Urban Law Journal*, 28, 2037- 2077.

Dillon, J.T. (1980). Paper chase and the Socratic method of teaching law. *Journal of Legal Education*, 30, 529-535.

Dvorkin, E., Himmelstein, J. & Lesnick, H. (1981). *Becoming a lawyer: A humanistic perspective on legal education and professionalism*. New York: West Publishing Co.

Eagar, J. (1997). The right tool for the job: The effective use of pedagogical methods in legal education. *Gonzaga Law Review*, 32, 389-416.

Edwards, H. T. (1992). The growing disjunction between legal education and the legal profession. *Michigan Law Review*, 91, 34-78.

Feinman, J.A. (1998). The Future History of Legal Education. *Rutgers Law Journal*, 29, 475-485.

Fenwick, T. (2000). Expanding conception of experiential learning: A review of five contemporary perspectives on cognition. *American Education Quarterly*, 50(4), 243-272.

Fetterman, D.A. (1998). *Ethnography: Step by step*. Thousand Oaks, Calif. Sage Publications.

Fines, B G. (1997). Competition and the curve. *University of Missouri Kansas City Law Review*, 65, 879-915.

- Fitzgerald, M. F. (1993). Stirring the pot of legal education. *The Law Teacher* 27(1), 4-35.
- Fitzgerald, M. F. (1995a). Competence revisited: A summary of research on lawyer competence. *Journal of Professional Legal Education*, 13, 227-280.
- Fitzgerald, M. F. (1995b). Professional legal training in the Commonwealth. *Journal of Professional Legal Education*, 12, 179-209.
- Fitzgerald, M. F. (1998a). Evaluating articling: A recommended process. *Journal of Professional Legal Education*, 16, 209-228.
- Fitzgerald, M. F. (1998b). Determining the content of professional legal training. *Journal of Professional Legal Education*, 16, 69-85.
- Fitzgerald, M. F. (1999). How to evaluate legal training programs. *Journal of Professional Legal Education*, TBA.
- Fitzgerald, M. F. (2004). *Legal problem solving: Research, reasoning and writing* (3d ed.). Toronto: Butterworths.
- Fox, M. (1994). *The reinvention of work: A new vision of livelihood for our time*. New York: Harper Collins.
- Frank, J. (1933). Why not a clinical lawyer-school? *University of Pennsylvania Law Review*, 81, 907-923.
- Frankl, V. (1984). *Man's search for meaning*. New York: Pocket Books.
- Franzese, P. A. (1998). To be the change: Finding higher ground in the law. *Maine Law Review*, 50, 11-22.
- Gold, N. (1994). Forward. In M. LeBrun & R. Johnstone (Eds.), *The quiet revolution-Improving student learning in law* (pp. vii-x). Sydney, NSW: The Law Book Company.
- Gold, N., Mackie, K., & Twining, W. (1989). *Learning Lawyers' Skills*. London: Butterworths.
- Glennon, T. (1992). Theoretics of practice: The integration of progressive thought in action: Lawyers and caring: Building an ethic of care into professional responsibility. *Hastings Law Journal*, 43, 1175-1187.
- Granfield, R. (1992). *Making elite lawyers: Visions of law at Harvard and beyond*. New York: Routledge.
- Griswold, E. N. (1955). Law schools and human relations. *Washington University Law Quarterly*, 217-231.

- Grossman, G. S. (1974). Clinical legal education: History and diagnosis. *Journal of Legal Education*, 26, 162- 193.
- Guba, E.G., & Lincoln, Y.S. (1989). *Fourth Generation Evaluation*. Newbury Park, Calif.: Sage Publications.
- Gubrium, J.F. & Holstein, J.A. (Eds.) (2002). *Handbook of interview research: Context and method*. Thousand Oaks, CA: Sage.
- Guinier, L., Fine, M., & Balin, J. (1994). Becoming gentlemen: Women's experiences at one law school. *University of Pennsylvania Law Review*, 143 (1), 1-110.
- Hulburt W.H. (Ed.) (1979). *The Legal profession and quality of service. Report and materials of the conference on Quality of Legal Services. Ottawa, October 26-28, 1979*. Montreal: Federation of Law Societies.
- Hulburt W.H. (Ed.) (1981). *The Legal profession and quality of service. Report and materials of a national workshop on quality of legal services held in Toronto in October 1980 as a sequel to the national conference on quality of legal services held in Ottawa October, 1978*. Montreal: Federation of Law Societies.
- Iijima, A. (1998). Lessons learned: Legal Education and law student dysfunction. *Journal of Legal Education*, 48, 524-531.
- Janoff, S. (1991). The influence of legal education on moral reasoning. *Minnesota Law Review*, 76, 193-220.
- Jarvis, P. (1995). *Adult and continuing education* (2nd ed.). London: Routledge.
- Jaquish, G., & Ware, J. (1993). Adopting and educator habit of mind: Modifying what it means to think like a lawyer. *Stanford Law Review*, 45, 1713-1730.
- Kissam, P.C. (1989). Law School Examinations. *Vanderbilt Law Review*, 42, 433-504.
- Kissam, P.C. (1999). Lurching towards the millennium: the law school, the research university and the professional reforms of legal education. *Ohio State Law Journal*, 60, 1965-2016.
- Kolb, D.A. (1984). *Experiential learning - Experience as the source of learning and development*. Englewood Cliffs NJ: Prentice Hall.
- Krieger, L. S. (1998). What we're not telling law students – and lawyers – that they really need to know: Some thoughts-in-action toward revitalizing the profession from its roots. *Journal of Law and Health*, 13, 1- 48.

- Krieger, L. S. (2002). Institutional denial about the dark side of law school, and fresh empirical guidance for constructively breaking the silence. *Journal of Legal Education*, 52, 112-129.
- Kronman, A. T. (1993). *The lost lawyer: Failing ideals of the legal profession*. Cambridge: Belknap Press of Harvard University Press.
- Lambert, L. W., Zimmerman, D., Cooper, D.P., Lambert, J.E., Gardner, M.D., & Ford, P.J. (1995). *The constructivist leader*. New York: Teachers College Press.
- Law and Learning* (1983). Report to the Social Sciences and Humanities Research Council of Canada by the Consultative Group on Research and Education in Law. Ottawa: SSHRC. (referred to as the Arthur's report).
- LeBrun, M., & Johnstone, R. (Eds.) (1994). *The quiet revolution- Improving student learning in law*. Sydney, NSW: The Law Book Company.
- Lincoln Y.S., & Guba, E.G (1985). *Naturalistic inquiry*. Beverly Hills, Ca: Sage.
- Llewellyn, K. (1935). On what is wrong with so-called legal education. *Columbia Law Review*, 35, 651-653.
- Llewellyn, K. (1942). The crafts of law re-valued. *Rocky Mountain Law Review*, 15(1), 2-4, 7-8.
- MacFarlane, J. (1992). Look before you leap: Knowledge and learning in legal skills education. *Journal of Law and Society*, 19, 293-319.
- MacFarlane, J. (1996). Teacher power in the law school classroom. *Dalhousie Law Journal*, 19: 71-82.
- MacCrate, R. (1992). See American Bar Association (1992).
- Magro, K.M. (2001). Perspectives and theories of adult learning. In D. E. Poonwassie & A. Poonwassie (Eds.), *Fundamentals in adult education: Issues and practices of lifelong learning*. Toronto: Thompson.
- Marshall, C., & Rossman, G.B. (1999). *Designing qualitative research*. Thousand Oaks, Calif.: Sage Publications.
- Maslow, A. H. (1970). *Motivation and Personality*. New York, NY: Harper & Row.
- Matas, R.J. (1987). Law as a Learned Profession (Opening Address). In R.J. Matas & D. J. McCawley (Eds.), *Legal education in Canada, Reports and background papers of a national conference on legal education held in Winnipeg, Manitoba, October 23-26, 1985* (pp. 29-34). Montreal: Federation of Law Societies.

- Matas, R.J., & McCawley, D.J. (Eds.) (1987), *Legal education in Canada, Reports and background papers of a national conference on legal education held in Winnipeg, Manitoba, October 23-26, 1985*. Montreal: Federation of Law Societies.
- McLaren, J. (1987). The history of legal education in common law Canada. In R.J. Matas & D.J. McCawley (Eds.), *Legal education in Canada, Reports and background papers of a national conference on legal education held in Winnipeg, Manitoba, October 23-26, 1985* (pp. 111-145). Montreal: Federation of Law Societies.
- Menkel-Meadow, C. (1994). Narrowing the gap by narrowing the field: What's missing from the MacCrate Report – Of skills, legal science and being a human being. *Washington Law Review*, 69, 593-624.
- Menkel-Meadow, C. (1991). Can a law teacher avoid teaching legal ethics? *Journal of Legal Education*, 41, 3-10.
- Merriam, S.B. & Cafferella, R.S. (1991). *Learning in adulthood: A comprehensive guide*. San Francisco: Jossey-Bass.
- Mezirow, J. (1997). Transformative learning: Theory to practice. In P. Cranton (Ed.), *New Directions in Adult and Continuing Education* (No. 74, pp. 5-12). San Francisco: Jossey-Bass.
- Mixon, J., & Schuwerk, R.P. (1995). Personal dimension of professional responsibility. *Law and Contemporary Problems*, 58, 87-115.
- Morin, L.A. (2000). Legal education: Reflections on teaching law as right livelihood: Cultivating ethics, professionalism and commitment to public service from the inside out. *Tulsa Law Journal*, 35, 227-274.
- Morse, J.M. (1991). Approaches to qualitative-quantitative methodological triangulation. *Nursing Research*, 40(1), 120-123.
- Neumann, R.K. (1989). A preliminary enquiry into the art of critique. *Hastings Law Journal*, 725-769.
- Olivas, M.A. (1993). Reflections on a professional academic freedom: Second thoughts on the third essential freedom. *Saint Louis University Law Review*, 45, 1835-1856.
- Ortiz, A.M. (2003). The ethnographic interview. In F.K. Stage and K. Manning (Eds.), *Research in the college context: Approaches and methods* (pp. 35-48). New York, N.Y., Brunner-Routledge.
- Palmer, P. (1998). *The courage to teach: Exploring the inner landscape of a teacher's life*. San Fran: Jossey Bass.



- Palmer, P. (1999). The grace of good things: Reclaiming the sacred Knowing, teaching and learning. In S. Glazer (Ed.), *The heart of learning: Spirituality in education* (pp. 15-32). New York: Penguin Putnam.
- Pang, G. C. (1999). Eyeing the circle: Finding a place for spirituality in a law school clinic. *Williamette Law Review*, 35, 241-314.
- Patterson, E. W. (1951). The case method in American legal education: Its origins and objectives. *Legal Education*, 43, 1, 7.
- Patton, M. Q. (2002). *Qualitative research and evaluation and methods* (3<sup>rd</sup> ed.). Thousand Oaks, CA: Sage.
- Resnick, L.B. (1989). Introduction. In L.B. Resnick (Ed.). *Knowing, learning and instruction: Essays in honour of Robert Glaser*. Hillsdale, N.J.: Erlbaum.
- Rhode, D. (1993). Missing questions: Feminist perspectives on legal education. *Stanford Law Review*, 5, 1547-1576.
- Roach, C. A. (1994). A river runs through it: Tapping into the informational stream to move students from isolation to autonomy. *Arizona Law Review*, 36, 667-669.
- Rochette, A., & Pue, W.W. (2001). Back to basics? University legal education and 21st century professionalism. *Windsor Yearbook of Access to Justice*, 20, 167-190.
- Rogers, C.R. (1961). *On becoming a person*. Boston: Houghton Mifflin.
- Rubin, H., & Rubin, I. (1995). *Qualitative interviewing: The art of hearing data*. Thousand Oaks, CA: Sage.
- Schensul, J.J., & LeCompte, M.D. (1999). *Designing and conducting ethnographic research*. Walnut Creek: AltaMira Press.
- Schön, D. A. (1987). *Educating the reflective practitioner: Toward a new design for teaching and learning in the professions*. San Francisco: Jossey-Bass.
- Scott, G.W. (1987). The articling component in legal education. In R.J Matas & D. J. McCawley (Eds.), *Legal education in Canada, Reports and background papers of a national conference on legal education held in Winnipeg, Manitoba, October 23-26, 1985* (pp. 404-430). Montreal: Federation of Law Societies.
- Scott, S.M. (1998). Philosophies in Action. In S.M Scott, B. Spencer & A. Thomas (Eds.) *Learning for life: Readings in adult education* (pp. 98-106). Toronto: Thompson.
- Searle, C. (2003). Quality in Qualitative Research. In Y.S. Lincoln & N.K. Denzin (Eds.), *Turning Points in Qualitative Research* (pp. 169-182). New York: Rowan & Littlefield.

Sells, B. (1994). *The soul of the law*. Rockport, Mass: Element.

Severide, N. (1987). The role of various organizations in the continuum of legal education in Canada. In R.J. Matas & D.J. McCawley (Eds.), *Legal education in Canada, Reports and background papers of a national conference on legal education held in Winnipeg, Manitoba, October 23-26, 1985* (pp. 834-5). Montreal: Federation of Law Societies.

Shanfield, S.B., & Benjamin, G.A.H. (1985). Psychiatric distress in law students. *Journal of Legal Education*, 35, 65-75.

Sheldon, K.M., & Krieger, L.S. (2004). Does legal education have undermining effects on law students? Evaluating changes in motivation, values, and well-being. *Behavioral Science & Law*, 22, 261-286.

Sheldon, K.M., Elliot, A.J., & Kasser, T. (2001). What is satisfying about satisfying events? Testing 10 candidates psychological needs. *Journal of Personality and Social Psychology*, 80, 325-339.

Silver, M. (1999a). Emotional intelligence and legal education. *Psychology, Public Policy and the Law*, 5(4), 1173-1203.

Silver, M. (1999b). Love hate and other emotional interference in the lawyer/client relationship. *Clinical Law Review*, 6, 259-313.

Silverman, D. (2004). *Qualitative research: Theory, method and practice* (2nd ed.) Thousand Oaks, Calif.: Sage.

Stager, D., & Arthurs, H. (1990). *Lawyers in Canada*. Toronto: University of Toronto Press.

Steinzor, R.I., & Hornstein, A.D. (2002). The unplanned obsolescence of American legal education. *Temple Law Review*, 75, 447-491.

Stropus, R.K. (1996). Mend it, bend it and extend it: The fate of traditional law school methodology in the 21st Century. *Loyola University Chicago Law Journal*, 27, 449-489.

Strum, S.P. (1997). From gladiators to problem-solvers: Connecting conversations about women, the academy, and the legal profession. *Duke Journal of Gender Law & Policy*, 4, 119-147.

Ten Have, P. (2004). *Understanding qualitative research and ethnomethodology*. Thousand Oaks, CA: Sage.

Thomas, A.M. (1998). Learning our way out. In S.M Scott, B. Spencer & A. Thomas, (Eds.) *Learning for life: Readings in adult education* (pp. 354-364). Toronto: Thompson.

Twining, W. (1994). *Blackstone's tower: The English law school*. London: Sweet & Maxwell.

Twining, W. (1997). *Law in context- Enlarging a discipline*. Oxford: Claredon Press.

Vella, J. (2002). Quantum learning: Teaching as dialogue. In J. M. Ross-Gordon (Ed.), *New Directions for Adult and Continuing Education* (No. 93, pp. 73-83). San Francisco: Jossey-Bass.

Watson, A.S. (1958). The law and behavioral science project at the Univeristy of Pennsylvania: A psychiatrist on the law faculty. *Journal of Legal Education*, 11, 73-79.

Watson, A.S. (1968). The quest for professional competence: Psychological aspects of legal education. *Cincinnati Law Review*, 37, 93-166.

Webb, J.S. (1996). Why theory matters: In J. S. Webb and C. Maughan, *Teaching Lawyers' Skills* (pp. 23-51). London: Butterworths.

Webb, J.S. (1998). Ethics for lawyers or ethics for citizens? A new direction for legal education. *Journal of Law and Society*, 25, 134-150.

Weiss, C., & Melling, L. (1988). The legal education of twenty women. *Stanford Law Review*, 40, 1299-1369.

Wexler, M. (2002). Therapeutic jurisprudence and legal education. *Revista Juridica Universidad de Puerto Rico*, 71, 177-189.

**APPENDIX A**  
**LETTER OF INITIAL CONTACT**  
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*The perceptions of law school graduates in relation to first year law school educational practices*

6 June 2005

Dear \_\_\_\_\_

Thank you for responding to my posting at the Professional Legal Training Course.

This letter will tell you a bit more about the research I am conducting. After reading this letter, I will ask you to read and sign the enclosed Consent Letter and return it to me.

I am currently a PhD Candidate in the Department of Educational Studies at the University of British Columbia. I have a longstanding interest in legal education and have conducted other research relating to articling and professional legal training. Between 1992 and 1995 I taught law at the University of British Columbia and the University of Victoria. I also wrote a law school textbook on legal problem solving. Although I am a practicing lawyer, I am not acting in any legal capacity in conducting this research.

The purpose of my doctoral research is to explore the experiences of law school graduates during their first year of law school. The two questions central to this research are:

- How do law school graduates describe the educational practices they experience in first year law school?
- How do law school graduates perceive the impacts of these practices on themselves as learners?

Educational practices refer to such things as teaching methods, instructional materials, grading practices and curriculum. The overall aim of this research is to improve legal education.

I plan to schedule an interview with you for about one hour, at a mutually convenient location. You will be one of approximately 20 law school graduates whom I will be interviewing. The interviews will take place during May and June 2005. Your consent to participate in this research will contribute to a greater understanding of legal education and the experiences of new law students. You will be reimbursed \$25. for your time.

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## APPENDIX D

### INTERVIEW PROTOCOL

#### Introduction

- Introduce self, position and role (e.g. thesis requirement).
- Review and sign consent letter
- Mention recording, note taking and transcription.

#### Opening script

- Over the next hour I will ask you questions about your experiences in first year law school (from September 2003- May 2004).
- I would like you to try your best to recall what that time was like.
- As you can tell by the title of my research I am investigating what I call the “educational practices” employed in first year law school.
- I have divided these educational practices into the following five categories and will be asking you questions in each category:
  - Teaching methods
  - Grading and assessment
  - Courses, content and curriculum
  - Learning and development
  - Aims of law school

#### 1. Factual questions

- You graduated from UBC this past May?
- Therefore, you completed your first year of law school two years ago (e.g. in 2003)?
- What was your approximate rank in first year? top 1/4, top 1/2, top 3/4 or bottom 1/4.

#### 2. General question

As you think back on your first year of law school, give me your overall impression of your first year.

#### 3. Teaching methods

Focusing on the five “core” courses what do you recall most about the teaching methods?

Probes:

- How did you feel about these teaching methods?
- How do you feel now about the teaching methods used in first year?

#### 4. Professor's role

Focusing again on the five “core” courses what do you recall most about your professors and their role?

Probes:

- How did you feel about the role of your professors?
- How do you feel now about your professors' roles in first year?

#### 5. Grading and assessment

Focusing again on the five "core" courses what do you recall most about the grading and assessment methods used in first year?

Probes:

- How did you feel about the grading and assessment methods?
- How do you feel now about the grading and assessment used in first year?

#### 6. Courses, content and teaching materials

Focusing again on the five "core" courses what do you recall most about the courses, content of those courses and teaching materials in first year?

Probes:

- How did you feel about the first year courses, content or materials?
- How do you feel now about the courses, content or materials in first year?

#### 7. Learning and development

Focusing again on the five "core" courses what do you recall most about your own learning and development in first year?

Probes:

- How did you feel about your learning and development in first year?
- How do you feel now about your learning and development in first year?

#### 8. Aims of law school

Focusing again on the five "core" courses what do you recall most about the aims of first year?

Probes:

- How did you feel about the aims of first year law school?
- How do you feel now about the aims of first year?

#### Ending script

- ☐ Thank you for participating in this study I appreciate your candor.
- ☐ As you know I will keep your name and any information that might identify you completely confidential. I will do the same for any of the other people you mentioned.
- ☐ The information that you provided to me will form part of my written doctoral thesis.
- ☐ Also if you wish to find out about my results, I can mail you an abstract once my research is completed. Would you like that?