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A REPORT ON A SPECIAL PROJECT

- Practical Legal Education

Submitted for the Degree of Master of Laws at Victoria University of Wellington as a paper in Special Topic - Laws 539, 540.

October 1977

TWO INITIAL ATTEMPTS

Late in November 1976 discussions regarding my involvement as a student in Special Projects in 1977 were finalised. The question which then arose was whether to do a research paper or a project. My decision to do a project was influenced by three considerations.

1. Given a fairly heavy committment on my part to the concept of Clinical Legal Education, actual participation as a student in such an experience seemed extremely worthwhile. Furthermore the things I might learn (as opposed to the type of learning) appeared to be valuable.

2. A project would be of some assistance to some part of the community in that I would be doing legal (or related) work on a voluntary basis.

3. 1977 would be a heavy year for me academically with extra work for Law in Society tutorials, some Company lectures, two sets of masters seminars and a research paper in Administrative Law LLM. It therefore seemed that work of a slightly different kind might be more stimulating and (qualitatively) less of a burden.

I had to then decide on the actual project. I had not given the matter too much thought and had only a couple of vague ideas (concerning something of assistance to, or within, the profession or involvement in a Titahi Bay Youth Aid programme I knew about) when Neil Cameron suggested I think about working for George Rosenberg in his Newtown practice. At that stage Neil and Alex's understanding of the situation was that Rosenberg was definitely planning to set up a neighbourhood - law - office type of practice in Newtown in 1977. Rosenberg was apparently not sure whether it would actually get off the ground in 1977 but firmly intended that it should if at all possible. Little was known other than this.

My initial reaction was one of doubt - mainly about my ability to undertake such a task. However after some thought it appeared extremely suitable - both for myself and for Rosenberg. Having had about 18 months experience in an office I had handled clients, worked under people, done a large amount of drafting (albeit not court documents) and knew a reasonable amount about law offices and the practitioner role. Being slightly older than many undergraduate students who might do a Special Project would be another advantage. Rosenberg would also have the opportunity of checking with Peterson (of Chapman Tripp & Co) as to my ability, judgment, etc and might be able to feel a bit more confident in taking on a person of whom he had some independent assessment. As a fully qualified practitioner I would be able to handle all the tasks involved in most of the cases which came my way.

The main lacks I felt while thinking about taking up a position with Rosenberg were that I had not done any appearance work and had had little experience of the kinds of people and problems one might expect to meet in his practice. My experience in commercial conveyancing did not seem an entirely adequate preparation for coping with the problems of persons in a disadvantaged socio-economic position. However this also constituted quite an incentive to taking on such a project in that it would broaden my experience as a lawyer and further my appreciation and knowledge of a sector of the community which I would not normally come into contact with.

To enlarge upon the same issue, I wondered whether I would be up to the task. I perceived working for Rosenberg as involving a much more personal relationship with the client than that to which I had been accustomed. Furthermore, I saw the problems as being more difficult and demanding - particularly on a personal level. The problem posed by this was far more one of personal capability than of previous experience in practice. I realised that I customarily classed my background as

economically and emotionally secure. I therefore wondered whether I might simply be on another wavelength to many of the people and problems I met. An honest appraisal of my background revealed a much higher level of encounters with serious problems (both my own and those of others) not too dissimilar from many of the problems I anticipated facing while working for Rosenberg. I was thus encouraged to think that this aspect would not prove to be an insurmountable obstacle.

Another factor to be taken into consideration was whether I wished to work for Rosenberg. As I knew very little about him I resolved to check his reputation among a few members of the profession. This arose from a desire to ensure that I did not become involved in something which blew up badly or deservedly achieved a bad reputation. I saw the primary imperative on this level as professional competence as it seemed that Rosenberg had aims with which I would agree. Even if he didn't, I felt that we might negotiate an agreement on my involvement. Of course I was also free to not enter into a project which involved him. I checked with several people in the profession whose judgment I trusted and found that he was generally felt to be very competent. This impression was confirmed when I met him and talked to him about various cases and issues.

On a purely practical level I foresaw problems of time. A particular tension was the amount of time this work would use up in proportion to other commitments for the year. If I was to be of any use at all I would have to spend a reasonable period of time at Rosenberg's office plus fairly large amounts of time in preparation and research. However, I felt that this was something which could be satisfactorily negotiated once we had more of an idea as to the form my involvement would take.

Another consideration which had to be taken into account was money. As Rosenberg was going to run his practice on a normal basis it might not have been

appropriate that I work for him for nothing. I foresaw problems of principle, problems with the Law Society, Inland Revenue Department and University. In retrospect I think I saw these problems as greater than they actually were. In reality we would have just boxed away and it is unlikely that anything would have been done by, particularly, the Law Society. Rosenberg had a solution anyway - that I work for clients who could not pay. One of the problems with this solution which I didn't see at the time but now see, is the possibility of my involvement having distorted the shape of his practice. My involvement on this basis would have meant that the practice could do more work for free. An expectation might have been built up among the pool of clients which could not have been maintained.

However it soon became apparent that the primary problem was going to be one of timing. Rosenberg was attempting to find suitable premises in Newtown and was not having much success. We had several conversations in January and February 1977 about this and it looked less and less likely that he would start practice there early in the year. For a viable project I needed about four or five months involvement in the practice. Thus he had to be started by the end of May if I was to participate. As time went by this seemed more and more unlikely. Rosenberg did suggest an alternative of taking on a couple of cases for two or three of the community agencies, however, this did not appear to be practicable. The practical problems were too great and the cases seemed too difficult.

At the same time as these discussions were proceeding I was informed of a similar kind of practice being started in Porirua by two friends of mine, Peter McKenzie and Robert Brace. It appeared that they welcomed my involvement and we had several lengthy discussions about the shape of the practice and my part in it. Peter and Robert's plans seemed to be further along the path to an actual commencement than Rosenberg's and accordingly on

3rd March I put forward a proposal for involvement in this practice as a project.[1] This was approved. At that stage Peter and Robert were part way through the process of obtaining suitable premises in Porirua, at Cannons Creek. Negotiations for these premises continued through the next six weeks. But their course took an unexpected turn and it became clear that the practice would not commence until late June or July at the earliest. Thus I felt that this project was no longer viable and cancelled it in late April.

This was done with quite some regret as I had wanted to engage in one of the 'clinical' experiences which I had talked so much about the year before. As things turned out it was the right decision as this practice is only now getting underway.

I have discussed these attempts at getting a project underway for two reasons. First, they constitute part of the overall task of finding and carrying through a project. Secondly, they might be useful to someone in the future in so far as they illustrate the problems involved in finding and setting up a project of the type I envisaged; in addition, I have attempted to make some observations about the way in which I perceived the potential projects.

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1. This proposal outlines the project envisaged - see Appendix 1

PRACTICAL LEGAL EDUCATION

1. SETTING THE STAGE

This particular project brought together quite a few facets of my educational and working experience. In this sense it was not as 'different' an experience as the two projects which I attempted to set up. I think it has also made it harder to stand back from the experience and analyse it. However that comes later. What I wish to do in this part of the paper is to set forward the context out of which I came to the practical training debate, outline the context of the debate itself and describe the setting up of the stage on which I played out my part in the piece. In some senses it was indeed a play. The issues weren't life or death, freedom or jail, fight or retreat. The actors were part-time, unpaid, otherwise busy, most often ill-prepared, frequently out of step. The pace was leisurely, even tardy - except for those playing too many parts. The stage wasn't in the street. It didn't involve the public. It didn't involve many members. Some of it was behind doors closed by confidentiality. However that is not to say that it was unreal. It was, but it wasn't.

THE CONTEXT

My involvement in the specific issue of practical legal education stems from the fourth year of my under-graduate training. (However I don't wish to start a long and ponderous blow by blow account of my life and times from 1974 onwards but simply point to some salient attitudes and experiences). At that stage I had an almost reverential respect for senior academics, senior practitioners, and the integrity of the debates in which issues such as practical training were discussed and determined. I also felt that a clinical programme for under-graduates was the panacea for almost all ills and had little regard to the practicalities of resources, cost and benefit and propriety of function. I had lessons in many of these aspects over the succeeding year.

However my report to the Faculty in 1976 on Clinical Legal Education highlighted the need to speak sensibly from the context out of which an issue flows. In addition I began to see the appropriate ways of attempting to teach various kinds of skills and information. This year's discussions of practical training for graduates can be seen with the benefit of hindsight as an almost natural extension of much of my activity to that date. Thus I did not come to the debate out of a vacuum.

In addition it is worth noting that I felt that I had a foot in both camps having spent almost 18 months in a law firm and 15 months with the law faculty. It will become apparent that there are indeed two camps - the practitioner and the academic - often equated with the real and the unreal. Many attitudes and mispreceptions running through the debate were founded upon fundamental pre-suppositions as to the relationship between academic and practical matters, of theory and practice.

As mentioned above the debate itself had a context of its own. The first contextual factor which I wish to isolate is contained in the proposition that there is currently a good deal of general uncertainty about the best way in which to train people for specific vocations. The primary tension is between institutionalised training and 'real' or 'on-the-job' training. Part of the uncertainty is due to a vast and complex number of factors of a historical and social kind - in particular the growth of institutions and resort to institutionalised, external solutions to problems. Obviously this is not the place in which to go into this.

A second factor is that there is an increasing trend towards full-time study for the LLB degree. In 1966 66% of law students were studing full-time. In 1976 that proportion was 81%. (Because the swing from part-time to full-time study is primarily reflected in the third (degree) year onwards it is possible that the actual swing

to full-time study is higher than that reflected by these figures - which are taken over the whole degree). Therefore more graduates are entering offices without any practical experience. It seems to me that many practitioners do not see this point and simply say that the University is not doing as good a job as it was.

Another contextual factor appeared to lie in an increasing unwillingness on the part of practitioners to train their new employees. I did, and do not believe that that is because practitioners are any busier than they were. But it is certainly an attitude which influenced many people in their approach to the practical training debate.

Part of the context also comprised an increasingly competent and sophisticated LLB degree programme. In addition most academics are now professional law teachers rather than practitioners teaching part-time. It is therefore easier to point the finger at academics who are now 'them' rather than 'us'. Law teachers also constitute a more comprehensive and cohesive body to form the other party to any debate over graduate skills. Also faculties now have greater interests of their own to protect in that they undertake a specific set of tasks which are in many respects different from and broader than those undertaken in practice.

Thus the practical training debate has surfaced from time to time over the past few years. It has usually reflected the kinds of contextual factors mentioned however almost all the practitioner responses and comments which I had heard or read paid scant regard to the context. Most of them were little more than trite generalisations. As I mentioned in my proposal for this project I have long been concerned to see that the academic side of the case is put. Too many practitioner observations on this subject gain credence through sheer repetition. Unless <u>better</u> comments are made there is, at least, nothing to begin to stop such comments being believed. A further concern which

I had about previous observations on this subject was that too many were too general. Therefore I wished to introduce a more specific analysis.

Another part of the context is reflected in the question as to who the parties to this debate were.

THE COUNCIL OF LEGAL EDUCATION AND PRACTICAL TRAINING

The primary forum of debate this year was the Council of legal Education and its sub-committees. The Council is of course the body which oversees legal education in New Zealand. It comprises four practitioner members, the four deans of the law schools and two judges. Because of its bi-partisan nature and its role of deciding the issue the Council is not specifically a party to the debate. In so far as it is a body within the institution of the legal profession it is a party to conflicts which can be found under a wider analysis. For instance, in this context the Council would be concerned to preserve the integrity of the profession against any suggestion that lawyers should not be playing the role they do in society and therefore need not acquire practical skills.

However that question was just not open in this debate. The debate over practical training proceeded without challenge to the normative status of practical skills. It was accepted that practical skills were a good thing. The only question was as to how, when and by whom they should be imparted. From the point of view of the participants it was, overall, in Aubert's terms,[2] a conflict of interest. There were odd challenges to the purpose and status of practical skills but these remained minor and peripheral.

The primary parties to the debate in the Council and its sub-committees were the profession and the Faculties. There were sub-groups on both sides however if one is going

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2. Aubert, The Hidden Society (1965)

to identify any sides then they were these two. This can be illustrated by outlining the broad thrust of that debate.

The Secretary of the New Zealand Law Society wrote to the Council of Legal Education prior to its meeting in April this year conveying the Society's concern at the inadequacies of the training of law graduates. The Society was of the view that current law graduates are ill equipped to cope with the practical aspects of office work and therefore not trained to enter the profession of law. Two members of the Society's legal Education Committee had attended a conference in Australia and had been particularly impressed by the Sydney College of Law. While recognising the problem of limited resources the Society wished to see similar kinds of institutions set up in New Zealand. In particular it asked the Council to give urgent consideration to the extension of the Auckland block course as a pilot scheme from which nationwide changes might flow. It was envisaged that the extra resources needed would come from University funds.

This letter contained a number of glaring inaccuracies and self-contradictions but its purpose was clear. The profession was not happy with the product which it was getting from the universities. It wished to have this product improved. It quickly became evident that this view stemmed from a tension between two of the historical factors mentioned earlier: the increasing trend towards full-time study combined with an increasing reluctance on the part of the profession to train law graduates in practical skills. It seemed to me that the profession tended to discount the first of these two factors and accordingly see the cause of the problem as inadequate training. It also seemed that the profession was simply not considering the possibility of putting more time into on-the-job training of graduates. I felt that both these attitudes were wrong. They seemed to stem from an excess of self-interest combined with an inability to see the true nature and extent of the problem. This view was shared by others.

The Council discussed the matter, decided that the Society's proposals were too vague and appointed sub-committees in each of the four main centres to investigate the whole subject of Practical Training and report back to the Council. Each of these sub-committees was convened by one of the Deans and a practitioner. Their purpose was to bring university teachers and practitioners together to attempt to find a practical solution. Thus the debate constituted a review of the current position. It was at this point that I became directly involved. Up to that point I had had discussions with K.J. Keith and J.C. Thomas about the Law Society's letter, had participated in a meeting of the Faculty's sub-committee on practical training (of which I had been a member for 3 years), but had not become directly involved.

Before leaving the Council of Legal Education and discussing some of the other forums in which practical training was an issue it is worth commenting on some aspects of the scope of the debate and the way in which it arose:

(1) I have already said that the ambit of the debate was narrow. It contained the potential for major changes to the status quo of methods of post-degree practical training but there were no major threats to the structure of the universities or the profession. Furthermore it was fairly clear right from the outset that there was little liklihood of obtaining a significantly greater amount of money with which to make improvements to the existing situation. The profession was looking to the universities for funds, the universities didn't have any.

(2) The New Zealand Law Society is of course the body which represents and comprises the profession as a whole. As an institution it had already filtered the problem to make it one of change within the profession, by the profession. In addition the Council of the Law Society consists almost completely of older senior practitioners. By virtue of having attained such a position they are unlikely to have

very radical views about the legal profession and its role in society. They are also not the people who are having to grapple with the relationship between theory and practice. It will probably have been a very long time since they did that. Some may never have embarked upon this task in a rigorous way. Furthermore, they are often not even the persons who have to supervise the graduates a firm employs - often it will be a junior partner or staff solicitor. Hence the Council of Legal Education plays an important role. It at least brings a balance. But there are still gaps - the public, younger lawyers. In many ways the structure is a good example of the ways in which an institution maintains its cohesion in a conservative and introverted way.

(3) Furthermore it also became clear that even within this filtering mechanism there was another constraint on the problems, issues and solutions presented. Everyone was involved in this debate part-time. Most people had simply no time to work through the problem in as thorough a way as they would have liked. That is nothing new. But it does leave the initiative to those who are keen, who can find the time. It was fairly common knowledge that the main thrust of the Law Society's proposal and attitude came from one individual. It is interesting to speculate on the reasons why one particular person stands out in certain forums. In a part-time forum such as this one it seems that he who has the time and motivation to do the work involving in winning is the one who will have the best chance of carrying the day. Of course that presupposes a plausible set of arguments.

THE PRACTICAL TRAINING DEBATE IN WELLINGTON

In July 1976 the Dean of the Faculty at Victoria had made approaches to the district Law Society asking for a joint examination of the professional courses at Victoria University. These approaches were ignored by the Law Society

until March 1977. The proposal put forward by the New Zealand Society and the Council of Legal Education's decision to set up regional sub-committees acted as a catalyst on the Wellington debate. However at that point the debate assumed the role assigned to it by the Council and took on aims that included, but went beyond the regional debate. In passing it is worth noting that I had to engage in some fairly fancy footwork to route the debate around a particular individual and a district Law Society sub-committee. This was done for two purposes: first, to keep the local initiative with the Faculty thereby keeping a little more control over the debate; second, to maintain the joint nature of the debate, as we were concerned that the Law Society seemed to want to do its 'own thing'.

THE WELLINGTON YOUNG LAWYERS GROUP

This group has existed for several years now. It comprises younger practitioners and runs practical training seminars and workshops for recently admitted practitioners. The level of achievement attained from year to year appears to vary with the constitution of the committee, however the group appears to be building towards a firmer base level of activities. The committee meets on a monthly basis supplemented by additional meetings to organise special activities. It was suggested at the beginning of this year that I might like to liaise with the committee concerning provision of Faculty assistance in respect of any of its activities. I felt that I might also be able to contribute something from the little bit of knowledge I had about clinical legal education so I joined the committee.

When the practical training debate surfaced in March it became clear that the Young Lawyers Group should have a hand in its course. The reasons were two-fold: one, the Group were already involved in practical training and, two, as recent graduates we were in as good a position as anyone to comment on the problems of practical training.

(I say we because I regard myself as part of that group on account of my recent admission and practice. However the gap is rapidly widening. I already feel a schism between myself and my contemporaries still in practice. Involvement with them on a 'professional' level was quite enlightening. Values begin to differ, attitudes and mannerisms also). Thus we decided to set up a sub-committee of those interested in examining the question of practical training.

Thus by the middle of April the Council of Legal Education had set regional sub-committees in motion, the Wellington examination of the matter was subsumed under this head and the Young Lawyers Group had constituted a sub-committee on practical training.

Before outlining the subsequent course of the debate it is appropriate to point to the way in which this matter became a project. I participated in the various events in something of an extra-curricular fashion until early July. That is, I was involved in the various activities, strictly speaking they were not part of my job and initially they were not part of a project as I was attempting to set the other two projects up. When it became clear that those projects were not going to get off the ground I chose a research paper on Marx and aspects of his view of conflict. In July it was suggested that I publish some of my thoughts on the practical training debate for wider circulation. My response was that I would have liked to have published a paper but had no time whatsoever in which to do so. At that point it was suggested that I turn my participation in the practical training debate into a project on practical legal education. Those circumstances together with my reasons for embarking on the project are outlined in Appendix 2.

In a sense it is somewhat ironic that I put quite a lot of work into the topic of clinical legal education in 1976, attempted to engage in the topic in a real way by doing a project in Porirua or Newtown, failed, and ended up doing a project in the area of practical legal education - a subject very akin to clinical education.

3. PROJECT: APRIL - SEPTEMBER

The first thing which I attempted to get under way was a discussion in the Young Lawyers Group. I saw the role of that group as one of providing evidence as to the problems at hand (i.e. just what are we trying to cure?) and of commenting on the courses offered and proposed. I had got the impression that the Group's committee tended to quickly stray away from specific discussion and talk in circles around a matter. Therefore I prepared a memorandum [3] as a basis for discussion. [4] Much to my surprise I found that when we came to discuss the matter it was still almost impossible to get people to stick to the point. There was a consensus that the list of deficiencies in a graduate which I outlined in the memorandum was helpful and correct. And yet I had to be almost rude at times to make people stick to the various issues at hand. I would have understood the problem if it had been simply in relation to me. But issues or lines of discussion raised by others often met the same treatment.

This was a trend which I was to meet time and time again, in all the forums in which I took part. In the end I put it down to a lack of rigour stemming from an unwillingness or inability on the part of many to address themselves to the problems at hand. Perhaps that is being too uncharitable. The various meetings were all in the

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3. Appendix 3 to this report.

4. The purpose of the Memorandum is outlined in paragraph 3 of it.

evenings, lunchhours or some other point in busy schedules. Significant things were achieved and one shouldn't expect constant perfection. But even so the success of the debates was markedly hindered by this tendency.

The next event to happen was that Prof. Keith set up a meeting in Wellington to discuss the professional courses. This meeting flowed from the approaches made to the Law Society last year and was intended both to fulfil a local function and to assist the Wellington sub-committee of the Council of Legal Education. The meeting comprised all the teachers of the professional courses and representatives of the Law Society, Young Lawyers Group, Law Faculty and Law Faculty Club. The discussion paper put out by Prof. Keith [5] was partly based on my memorandum to the Young Lawyers Group. We were attempting to identify the problems before setting up some very fancy and expensive alternatives.

Once again I was a little surprised at the rather low level of debate. It might be that that is the fate of once-off meetings with large attendance. However, it was apparent that some practitioners were not about to come to grips with the problem. (e.g. "It all depends on motivation, if these chaps want to learn, they'll learn" - not wrong in itself but it certainly didn't meet the question to which it was addressed).

This meeting was a useful public relations exercise for the Faculty, brought together people who otherwise work separately at related tasks and did air the problem to some extent. It also identified a number of areas which could be usefully explored e.g. a Litigation course will be run in February 1978 as a result of this meeting. In addition it provided a chance to see who might most usefully contribute something further to the debate.

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5. Appendix 4

At around the same time the Wellington District Law Society commenced a series of lectures on commercial law as part of a continuing education programme. This was the first concentrated effort of this kind for quite a while and was generally regarded as a success. To some degree the setting up of this programme involved similar questions to those of practical legal education as we were discussing it. For those involved in both forums there was therefore a useful link. I managed to get to only one of the seminars which was an interesting example of just how bad a practitioner can be at attempting to teach purely practical matters. There was consistent, uninteresting recourse to the rules governing the subject and virtually no synthesis of rules, pragmatic considerations and the context of the task which he was discussing. It was a superbly impractical seminar.

At this point in time my involvement spread to a number of areas. Before discussing them it is worth noting that some informal ongoing activities were being pursued at a number of levels - regular discussions with J.C. Thomas and K.J. Keith (filled with varying mixtures of wonderment, anger and despair at the various happenings in the debate), Young Lawyers Committee meetings and discussions with people in practice about the subject. However, the main brunt of activities came in July, August and September. These will be discussed under the following heads:

(a) Article for New Zealand Law Journal

(b) Young Lawyers Group practical seminars.

(c) N.Z.L.S.A. conference

(d) Wellington Sub-committee of Council of Legal Education.

(a) Article for the New Zealand Law Journal.

The suggestion that I put pen to paper for this purpose was one that I liked and am grateful that this has

been made possible. The major reason for doing so is a belief that ideas are important. People act in accordance with their attitudes, perceptions and ideas. Historical and factual context is naturally an enormous constraint on perceptions and ideas along with the possibility and method of putting those into practice. Nevertheless it is still possible to effect changes in attitudes thereby introducing changes in behaviour. This is what I wanted to do with an article. Unfortunately the results of such a piece of work are not easily identified. The persons to whom it was addressed were practitioners in general. The people I most wanted to reach were those who are not participating in the debates over practical training: it is impossible to assess the results in that forum. All one can do is hope that it might have some effect and might be of use in the future.

The article which I eventually produced [6] had three specific purposes:

(1) To identify the specific problems which practical training attempts to remedy

(2) To say that the problem is not that great

(3) To point out the areas of responsibility for solution of the problem.

In so doing I hoped to scale down the informal debate within the profession at large. The kinds of comments which so many practitioners make are those of the order of: "These graduates don't even know where the L.T.O. is" "They can't fill in the simplest forms, they can't even write a letter" The conclusion which is often drawn is that academic training is totally unreal, the product totally unsuited to the task.

This article is coming out in the current Law Journal. Hopefully it will wedge open the door to further debate

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6. Appendix 5

in that forum. In many senses I would wish to regard the article as the broadest and most long-lasting thrust of this project.

(b) Young Lawyers Group Practical Seminars.

We ran three seminars in August and September for 35-40 newly admitted practitioners. Two of the three seminars required participants to prepare and deliver submissions to the Court in the way in which they would do so if representing a client. Thus there was simulated 'doing' of the task in issue.

The problems were fairly simple (e.g. applications for bail in the Magistrate's Court, undefended divorces in the Supreme Court) but appeared to be set on the right level. (In our discussions planning the series we had had some difficulty in knowing whether the problems were too hard or too easy). Participants took the task seriously and appeared to learn an appreciable amount. The form of learning by doing appeared to be precisely what was needed in this area. One example will suffice: the participant was asked to make a plea in mitigation on behalf of a prominent sports administrator who has pleaded guilty to a blood alcohol charge[7] and wondered whether he could get suppression of name. Counsel cited his client's full range of services and asked for suppression of name. The Magistrate (a practitioner who played the role superbly) refused suppression and gave the standard fine and disqualification. The commentator then pointed out to participant counsel that he had just ensured that his client got bold type coverage in the newspapers recording his conviction. The object of the exercise was to show that one cannot get suppression on such grounds for that offence, that the sentence was fairly standard and that counsel is better to simply 'shut up' about his client's position in the community and hope the court reporters don't know, or notice, his name. That lesson went home

7. Problem 16 of Magistrate's Court Problems on accompanying file.

to all present.

Involvement in planning and participating in these seminars was useful from the point of view of understanding the intensely practical problems encountered in getting even such a small course off the ground. The resources poured into these seminars were quite extensive indeed: two planning sessions of five persons, arranging registration, organising court rooms and distribution of problems, arranging judges, clerks, witnesses, the time given by the persons who played those roles, etc etc. As alluded to above it was also a useful insight into the way in which practical skills can be taught. I might also add that we are planning a similar workshop (probably an all-day workshop) on domestic proceedings. It appears that my involvement will also extend to a rather different series of workshops early next year. The primary role I envisage for myself in relation to those workshops is that of ensuring that they fit in with the overall training provided in the first two years of a graduate's experience in practice.

(c) N.Z.L.S.A. Conference.

I was asked if I would deliver a paper in a session of this conference devoted to the subject of practical training.[8] Regrettably there was a very low level of attendance at the conference and at this session. It seems that students also have little time or inclination for overtly extra-curricular activities.

One of the most interesting parts of this activity was the way in which an address by Ian Muir (Otago Law School) differed from mine in approach. He expressed the view that the content of practical training was not value - free and that the universities should retain full responsibility for this training and ensure that they

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8. This paper was in large part drawn from my article. It represents Appendix 6.

didn't just serve the status quo and the profession. His approach called for a conflict of value (in Aubert's terms). It was an atypical approach to the current debate. By showing what the current debate is not it illustrates the essentially consensual nature of the debate. No one else was arguing about the purpose of practical training or its wider implications. Muir's thesis asked different questions than those which I was immediately concerned to embark upon. I felt that his questions were pertinent to the forum in which they were delivered but could not be taken up effectively within the context of the main thrust of the current debate. Therefore I did not pursue them in my other activities. A challenge to values is better issued in the most effective way possible.

(d) Wellington Sub-Committee of the Council of Legal Education

This committee consisted of the Dean - K.J. Keith, the Wellington practitioner member of the Council, a representative of the district Law Society, a student, two of the teachers of the professional and myself. I was there as the representative of the Young Lawyers Group. Even getting onto this sub-committee taught me a bit about how to work most effectively in meetings e.g. getting other people to suggest things one does not wish to put forward oneself.

This committee was a part-time committee, met at night and was hampered by lack of time. There were no serious conflicts within the committee and we reached agreement on issues quite amicably. This was mostly a product of the non-contentious nature of the material. We attempted to define the problems and work towards the best available methods by which to solve them. We did not envisage any drastic changes in the near future to the status quo. I would like to think that I was of some assistance to the committee. Our report[9] was partly

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9. Dated 12.8.77 - on accompanying file.

based on my analysis of the problems. Apparently a comment was made in the subsequent meeting of the Council to the effect that our committee was the only one which approached the matters in the right way - looking at the problems first. However I would emphasise that my initial involvement in this debate did not stem out of my own initiative. It was suggested by others that my work in this area might be of use. In many ways I was more a tool than a moving force.

Our report to the Council was partly an interim report. We felt that the matter would carry beyond the Council's September meeting and have been building further parts of our case. One of these parts is focussed upon in a small discussion paper I prepared for the committee.[10] The Law Society representative on the committee did not see that there was any way in which one could get individual practitioners to undertake specific responsibility for the training of their graduate-employees. I was of the opinion that we had to get the profession to change its mind on this as on-the-job training is the most significant part of a graduate's training. Furthermore I felt that the change could be effected. His attitude was that I would have to show him how and why that could be done. The discussion paper referred to is the first part of that attempt. It represents the initial outline of a strategy to institute that change.

The Council meet this month to consider the reports of its sub-committees. I attended this meeting as an observer and was asked to keep the proceedings of the meeting confidential. The Council resolved to set up another set of sub-committees to consider the matter further and report to the Council early next year. Doubtless not very much can be achieved in a five hour, ten member meeting but one wonders whether they could not have

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10. Appendix 7

resolved some of the issues at hand. At this point it is appropriate to simply observe that none of the arguments I have heard thus far have very much changed my view as to the true nature of the problem and its solutions. My views as to the way in which these matters are decided have changed. I would confess to being a great deal more cynical about these processes than I was.

EVALUATION OF THE PROJECT

I commented at the beginning of this report that I did not think this project would be as easy to introspect as the other projects I was interested in. I am now a little more sure of that than I was. This is probably because this project did not bring me into contact with wildly different situations from those I normally worked in, nor did I encounter radically different attitudes and perceptions, behaviour or appearance. The practical training debate was part of my working world. Reflection on this project has once again reminded me that it is indeed a fairly sheltered world.

Another reason why this project might be a bit harder to introspect lies quite simply in the fact that I was working from the place I normally work from - my office. I was also working with many of the people I normally work with. There were not all that many links (of even a physical nature) by which I could easily separate off this compartment for even partial scrutiny. It reminded me of how little I sit back and scrutinise the mainstream of my working life. One grapples with the issues, reacts to the pressures, copes with this, and that, and the next thing - most of them trivial. Then comes the realisation that one is being towed along by history rather than creating it, a victim of circumstance rather than a shaper of events. Its no wonder people come to believe in a machine, 'out there', pushing them helter skelter through life.

These comments do not represent a plea for sympathy in the task of introspection and evaluation. They are

mentioned in passing as two factors which may be relevant to assessment of proposals for future projects. I think that the more 'different' an experience can be the easier it would be to assess in retrospect. A more different experience would certainly be more novel. But that is not to say that it would be more valuable in toto. Nor am I saying that I didn't learn anything by virtue of this project. I shall attempt to outline the kinds of things which I have learnt.

First, I came to a better appreciation of the need to understand and cater for the context out of which an issue arises and into which one is to speak. The actual list of deficiencies which formed the basis of a large proportion of my contribution came from another debate - clinical legal education. That occasion was just not the time or setting in which to fully use that list. I had not fully understood the context within which I was working. I certainly wasn't politically aware enough nor was I apt enough to keep control of the report which I had written. Through the able offices of J.C. Thomas and K.J. Keith I was able to see the context and the true shape of the debate a little more clearly. Through the course of the project I have become more and more aware of the need to see the context of an issue to appreciate the questions which need answering, to anticipate events and to organise and channel various events and people in the direction in which one wants them to go.

I must confess that I always had a very crude view of the way in which the world ran. I believed that provided one had the right ideas and shouted them loudly enough then people would listen and change. This project has gone a long way towards dispelling that myth. Thus I would hope that as well as trying to find the right answers for various questions I would now spend almost as much time seeing how those answers related to a situation at hand and how they might be put effectively into operation.

In the same vein I think I have also learnt quite a lot about when to speak and when to remain silent, to select issues to take up more carefully. I think I have also learnt not to insist on winning all the time. Involvement in the various meetings was good experience in meeting techniques in other ways also. On several occasions I managed to get other people to suggest things I did not want to put forward myself. By gradual experience I also became a bit more aware of the way in which I was being received by those with whom I was interacting. On several occasions I felt very definitely that I was appearing to be too negative in my approach to a question. Thus I ensured that I corrected the impression as quickly as possible.

The project was also a good exercise in patience and perserverance. Much of my time was spent in putting forward the same propositions over and over again in various forums and ways. The same questions had to be answered, the same criticisms met. I often caught myself becoming too impatient, too negative, too self-assured. The aspect of perserverance also taught me something else - that he who does the work has the best chance of winning. Being in a position to shape the agenda and prepare material for consideration was a clear advantage in this debate. In many ways it was not one which we were about to lose as everyone had difficulty in putting the requisite amount of time into the debate.

A factor which is related to this concerns the sheer inertia of a situation such as practical training. Everyone is too busy to put time into it. Contributions are only half worked out, meetings are too short - if they eventuate. The eight month delay in getting the Wellington discussion going is an indication of just how hard it is to get a debate like this moving.

A similar problem was an apparent lack of creativity in approaching the subject. After about three months I realised that there were extremely few people who were creatively thinking their way through to a solution. One wonders whether as a profession we don't become a little uncreative through the processes of our training and practice. However, on the other hand there were some startlingly 'different' contributions to the debate. Some people were so innovative that their ideas bore no relation to reality whatsoever. After a while one came to expect the odd contribution of this kind.

I also came to expect a lack of rigour of analysis of the issue at hand. It was rather curious to discover that a significant proportion of the 'enlightened' practitioner community was unable to come to grips with the problem in a rigorous way. For a profession ostensibly marked by its analytical abilities we did not score highly in this debate. Even a factor such as this added to the essential conservatism of the status quo.

The topic itself is quite diffuse and one can understand a certain amount of difficulty in coming to grips with it. The professional courses cover a reasonably broad range of subjects; they stand at a meeting point of practice and theory and therefore stand in tension; and they have dual aims - long term and transitional. I found myself continually having to grapple with the relationship between theory and practice and found the project immensely valuable in this regard. As with the other kinds of learnings which a project such as this involves I could not accurately identify the means by which I was coming to understand this relationship. About all I can say is that it is not a straightforward kind of learning, it is not organised but is an existentially <u>real</u> way of learning. Understanding comes to more than just the mind (and there is nothing like sheer exasperation to sheet the understanding home).

In this regard it is worth noting that I am glad to have had an opportunity to work with the various people involved in the debate. I probably learnt just as much by observing the various participants in the debate as I did by my contributions to various discussions (and the mistakes and blunders were just as valuable as the fine points and victories).

The experience also showed that the profession does not always have the competence and prerogative on right answers which it often claims for itself. It also reinforced my belief that the university does have a more valuable role than that which many ascribe to it. This belief relates to the question of theory and practice and formed part of the motivation behind my article.

I found the article enormously difficult to write. I spent an inordinate amount of time on it - perhaps a disproportionate amount. The major source of the difficulty lay in my own inability to put pen to paper in a clear and graceful way. J.C. Thomas was good enough to look at my draft for me and was of great assistance. I learnt a considerable measure from his advice on style, clarity of expression and structure. It also became apparent that writing for publication has its own special agony. This was made more acute by the subject matter of the article. I was attempting to be direct without totally alienating the reader. I was aiming for those practitioners who would not normally confront themselves with the problem and thus made concessions such as brevity and limited scope. I hope that the article will open a door to questions in practitioners' minds and would like to follow it up with another one focussing more directly on the individual practitioner's responsibility to train. I do not care to attempt an assessment of the article itself. That is a task for others. In any case I am not sure that I could. I find I became so personally involved in it that I had difficulty seeing the wood for the trees. In future I

would also want to leave more time between drafts. The problem of extrication in order to view became apparent even in the re-drafting process.

Conclusion

I have not devoted a specific section of this paper to recommendations for future projects. It seems unlikely that a project of quite this nature will occur again. Instead I have attempted to build observations that may be of assistance in the future into the body of the paper.

I would also note that another report will follow this paper. It will concern the ongoing course of the debate together with certain more confidential aspects of the debate to date.

It can doubtless be said that one is committed to saying that an experience has been worthwhile and valuable. Nevertheless from my point of view it has in fact been very worthwhile and educative indeed.

APPENDIX 1

VICTORIA UNIVERSITY OF WELLINGTON

FACULTY OF LAW

MEMORANDUM TO: N. Cameron
A. Frame

Proposal for Project

As discussed the basic thrust of the proposal is that I work approximately one day a week for the law practice in Cannons Creek which will be run by F.D. McKenzie and R. Brace. I would function as a practitioner within this setting. In addition I would attempt to introspect and assess my experience and the experience of the practice. I would present a paper reporting on my experience, attempting to evaluate it and reflecting upon the practice as a whole. At this point it is appropriate to note that the proposal includes involvement in and reflection upon the setting up of the practice.

It should be emphasised that from the point of view of F.D. McKenzie and R. Brace my involvement is firstly and foremost as a law practitioner. In other words I would be there to provide the best possible professional service to clients. I agree entirely with this view and feel that there will not be any problem in reconciling this interest with my academic interest in the proposal.

The Practice

While being staffed by Peter McKenzie and Robert Brace the practice will be a branch of Messrs Brandon Ward Evans-Scott and Hurley. I understand that this firm is prepared to support and run the practice for a year on a trial basis. The practice will be situated in or near Cannons Creek and will probably occupy a Housing Corporation house. Negotiations for suitable accommodation are underway and it is almost certain that the practice will open its doors in May.

Peter and Robert will attempt to make the practice self-supporting, however their prime concern is not to set up a practice which primarily benefits themselves but to serve the local community. It is this aspect which makes this practice particularly appealling as a project. An attempt by members of the private sector to organise a cohesive service oriented law practice within a community such as Porirua East is an experiment of some note. Being involved in such a practice would be worthwhile in itself - for myself and (hopefully) for the community. An opportunity to also analyse such an experience and such a practice is even more valuable. I think it would be agreed that the experience of being involved in this practice should provide plenty of material worthy of introspection and analysis.

My Involvement

As mentioned it is anticipated that I would work about one day a week for the practice. I can see it as likely that it could stretch to more - perhaps a fairly regular one and a half days a week and more on odd occasions. At this stage it is virtually impossible to assess just what amount of involvement will be enough to be worthwhile for myself and the practice. This consideration must also be balanced against my other commitments - teaching duties, mater's seminars and administrative law research paper. At the moment it may be enough to say that we are thinking of about 1 - 1½ days per week. I have also mentioned to Peter that I would be prepared to work beyond October should the arrangement prove suitable. This suggestion flows from a long-term interest in such a form of legal practice.

In broad outline my involvement is seen as that of a qualified practitioner who is not very experienced in common-law work but who has handled a fairly wide range of legal work. Accordingly I would have more responsibility than a law student or law clerk would but would need to be supervised at certain points.

I have discussed the financial aspect with Peter McKenzie and it appears that it should not be firmly resolved at this stage. Peter does not feel able to approach Brandon's with a proposal that commits them at this stage to further expenditure. I am in agreement with this attitude, however I would not wish to work for nothing should Brandon's end up making a profit from the venture or should my involvement distort the shape of the practice and expectations of its future.

At this point in time it is not possible to predict whether there will be more work than two people can handle or how significant my contribution will be. Peter has said that if it appears after a couple of weeks that it is necessary that I hold a practising certificate then he would ask Brandon's to pay for this. Over and above this I feel I should work for nothing (or possibly some typing services should there be spare typing time) unless Peter and Robert and I feel that I could and should be paid. In that case money that I earnt would in part cover my travelling expenses with the balance being ploughed back into the community. In the light of my friendship with Peter and Robert and my desire to help the practice get off the ground I feel that the financial aspect could and should be left on this basis.

I have informed Peter that you would want him to talk with you later in the year and would ask him to assess my work and to comment on my report on my experience and that of the practice. I will discuss with him the possibility of a further supervisor.

Evan Williams
3.3.77

APPENDIX 2

MEMORANDUM TO: Alex and Neil

Special Projects 1977

During the course of a discussion John Thomas and I were having on Friday, John suggested I publish an article in the Law Journal on Practical Legal Training and the Deficiencies of a Graduate. Such an article would be based on material I have gathered in the course of this year, in particular a memorandum I wrote recently.

In typical fashion such a possibility had not even occurred to me but a few moments thought gave rise to quite some enthusiasm.

As you may have gathered one of my concerns over the last 12 months has been that the prejudices and jibes of the profession in regard to the law schools are rarely, if ever, challenged publicly; that these comments abound in rhyme - but not reason, and that they gain strength and credibility by virtue of sheer repetition. We do have opportunities to communicate with some practitioners however those with whom we meet tend to be rather more enlightened and open-minded than most. Therefore I have felt that we should enter into the wider forum of the Law Journal or Law Talk with reasoned accounts of aspects of Legal Education. By so doing we might be able to stir the mud and provoke debate, perhaps even a higher standard of debate - or, wildest dream of all, explode some of the myths and fantasies. Given that we have given some thought to the problems of Legal Education and that the profession has an interest in it, it seems reasonable that we produce some material on the subject for wider consumption.

I was therefore keen to do an article but rapidly concluded that I had no time whatsoever.

Our conversation turned to the current debate on practical training, our involvement in it and its possible outcome. In the course of this it must have occurred to John that it might make a good project for he mentioned this shortly thereafter. I understand that he has mentioned this to you - I was feeling rather hesitant about such an idea as I did not want either of you to feel that I was messing you around or that I was not committed to my research paper on Marx.

Since talking to Neil I have given the matter some thought and am of the opinion that this would be a good project - i.e. the practical training debate. I have been engaged in the specific content of it all year; it has been a long-term concern of mine - since my fourth year as a student; I think it would not be untrue to say that I am already highly motivated towards this debate and that I am keen to be able to do a lot more work on the substance of it (particularly on assessing the whole situation and debate in a critical fashion); furthermore I think it is manageable.

The situation to date is as follows:-

1. Over the last 4 years I have been on the Faculty's Clinical Legal Education sub-committee. You will recall the report I wrote last year of some 9,500 words.

2. Since April I have been a member of the Young Lawyers Committee. This Committee primarily concerns itself with practical training (albeit in a fairly sporadic and embryonic fashion in the past few years) and is now moving more firmly to establish an ongoing programme - and is receiving more support from the Law Society. I am also a member of a working group of that Committee which was established to participate in the current debate on practical training. Up to now this working group has met only once - to consider a 2,500 words memorandum which I wrote (based largely on my Clinical report) - but should be meeting for several longer and more concentrated sessions over the next few weeks.

3. Together with Alex and others I am on the Faculty's sub-committee on practical training. This has met only twice thus far.

4. The Council of Legal Education has asked the Law Schools and District Law Societies to examine the question of practical training and report back to the next Council meeting. This will be held at the end of August. Hence the issue will be focussed upon quite heavily over the next 2 months.

5. I have had reasonably lengthy discussions with John and Ken over the past few months. Hopefully I have a reasonable grasp of the context within which the debate falls.

6. Ken circulated a copy of the memorandum I prepared for the Young Lawyers Group among those attending a meeting held on 1st June. That meeting comprised representatives of the Law Society, Faculty, Young Lawyers Group, Law Faculty Club, and all the teachers of the professional subjects.

7. I am the Young Lawyers' representative on the Wellington Committee on Practical Training.

8. Mike Stephens from N.Z.L.S.A. recently asked me if I would be prepared to give a paper, or be part of a panel of speakers on Practical Training, at the N.Z.L.S.A. conference in August.

Although I have not made extensive notes of these meetings and discussions I believe I can remember enough to be able to accurately introspect and assess most of the activities I have been involved in thus far, my role and the role of others, together with the interests and conflicts manifested to date.

Areas in which I can further participate are:

1. Further work with the Young Lawyers group - including meetings reports and proposals on the current debate together with involvement in the organisations of next month's practical workshops and seminars.

2. Participation in the Wellington Committee on Practical Training. Possibly a paper for this committee. Certainly some meetings and discussions.

3. An article in the Law Journal.

4. Participation in the N.Z.L.S.A. conference - to be confirmed. Possibly I might take the initiative with the Law Faculty Club also and attempt to involve myself in some sort of discussion on practical training. They appear to be thinking that they are worth nothing to a Law office.

All of this can be achieved before the end of the first week in September. At that stage there will also be interim, and possibly some final, conclusions to the debate.

My report on the debate and my experience would attempt to outline the context, what happened, the parties to the debate and their interests and aims, the various perceptions and definitions; to assess these in a critical fashion attempting to stand back some way from my own involvement. Also included would be the material I would have written together with the other documents produced.

Evan Williams

July 1977

PRACTICAL LEGAL TRAINING

MEMORANDUM FOR MEMBERS OF YOUNG LAWYERS SUB-COMMITTEE ON PRACTICAL LEGAL TRAINING

1. The question of practical training for lawyers is currently being considered in a number of forums. The New Zealand Law Society has a Legal Education Committee which has considered this question. The Council of Legal Education will be having a meeting later this week at which it will consider a report from the New Zealand Society's Committee together with personal reports from Messrs. A.D. Holland and I.L.M. Richardson, a letter from the New Zealand Law Society and a memorandum from Professor Keith. These reports consider some of the general issues of practical legal education and focus in particular on the professional courses and their alternatives. It is unlikely that the Council will attempt to resolve the question in isolation and will probably call for discussions at the district level. Victoria University and the Wellington District Law Society anticipate holding a meeting in the near future to discuss the professional courses and practical legal training. This meeting will comprise representatives from the Law Society, the University, Young Lawyers, students and all the teachers of the professional courses. There will probably be about 4 representatives from each group. We should have more information regarding this meeting shortly. One further point worth noting is that the Law Faculty has a sub-committee on practical legal training and that the Wellington District Law Society will probably resurrect its Practical Training Committee.

2. Kit Toogood has suggested that we hold a meeting of those of us who expressed an interest in practical training at the last Young Lawyers Committee meeting. You will recall that we decided that it would be a good idea to set up a sub-committee on this aspect. Doubtless Kit will contact you individually regarding a meeting.

3. The purpose of this memorandum is two-fold. It is intended to, first, bring you up to date with the situation and, secondly, to outline some of the questions which I feel are relevant to the practical training debate. In doing so I am conscious that I am not currently practicing full-time and that you will be far more aware of the issues and solutions than I. Therefore this document is intended merely as a catalyst which raises questions rather than providing answers. Furthermore, I hope it will provide something of a focus for our initial discussions.

4. One way of looking at practical legal training is to examine the professional courses. Another way is to focus our attention upon the new entrants to law firms and identify their customary defects. For our immediate purposes I believe that the latter approach will be more useful. I believe that we may make a substantial contribution to the debate on practical training by setting forth the problems which we encountered on commencing work for a firm, the gaps in our training and the ways in which these gaps could (if they could) be rectified - either in or outside of the office.

5. Some time ago I had occasion to draw up a list of the deficiencies which I saw in the typical entrant to a law firm. This list assumes a reasonable grasp of both the degree and professional subjects and the deficiencies mentioned are of course more serious in those who have not done any of the professional units prior to entry to a law firm. The list I arrived at last year was:-

(a) He is not familiar with the people, the routine, the formal and informal systems and rules of the particular office in which he works. He may not have worked in an office before.

(b) He will probably be unaware of the ways in which he is expected to act and to communicate with people.

(c) It is likely that he will have large gaps in his knowledge of the kinds of accounting practitioners are required to handle.

(d) He will not know very much, if anything, about the systems and procedures of registration and filing of land and court documents.

(e) He will not be at all good at drawing documents or writing letters.

(f) He will not be aware of the details or implications of planning and executing a transaction in its entirety - in other words he will be somewhat lacking in his handling of the raw material of a transaction.

(g) He will be unfamiliar with the details of the process of bringing a matter before the Court, planning a case, the procedures of the Court; initially his advocacy will be fairly undeveloped.

(h) He will probably have forgotten or not have been confronted with a reasonable proportion of the substance and details of the law relating to many of the matters he will be called upon to deal with.

6. There are two things which I would ask of you in relation to this list. The first is, is it complete? The second is, what are the specific ways in which you feel these defects are manifested? In other words I feel that we should outline in lengthy detail the problems faced by a new entrant to a firm.

7. In order to raise some of the issues I should like to outline some of my comments on these deficiencies.

Deficiency (a)

He is not familiar with the people, the routine, the formal and informal systems and rules of the particular office in which he works. He may not have worked in an office before.

I believe that this problem cannot be cured in advance. However, it is crucial that firms appreciate this problem and provide their new employee with as much information, guidance and supervision as possible. This problem will relate very much to the range of tasks which the new employee is called upon to undertake. It seems to me crucial that either one or two persons are responsible for his overall supervision and management of the content and load of his work.

Deficiency (b)

He will probably be unaware of the ways in which he is expected to act and communicate with people.

I wonder whether there is any substitute for experience in this area. Notwithstanding this comment I feel that some graduates will handle this problem much more easily than others. Some people fit into new situations and assume the practitioner role much more readily than others. In addition many tensions or problems perceived in this area may be put down to the gap in ages and attitudes which must inevitably exist between practitioners and graduates. However, we might bear in mind the possibility of courses in negotiating and interviewing. By the use of role-plays, discussions and practical exercises a new admittee to the profession may be given more confidence and sophistication in his approach to these parts of his practice.

Deficiency (c)

It is likely that he will have large gaps in his knowledge of the kind of accounting solicitors are required to handle.

Question: Do you agree? What do you feel these gaps are?

Deficiency (d)

He will not know very much, if anything, about the systems and procedures of registration and filing of land and court documents.

In regard to the systems and procedures of physically registering and filing documents the new employee will not be in a very different position from that of most practitioners. As you are aware, in the main centres the task of registration and filing of documents tends to be carried out by girls hired specifically for that purpose. What is required, however, is that a new employee of a law firm be aware of the implications of these systems for him as he drafts documents and decides whether, when and where to file or register them. I would think it worth considering the precise nature of the implications of which he should be aware and the level of understanding which should be achieved at various points in his progress.

Deficiency (e)

He will not be at all good at drawing documents or writing letters.

This deficiency together with the next are probably the two items of greatest concern to the profession. To what extent can this lack of drafting skills be remedied prior to entry to a firm? How quickly can it be remedied upon entering a firm?

It would seem to me that the problem is accentuated by the fact that most graduates will have had no training whatsoever in drafting before entering a firm. Most people who have completed their LL.B. as full-time students will not have done any professional units prior to entry to a firm. If they have done any it is likely that they will have done taxation and evidence as these courses are more purely academic in content and therefore easier to do full-time than conveyancing or civil procedure.

The period during which the inadequacies of a new law clerk or solicitor are greatest and most clearly on display is the first three or four months in a firm. The four deficiencies listed prior to this one will probably be causing him quite some concern and taking a reasonable amount of his concentration and effort. Add to this a complete lack of experience in, and knowledge of, drafting and it is no wonder an older experienced practitioner will ask whether his clerk knows anything of any practical value whatsoever. How serious do you feel this problem is? In relation to this it

is also worth asking how rapidly a new clerk or solicitor can begin to pay his way. How might firms best strike a balance between getting some monetary return from their new employee while being heavily engaged in the task of teaching him new skills?

Deficiency (f)

He will not be aware of the details or implications of planning and executing a transaction in its entirety - in other words he will be somewhat lacking in his handling of the raw material of a transaction.

This aspect focuses on the initial confrontation with the facts and requirements of a particular problem or transaction. It also relates to the ability to carry on and maintain the transaction in an efficient and proper manner. Both aspects emphasise a knowledge of practical requirements. How serious is this problem? What is its precise nature? What are its implications?

Deficiency (g)

He will be unfamiliar with the details of the process of bringing a matter before the court, planning a case, the procedures of the Court; initially his advocacy will be fairly undeveloped.

We are probably in a better position than anyone else to comment on this authoritatively. Once again you might wish to reflect upon the precise nature of this problem.

Deficiency (h)

He will probably have forgotten or not have been confronted with a reasonable proportion of the substance and details of the law relating to many of the matters he will be called upon to deal with.

No-one would seriously argue that a graduate should know all areas of the law and all its details. No lawyer does. I do not feel that this area represents a serious problem. The graduate who is in any way competent can find the law on a particular problem and analyse it, albeit not with the confidence and precision of an experienced practitioner. Apart from these skills of analysis and research a law student who enters the profession must have done Contracts, Torts, Criminal Law, Constitutional Law, Land Law, Equity, Commercial Law, Company Law, Family Law, and the professional subjects. In these areas he will have been taught the basic principles of the subject and the way in which these principles relate to factual problems. At first sight teaching basic principles may seem too theoretical. These important principles are not often the immediate subject matter of a specific problem a practitioner will have directly in front of him. However, these principles have shaped the subject and they make up the framework in which the specifics lie. I feel it is more important to teach the framework together with an ability to then work with the specifics than it is to simply to teach a great many specifics. However, we may wish to consider whether we feel that certain specifically practical items which are not presently taught should be added to the content of any of the degree courses. An example of this kind of thing is the suggestion that a complete file on a merger or take-over be studied by the Company Law course in the course of looking at mergers and take-overs.

8. I would emphasise again that the comments outlined above are not intended to be a comprehensive paper but merely something of a catalyst. I believe that we should look at them in relation to the three questions currently under consideration - practical legal training in broad terms, the professional courses currently offered, and the seminar programme which we wish to run this year.

E. C. WILLIAMS

19 April 1977

Appendix 4

Practical Training of Lawyers: a discussion

Date: Wednesday, 1 June 1977, 8.00 p.m.

Place: Room 701, 7th Floor, Rankine Brown (Library) Building, Victoria University.

This meeting has its origins in a proposal made last year by John Thomas as Dean of the Law Faculty to Peter Young, then President of the Wellington District Law Society. He suggested that the profession and the University might co-ordinate the attention which they were both focussing on the extent to which legal education in its present form should and did equip students for private practice. He proposed that a convenient starting point would be a meeting at which there might be representatives of the Law Society, the Young Lawyers Group, the practitioners who are teaching the professional subjects, senior students and full-time University staff. This proposal has now been accepted.

There is a related development. The Council of Legal Education at its meeting held in April considered reports from two of its members on the Australian Conference on Legal Education, a letter from the New Zealand Law Society setting out proposals on practical training, and two comments on that letter. The Council asked the practitioner member and the Dean in each of the four districts to act as joint conveners of a committee to investigate the practical training of lawyers and to report to the Council before the end of July. Obviously, this meeting can help inform that committee. (The local conveners are Hugh Williams and me.)

I attach brief outlines of the present courses and of the Auckland course which has, in the last two years, been substantially altered in format.

I have asked those who teach the professional subjects to provide the meeting with a description of the topics they discuss in their courses and, if they wish, an indication of any changes they would like to see made in them.

A principal purpose of the meeting will be to test those descriptions against the expectations of those participating in the meeting about the objectives and possible achievements of a professional course. Your thinking about those expectations might be assisted by the following list included by Evan Williams, a member of the Faculty, in a paper which he prepared for the Young Lawyers Sub-Committee on Practical Legal Training and which is attached. It is a list of the deficiencies which he saw in the typical entrant to a law firm.

(a) He is not familiar with the people, the routine, the formal and informal systems and rules of the particular office in which he works. He may not have worked in an office before.

(b) He will probably be unaware of the ways in which he is expected to act and to communicate with people.

(c) It is likely that he will have large gaps in his knowledge of the kinds of accounting practitioners are required to handle.

(d) He will not know very much, if anything, about the systems and procedures of registration and filing of land and court documents.

(e) He will not be at all good at drawing documents or writing letters.

(f) He will not be aware of the details or implications of planning and executing a transaction in its entirety - in other words he will be somewhat lacking in his handling of the raw material of a transaction.

(g) He will be unfamiliar with the details of the process of bringing a matter before the Court, planning a case, the procedures of the Court; initially his advocacy will be fairly undeveloped.

(h) He will probably have forgotten or not have been confronted with a reasonable proportion of the substance and details of the law relating to many of the matters he will be called upon to deal with.

Several questions arise: is the list complete? Which are the most serious deficiencies? And more relevant for us: How can the deficiencies best be dealt with? Which of them are best subject to lecture based courses? Which are best dealt with on the job? Which are best dealt with by seminars held a short time after admission? And which might be dealt with in the programme of meetings between senior practitioners and recently admitted practitioners which the Wellington District Law Society is instituting this year? What is the level at which the professional courses should be taught? Is their prime purpose to give graduates some acquaintance with the elementary tasks which they will encounter in their first months in a law office or is it to give a deeper understanding of more fundamental aspects of the professional subjects? What use is made and can be made in all the places in which practical training is given of the excellent Legal Practice Manual edited by Stuart Macfarlane and issued a few years ago by the Auckland District Law Society? Doesn't that Manual provide just that detailed indication of the steps to be taken (including the questions to be asked) which the recent entrant to the profession requires in grappling with many of his day to day tasks?

This final set of questions should produce some suggestions about a second principal concern of the meeting: the methods of teaching the present professional subjects. So should we move away, in part, from the lecture based system? Should we attempt to introduce more tutorial groups which would, for instance, provide for closer supervision of drafting?

K.J. Keith

24 May 1977

The professional courses at the University of Auckland

In 1976 Auckland altered the professional courses principally by providing for much of the teaching to be completed early in the year.

This year the formal instruction is being given in two parts:

(a) six weeks in February and March

(b) two weeks in May.

The lectures in Evidence are given throughout the academic year.

SUBJECT	LECTURE HOURS	PRACTICAL HOURS	TOTAL
Court Papers & Practice	27	10 1/2	37 1/2
Commercial Papers & Practice	6	10 1/2	16 1/2
Land Conveyancing Papers & Practice: Office Administration	29	10 1/2	39 1/2
Wills & Trusts Practice	10 1/2	10 1/2	21
Advocacy & Ethics	22		22

Each day there are lectures from 8 - 9.30 a.m. and from 1 - 2p.m. and practical, small group classes from 5-6.30 p.m.

In addition, in 1976 seven exercises were completed and handed in between the two sessions of instruction and five tests were sat after the second session.

The Auckland Dean has said of this course that it is as good as but not necessarily better than the old.

24 May 1977

VICTORIA UNIVERSITY OF WELLINGTON

FACULTY OF LAW

The Professional Courses

The Professional Examinations in Law Regulations 1966 provide for the following subjects (and prescriptions) additional to the requirements of our LL.B. degree:

The Law of Civil Procedure

The jurisdiction and procedure of the Supreme Court and the Court of Appeal in civil cases, including probate and administration, but excluding bankruptcy. The jurisdiction and procedure of the Magistrate's Court in civil cases, including the procedure but not the substantive law on complaints under the Summary Proceedings Act. The principles of pleading. The drafting of documents.

Conveyancing and Draftsmanship

Practical conveyancing in the prescribed classes of instruments comprising the following: agreements for sale; conditions of sale; transfers of land and interests therein; assignments of personalty; hire purchase agreements; mortgages and sub-mortgages; leases; agreements for lease; sub-leases; surrenders of lease; power of attorney; bonds; partnership deeds;wills and settlements; appointments of new trustees. (Forms to be of a simple and usual character only.)

The Law of Evidence

The principles of the law of evidence in civil and criminal cases.

Office and Courtroom Practice

Elementary bookkeeping and trust account procedures. The Solicitors Audit Regulations. Office Systems. Office Management. Preparation and presentation of cases before tribunals; the basic techniques of counsel when appearing in Court. A practitioner's ethical duties towards the Court, other practitioners and his clients and other members of the public.

Taxation and Estate Planning

The law relating to land and income tax, gift duty, death duty and stamp duty and property speculation tax. The principles of estate planning, with reference to the use of family trusts, companies and life insurance.

The numbers of lectures in each subject are as follows:

Civil Procedure	52
Conveyancing	26
Evidence	26
Office and Courtroom Practice	44
Taxation	52

Each course has a number of written assignments. All, except Office and Courtroom Practice, have terms examinations and a final examination although most students in Procedure and Conveyancing are granted a certificate on the basis of the satisfactory completion of the year's work and do not have to sit the final examination.

24 May 1977

PRACTICAL LEGAL TRAINING

MEMORANDUM FOR MEMBERS OF YOUNG LAWYERS SUB-COMMITTEE ON PRACTICAL LEGAL TRAINING

1. The question of practical training for lawyers is currently being considered in a number of forums. The New Zealand Law Society has a Legal Education Committee which has considered this question. The Council of Legal Education will be having a meeting later this week at which it will consider a report from the New Zealand Society's Committee together with personal reports from Messrs. A.D. Holland and I.L.M. Richardson, a letter from the New Zealand Law Society and a memorandum from Professor Keith. These reports consider some of the general issues of practical legal education and focus in particular on the professional courses and their alternatives. It is unlikely that the Council will attempt to resolve the question in isolation and will probably call for discussions at the district level. Victoria University and the Wellington District Law Society anticipate holding a meeting in the near future to discuss the professional courses and practical legal training. This meeting will comprise representatives from the Law Society, the University, Young Lawyers, students and all the teachers of the professional courses. There will probably be about 4 representatives from each group. We should have more information regarding this meeting shortly. One further point worth noting is that the Law Faculty has a sub-committee on practical legal training and that the Wellington District Law Society will probably resurrect its Practical Training Committee.

2. Kit Toogood has suggested that we hold a meeting of those of us who expressed an interest in practical training at the last Young Lawyers Committee meeting. You will recall that we decided that it would be a good idea to set up a sub-committee on this aspect. Doubtless Kit will contact you individually regarding a meeting.

3. The purpose of this memorandum is two-fold. It is intended to, first, bring you up to date with the situation and, secondly, to outline some of the questions which I feel are relevant to the practical training debate. In doing so I am conscious that I am not currently practicing full-time and that you will be far more aware of the issues and solutions than I. Therefore this document is intended merely as a catalyst which raises questions rather than providing answers. Furthermore, I hope it will provide something of a focus for our initial discussions.

4. One way of looking at practical legal training is to examine the professional courses. Another way is to focus our attention upon the new entrants to law firms and identify their customary defects. For our immediate purposes I believe that the latter approach will be more useful. I believe that we may make a substantial contribution to the debate on practical training by setting forth the problems which we encountered on commencing work for a firm, the gaps in our training and the ways in which these gaps could (if they could) be rectified - either in or outside of the office.

5. Some time ago I had occasion to draw up a list of the deficiencies which I saw in the typical entrant to a law firm. This list assumes a reasonable grasp of both the degree and professional subjects and the deficiencies mentioned are of course more serious in those who have not done any of the professional units prior to entry to a law firm. The list I arrived at last year was:-

(a) He is not familiar with the people, the routine, the formal and informal systems and rules of the particular office in which he works. He may not have worked in an office before.

(b) He will probably be unaware of the ways in which he is expected to act and to communicate with people.

(c) It is likely that he will have large gaps in his knowledge of the kinds of accounting practitioners are required to handle.

(d) He will not know very much, if anything, about the systems and procedures of registration and filing of land and court documents.

(e) He will not be at all good at drawing documents or writing letters.

(f) He will not be aware of the details or implications of planning and executing a transaction in its entirety - in other words he will be somewhat lacking in his handling of the raw material of a transaction.

(g) He will be unfamiliar with the details of the process of bringing a matter before the Court, planning a case, the procedures of the Court; initially his advocacy will be fairly undeveloped.

(h) He will probably have forgotten or not have been confronted with a reasonable proportion of the substance and details of the law relating to many of the matters he will be called upon to deal with.

6. There are two things which I would ask of you in relation to this list. The first is, is it complete? The second is, what are the specific ways in which you feel these defects are manifested? In other words I feel that we should outline in lengthy detail the problems faced by a new entrant to a firm.

7. In order to raise some of the issues I should like to outline some of my comments on these deficiencies.

Deficiency (a)

He is not familiar with the people, the routine, the formal and informal systems and rules of the particular office in which he works. He may not have worked in an office before.

I believe that this problem cannot be cured in advance. However, it is crucial that firms appreciate this problem and provide their new employee with as much information, guidance and supervision as possible. This problem will relate very much to the range of tasks which the new employee is called upon to undertake. It seems to me crucial that either one or two persons are responsible for his overall supervision and management of the content and load of his work.

Deficiency (b)

He will probably be unaware of the ways in which he is expected to act and communicate with people.

I wonder whether there is any substitute for experience in this area. Notwithstanding this comment I feel that some graduates will handle this problem much more easily than others. Some people fit into new situations and assume the practitioner role much more readily than others. In addition many tensions or problems perceived in this area may be put down to the gap in ages and attitudes which must inevitably exist between practitioners and graduates. However, we might bear in mind the possibility of courses in negotiating and interviewing. By the use of role-plays, discussions and practical exercises a new admittee to the profession may be given more confidence and sophistication in his approach to these parts of his practice.

Deficiency (c)

It is likely that he will have large gaps in his knowledge of the kind of accounting solicitors are required to handle.

Question: Do you agree? What do you feel these gaps are?

Deficiency (d)

He will not know very much, if anything, about the systems and procedures of registration and filing of land and court documents.

In regard to the systems and procedures of physically registering and filing documents the new employee will not be in a very different position from that of most practitioners. As you are aware, in the main centres the task of registration and filing of documents tends to be carried out by girls hired specifically for that purpose. What is required, however, is that a new employee of a law firm be aware of the implications of these systems for him as he drafts documents and decides whether, when and where to file or register them. I would think it worth considering the precise nature of the implications of which he should be aware and the level of understanding which should be achieved at various points in his progress.

Deficiency (e)

He will not be at all good at drawing documents or writing letters.

This deficiency together with the next are probably the two items of greatest concern to the profession. To what extent can this lack of drafting skills be remedied prior to entry to a firm? How quickly can it be remedied upon entering a firm?

It would seem to me that the problem is accentuated by the fact that most graduates will have had no training whatsoever in drafting before entering a firm. Most people who have completed their LL.B. as full-time students will not have done any professional units prior to entry to a firm. If they have done any it is likely that they will have done taxation and evidence as these courses are more purely academic in content and therefore easier to do full-time than conveyancing or civil procedure.

The period during which the inadequacies of a new law clerk or solicitor are greatest and most clearly on display is the first three or four months in a firm. The four deficiencies listed prior to this one will probably be causing him quite some concern and taking a reasonable amount of his concentration and effort. Add to this a complete lack of experience in, and knowledge of, drafting and it is no wonder an older experienced practitioner will ask whether his clerk knows anything of any practical value whatsoever. How serious do you feel this problem is? In relation to this it

is also worth asking how rapidly a new clerk or solicitor can begin to pay his way. How might firms best strike a balance between getting some monetary return from their new employee while being heavily engaged in the task of teaching him new skills?

Deficiency (f)

He will not be aware of the details or implications of planning and executing a transaction in its entirety - in other words he will be somewhat lacking in his handling of the raw material of a transaction.

This aspect focuses on the initial confrontation with the facts and requirements of a particular problem or transaction. It also relates to the ability to carry on and maintain the transaction in an efficient and proper manner. Both aspects emphasise a knowledge of practical requirements. How serious is this problem? What is its precise nature? What are its implications?

Deficiency (g)

He will be unfamiliar with the details of the process of bringing a matter before the court, planning a case, the procedures of the Court; initially his advocacy will be fairly undeveloped.

We are probably in a better position than anyone else to comment on this authoritatively. Once again you might wish to reflect upon the precise nature of this problem.

Deficiency (h)

He will probably have forgotten or not have been confronted with a reasonable proportion of the substance and details of the law relating to many of the matters he will be called upon to deal with.

No-one would seriously argue that a graduate should know all areas of the law and all its details. No lawyer does. I do not feel that this area represents a serious problem. The graduate who is in any way competent can find the law on a particular problem and analyse it, albeit not with the confidence and precision of an experienced practitioner. Apart from these skills of analysis and research a law student who enters the profession must have done Contracts, Torts, Criminal Law, Constitutional Law, Land Law, Equity, Commercial Law, Company Law, Family Law, and the professional subjects. In these areas he will have been taught the basic principles of the subject and the way in which these principles relate to factual problems. At first sight teaching basic principles may seem too theoretical. These important principles are not often the immediate subject matter of a specific problem a practitioner will have directly in front of him. However, these principles have shaped the subject and they make up the framework in which the specifics lie. I feel it is more important to teach the framework together with an ability to then work with the specifics than it is to simply to teach a great many specifics. However, we may wish to consider whether we feel that certain specifically practical items which are not presently taught should be added to the content of any of the degree courses. An example of this kind of thing is the suggestion that a complete file on a merger or take-over be studied by the Company Law course in the course of looking at mergers and take-overs.

8. I would emphasise again that the comments outlined above are not intended to be a comprehensive paper but merely something of a catalyst. I believe that we should look at them in relation to the three questions currently under consideration - practical legal training in broad terms, the professional courses currently offered, and the seminar programme which we wish to run this year.

E. C. WILLIAMS

19 April 1977

Appendix 5

Practical Training of Lawyers

Once again the subject of practical legal training has reared its hoary head and is currently being debated in a number of forums with a view to determining its present state and future prospects. Unfortun ately many discussions of this topic comprise little more than vague articulations of a general feeling that something is wrong. It is regrettable that we often do not apply the same rigour of analysis to our own problems as we do to those of our clients. It is my belief that the initial focal point for any such discussion must lie in the specific problems which are to be remedied. Therefore this article represents an attempt to identify the specific problems which practical legal training is aimed at solving. A further aim is to put forward some tentative views on the ways in which these problems might be remedied. However before doing so I wish to briefly examine the debate over practical training in a more general way, and to suggest that broad historical factors should not be allowed to obscure the real issues or to unduly colour our view of the true nature of the answers to the problem posed.

There appears to be a feeling that is said to be stronger today than in the past that entrants to law firms are not properly trained. One might therefore ask why this feeling might be stronger. I wish to suggest that there are two primary reasons why this may be the case.

The first is that there generally exists a good deal of confusion about the best way in which to train people for vocations, the two main options being "on the job" training and separate institutionalised training. Thus we see nurses now seeking to learn nursing in polytechnics rather than hospitals, teachers learning how to teach away from schools, and many other vocations moving towards this method of training. However there are many who argue forcibly that only a very limited amount can be achieved by such moves; that practical skills are very difficult to teach away from the job; that a more valuable method of vocational training is one which takes place within the actual environment of the work place itself and that it is difficult to transfer many skills out of the institution in which they are taught into the environment in which they are to be exercised. Indeed recent evidence exists which tends to show that the transfer of professional skills out of a contrived learning situation into the <u>real</u> professional context is very much more

difficult than has been generally admitted in the past.[1] However a general educational debate is beyond the ambit and competence of this article. The primary point is that in a time when there is general uncertainty over methods of job training there is likely to be greater questioning by lawyers of their particular training. Accordingly it is also likely that there will be more doubt about the product of this training - in our case the law graduate - and about the role of a firm in training him for practice.

A second reason why there might now be a stronger feeling that a law graduate is not adequately equipped with practical skills is historical. For financial or other reasons fewer law students complete their degrees part-time and the budding lawyer now enters an office at a much later stage of his professional training. (It is worth noting in passing that the common idea that this is due to a University policy towards full-time study throughout the degree is not correct.) Some even hold, or nearly hold, practising certificates when they first join a firm. Not surprisingly these graduates expect somewhat more interesting and responsible work than the part-time clerk of the past. They also expect much higher remuneration. On the other hand it is no less surprising that a law firm expects more from these more expensive graduates than it did of part-time clerks. On a quantitative level at least a firm obtains a full-time employee. However it is almost certain that on entering a firm a graduate is no more practically skilled than a part-time clerk was when he entered a firm - particularly in relation to the kind of tasks he is called upon to undertake in the first few months of employment. It should be observed here that this last point does <u>not</u> call into question the overall competence and ability of a graduate. It is confined to the question of practical skills, and in particular the <u>lack</u> of practical skills needed in the first few months of his working career. The proposition I wish to challenge is the one which says that "because graduates have spent four years at university they should be more practically skilled than part-time clerks were and therefore better at doing the same kind of conveyancing and debt-collecting that those clerks did; because they're not, there is now a problem (which did not exist before)and it should be solved prior to entry to a firm."

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1. Argyris C. "Theories of Action that Inhibit Individual learning" American Psychologist (1976) Volume 31 p.638.

Thus I suggest that any increase in doubts about the practical ability of a new entrant to a law firm owes its existence more to external historical factors than it does to the internal content of the training of that person. These historical factors tend to discredit the proposition that there must be a problem because everyone says there is. However that is not to say that we should throw up our hands and walk away. Nor should we refuse to examine the courses offered by the universities to see whether they might be improved. But might practitioners not also look to themselves and their own houses and put them in order too? In doing so we must attempt to identify as clearly and precisely as possible the problems that exist for the solving.

Deficiencies in a Typical Entrant to a Law Firm

It will doubtless have become apparent that the particular area which I wish to focus upon is the level of practical expertise of new entrants to law firms and the transitional problems posed by their entry to the actual practice of law. Assuming a reasonable grasp of their degree courses together with all, or some, or none of their professional units these graduates can be expected to have the following deficiencies:-

1. They are not familiar with the people, the routine, the formal and the informal systems and rules of the particular office in which they work. They may not have worked in an office before.
2. They will probably be unaware of the ways in which they are expected to act and to communicate with people.
3. It is likely that they will have large gaps in their knowledge of the kinds of accounting practitioners are required to handle.
4. They will not know very much, if anything, about the systems and procedures of registration and filing of land and court documents.
5. They will not be at all good at drawing documents or writing letters.
6. They will not be aware of the details or implications of planning and executing a transaction in its entirety - in other words they will be somewhat lacking in their handling of the raw material of a transaction.
7. They will be unfamiliar with the details of the process of bringing a matter before the court, planning a case, the procedures of the court; initially their advocacy will be fairly undeveloped.

8. They will probably have forgotten or not have been confronted with a reasonable proportion of the substance and details of the law relating to many of the matters they will be called upon to deal with.

To expand upon these points:-

1. They are not familiar with the people, the routine, the formal and the informal systems and rules of the particular office in which they work. They may not have worked in an office before. Some may seem overconfident. Others may be too timid. All will be ill at ease.

I believe that this problem cannot be cured in advance. However it is crucial that firms appreciate this problem and provide their new employees with as much information, guidance and supervision as possible. New employees especially need a particular person whom they know they can turn to for guidance and assistance. It seems to be crucial that either one or two persons are responsible for the overall supervision and management of the content and load of new employees' work.

2. They will probably be unaware of the ways in which they are expected to act and to communicate with people.

There are good grounds for believing that this is a significant question. Entry to a law firm involves a person in a wide and complicated set of relationships. This set of relationships is reasonably hierarchical and involves a wide number of persons including partners, firm's solicitors, other solicitors, clients, magistrates and judges, court staff and others. In particular new employees do not know where people fit in and are unsure about the way in which they are supposed to relate to them. A central problem is that of their relationship with their clients.

One wonders whether there is any substitute for experience in this area. However not withstanding this comment it can be said that some graduates will handle this problem much more easily than others. Some people fit into new situations and assume the practitioner role much more readily than others. In addition many tensions or problems perceived in this area may be put down to the gap in ages and attitudes which must inevitably exist between practitioners and graduates.

Despite the general conclusion that this deficiency cannot be remedied outside of the office situation one aspect that might be cured in part by external training is the lack of negotiating and interviewing skills. By the use of role plays, discussions and practical exercises graduates may be given more confidence and sophistication in their approach to these parts of their practices. They would have conducted a few interviews and negotiation sessions (albeit in simulation) and may be more aware of the undercurrents and complexities inherent in these situations together with the techniques they may bring to bear on them.[2]

3. It is likely that they will have large gaps in their knowledge of the kinds of accounting practitioners are required to handle.

There is some feeling that as well as an ability to cope with the firm's own accounting system the new practitioner needs a knowledge of accounting principles. One difficulty in teaching firm accounting outside of a firm is that the outward appearance of these systems varies quite markedly from firm to firm. However there is little doubt that it is possible to teach elementary principles of book keeping and trust account procedures by a course such as the Office and Courtroom practice course. It should also be possible to familiarise students with the solicitors' audit regulations and make certain general observations about office systems. Unfortunately I find that I cannot avoid commenting that the only Office and Courtroom Practice course of which I have personal knowledge does not appear to succeed in this regard. While bearing in mind the observation that we should not expect too much from such a course it is probable that close scrutiny of the format of these courses would be worthwhile. Furthermore it should be even more possible to provide a fairly good introduction to general accounting principles and procedures. One might observe that it is probably appropriate that general accounting principles be taught by a full-time accountancy lecturer.

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2. See for instance the discussion of special training in interviewing by A. Mc.M. Stanton in [1969] N.Z.L.J. 514

4. They will not know very much if anything, about the systems and procedures of registration and filing of land and court documents.

In regard to the systems and procedures of physically registering and filing documents the new employee will not be in a very different position from that of most practitioners. In a great number of firms the task of registration and filing of documents is now carried out by girls hired specifically for that purpose. Very few principals or solicitors within firms would know which counters or rooms to go to in the Land Transfer Office or which forms and abstracts to attach to documents. Doubtless we would all agree that this does not represent a problem. What is required, however, is that new employees be aware of the implications of this system for them as they draft documents and decide whether, when and where to file and register them. One might conclude that these implications are neither large in number nor terribly difficult and that in any case this ability is only acquired by actual performance of the task of coming to grips with these implications as one drafts and registers documents.

5. They will not be at all good at drawing documents or writing letters.

This deficiency together with the next are probably the two items of greatest concern. To what extent can this lack of drafting skills be remedied before entry to a firm or in a learning situation outside the firm? How quickly can it be remedied within a firm?

It would seem to me that the problem is accentuated by the fact that most graduates will have had no training whatsoever in drafting before entering a firm. Most will start their first job in the same year as they are taking the professional courses, Conveyancying and Draftsmanship & Civil Procedure at University.

The period during which the inadequacies of a new law clerk or solicitor are greatest and most clearly on display is the first three or four months in a firm. The four deficiencies listed prior to this one will probably be causing him quite some concern and taking a reasonable amount of his concentration and effort. Add to this a complete lack of experience in, and knowledge of, drafting and it is no wonder an older experienced practitioner will ask whether his clerk has been taught anything of use, or anything at all while at university. Is the practitioner right to arrive at a negative conclusion?

As a general proposition it is demonstrably false but in regard to the specific skill of drafting documents and letters it is indeed correct. It is unfortunate that this specific complaint is often broadened into a generalised statement that not very much of practical value is taught within the law course.

There remains the substance of the question concerning the extent to which drafting skills can be remedied prior to entry to a firm. I would contend that a reasonable amount of the skill of drafting can be taught outside a law firm - but not without the actual "doing" of the drafting by those being taught. It is widely recognised that practical experience is the primary tutor of the skills of drafting. It is therefore logical to advocate a higher element of the "doing" of drafting in the Conveyancing courses than presently exists. However one constraint on such a programme is that of time and resources. Conveyancing is but one of the professional units. A balance of emphasis must therefore be arrived at. In addition while the Universities may wish to hire practitioners or other part-time teachers to take tutorials in drafting it is worth asking how many tutorial hours are needed to bring a student up to a significantly better level. A dozen tutorial hours will not provide a volume of experience comparable with that which even the first few weeks in a law office might provide. Another limitation on the extent to which drafting can be taught is that of the situation in which it is taught. I believe that a graduate will bring more care, attention and effort to bear on a <u>real</u> document or letter than on an exercise. He will undertake the task of improving his skills of draftsmanship far more diligently in a real situation than in a simulated setting.

Therefore my conclusion is that the important skills of drafting can be taught to a certain extent by separate institutionalised training but only to a very limited extent. One is thus forced to the conclusion that not very much should be expected of the drafting skills of a new entrant to a firm.

6. They will not be aware of the details or implications of planning and executing a transaction in its entirety - in other words they will be somewhat lacking in their handling of the raw material of a transaction.

This aspect focusses on the initial confrontation with the facts and requirements of a particular problem or transaction. It also relates to the ability to carry on and maintain the transaction in an efficient and proper manner. Both aspects emphasise a knowledge of practical requirements. These requirements are partly shaped by theory and partly by the situation in which the transaction is being conducted. I would suggest that only a limited proportion of the situational requirements can be taught outside the context of the actual work situation. However a tool such as the legal practice manual edited by S. MacFarlane and issued by the Auckland District Law Society can impart a significant level of information about the environment within which a legal problem exists and the steps that must be taken to carry the problem through to its solution.

7. They will be unfamiliar with the details of the process of bringing a matter before the court; planning a case, the procedures of the court; initially their advocacy will be undeveloped.

Much the same comment can be made about this deficiency as was made about the last one. Furthermore, the same type of solution appears appropriate. An example of another way of attempting to solve this problem is an integrated litigation course which uses fairly simple but complete files as precedents for exercises which students undertake in simulation.

8. They will probably have forgotten or not have been confronted with a reasonable proportion of the substance and details of the law relating to many of the matters they will be called upon to deal with.

No-one would seriously argue that a graduate should know all areas of the law and all its details. No lawyer does. I do not feel that this area represents a serious problem. The graduate who is in any way competent can find the law on a particular problem and analyse it, albeit not with the confidence and precision of an experienced practitioner. Apart from the skills of analysis and research a law student who enters the profession must have done

Contract, Torts, Criminal Law, Constitutional Law, Land Law, Equity, Commercial Law, Company Law, Family Law, Office and Courtroom Practice, Conveyancing and Draftsmanship, Civil Procedure, Taxation and Estate Planning and the Law of Evidence. In these areas he will have been taught the basic principles of the subject and the way in which these principles relate to factual problems. At first sight teaching basic principles may seem too theoretical. These important principles are not often the immediate subject matter of a specific problem a practitioner will have directly in front of him. However these principles have shaped the subject and they make up the framework in which the specifics lie. Therefore I am of the opinion that it is more important to teach the framework together with an ability to then work with the specifics than it is to simply teach a great many specifics. That is not to say that the specifics of subjects are not taught. Indeed they are, but primary emphasis lies with the framework of the subject and its basic principles.

The feeling of a meeting held recently in Wellington comprising representatives of all groups with interests in the practical training debate was that only three or, at most, four of the deficiencies listed above could be tackled outside of the context of a firm. It appeared that the consensus was that only deficiencies 3 (relating to accounting) 5 (the drafting of documents and letters) and 7 (the process of bringing a case to court) could be taught in a classroom situation. Even in relation to these three deficiencies it appeared clear that the problem could only be solved to a very limited extent.

Conclusion

Thus my conclusion is that the deficiencies in a graduate and the current methods of institutionalised practical training do not constitute a serious problem. Or, as others prefer, they do represent a serious problem but there is very little which can be done about it.

Therefore firms have to expect that new law clerks, whether graduate or undergraduate will lack practical skills and "savvy". In this area there is no substitute for experience. Training of whatever kind can ease the transition from University to a law office but the major part of the problem can only be solved by experience.

One might well ask what kind of training will best ease the transition. Obviously the professional courses in the Universities can help. Bearing in mind the fact that the professional courses constitute a professional qualification with aims beyond the transitional period, the courses in which practical skills are taught should be examined to isolate the specific ways in which these may be of more, or more immediate, assistance to a graduate.entering practice. Another way in which the transition might be eased lies in the use of practical workshops tailored to a specific area of practical concern. These courses are more readily understood and better received if they are given after a student has entered an office and has had to actually grapple with the problems tackled in such workshops. The fact that these courses can be run successfully in New Zealand is established by the effective running of just such programmes by Young Lawyers' Groups.

However the primary way in which to ease the transition is by satisfactory "on-the-job" training and supervision. If my outline of the problems and the comments on them is capable of being agreed with then the only significant means of easing the transition lies within offices. Different firms have different approaches to "on-the-job" training and the New Zealand Law Society or the District Societies might play a significant part in improving this training by drawing together the collective experience of the profession on this aspect and assisting individual firms to find new and better ways of training their new employees.

Several areas of responsibility have been identified. The Law Society and the Universities both have a responsibility, but the prime responsibility rests upon the individual practioner. In accepting institutional responsibility for this matter the Law Society should ensure that it does not thereby absolve individual practioners from their responsibility. In an age of increasingly total abdication to institutional solutions to problems we should resist the temptation of assuming that these solutions are the best ones and recognis e instead the true nature of the problem and its solution.

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Appendix 6.

"Practical Training for Law Students - Some Alternatives"

PROBLEMS IN PRACTICAL SKILLS OF LAW GRADUATES

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The major aim of this paper is to attempt to put the question of practical legal training into its proper perspective. A thorough consideration of the topic must begin with an examination of the aims of such training. We must therefore look at the mischief practical training tries to remedy. Thus we look at the object of the training - the up and coming student lawyer.

Navel-gazing is a task that is all too easy to indulge in. But critical, honest, broadly based navel-gazing is very difficult indeed. But isn't that precisely what is needed if we are to examine our own problems, deficiencies and training? The critical point of assessment of our practical abilities usually comes when we first enter the practice of law. Before then we are assessed in a controlled environment, on organised material. After a year or two in practise we are not subject to such direct and close scrutiny and supervision as is imposed by most firms on their new clerks. In any case after a year or two in practice most practitioners will have a niche which they can organise and control, and which suits their taste and ability. When examining our abilities and short-comings as law clerks and recent graduates we should ensure that our navel-gazing is as accurate as possible; that we have an opinion of our professional abilities that is neither too high nor too low; that a considered judgment is made in the light of a knowledge of our own abilities and shortcomings viewed against, and along with, the world around us.

One of the chief sins to avoid is the tendency towards extremes. A very few years ago law students were making a case that they were very useful to a firm and well qualified for practice; now many are saying that they are very useless and not well qualified. Where lies the truth? As often, somewhere in the middle. But that is not to say that it is either insignificant or unimportant. Many an hour may be spent arguing the middle view against an extremist. Even more time may be spent discussing the specific nature of the abilities and disabilities of a recent graduate. But this is the task which must be attempted if we are to sensibly discuss the subject of practical training. The succeeding paragraphs represent an attempt to outline the problems of a typical graduate so that we might begin to see the true task of practical training.

Deficiencies in a Typical Entrant to a Law Firm

Most graduates will not have done any of the professional units prior to entry to a firm. Others will have done some, or all of these units. In either case I would suggest that the following deficiencies are to be found in new entrants to law firms:

1. They are not familiar with the people, the routine, the formal and the informal systems and rules of the particular office in which they work. They may not have worked in an office before. Some may seem overconfident. Others may be too timid. All will be ill at ease.

I believe that this problem cannot be cured in advance. However it is crucial that firms appreciate this problem and provide their new employees with as much information, guidance and supervision as possible. New employees especially need a particular person whom they know they can turn to for guidance and assistance. It seems to be crucial that either one or two persons are responsible for the overall supervision and management of the content and load of new employees' work.

2. They will prbably be unaware of the ways in which they are expected to act and to communicate with people.

There are good grounds for believing that this is a significant question. Entry to a law firm involves a person in a wide and complicated set of relationships. This set of relationships is reasonably hierarchical and involves a wide number of persons including partners, firm's solicitors, other solicitors, clients, magistrates and judges, court staff and others. In particular new employees do not know where people fit in and are unsure about the way in which they are supposed to relate to them. A central problem is that of their relationship with their clients.

One wonders whether there is any substitute for experience in this area. However notwithstanding this comment it can be said that some graduates will handle this problem much more easily than others. Some people fit into new situations and assume the practitioner role much more readily than others. In addition many tensions or problems perceived in this area may be put down to the gap in ages and attitudes which must inevitably exist between practitioners and graduates.

Despite the general conclusion that this deficiency cannot be remedied outside of the office situation one aspect which might be cured in part by external training is the lack of negotiating and interviewing skills. By the use of role plays, discussions and practical exercises graduates may be given more confidence and sophistication in their approach to these parts of their practises. They would have conducted a few interviews and negotiation sessions (albeit in simulation) and may be more aware of the undercurrents and complexities inherent in these situations together with the techniques they may bring to bear on them[1]

3. It is likely that they will have large gaps in their knowledge of the kinds of accounting practitioners are required to handle.

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1. See for instance the discussion of special training in interviewing by A. Mc.M. Stanton in [1969] N.Z.L.J. s.14

There is some feeling that as well as an ability to cope with the firm's own accounting system the new practitioner needs a knowledge of accounting principles. One difficulty in teaching firm accounting outside of a firm is that the outward appearance of these systems varies quite markedly from firm to firm. However there is little doubt that it is possible to teach elementary principles of book keeping and trust account procedures by a course such as the Office and Courtroom Practice course. It should also be possible to familiarise students with the solicitors' audit regulations and make certain general observations about office systems. Unfortunately I find that I cannot avoid commenting that the only Office and Courtroom Practice course of which I have personal knowledge does not appear to succeed in this regard. While bearing in mind the observation that we should not expect too much from such a course it is probable that close scrutiny of the format of these courses would be worthwhile. Furthermore it should be even more possible to provide a firly good introduction to general accounting principles and procedures. One might observe that it is probably appropriate that general accounting principles be taught by a full-time accountancy lecturer.

4. They will not know very much, if anything, about the systems and procedures of registration and filing of land and court documents.

In regard to the systems and procedures of physically registering and filing documents the new employee will not be in a very different position from that of most practitioners. In a great number of firms the task of registration and filing of documents is now carried out by girls hired specifically for that purpose. Very few principals or solicitors within such a firm would know which counters or rooms to go to in the Land Transfer Office or which forms and abstracts to attach to documents. Doubtless we would all agree that this does not represent a problem. What is required, however, is that new employees be aware of the implications of this system for them as they draft documents and decide whether, when and where to file and register them. One might conclude that these implications are neither large in number nor terribly difficult and that in any case this ability is only acquired by actual performance of the task of coming to grips with these implications as one drafts and registers documents.

5. They will not be at all good at drawing documents or writing letters.

This deficiency together with the next are probably the two items of greatest concern. To what extent can this lack of drafting skills be remedied prior to entry to a firm or in a learning situation outside the firm? How quickly can it be remedied within a firm?

It would seem to me that the problem is accentuated by the fact that most graduates will have had no training whatsoever in drafting before entering a firm. Most will start their first job in the same year as they are taking the professional courses, Conveyancying and Draftsmanship and Civil Procedure at University.

The period during which the inadequacies of a new law clerk or solicitor are greatest and most clearly on display is the first three or four months in a firm. The four deficiencies listed prior to this one will probably be causing him quite some concern and taking a reasonable amount of his concentration and effort. Add to this a

complete lack of experience in, and knowledge of, drafting and it is no wonder an older experienced practitioner will ask whether his clerk has been taught anything of use, or anything at all while at university. Is the practitioner right to arrive at a negative conclusion? As a general proposition it is demonstrably false but in regard to the specific skill of drafting documents and letters it is indeed correct. It is unfortunate that this specific complaint is often broadened into a generalised statement that not very much of practical vlue is taught within the law course.

There remains the substance of the question concerning the extent to which drafting skills can be remedied prior to entry to a firm. I would contend that a reasonable amount of the skill of drafting can be taught outside a law firm - but not without the actual "doing" of the drafting by those being taught. It is widely recognised that practical experience is the primary tutor of the skills of drafting in the Conveyancing courses than presently exists. However one constraint on such a programme is that of time and resources. Conveyancing is but one of the professional units. A balance of emphasis must therefore be arrived at. In addition while the Universities may wish to hire practitioners or other part-time teachers to take tutorials in drafting it is worth asking how many tutorial hours are needed to bring a student up to a significantly better level. A dozen tutorial hours will not provide a volume of experience comparable with that which even the first few weeks in a law office might provide. Another limitation on the extent to which drafting can be taught is that of the situation in which it is taught. I believe that a graduate will bring more care, attention and effort to bear on a <u>real</u> document or letter than on an exercise. He will undertake the task of improving his skills of draftsmanship far more diligently in a real situation than in a simulated setting.

Therefore my conclusion is that the important skills of drafting can be taught to a certain extent by separate institutionalised training but only to a very limited extent. One is thus forced to the conclusion that not very much should be expected of the drafting skills of a new entrant to a firm.

6. They will not be aware of the details or implications of planning and executing a transaction in its entirety - in other words they will be somewhat lacking in their handling of the raw material of a transaction.

This aspect focusses on the initial confrontation with the facts and requirements of a particular problem or transaction. It also relates to the ability to carry on and maintain the transaction in an efficient and proper manner. Both aspects emphasise a knowledge of practical requirements. These requirements are partly shaped by theory and partly by the situation in which the transaction is being conducted. I would suggest that only a limited proportion of the situational requirements can be taught outside the context of the actual work situation. However a tool such as the legal practice manual edited by S. MacFarlane and issued by the Auckland District Law Society can impart a significant level of information about the environment within which a legal problem exists and the steps that must be taken to carry the problem through to its solution.

7. They will be unfamiliar with the details of the process of bringing a matter before the court; planning a case, the procedures of the court; initially their advocacy will be undeveloped.

Much the same comment can be made about this deficiency as was made about the last one. Furthermore, the same type of solution appears appropriate. An example of another way of attempting to solve this problem is an integrated litigation course which uses fairly simple but complete files as precedents for exercises which students undertake in simulation.

8. They will probably have forgotten or not have been confronted with a reasonable proportion of the substance and details of the law relating to many of the matters they will be called upon to deal with.

No-one would seriously argue that a graduate should know all areas of the law and all its details. No lawyer does. I do not feel that this area represents a serious problem. The graduate who is in any way competent can find the law on a particular problem and analyse it, albeit not with the confidence and precision of an experienced practitioner. Apart from the skills of analysis and research a law student who enters the profession must have done Contract, Torts, Criminal Law, Constitutional Law, Land Law, Equity, Commercial Law, Company Law, Family Law, Office and Courtroom Practice, Conveyancing and Draftsmanship, Civil Procedure, Taxation and Estate Planning and the Law of Evidence. In these areas he will have been taught the basic principles of the subject and the way in which these principles relate to factual problems. At first sight teaching basic principles may seem too theoretical. These important principles are not often the immediate subject matter of a specific problem a practitioner will have directly in front of him. However these principles have shaped the subject and they make up the framework in which the specifics lie. Therefore I am of the opinion that it is more important to teach the framework together with an ability to then work with the specifics than it is to simply teach a great many specifics. That is not to say that the specifics of subjects are not taught. Indeed they are, but primary emphasis lies with the framework of the subject and its basic principles.

The feeling of a meeting held recently in Wellington comprising representatives of all groups with interests in the practical training debate was that only three or, at most, four of the deficiencies listed above could be tackled outside of the context of a firm. It appeared that the consensus was that only deficiencies 3 (relating to accounting) 5 (the drafting of documents and letters) and 7 (the process of bringing a case to court) could be taught in a classroom situation. Even in relation to these three deficiencies it appeared clear that the problem could only be solved to a very limited extent.

Conclusion

My conclusion is that the problem is not that great.

However it is equally clear that certain aspects of practical training can be improved. Suggesting those alternatives is the task of the following papers in this seminar.

Appendix 7

PRACTICAL TRAINING

- obtaining a change in the attitude of practitioners (and accordingly, firms) to the training and supervision of clerks and recently admitted solicitors -

1. Practitioners do bear a heavy responsibility to effectively train their clerks and ease the transition into the practice of law.

2. This responsibility exists for several reasons:-

(a) Most of the deficiencies of a graduate (in purely practical terms) cannot be cured away from the job. Furthermore these deficiencies are significant. Those that can be dealt with at all can only be dealt with to a limited extent. Therefore they must be taught on the job, by the employer-practitioner.

(b) The university has a different role than that of teaching the kinds of specific skills which we have been talking about. It operates at a broader level, has aims which extend beyond the question of transition to practice. However we should not disregard the possibility that certain aspects of the LL.B.training might be altered to alleviate the problem of a lack of practical skills.

(c) It accords with one of the aspects of the notion of a profession - an ability and willingness to teach itself.

(d) It is in practitioners' interests anyway:-

(i) Professional goodwill - a clerk who receives good training is less likely to move from a particular firm than one who receives poor training and supervision. Even if the clerk does join another firm he will hold the firm in which he was well treated in high regard and his future dealings with that firm will probably reflect this attitude. (Perhaps this proposition is better expressed in the negative - if he was poorly trained his regard for that firm will not be high etc.)

(ii) a firm which trains well will obtain the best graduates - this argument has more force in a time when there is a smaller proportion of graduates to positions available.

(iii) goodwill of clients - a law clerk who is trained and supervised effectively is less likely to upset clients, is more likely to create goodwill for the firm.

(iv) effective training and supervision of a clerk will mean that he pays his own way, and is of more assistance to those for whom he works more quickly.

(v) practitioners are liable for the mistakes of their employees; and those mistakes are not always picked up by supervision - prevention is better than cure.

3. Given that we accept that this responsibility exists, there are several problems in changing the current unwillingness (shared by most practitioners) to invest their time and effort in training their clerks. The prime responsibility of taking the lead in this matter rests with the law Society - first the New Zealand Law Society and secondly the District Law Societies.

4. The first step at the Law Society level would be to gain acceptance of the proposition that this responsibility exists, that there is a problem in the attitude of practitioners to it, and that this attitude needs to be changed. A more complete outline of the reasons stated in paragraph 2 above should be enough to achieve Law Society agreement. It is also likely that we would need to bring evidence that there is a problem with the way in which many firms approach this matter.

5. The Law Society would then have the task of persuading practitioners that something needs to be done in this area. How might this be done? I suppose that the first task would be to show practitioners that there is a problem that lies with them. Evidence would have to be brought as to deficiencies in certain approaches many practitioners have to this problem. Alternatives would need to be suggested. The major need is for an outline of suggestions as to appropriate methods of handling new graduates.

6. How might this be effectively translated into law firms? Obviously this needs the agreement of practitioners. If they do not want to tackle this problem there is little the Law Society can do. As suggested above the first task therefore is to persuade. I have always been a believer in the promulgation of ideas as a way of changing situations. If the right people say something often enough, in a good enough way, eventually it sinks in.

7. However we may also examine the role of the proposed director of practical training. If he is still going to exist I would like to see him working very heavily with firms - and that he be someone who would seriously engage in the task of persuading firms to improve their training of new employees.

8. These are purely points for discussion. I trust that they are of assistance but that they do not limit us to the suggestions herein.

E.C. Williams
31.8.77

APPENDIX 8

Time

I have attempted to assess the amount of time expended on the project over the 26 weeks from April to September. I have managed to identify 95 - 100 hours. This adds up to a little under 4 hours per week. It is appropriate to note that these are only the hours I have been able to link with a formal activity or period which I can specifically recall.