

**PROCEEDINGS — Training Project No. 48**

**LEGAL AND LAW RELATED  
EDUCATION IN AUSTRALIA**

**AUSTRALIAN INSTITUTE OF CRIMINOLOGY**



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EDUCATION IN AUSTRALIA**

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**AUSTRALIAN INSTITUTE OF CRIMINOLOGY**

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## NOTES ON AUTHORS

The Honourable Mr Justice M.D. Kirby  
Chairman  
The Australian Law Reform Commission  
Sydney                      New South Wales

Mr C.R. Bevan  
Assistant Director (Training)  
Australian Institute of Criminology

Professor K.E. Lindgren  
Professor of Legal Studies  
Department of Legal Studies  
University of Newcastle      New South Wales

Mr John Goldring  
College Fellow in Law  
Canberra College of Advanced Education

Mr T. Purcell  
Executive Director  
The Law Foundation of New South Wales

Ms S. Churchman  
Legal Eagle High School Education  
Law Project  
Five Dock      New South Wales

Mr John McArthur  
National Curriculum Development Centre  
Canberra

Mr S. Kyburz  
Legal Studies and Consumer Education  
Weston Creek High School  
Canberra

Mr R. Herschell  
Research Officer  
Curriculum Branch  
Queensland Department of Education

Mr G. Power  
Education Officer  
Curriculum Branch  
Education Department of Western Australia

Mr M. Sherry  
Technical Schools Division  
Department of Education  
Victoria

Mr J.A. Sonneman  
Victorian Commercial Teachers Association

Miss Helen A. Sanderson  
Co-ordinator  
Legal Studies Curriculum Committee  
Education Department  
South Australia

Mr D. Murphy  
Co-ordinator  
Legal Studies Curriculum Committee  
Education Department  
South Australia

Ms R. Graycar  
Education and Research Officer  
South Australian Legal Services Commission

Mr M. Sherry  
Technical Schools Division  
Victoria

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## INTRODUCTION

As a result of local meetings with teachers, students and other interested persons, it was decided to conduct a national seminar to discuss the subject of legal and law related education in Australia.

Representatives of the educational systems of each State and Territory as well as persons involved in legal education were invited to attend, to present their views and to describe the systems in use in each State and Territory. Projected developments were discussed and matters of policy including the question of teacher training, were debated. Resolutions emanated from the discussions and these are reproduced in this volume as is a list of participants and speakers.

Publication of the papers presented is a response to the demands of participants and other interested parties and is an indication and affirmation of the continuing interest of this Institute in this rapidly developing educational field.

The valuable contribution of CCH Australia, Education and Business Law publishers, in sponsoring the seminar dinner is hereby gratefully acknowledged.



## OPENING SPEECH

*Senator John Knight*

It is a pleasure to welcome you to this seminar. The Attorney-General, Senator Peter Durack, has asked me to express his apologies for his inability to be here to welcome you personally. As Senator for the Australian Capital Territory, it is my special pleasure to welcome those who are visitors to our National Capital.

The Attorney-General is the Minister responsible for the administration of the Institute of Criminology and he maintains a close interest in its activities. It is because of this interest that he has asked me to join you for this opening session. I welcome the opportunity to do so as I acknowledge the important role the Institute has to play in the community and the valuable work it has already done.

It is an unusual Institution. It is the only Criminology Institute in the world operating as an independent Statutory Authority outside either a Government Department or University. Its Board of Management is a successful example of working federalism, comprising three members nominated by the Attorney-General, and three representing the States. The allied body, the Criminology Research Council is comprised of six representatives of the States and one Commonwealth representative.

This seminar represents something of a departure for the Institute in its involvement with school curriculums, it is a significant and welcome initiative, characteristic of the role the Institute has established and indicative of the sort of contribution it can make to the community.

As the programme indicates, the objectives of the seminar are to:

- assess the state of legal education on a national basis;

- to list and evaluate currently available resources for teaching legal and law-related subjects in schools;

- to evaluate the current state of teacher training for legal teaching; and

- to raise and discuss proposals for the future development of legal and law-related education in Australia.

This seminar arose from the concern of the Board of Management to provide the young people of Australia with a better understanding of the criminal justice system. That concern has coincided with a growing interest in educational circles in providing an increased understanding and awareness of the law among pupils. Clearly these interests can be linked, to the benefit of pupils and society generally.

It is also clear that the provision of a forum by an independent national body such as the Institute will encourage Interstate and Territory exchange of information regarding ideas, problems and solutions. I understand that legal education has developed so far on a rather uneven basis; I hope that this seminar will begin a process by which the experience of some will assist others and also initiate a co-ordinated and purposeful effort towards progress in this important area.

The Institute of Criminology is concerned to inform the public of the impact of crime and criminal law in everyday life and to increase awareness of the mechanisms of self-protection and community crime control. It is clear that this understanding should be linked with a broader understanding of the law in its totality, both civil and criminal.

I belong to a generation brought up on the so-called '3 R's'. There is an increasing need for education to be based not just on more innovative techniques and courses but on the '5 R's' - the fourth and fifth being rights and responsibilities, whether social, political, legal, economic or other. All these depend ultimately on law and understanding of the law, not least the criminal law.

It is essential that citizens be better equipped now and in the future not only to accept their responsibilities as citizens, but to be aware of their rights - and to have those rights protected. It is in this context that I consider this seminar to be of special importance in building a knowledge and understanding of rights and responsibilities under the law from a very early stage of the educational process. That in itself will strengthen understanding and thus, I believe, our system of law. It is an especially important process in our modern and increasingly complex, often daunting social, political, economic and legal structure.

The law has become a ubiquitous feature of the daily lives of all Australians. The growth of the number of laws relating to all forms of human activity has become apparent as a major 20th century phenomenon. The Australian Parliament has passed an average of 160 Acts each year over the past decade. It is not surprising then that this development has been recognised by educators and lawyers - as this seminar demonstrates.

The development of legal and law-related education in the 1970s has already marked a significant extension of traditional education. So far this development has been mainly restricted to senior studies, although the law is receiving greater attention in middle-range courses in social science, social studies, consumer education and history. I am told that some educationists are proposing a full legal education stream to develop from kindergarten right through to the higher school certificate. It is an aspiration and an objective which I support.

It is essential that individuals - as well as groups - be able to understand the multitude of laws which affect them. It is such a complex web of law, precedent and procedure that it is increasingly important that this educational process begin at an earlier stage.

I should add that this Institute's involvement in education is not a new one. At the tertiary level the Institute has enjoyed a continuing close relationship with many teaching Institutions throughout the country, particularly those teaching law and the social sciences. Seminars and research projects dealing with youth, juvenile delinquency, juvenile justice, crime prevention planning, and urban delinquency have all involved teachers and students at the secondary level. Officers of the Institute regularly lecture to parent and student groups in a number of schools. Secondary and tertiary students make regular use of the facilities of the J.V. Barry Memorial Library at the Institute, and Institute publications such as 'Crime and Justice in Australia' are receiving widespread use as texts for tertiary and secondary courses in law and social science.

I note that this seminar will consider, as well as the present position on legal education, the development of resources and teacher education. I shall read with interest the conclusions and recommendations of the seminar as I am sure will be the case with the Attorney-General and the Minister for Education, Senator Carrick.

It is important that bodies such as the Institute and the Curriculum Development Centre take a leading role in encouraging positive discussion towards development of appropriate courses, resources and teacher education. All of these will themselves encourage the emergence of a more responsive and responsible public, aware of both rights and responsibilities.

In conclusion, may I express my appreciation to the Institute for its initiative in conducting meetings of local teachers and students last year to assess the ways in which it can assist education in the A.C.T. The Institute's excellent library has been open to local students, who use its resources regularly for assignment and project research; Institute staff have also lectured to social science and law classes at a number of local schools and colleges. Local school students and staff have been involved with regional crime prevention seminars in such centres as Albury-Wodonga, Geelong, Darwin, Alice Springs and Armidale. I can only say that these forms of involvement in our school system are both welcomed and encouraged by the Attorney-General and by myself.

It gives me pleasure to open this seminar on behalf of the Attorney-General. I wish you a rewarding and successful meeting and look forward to seeing the results.

## COMMUNITY LEGAL EDUCATION AND LAW REFORM

*Honourable Mr Justice M.D. Kirby*

### 'UNINTENTIONAL' LEGAL EDUCATION

A recent review of community legal education in Australia asserted that the Australian Law Reform Commission had 'unintentionally' become involved in community legal education.

'Law reform activities can also provide valuable information and practical training in the mysteries of the law. The Australian Law Reform Commission with its emphasis on socially oriented references and its practice of pursuing those matters in a very public way through media publicity the encouragement of submissions from interested parties, public hearings advertised as such and the extra-ordinary round of conference lecturing pursued by the current Chairman, Mr Justice M.D. Kirby, has raised public interest and involvement in law reform as never before. These are commendable initiatives which could well be emulated by other State law reform bodies. The Australian Law Reform Commission *perhaps unintentionally* has done as much in Community Legal Education as any other legal institution in the past few years.'<sup>1</sup>

The tribute is generous and I say nothing of it. But the allegation of unintentionation is not accepted. From its establishment, the Australian Law Reform Commission saw as one of its functions the raising of community consciousness about the problems and defects in the legal system of this country. By doing this, expectations of actual reform and the achievement of orderly change are raised. Such expectations carry with them the imperative of modernisation, review and simplification of the legal system which is the statutory charter of the Law Reform Commission.

I start by congratulating the Australian Institute of Criminology upon yet another splendid initiative, this time in organising a seminar, the first of its kind, on Legal and Law-Related Education in Australia. It is a signal of the versatility and imagination of those who direct the Institute. I hope this seminar is the first of many, within the Institute and elsewhere, upon community legal education in this country.

The Law Reform Commission and the Australian Institute of Criminology are two national bodies, established by Commonwealth legislation, to stand to the side of the legal system observing it and commenting upon it with constructive criticism. We in the Law Reform Commission are privileged to be associated with the Institute in a number of important projects. In the past, we have had help from the Institute in the preparation of reports to the Commonwealth Government. At present, the Institute is helping us actively in two current projects of law reform. The first is the reference we have received to reform the law relating to the punishment and sentencing of Commonwealth offenders throughout Australia. In this matter, the Institute has arranged seminars, provided research assistance and supplied advice and counsel to the Commissioner in charge of the project, Professor Duncan Chappell.

As recently as last week, the Attorney-General announced the appointment of a Senior Criminologist within the Institute, Dr John Seymour, as the latest Commissioner of the Law Reform Commission. This appointment, and the promise it bears of close co-operation between the Institute and the Commission in the project on child welfare laws, cements firmly the co-operative relationship that has been established between the Commission and the Institute. We in the Commission are proud to be associated with Australia's national criminology institute which is earning for itself a splendid name in the international community of the intellect.

I am also glad to see that a number of the lecturers in the seminar are persons with whom the Law Reform Commission is actively engaged. We have taken advice from Mr Tjerk Dusseldorp on our processes of consultation. Mr John Goldring is a consultant to the Commission in one of its important projects. Mr Terry Purcell of the Law Foundation of New South Wales is also a consultant and his Foundation is playing an active and constructive part in our project on sentencing. By the assistance of funds, manpower and advice, the foundation has helped to launch a most imaginative survey of the judicial officers of Australia concerning the defects that are perceived by them in sentencing law and practice. I look forward to even closer co-operation between the Institute of Criminology, bodies such as the Law Foundation and the Law Reform Commission. The purpose of these words is to enliven your interest in the Law Reform Commission, its work, its achievements and its methodology.

#### THE COMMISSION

The Australian Law Reform Commission is a Commonwealth authority, permanently established by an Act of the Federal Parliament, the *Law Reform Commission Act 1973*. The first Commissioners were appointed in 1975. There are now twelve Commissioners, four of who are full-time, the balance, like Dr Seymour, part-time. The Commission's office is established in Sydney. It has a staff of nineteen. It works upon references received from the Commonwealth Attorney-General. It reports to him. Its reports may not be lost in the bureaucracy but must, under the Statute, be tabled by the Attorney-General within a short time of receipt. Its task under the Act is to review, modernise and simplify the laws of this country which are within Commonwealth i.e. federal

jurisdiction. It has an important responsibility, in preparing suggestions for law reform, to keep in mind the desirability of securing, in appropriate areas, uniformity between the laws of the Territories (for which the Commonwealth is responsible) and the laws of the States.

#### COMPLETED PROJECTS

The Commission's references have been many and varied but I think the commentator's statement that they have a common emphasis on social policy is a fair one. The first reference we received, from the Labor Government, involved an examination of two separate but related issues. The first produced the report, *Complaints Against Police*,<sup>2</sup> the second led to the report on *Criminal Investigation*.<sup>3</sup> From the present Administration we have received equally controversial and policy-pregnant references. Mr Ellicott's first assignment related to the breathalyzer laws of the Australian Capital Territory. In discharge of this reference, we produced our report, *Alcohol, Drugs and Driving*.<sup>4</sup> Subsequently we delivered reports on *Insolvency : The Regular Payment of Debts*,<sup>5</sup> suggesting major changes in Australia's bankruptcy, insolvency and debt recovery laws. We also produced a report on *Human Tissue Transplants*.<sup>6</sup>

In addition to these reports, the Commission has produced discussion papers on a wide variety of other assignments. These discussion papers foretell reports which will be produced after the Commission has had the opportunity of considering reaction to tentative suggestions for reform.

#### THE PROGRAMME IN PROSPECT

The Commission is presently working upon a number of references and will report in turn on each. Some of them contain deadlines for report, a new and not always welcome innovation in law reform. The Commission worked to deadlines in the reports on *Complaints Against Police*, *Criminal Investigation*, *Alcohol, Drugs and Driving* and *Human Tissue Transplants*. In each case where a deadline has been fixed by successive Attorneys-General, the Commission has met the time limit and reports in due time. Two of the projects currently before the Commission include such time limits. These are the latest references received from Attorney-General Durack. They relate to the reform of sentencing law and child welfare law. Each of them requires a report during 1979. The fixing of a time limit indicates the priorities which government give to the programme of the Commission.

Among the other tasks are major exercises in the modernisation of our legal system. The next report, about to be delivered, relates to *Unfair Publication : Defamation and Privacy*.<sup>7</sup> The report on this subject, suggesting important changes in defamation law and procedure, will be delivered within the next few weeks. The Commission will proceed to deal with other aspects of its reference on privacy. Generally speaking the law of Australia gives inadequate and piecemeal protection to individual privacy. The Commonwealth Government has now asked the Commission to provide new laws that will ensure workable machinery for the protection of privacy, particularly in information systems of various kinds, including computerised or automatic data systems.



The Commission is also working on a project for the reform of the law of standing i.e. the question of what interest is required before a person can move the courts to a concern in his complaint. Parallel with this is our project on class actions : to decide whether this American procedure of mass litigation should be imported into Australia. A class action is an American device by which one person sues, often for damages, on behalf of a whole group of persons who have been affected similarly to himself. A discussion paper on this matter will be published shortly.

Another reference requires us to look at the law relating to lands acquisition under compulsory process by the Commonwealth. A discussion paper has already been published on this subject as on several of the topics I have mentioned. Perhaps our most difficult task is that which asks us whether, and if so to what extent and how, Aboriginal customary laws should be recognised in the criminal justice system of Australia. The white settlers came to this country. In their courts they paid no heed to the laws and customs of the Aboriginal people. But law can be a positive force for stability and order in society. The question asked of the Law Reform Commission is whether the time has come for us to utilise Aboriginal customs in our legal system and thereby to avoid the injustices of double punishment that can sometimes arise, particularly in the case of traditional Aboriginals.

The Commission also has a reference on insurance contracts : designed to face up to the mass consumer nature of modern insurance and to bring the law into closer contact with the reality of modern insurance practices.<sup>9</sup> Finally, the Commission is also working on an overhaul of the law of debt recovery, an extension of the early project which led to our sixth report.<sup>10</sup>

#### IMPLEMENTATION OF REFORM

The Act establishing the Law Reform Commission is silent about what happens after a law reform report is delivered to the government. The establishment of a law reform body which produced excellent reports but whose labours led to no actual reform of the law and of our society governed by the law would be a waste of energies and public funds. This truth has been perceived and articulated by successive Attorneys-General, including Senator Durack.

Although the initiative for the implementation of reports lies outside the Commission, it has to be said that the response of governments, Commonwealth and State, has so far been encouraging. The report on *Complaints Against Police* was accepted by the former Administration and was the subject of legislation in the Australia Police Bill 1975. However, this Bill lapsed in November 1975 and was not reintroduced with the change of government. The new government asked the Commission to revise its proposals, in the light of the decision not to establish the Australia Police. The revised report<sup>11</sup> suggested retention of the basic scheme proposed. Meanwhile, the New South Wales Government adopted this scheme and introduced it in legislation governing the largest police

force in Australia : *Police Regulation (Allegations of Misconduct) Act* 1978. The Commonwealth authorities are examining the Commission's report in relation to the proposed Federal Police of Australia. I expect that we will see a scheme very similar to that put forward by the Commission introduced in federal legislation. Additionally, the Victorian and South Australian Police have adopted administratively one of the key proposals put forward by us (the introduction of a special unit of the police to handle citizen complaints). The Queensland Parliament also enacted legislation in 1978 which included certain of the proposals advanced in the Commission's report (dealing with vicarious liability for police).

So far as the report on *Criminal Investigation* is concerned, Attorney-General Ellicott introduced the Criminal Investigation Bill 1977, based on the report, and described it as 'a major measure of reform'. The Bill lapsed in 1977 but Senator Durack has indicated that he hopes to reintroduce it in Parliament this year, with some modifications. As well, the New South Wales Government has picked up some of the proposals in the report dealing with bail law reform and enacted the *Bail Act* 1978. The Northern Territory Government also adopted a number of the proposals, including such novel suggestions as the use of telephones to permit judicial supervision of arrest and search warrants in the great distances of the Northern Territory.

The report on *Alcohol, Drugs and Driving* was implemented in the Capital Territory in the *Motor Traffic (Alcohol and Drugs) Ordinance* 1977. It introduces the most modern breathalyzer equipment, including the facility of a 'printout' to the citizen charged with an offence. It also introduced procedures for taking blood tests to counteract the growing use of drugs other than alcohol, to which the breathalyzer is not specific. Many other suggestions for reform were contained in the report and implemented by the Ordinance.

The report on *Human Tissue Transplants* has created worldwide interest. It was praised in the British Medical Journal and is shortly to be translated into Spanish for distribution throughout Latin America to governments concerned with the universal problem of updating the law to deal with transplant surgery. The draft legislation attached to the report has now been implemented in the Capital Territory.<sup>12</sup> The Deputy Premier of Queensland has indicated that the law will be introduced in that State.

Even in advance of reports, proposals put forward in discussion papers on lands acquisition and defamation have been adopted by governments. Perhaps the most surprising is the indication we have from Barbados, in the West Indies, that they propose to adopt our suggestions for reform of defamation law and procedures.

## THE METHODOLOGY OF REFORM : COMMUNITY PARTICIPATION

The orthodox method of preparing laws in British societies has been a highly secretive one. Laws are prepared behind closed doors and are generally unavailable until they are tabled in Parliament. The Law Commission of England, established in 1965, reversed this procedure. By developing working papers or 'Green Papers' as they become to be known from their cover, the Law Commission put about tentative ideas for improvement in the law, precisely in order to encourage public debate and to secure ideas for the law's improvement.

We in the Australian Law Reform Commission have taken this a step further. Instead of lengthy working papers we have prepared documents in clear English, stating the problem to be addressed and the Commission's proposals for reform. These documents are widely distributed in legal and other circles and are available free of charge from the Commission.

A team of honorary consultants is appointed in every reference. There has been no difficulty in securing consultants of the highest quality to assist the Commission in its projects, without cost to the Commonwealth.

Public sittings have been held in many centres throughout Australia, to which ordinary citizens, lobby groups and experts come : voicing in an informal way the suggestions they have for the improvement of the law. The increasing numbers attending the public sittings indicate the growing understanding of the methodology of the Law Reform Commission and the growing willingness of people in our community to come forward and express their views. There is something of a controversy about the desirability of public sittings. In his recent Nehru Lectures, Lord Scarman, the first Chairman of the English Law Commission, put it this way:

'Lord Chancellor Gardiner frequently suggested to me ... that consultation could not be complete without public meetings held in various parts of the country to discuss the tentative proposals contained in a working paper. Kirby J. the ... Chairman of the Australian Law Reform Commission, tells me that they hold such meetings in Australia. Though we have not felt the need for them in the United Kingdom, I would not rule them out. Perhaps, for us, they are unnecessary because of the existence of so many societies, lobbies and pressure groups upon every conceivable topic of social or economic importance. Our consultations embrace them : they have their say : and there is little left to be said when they have finished'.<sup>13</sup>

It seemed to the Australian Law Reform Commission that the consultation with the public was both right in principle and efficient in practice.

It is right that the community governed by the law should have the opportunity to express its views on the defects in the law. Powerful and interested lobby groups do not always perceive the law in the same way as citizens 'on the receiving end'. That is why we have made positive efforts to secure the opinion of ordinary people. We have also found that such opinion, and the recounting of actual experiences in the law, are very helpful in grasping a practical solution to deliver *real* law reform. The temptation is always there to produce yet another statute which looks fine on paper. The duty of the Law Reform Commission is actually to improve the administration of justice and not simply to produce fine reports.

In addition to these means of consulting the public, we have used public opinion polls. This cannot be done within our own resources and accordingly we have utilised the regular national polls carried out by newspaper chains, who are happy to make available a few questions relevant to the issues before the Commission. In this way we can gauge public opinion and thereby protect the Commission's reports from the criticism that they are unrepresentative and the views of an elite few. In addition to consulting the whole community, we seek to procure the opinions of specially interested groups. In our task on sentencing, for example, we are surveying the whole of the judiciary of Australia : more than five hundred judges and magistrates, in every part of the nation. They are being asked to state their views on sentencing and the ways in which sentencing law and practice could be improved. The independence of the judiciary and its remove from matters of high controversy require that this should be done by an independent body and in an anonymous and confidential way. This is the kind of thing which the Law Reform Commission can do. It will allow the judges and magistrates to speak, through us, to Parliament and voice their concerns about failings in our system of criminal justice, and the way to cure them.

In addition to all this, the Commission has used the television, the radio, talkback programmes, the printed media, magazines and so on to explain the tasks before it and to elicit public comment and assistance in discharging its functions. Of course, he who uses the media, rides a tiger. It is not always a disinterested distributor of information. Nevertheless, we have generally found the printed and electronic media in Australia only too happy to write up stories about the law and its problems. Until now, there have been few opportunities to speak constructively of the legal system and to examine its substantive and procedural rules critically, with the hope for improvement. The Australian Law Reform Commission and the State law reform bodies provide vehicles to permit the focus of public debate upon the fundamental principles which should guide the legal system. All of the references given to the Law Reform Commission have been controversial ones. Not for us has been the highly technical areas of so-called 'lawyers law' which, up till now, has been the general diet of law reform commissions. This consideration and the reasons of principle and practicality I have mentioned, dictate that we should spare no effort in engaging in a community debate and raising community consciousness about the law and its practitioners.

Nor are we in the Australian Law Reform Commission the only innovators. The New South Wales Law Reform Commission, which has a vital reference on the reform of the legal profession, has taken new steps itself in the procedures of consultation. Its commissioners have sat in country districts to hear views on the reform of the legal profession both from legal practitioners and clients, including disaffected clients. The result has been an informal process of consultation which gets away from the intimidating procedures of courtrooms and Royal Commissions of the past. We can all learn from each other in the business of consultation. We in the Australian Law Reform Commission have looked to Tjerk Dusseldorp for positive advice in the way in which we can write our discussion papers in a language which is more readily understood by the layman. Lawyers tend to speak a special *patois*. Translating lawyers' language into plain English may be a job for educators. Teaching lawyers to speak to the community as a whole may be just as important as teaching the community the fundamentals of the law and of legal method.

## TWO THEMES

Running through the references that have been given by successive Attorneys-General in different Administrations are two major themes. The first is the impact of science and technology upon the law. Our reference on human tissue transplantation illustrates this. So does our task on criminal investigation, with the suggestions of the use of tape recordings, videotapes, photography and other means to set at rest the bitter debates about police interrogation and investigation. The project on defamation arises, in part, from the mass means of communication that are available today. The project on privacy arises substantially out of the development of computing and telecommunications technology which threatened to submerge the individual in mass information systems.

The second theme is the changing social values of our country. This is the theme which is relevant to community legal education. It should not really be a matter of surprise that the value system of our society is changing. The information with which the community is bombarded, principally by the media, has risen enormously both in quantity and quality in the last few decades. It will continue to rise at an exponential rate with the advance of computing science.

Additionally, our community is now better educated than ever before and more able to absorb the massive flows of information it receives. In twenty five years, the numbers of graduates leaving Australian Universities have increased from about 3,000 a year to 25,000 a year. At the same time 83 Colleges of Advanced Education have been established. In the past ten years, the numbers of girls going on to higher education beyond the age of sixteen years has doubled. Such changes in the information levels of our society create new demands for access to the law and for a more rational and fair system of justice. In such an age, it is inevitable that the demand for knowledge about the law should increase, for this is the discipline which is all pervading and which governs each and every member of our organised community. It is possible, though unlikely, to go through life

without medical and dental troubles; and never to require an engineer or a botanist. But in every waking day, persons living in the Australian community are confronted by legal rules. It is the universality of the law that creates the necessity of community education in it.

#### THE IMPEDIMENTS TO COMMUNITY LEGAL EDUCATION

There are many impediments in the way of advancing community legal education. In the first place, the legal profession has hitherto been unenthusiastic for it. The law is a conservatising force. It is inevitable that lawyers should be, generally, a conservative group, unsympathetic to radical change. The studies done by John Goldring indicate the highly limited socio-economic groups from whom the great majority of lawyers come.<sup>14</sup>

Their background, education, training and the nature of their discipline tends to encourage the 'mystic cult' syndrome. These fancies are developed by the extraordinary dress into which they must bedeck themselves to perform their routine tasks. It seems to me an extraordinary thing that today, we are still wearing black robes in mourning for Queen Anne. The seventeenth century periwigs are a relic which serve to alienate those who practise the profession of the law from those outside the charmed circle. This is unfortunate, because it inhibits the recognition of the great social utility of the law and the positive force which the law can be for orderly change in our society.

There are some writers who assert that the basic impediment to change is a frank economic one : the existence of monopolies and economic advantage, hard won and not readily released. But quite apart from these impediments of the legal profession, there are other inhibitions in the advance of community legal education. Our statute laws are obscure to the point of incomprehensibility on occasions. A writer in a recent law review described the legislation enacted by Federal Parliament in terms that are hardly flattering:

'Because of the pressures under which (Parliamentary Counsel) must work, they tend to develop habits in drafting which, though unconducive to clarity and simplicity, are unlikely to be modified because Parliamentary Counsel so seldom have the time to make a thorough review and reappraisal of established drafting practices. Some of the habits which have become entrenched in this way are the tendency to use participles and ablative absolutes instead of indicative verbs, and the stubborn refusal to break a subsection into two or more sentences. This latter practice in particular, which produces what must be the most breathless, tedious and confusing legislation in the English-speaking world is not explicable on the grounds of ancient practice ...'<sup>15</sup>

In addition to the defaults of laws made by Parliament, the language in which judges couch their expressions is sometimes obscure and convoluted with excessive reference to authority and inadequate attention to principle and concept. The law is also unavailable to practitioner and layman alike. The statutes of many States of Australia are difficult to obtain until, in many cases, months after Assent. Yet they govern the community as soon as they are proclaimed to commence. The subordinate legislation (regulations, ordinances and by-laws) are even more difficult to come by. The most modern computerised method of retrieving legal information is difficult to sell to a profession which is unresponsive to the pressures for change and to governments who believe that there are few votes to be earned in activities of this kind. The availability of the decisions of the High Court of Australia to ordinary citizens is, in practice, limited. This great institution : the third arm of government in this country, publishes its decisions through many specialist journals available to the legal profession. However, the costs to the citizen of getting access to the decisions of the High Court of Australia is high, if not prohibitive.

'It is virtually impossible to obtain copies of High Court judgments without paying an annual subscription to the Commonwealth Law Reports (\$38.50), purchasing a 'part' of a volume (\$11.00), reading the transcript in the High Court Registry or purchasing a copy of the transcript at 50c per page. When one considers the enormous volume of unreadable bureaucratic reportage that is produced by A.G.P.S. every year, at public expense, this is surely ridiculous'.<sup>16</sup>

Is it unreasonable to hope that, at a time when substantial funds are being spent on court buildings, some attention will also be given to the supply and distribution of the intellectual product of the courts, in a form that can be readily appreciated by the community? If we do nothing to recognise the growing literacy and legitimate interest of the people in the courts, we will be accused, and perhaps rightly accused, of ill assessed priorities and seduction by the 'outward show' of the law and its institutions. Because news reports of decisions of our highest courts are so few and, when they occur, often so ill balanced, and even inaccurate, I look to a time when specially appointed officers take on the task of accurately summarising important court decisions and explaining their significance to the ordinary man and woman. Dare I say it? It might even be helpful for busy lawyers to have such information.

## BREACHING THE WALL

Despite all these impediments, there is no doubt that the wall has lately been breached. Community legal education is now with us in Australia. The teaching of law and law-related subjects in schools is a growing, busy, reality in the school curriculum in several States. The publication of periodicals such as *'Legal Eagle'*, the *'Legal Service Bulletin'* and the Australian Law Reform Commission bulletin *'Reform'* represent efforts to bridge the gulf between the law and its practitioners and a wider interested community. Production of the *Legal Resources Book* by the Fitzroy Legal Service and the Redfern Legal Centre has been a remarkable success in providing relevant information upon daily legal problems.

The legal profession itself is changing. Lawyers are taking their part in teaching law to laymen and in schools. Committees have been established to examine community legal education. The Australian Legal Education Council has deputed a sub-committee under Mr Justice Samuels and Professor Lindgren to examine ways in which the organised legal profession can take an active part in promoting community legal education. Recently, the Chief Justice of New South Wales informed me that his Legal Education Consultative Committee had resolved on 20 March 1979 to establish a sub-committee in relation to community legal education. The sub-committee comprises Mr Justice Samuels, Mr Purcell of the Law Foundation, Mr P. Correy and an academic member. The question of further enlargement of the sub-committee was to be considered later.

In addition to these initiatives, the New South Wales Government has given the Law Reform Commission of that State a most challenging task to review the future role and regulation of the legal profession. No-one believes that important reforms of the legal profession of New South Wales will be limited to that State. In a real sense, the scrutiny by the New South Wales Law Reform Commission of the lawyers of New South Wales will be a catalyst for the future of the legal profession in Australia. Already the inquiry has led to a general acknowledgement, in many quarters, that some of the monopolies of the past must go. This inquiry, the committees specifically looking at community legal education and the role of the legal profession in it and the great shift in the age structure of the legal profession of Australia, towards youth, betoken a more optimistic relationship between lawyers and the community in the future. The fact that there are many lawyers now who cannot obtain premium work in the profession and that many young lawyers choose to pursue a more imaginative career than in days gone by will probably release a number of trained lawyers to take an active, professional interest in legal education of the community as a whole. I am not unmindful of the criticism of lawyers as educators. But it seems to me that lawyers should take an active part in interpreting their profession and its precepts to the community and in learning from the community the inevitable criticisms that will come from knowledge.



# COMMUNITY LEGAL EDUCATION : IS THERE A NEED?

What are the chief reasons for the need for community legal education? Among them, appear to be four. First, our legislators are annually producing more than a thousand Acts in the Parliaments of Australia. This says nothing of the subordinate legislation, the case law and other rules by which we are governed. Some say we are over-governed by the law and that there is too much law. But there is no evidence that the tide is about to be stemmed. On the contrary, the bulk and complexity of laws grows daily. The law governs us all. Ignorance of the law is no excuse. It scarcely needs elaboration to say that lawmakers who produce laws and take no interest in bringing their product to the attention of those governed by the law are acting irresponsibly. Fairness dictates an equal concern with lawmaking and legal education. I realise, of course, that it is impossible to bring each and every law to the attention of every person. Indeed, it is impossible for the modern lawyer to keep pace with more than the broad developments of the law. Increasingly, the complexity of legislation and other lawmaking has forced specialisation upon what was, until recently, a catholic and universal profession. But it is one thing not to inform people about the law. It is entirely another to obstruct efforts to gain access to the law or to fail to teach the community generally about broad principles of the law and the machinery by which it is made. I realise that it is easy in developing course curricula to limit teaching to a number of very specific rules. Such a methodology is simpler for curriculum development and for examination and assessment of students. It is not, however, the way I believe responsible community education in the law should develop. More important is the teaching of the machinery of lawmaking, the general principles of the law and, especially, of areas of the law with which the ordinary citizen may become concerned. One of the chief arguments for class actions advanced to the Law Reform Commission is that it provides a realistic way in which large numbers of consumers can enforce the remedial consumer protection legislation which otherwise lies unknown and unused or is unenforceable in the hands of the ordinary citizen. The removal of myths, a familiarity with the machinery of the system and a broad appreciation of the general principles of the law, rather than a detailed study of commercial law subjects, is the way I believe community education in the law should develop. This may mean the inclusion of law and lawmaking in social studies and other like courses rather than the devotion of particular attention to law as a set of rules. From the point of view of the reformer, it is much more important to have a community that knows how the system works than to have a limited number of top students who have a necessarily superficial smattering of the principles of commercial and contract law.

Secondly, I believe the need for community legal education is shown by the response of ordinary Australians to the law when it is available and explained to them. I understand that Legal Studies is now one of the most popular curriculum courses in Victorian schools. Certainly, the responses to the Law Reform Commission's efforts promoting a community debate about the references given to it tend to indicate a great interest in law and its improvement. The Prime Minister, Mr Fraser, said to the assembled lawyers, when opening the last Australian Legal Convention that it takes a Cabinet of Farmers to produce a Government of Law Reformers.

There is a keen interest in law in the community because unlike other disciplines, legal rules can generally be appreciated, if not approved, by the layman when explained.

Thirdly, I am convinced that the law has a positive role to play in improving our society. Knowledge of its machinery and of the opportunity to advance society, governed by the law, will enhance the role of the law and lawyers not as obstructions in the way to a better society but as vehicles to promote agreed improvements in our country.

Fourthly, the Banner of the West is said to be societies living under the Rule of Law. It is this that is said to distinguish us from so many other less happy regimes and to provide order and liberty under the law for our community. A society that proclaims a belief in the Rule of Law but which then does little to inform its citizenry of the law which is enforced is engaging, to my mind, in a dangerous hypocrisy. It is an empty, shallow boast to assert the Rule of Law but to provide ordinary people with little, if any, knowledge of the Law by which they are ruled.

More should be done than is being done. But an important start has been made. It is for that reason that I was delighted to take part in this important seminar. I congratulate the Institute of Criminology for arranging it. I hope it will be followed by many like seminars here and elsewhere in the future. I also hope that the importance of the subject will be brought home to many whose responsibility it is to design school curricula and to choose between the competing arguments about this or that subject as pre-requisites in the education of civilised men and women. If the Banner of the West is the Rule of Law, there can be no more important matter for our future citizens to learn than the organisation of their society, the way in which its rules are made and the way in which they are open to change and improvement and reform. I am pleased to be described as a community legal educator. It is not an unintentional vocation. The way of the reformer in Australia may be hard, as some assert, but it is eased by raising the community's knowledge of the law as it is and the community's expectations of the law as it should be.

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1. B. Keon-Cohen, 'Community Legal Education in Australia', (1978) 4 *Monash University Law Review* 292, 317.
  2. A.L.R.C.1., Canberra, 1975.
  3. A.L.R.C.2., Canberra, 1975.
  4. A.L.R.C.4., Canberra, 1976.
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7. A.L.R.C.11., Canberra, 1979.
8. A.L.R.C., Discussion Paper No.5., '*Lands Acquisition Law : Reform Proposals*', 1977.
9. A.L.R.C., Discussion Paper No.7., '*Insurance Contracts*', 1978.
10. A.L.R.C., Discussion Paper No.6, '*Debt Recovery & Insolvency*', 1978.
11. *Complaints Against Police : Supplementary Report* (A.L.R.C.9) Canberra, 1978.
12. *Anatomy and Transplantation Ordinance*, 1978 (A.C.T.)
13. Lord Scarman, Nehru Lectures, 1979, Lecture II 'The Law Commission - As It Is, And How It Does' , 6 January 1979, *mimeo* 4.
14. J.Goldring 'Admission to Law Courses in Australia' (1977) 20 *Vestes* (Australian Universities Review), 61.
15. G. de Q. Walker, Book Review (1978) 9 *Federal Law Review* 523.
16. Keon-Cohen, *op.cit.* 315. The subscription figures quoted were as at 1977.

## THE ROLE OF THE AUSTRALIAN INSTITUTE OF CRIMINOLOGY

*C.R. Bevan*

This Institute is dedicated to a number of things. Not the least of its concerns is the prevention of crime. But there are other matters of great importance, one of them being a concern for the improvement of the criminal justice system and the improvement of practice in the implementation of the penalties imposed within it. We have yet to be convinced that there is any real connection between crime rates and the operation of the criminal justice system. While it is probably impossible to say how many potential offenders are deterred by the possibility of penalties, I for one am much more inclined to relate rates of crime to factors and variables deeply entrenched in the culture. It seems to be that only in those cultures where there remains an element of respect for authority and for the culture are crime rates under reasonable containment and control.

Our recent literature, particularly that since the Second World War, is now so replete with exposures of the manner in which our criminal justice system has been able to be manipulated by those with the power, that one need not be surprised that the criminal justice system needs a spring cleaning, an overhaul, and the closure of those holes through which those with the money and the power have been able to exploit the system and protect their own interests. Necessary first steps are the flinging open of the doors and inviting the community to step in and look things over.

I began my working life as a member of the teaching profession. The process by which I now find myself in the field of criminology seems logical enough in retrospect, but, at the time it seemed rather extraordinary. My academic background is in psychology and education, and many of my endeavours since joining the field of criminology have been to persuade educational authorities to assume much more fully the responsibilities appropriate to education's place in the scheme of things. I have been generally unsuccessful. I am not even sure that at this gathering, you and I, will see eye to eye on the place of schools in criminal justice. I rather suspect that what I hope from the involvement of schools in legal studies may not rate highly in your list of priorities. The teaching of legal information is one thing, the inculcation in young people of a consciousness of the power they have at their disposal to influence the humanistic quality of legal processes is another. Legal education has been supplied to solicitors, barristers, judges and magistrates for generations without necessarily leading them to understand that crime is committed by people to people and that both suffer in the process.

There are some recent signs, however, that legal educators (like medical educators) are now recognising the importance of relating their discipline to human behaviour. In October 1978 this Division hosted a one day seminar for school students within the Australian Capital Territory and surrounding New South Wales districts to try to find out where the most obvious gaps in the teenagers' knowledge of our criminal justice system lies. Our original intention was to compile sufficient information using a variety of media such as audio-visual techniques, discussion sessions, seminars etc to fill some of those discovered gaps. The questions posed in a questionnaire we administered, a copy of which is annexed to this paper, obviously tap only a fraction of areas of possible ignorance and we are conscious of the haste with which it was constructed and refinements that could be made. As an initial step, however, and within its limitations, the survey has indicated those areas which concern both criminologists and teachers of legal studies and law-related courses. The questions are also obviously open-ended to allow broad ranges of suggestions and replies. There has been no attempt to restrict the spread of responses by trying to fit them into any pre-determined number of categories. Hence, some suggestions which may appear very similar on first glance were included as distinct responses because of different emphasis given by the different respondents. Suggestions have been analysed in terms of the form to which a student belonged that is whether he or she was in year 10, 11 or 12. The surveys were completed anonymously, so no further distinctions have been attempted, and no discriminations have been made between students who had or had not participated in legal studies.

Some respondents gave no answer to some questions and several answers to others. Thus the average number of suggestions listed in the accompanying table 'per participant' varies in each question and from one year to another. It has been compiled simply by dividing the number of suggestions made by the number of participants in each form. Where possible, answers or suggestions that were obviously wrong have been labelled as such and those that could be considered correct or reasonable have been labelled so. Some of the assignments to one category or another may be questioned or considered open to alternative interpretations. The papers were, however marked, and the answers assessed by Ms Maureen Kingshott, a Senior Training Officer in this Division, an ex-teacher also qualified both in psychology and law. In the table presented, the first column lists the questions in order. The second gives the total differing categories into which the responses to each question fall. The following columns analyse the average number of responses listed by participants in each of years 10, 11 and 12, the questions where no response was given, the average wrong or doubtful answers given, and, finally, the frequency of correct or reasonable responses made.

If we take into account the fact that there were almost twice as many participants in year 10 as there were in year 12 it is only the 'no answer given' column in the table that shows an atypical pattern of response. Here there was a total of 14 instances in which year 10 participants failed to supply an answer, compared to only one instance of a year 12 similarly failing to supply an answer. This occurred

even though there were several wrong or doubtful answers given by year 12 participants to each question. One hesitates to suggest a reason for this difference in approach - perhaps year 10 students are less confident of voicing uncertain opinions in strange surroundings.

From the raw data it seems that students of each of the levels surveyed have a good understanding of questions 9, 10 and 11, that is, why the law seems so difficult to understand, why people commit crime and the reasons for justice being uncertain or unattainable in our legal system. Similarly, answers to questions 3, 5, 6, 7, and 8 indicate a reasonably acceptable level of understanding of the functions of judges, policemen and probation officers, the differences between a judge and a magistrate, and the processes by which our laws are made.

The most obvious in the gaps of the participants knowledge appeared in more factually based areas. This was indicated by responses to questions 1 and 2, which asked for the differences between criminal and civil law and those between a solicitor and a barrister. While speaking of lawyers it was interesting to note the relative paucity of answers to question 4 - Why do we need a lawyer? A broad and thoughtful range of answers resulted from the more philosophically oriented questions (9 and 10) which relate the complexities and mysteries of the law and the variety of reasons for criminal behaviour.

This was particularly pleasing to us at the Institute because, as was previously explained, we look to legal education in schools to develop in young people a critical capacity to assess the efficacy of the criminal justice system and the quality of justice it actually dispenses. It is a relatively simple matter to fill gaps in factual knowledge, but the areas of competence demonstrated by the youngsters in philosophical areas illustrate their capacity to deal with sociological and economical determinants of behaviour to a depth that perhaps many adults find difficult to appreciate.

Sooner or later this Division has to organise a seminar with such a title as 'education for improved socialisation' or 'the role of education in delinquency prevention' which we hope will go much further than the franchise apportioned to this particular meeting. We have dealt, in various guises, with the role of social welfare in delinquency prevention, the role of police in delinquency prevention and the role of diversionary programmes such as juvenile aid panels. We have long felt the lack of a determined onslaught on the educational system to press home its role in delinquency prevention. We need to underline the role of education in the socialisation of young persons, the need for special services within schools as an aid to delinquency prevention, (including specialised assistance to enhance social adjustment), delinquency intervention programmes such as life guidance services, personality growth programmes, and programmes aimed at instilling in the child a sense of responsibility, security, and belief in confidence. Other needs include those for specialised assistance to enhance social adjustment, taking care to ensure that assistance is not directly identified with delinquency prevention; the avoidance of counterproductive elements of educational systems that could arise if adolescents saw themselves as being placed in an educational

ghetto and denied the right to work; the inclusion in curricula of material relevant to economic and industrial settings suitable to the practical needs of young people entering the work force; the need for specialised assistance in the form of general and remedial forms of education for those who wish to continue their education beyond the compulsory age limit and for those who drop out of the school system; the need for planning for delinquency prevention to become an integral and essential part of educational planning and the development within, as a part of, the educational sector (including the curricula of faculties of education) of professional knowledge and expertise in crime prevention planning to assist in building crime prevention elements into education programmes.

These matters would seem to be beyond the purview of this particular seminar, and many educationists would claim that such programmes are already built into education curricula.

I do not particularly relish the role of insisting that implementation of such programmes often falls short of honourable intentions. This particular Institute is currently engaged in preparing for a month-long training course in crime prevention planning for participants from developing countries in positions offering potential for policy making in areas of economic planning, social development planning and police crime prevention. It is still felt that the role of education is so powerful in laying down firm foundations for effective planning against crime in our culture that not to include educationists in such a programme would not do the matter justice. We firmly believe we need a national seminar for educationists devoted to this highly important topic.

In the meantime we sincerely hope that this particular seminar will reveal what is actually happening in Australia at the present time in the area of legal education for young people, what are the aims and objectives of those responsible for the dissemination of legal information, and to what extent are the aims and objectives being realised. We also hope that this particular exercise will be but the first of many.

QUESTION NO.	TOTAL NO. OF DIFFERENT SUGGESTIONS	AVERAGE NO. OF SUGGESTIONS PER PARTICIPANTS			NO ANSWER GIVEN			WRONG/ DOUBTFUL ANSWER GIVEN			CORRECT/ REASONABLE ANSWER GIVEN		
		YR 10	YR 11	YR 12	YR 10	YR 11	YR 12	YR 10	YR 11	YR 12	YR 10	YR 11	YR 12
1	9	2	1	2				21		2	10	2	14
2	7	2.36	1	2.62	1			10		4	25	1	16
3	9	2.12	2	3				7	1	5	21	1	19
4	5	1.68	1	1.87				20		9	8	1	6
5	8	2	2	2.62	1			3		2	27	2	19
6	6	1	1	1.5	4		1	6	1	5	9		7
7	6	1.6	2	2.12	3			5	1	1	20	1	16
8	5	1.24	1	1.87	2			4		3	15	1	12
9	8	1.48	1	1.62							23	1	13
10	17	3.36	2	4							51	2	32
11	6	1.3	2	1.6	3		1	-			23	2	14
NO. OF PARTICIPANTS	24	15	1	8	15	1	8	15	1	8	15	1	8



QUESTIONNAIRE

1. WHAT IS THE DIFFERENCE BETWEEN (I) CRIMINAL AND (II) CIVIL LAW?
2. WHAT IS THE DIFFERENCE BETWEEN (I) A SOLICITOR AND (II) A BARRISTER?
3. WHAT IS THE FUNCTION OF A JUDGE?
4. WHY DO WE NEED LAWYERS?
5. WHAT IS THE FUNCTION OF A POLICEMAN?
6. WHAT IS THE FUNCTION OF A PROBATION OFFICER?
7. WHAT IS THE DIFFERENCE BETWEEN (I) A JUDGE AND (II) A MAGISTRATE?
8. WHO MAKES OUR LAWS?
9. WHY DOES THE LAW SEEM SO DIFFICULT TO UNDERSTAND?
10. GIVE THE MAIN REASONS, IN YOUR OPINION, WHY PEOPLE COMMIT CRIME.
11. COMMENT BRIEFLY ON: 'JUSTICE IS ALWAYS CERTAIN IN OUR LEGAL SYSTEM'.

## THE ROLE OF THE AUSTRALIAN LEGAL EDUCATION COUNCIL

*Professor K.E. Lindgren*

The purpose of this paper is to outline the position taken to date by the Australian Legal Education Council ('A.L.E.C.') in relation to legal education unrelated to the professional practice of law.

### 1. Formation of the Australian Legal Education Council

A.L.E.C. was formed by an agreement between the Law Council of Australia and the Australian Universities Law Schools Association dated 17th September 1977 in which it was provided (inter alia) as follows:

#### Objects

The objects of the council shall be

- (a) to provide a forum for the exchange of information and ideas on legal education between States and Territories and between and within the teaching and practising components of the legal profession in Australia;
- (b) to fulfill an advisory function in relation to legal education on the federal and state level.

#### Composition of the Council

The Council shall be constituted as follows:

- members of the practising legal profession nominated by the Law Council of Australia 3
- a member of the judiciary chosen by the Law Council of Australia 1
- University Law School teachers nominated by the Australian Universities Law Schools Association 3
- nominee of the Conference on Professional Legal Education (the legal practice courses) 2
- a person nominated by the Australia and New Zealand Association of Law School Students (ANZAALS) 1

- any two of the following, co-opted by the Council:

. a teacher in a non-university law course	)	
. a teacher of law in a tertiary course	)	
other than a law course	)	2
. a government lawyer	)	
Total		<u>12</u>

I have been co-opted as 'a teacher of law in a tertiary course other than a law course'.

Two matters are most relevant to the role of A.L.E.C. First, it has minimal funds and staff, its administrative and secretarial needs being met by the Secretariat of the Law Council of Australia. Its members, or the institutions from which they come, meet the members' travelling and accommodation expenses on the occasions of the Council's meetings. The second matter, and one related to the first, is that the meetings of A.L.E.C. are held biannually - once every six months in Melbourne. The Council has had four meetings to date (17 November 1977, 14 April 1978, 4 August 1978 and 23 March 1979), the two co-opted members having been members for the last three.

## 2. Australian Legal Education Council's general approach to law for non-lawyers

Australian Legal Education Council has sought to identify and delineate its proper role in this area. It has distinguished between legal studies for school children on the one hand and adult community legal education on the other. The basis of the distinction is that legal studies already occupies a substantial place in some school systems in Australia, and further that the existence of school systems provides an institutional framework through which legal studies can be taught, whereas neither of these circumstances characterises legal studies in the adult community. Henceforth in this paper I shall observe this distinction. A final introductory comment is that at the three meetings which I have attended, the Council has shown great interest in these two topics.

## 3. Legal Studies in secondary schools

Mr Justice G.J. Samuels and I were requested to prepare a discussion paper on the subject of legal studies in Australian secondary schools. After the form and content of the paper were approved by A.L.E.C. it was circulated widely throughout Australia and comments were sought. After describing existing legal studies in Australian secondary schools, the paper proposed a role for the Council which was supportive but fairly passive. We were anxious that A.L.E.C. should not give its imprimatur to one form of legal studies in secondary schools in preference to another (we were conscious, for example, of the diverse approaches taken in Victoria and New South Wales) or advocate that legal studies

should be taught at the expense of any particular other subject in the secondary school curriculum. Finally, we considered that the place of legal studies in secondary schools on anything like a substantial scale was best, and indeed necessarily, left to school teachers.

We proposed that A.L.E.C. should encourage legal practitioners and academics to make themselves available to school teachers as an informational resource to be drawn upon; to make themselves available to participate with teachers in the school classroom; and to provide expertise in in-service teacher training courses. We thought that there might be some scope, albeit a limited one, for A.L.E.C. to encourage practising and academic lawyers to make themselves available for 'one off' lectures to school children and for A.L.E.C. to develop a 'kit' for use throughout Australia for this purpose. Finally, we proposed that A.L.E.C. assume the role of a clearing house and disseminator of information.

We were sensitive to the danger that the lawyers might be seen as interfering and intending to dominate and control legal studies in secondary schools if a more active and positive role were advocated. Contrary to our expectations, the responses to our discussion paper from those 'in the field' urged us to take a far more positive and active role. Although the responses were not universally in this direction, and indeed some suggested that A.L.E.C. should give a low priority indeed to 'law for non-lawyers', the majority were quite encouraging.

Accordingly, at the meeting of A.L.E.C. held recently on 23 March, His Honour and I presented a summary of the responses to our discussion paper and certain draft resolutions which, after discussion and amendment, were passed to the following effect:

That in view of the generally encouraging responses to A.L.E.C. Discussion Paper No.1, Council take the following steps in relation to legal studies in Australian secondary schools:

- (1) That the Council assume as a primary task the role of a clearing house and disseminator of information concerning -
  - (a) courses in legal studies from time to time existing in or proposed for Australian secondary schools;
  - (b) materials from time to time existing or being proposed or devised in respect of such courses;
  - (c) in-service teacher training courses from time to time existing or proposed, of relevance to such courses.

- (2) That Council take steps to promote and encourage meetings within the respective States between those concerned with the teaching of legal studies in secondary schools and practising and academic lawyers in relation to legal studies in secondary schools within the State (e.g. by writing to Law Societies and State Education Ministers and the New South Wales Legal Education Consultative Committee).
- (3) That subject to the availability of staff and financial resources, the Council sponsor a national conference of persons interested in the matter of legal studies in Australian secondary schools.
- (4) That Council establish a sub-committee to carry forward the matters referred to in paragraphs (1), (2) and (3) and to consult with those concerned in the area of legal studies in secondary schools.
- (5) That the members of the sub-committee be Mr Justice Samuels and Professor Lindgren.
- (6) That in due course the Council should seek funds and other forms of assistance from Law Foundations, Law Societies, State and Commonwealth Departments of education and State and Commonwealth Attorneys-General, the Curriculum Development Centre, and the Educational Research and Development Committee to assist it in carrying out the terms of the foregoing resolutions.
- (7) That Council establish a Planning Committee to advise it on the organisation of the the suggested National Conference on legal studies in secondary schools to include representatives of the following bodies: the Australian Legal Education Council, the Victorian Commercial Teachers' Association, the High School Education Law Project of the Law Foundation of New South Wales, the Curriculum Development Centre, the legal profession, State and Commonwealth Ministers for Education, the Standing Committee of Federal and State Attorneys-General, and teachers.

The National Conference would be a major one. A date was not fixed for it but we had in mind the end of 1980 or the beginning of 1981. The Planning Committee would be based in Melbourne and Professor G. Nash the Dean of the Monash Law School was appointed as convenor.

#### 4. Adult Community Legal Education

We have found the subject of community legal education excluding legal education in secondary schools, a more intractable matter. The Council considered it desirable to seek to identify some specific areas for the activity and interest of the Council in this area and for this purpose thought that information should be collected on existing community legal education activities in each State and Territory. Letters were written to Law Societies, Law School Deans and educational authorities as well as to television stations. Letters were also written to overseas bodies namely the Canadian Bar Association, the Canadian Association of Broadcasters, the American Bar Association and the English Law Society, to ascertain what they were doing in this area. It appears that the only person who has surveyed community legal education in Australia is Mr B.A. Keon-Cohen and his analysis and views are set out in his article, 'Community Legal Education in Australia' in (1978) 4 *Monash Law Review*, 229, an early form of which was discussed by the Council.

Thirty-three organisations responded to A.L.E.C.'s letters of inquiry including law societies, bar associations, law schools and television stations. As one might expect there is a good deal of sporadic activity in the form of lectures or occasional papers delivered by legal practitioners or academics, and more regular activities for particular professional or other interest groups. In addition, there is some self promotional work by professional bodies of lawyers, i.e. activities designed to make the public aware of what services are available from the legal profession. We did not consider this or the actual rendering of legal services, even though it might involve an educative element, as being 'community legal education' in the sense which that expression should bear in our terms of reference. The most interesting and potentially the most important and comprehensive work in Australia is that of the Community Legal Education Committee of Victoria established in April 1977. However, it appeared to Mr Justice Samuels and myself that it has veered away from a general community approach and has concentrated now upon the problems of ethnic minority groups and the instruction of teachers in the task of introducing high school students to legal studies.

Outside Australia surprisingly little is being done. The Canadian Bar Association has a programme of informing the public by way of written material and television and radio 'that the legal profession is honourable competent and disciplined'. The American Bar Association, whilst it is actively involved in the school area, is only now beginning to develop anything in the area of adult community legal education. The Ohio State Bar Association produces a book concerning 'General and Everyday Law' and is embarking upon a two year advertising campaign with a budget of \$US550,000.00 but this is designed to commend existing legal services rather than to educate the public in basic legal principles.

We consider that the material available did not establish that there exists any comprehensive scheme and, although certainly of value and interest, did not tell us much which we did not know or could not have assumed. We concluded that existing work seemed to concentrate on a public relations exercise by lawyers or the problems of minority groups. A.L.E.C. is not directly interested in the first of these and is less concerned with the second than with the promotion of a broad campaign directed at the whole community. We considered that A.L.E.C. would need to devise its own programme and that any systematic programme devised would be a 'first'.

At its meeting in Melbourne on Friday 23 March 1979, A.L.E.C. discussed this question at some length. His Honour and I had prepared a number of resolutions which did not set out a detailed programme of action though they did involve the establishment of a sub-committee to settle and adopt a statement dealing with some particular aspect of the matter. The Council resolved that it 'supports the provision of education designed to provide adult members of the Australian community with an understanding of the legal system and of the law of that community' and referred back to His Honour and myself the task of devising a precise course of action which the council might pursue to give effect to this position.

A difficulty encountered in the area of adult community legal education which does not exist in the context of secondary schools is that one does not have a captive audience, that is one cannot compel adults to attempt to learn about the law and the legal system. One-off public lectures could be given, more extended series of lectures could be delivered, public discussion and symposia could be held, books on law for laymen could be and indeed have been published, lawyers could appear on television to discuss current issues and to answer viewers' questions and so on. The question is not whether these things should be done or even whether A.L.E.C. should encourage practising and academic lawyers to do them. My own opinion is that it should, but this does not take us very far. The clearing house role which A.L.E.C. could perform in the context of secondary schools does not seem apposite in the context of adult community legal education since there are not substantial groups and institutions engaged in adult community legal education which would have an interest in receiving information about what is being done by way of community legal education by others and elsewhere. Finally, the task of collecting such information would be far more difficult than in the secondary school context.

My own tentative view is that A.L.E.C. can not do much more in this area at present than to make statements (e.g. along the lines of the resolution referred to earlier) as to the desirability of adult community legal education, to refer the possibility of this activity to its constituent bodies, exhorting practising and academic lawyers to engage in it along the lines mentioned earlier. Perhaps A.L.E.C. could make it known that

it would like to receive information about adult community legal education activity taking place in Australia and it could store and catalogue such information which would be available to inquirers. This would be distinct from a regular dissemination of information. It may be that as more of us engage in adult community legal education activity, whether for professional or other groups, and make known our activities to A.L.E.C., a more precise plan of activity for A.L.E.C. itself will become obvious.\*

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\* This paper has not touched on the tasks which A.L.E.C. has undertaken outside the context of legal education for 'non-lawyers'.



## THE EDUCATION OF TEACHERS

*John Goldring*

The way in which law is taught will depend on the type of legal education involved. Different types of legal education have different aims. The law schools aim to teach a body of skills and knowledge which will equip the student with sufficient knowledge to practice law in the sense of delivering a full range of legal services to a client. The law taught as 'service' units in accounting, media, and other courses aims to provide an understanding of a particular applied area of law. These aims may be included within the general description 'learning the law' : they seek to achieve training in what the American legal theorist Karl N. Llewellyn called 'law-ways' and to initiate the student into the mysterious rites of the law. On the other hand, Llewellyn distinguished 'law-jobs', i.e. what law actually does within a society, and the way in which it functions. This is what is studied in various courses which deal with law in society or 'law in context'. It is the aim of most education in school legal studies courses not to teach the mechanisms of the law, but how law fits into society. This type of legal education, which has a long history, may be described as '*learning about law*', and it aims rather to demystify the law.

If legal education has different aims, then the qualifications of the teachers will vary.

Traditionally, the teachers of law in the Australian University Law Schools have themselves been lawyers. A law degree is required not only for those who are teaching aspiring lawyers, but also for those teaching 'service courses' to accountants, media people, nurses etc. On the other hand, many of the teachers of law in the secondary schools have little or no formal training in the law.

Very little thought has been given to the qualifications of law teachers or to the training that should be available for them. Nor has there been much thought given to the relation between the aims of the various types of legal education and the best people to do the teaching. Master's degree courses in Legal Education have been suggested from time to time, but to my knowledge no higher degree course on this subject has been offered in Australia.

Despite the requirement of the law schools for a law degree, not all of the teachers have actually worked as lawyers. Many have gone straight from law school and practical training courses into post-graduate study, often overseas, and then straight into a teaching position in Australia. Others have practised as solicitors, barristers or government lawyers for varying periods. Virtually none of the law teachers have any formal background in education. Of course, they have this in common with most tertiary teachers in Australia.

Many tertiary law teachers are regarded as good, even outstanding teachers, despite their lack of formal training. Others are regarded with some indifference by students accustomed to lecturers who are frankly incompetent teachers.

These law teachers, in the writer's experience, are quite resistant to suggestions that they can benefit from some assistance in presenting their material, especially if they have appeared in the court. Certainly similar preparation is required for presentation of an argument to a court and presentation of a lecture.

The real reason that legal knowledge is required is obviously that in order to teach tertiary students, a considerable scholarly background is required. The Universities, always conscious of academic standards, require it, and the proper training of professional lawyers also requires it.

The same considerations apply, though perhaps with less force, to 'service' courses offered in Faculties of Economics and Commerce, etc. In general, teaching positions in departments offering these courses are less prestigious than positions in Law Faculties. Further down the scale are legal courses offered in Colleges of Advanced Education - with the exception of the professional law courses offered at the Institutes of Technology in Queensland, New South Wales and South Australia. Only in the last few years have the staff of Colleges of Advanced Education - who have far heavier teaching loads than law teachers in Universities - achieved any measure of recognition.

However, legal education outside the traditional law degree courses is now recognized as important in its own right. Some teachers are attracted to positions where they are required to teach law to non-lawyers because it gives greater opportunities for inter-disciplinary work and is less restricted by the professional functions of the law schools. The Legal Studies Department of La Trobe University has sought people particularly suited to inter-disciplinary work. However, those teaching 'law for non-lawyers' do regard themselves as lawyers and legal scholars, and most would assert that their qualifications are necessary for the work that they are doing.

The 'legal studies boom' in secondary schools caused a problem. Though for many years a subject called 'Commercial and Legal Studies' had been offered in Victoria, the legal component was very narrow and commercial. Most of the teachers were economics or commerce graduates who may have taken one or two courses in law as part of their tertiary studies. The new, wider Legal Studies Syllabus offered after 1972 provided a challenge for teachers - and for teacher education.

Many of the teachers have met the challenge. This indicates that those who have not been lawyers can teach about law, though the accuracy and depths of their insights may, in some cases, be problematical. One would not ask a teacher who had not 'done' some physics - both theoretical and practical - at tertiary level, to teach upper secondary physics unless there were insuperable staff shortages. Yet there are very few experienced

lawyers teaching in schools, and not many more who have studied any law (except, perhaps, a vocational business law course).

This does not mean that only lawyers are qualified to teach law at secondary level. There are many reasons, indeed, why most lawyers are not fitted to teach law in schools. It takes four years at least to get a law degree. In the course of a law degree course, law students are, to a greater or lesser extent 'socialised' into a professional sub-culture. They acquire the speech and writing habits of the profession, and their attitudes become attuned to the presentation of material in a certain way. Of course, they learn this partly from their teachers, who are lawyers. By the time they are admitted to practice, the law student has been fully initiated into the mysterious rites of the law, which are shielded from the eyes of the layman.

The aims of legal education at secondary level, are to teach about law. A person who speaks and thinks legalese may find it hard to communicate with the students. Few lawyers are trained teachers. Therefore they may lack the skills necessary to communicate with secondary students.

Law teachers at secondary level, then, should be teachers. But they cannot teach what they do not know. They must have a higher degree of understanding of law than can be gained in most 'survey'- type courses which look at law and the legal system in a semester, or an academic year. They should know how to carry out enough legal research to enable them to find the primary sources of the law: the statutes and the reports of cases decided in the courts. They should be familiar with the structure of the legal system and the courts, and with legal reasoning and jargon. Preferably, they should have had the opportunity to study some - two or three, at least - basic areas of law, in considerable detail, so that they have an appreciation of what the law is.

This level of knowledge is not achieved, in the course of most teacher training, except where the student has the opportunity to study in a 'major' or 'sub-major' sequence of units such as are offered at institutions like LaTrobe and Newcastle Universities, and Ku-ring-gai and Canberra Colleges of Advanced Education. The problem at present is that there are very few of these institutions and that they offer the law units primarily to undergraduates. Most of the teachers of legal studies at the secondary level are qualified teachers with several years' experience. While it can be expected that some of the coming generations of legal studies teachers will have taken sequences of law units as part of their qualifying course, some will not, and therefore there is a definite need for post-graduate courses which will give those teachers a satisfactory level of understanding. These courses will be available preferably as part-time courses.

To meet these needs, the Canberra College of Advanced Education is proposing, at the present time, two new Graduate Diploma courses. One, in Curriculum Studies, will involve four units in the School of Teacher Education, directed at the theory and practice of curriculum development.

The other four units will be in a specialist area of study, and one of these will be law. The other is a Graduate Diploma in Legal Studies. In this course, at least six of the eight required units will be law units, so that the student will have the opportunity to cover the same amount of material as an under-graduate student taking a major sequence in law. The other two units may also be law units, but with approval, the student may take non-law units related to his or her special interests. It is thought that these courses will be more appropriate for most legal studies teachers than a part-time law degree. It will, at least, enable the students to undertake a series of studies, preferably in one or two definite areas of law, for example, public law or commercial law, which will give a full understanding of the subject-matter and a sound methodological basis so that he or she may carry out necessary research in other areas.

If legal studies teachers do not have at least this degree of knowledge of the law, there is a serious danger that law studies at secondary level may be superficial and therefore misleading and dangerous to the students, because of the danger that they will over-estimate their ability to recognise and cope with legal problems. If we accept that all members of the community should be able, and encouraged, to learn about the law, proper facilities must be provided to train teachers to be sufficiently familiar with the mysteries of the law as to be able to interpret the law, yet not socialised into the ways of the legal profession to the extent that their language and ways of thinking make them as unable as most lawyers to communicate with ordinary people. Demystification of the law depends on the availability of interpreters, and teachers are ideally placed to provide the interpretation. However, they must not be permitted to undertake this task unless they are properly equipped to do so.

## THE LEGAL PERSPECTIVE

*T. Purcell*

We welcome the Institute's initiative in holding a Seminar which focusses on the area of high school law-related education.

I note with great interest the paper by Colin Bevan in which he describes some interesting research he carried out amongst school children which has provided the stimulus for this event.

In many ways it is interesting to note the enthusiasm of politicians such as Senator Knight in seeing that the community has a greater knowledge how the legal system works. It is a pity however that they get hung up on the criminal law and the law and order kick.

What we are on about is letting the community know how the *whole legal structure operates* - that is, what protections, as well as, rights are enshrined in both the civil and criminal arenas.

At the present time The Law Foundation charter is to further legal education, legal research, law reform and law libraries. Under the new legislation the foundation's charter will be broadened from these to include a heavy emphasis on community education and community access to legal information and legal services. This orientation will be endorsed by a Board which will have greater representation from non-lawyers than is the present case and the Foundation will have a fixed share, namely a minimum of 10 percent of the Statutory Interest Account income. This income is derived from interest in lawyers' trust accounts and it is used to support the Law Society's Legal Aid Scheme, its Fidelity Fund as well as The Law Foundation.

I am therefore a little reluctant (and embarrassed) to come here today and provide what the programme describes as the 'Legal Perspective'.

It is apparent that the development of law related education throughout Australia is uneven - a range of excellent papers describe what is, or perhaps is not, happening in the various States, and in the Australian Capital Territory at the school level. This seminar provides a great opportunity to compare and learn from each other. It also provides an excellent opportunity to re-focus on what we are all trying to achieve - obviously there are differences caused by the curricula variations from State to State - it is important however to try and understand what the various State attempts are trying to achieve.

From our unique legal position we believe that first and foremost we should be helping kids understand why there is a thing called the law and what it will mean to them throughout life. We do not care whether school kids turn out to be process workers or highly-paid professionals. They should in our view all have some idea as to how their lives will be touched by the law. We have spent the last four years refining our ideas through the 'Legal Eagle' project, and the 'Eagle Book Series' is our response after working closely with educators, teachers and students during that period.

We believe that we are on the right track. That is not to say that the efforts elsewhere are wrong, only that in our view their scope is too limited. We do not want to see legal studies in New South Wales limited to the elite 30% who will complete high school. We believe that they are by and large bright enough to cope, and further that many will, because of their career paths, end up in areas where they will have contact with the law or lawyers either professionally or socially.

Clearly this seminar highlights the need for some institution to take on a national clearing house role such as that taken by the American Bar Association in the U.S. Perhaps a body such as the Australian Legal Education Council as described by Professor Lindgren, supported by bodies such as this Institute would be a suitable model.

I note that Mike Sherry's group has led recommendations similar to this.

Finally let me briefly address three issues which I believe are important:

1. Perhaps the greatest problems facing people like ourselves trying to expand law-related education is coping with the educational bureaucracies. Our experience in New South Wales has not always been satisfactory and in fact frequently we have been obstructed for no apparent reason. I note with interest the diagram in Robert Herschell's paper on the structure that superimposes curriculum developments in Queensland. We have to somehow learn to deal with such labyrinths if we are going to achieve the goal of every child being exposed to law-related education during their secondary education.

2. There is clearly a great need for parallel efforts to be made with teacher training. Our approach in New South Wales has been to work with the Department of Education on in-service training projects which we believe have been enormously successful. We are not confident that we have found the best way of working with Colleges of Advanced Education with their teacher training programmes. I am glad to see that this seminar has also focussed on this topic with papers from Mike Sherry and John Goldring. As to Goldring's views, we cannot agree with them, particularly when he questions the capacity of high school teachers to teach law-related education. Our view has always been that the central figure in law-related education is the teacher and our policy has been to present him with materials which he can effectively use regardless of the fact that he has had no formal or even semi-formal law education.
  
3. In addition to curriculum materials which are emerging from various quarters, teachers should not ignore the support that they can get from other institutions in the legal area. I am pleased to note the paper describing the steps being taken in community legal education by the South Australian Legal Services Commission. Other bodies such as law societies, courts, consumer affairs commissions are all positive sources of input to the teaching process. We believe however that there is a very limited role for legal professionals in the class room. Taking a pragmatic view they are simply resources for the teacher to use at his discretion.

Finally, let me say how much we who are connected with the Foundation's project have found this seminar to be a stimulating exercise. If there are any questions which we can answer either now or later, please do not hesitate to raise them.

## THE HIGH SCHOOL EDUCATION LAW PROJECT

*Susan Churchman*

The High School Education Law Project (H.E.L.P.) was begun by the Law Foundation of New South Wales early in 1975. Its aim was to develop curriculum materials and explore methods for introducing law into high schools.

During the first year of its operation, the project priorities became clear. It was decided to concentrate on highlighting the legal dimension already present in most junior high school syllabi. In this way, all school students would learn something about law, whatever age they left school and whatever subjects they chose to study while they were there. Because of this decision, H.E.L.P. had to become involved in curriculum design and teacher training, as well as developing resource materials. The project's activities were aimed at affecting all the factors which influence what takes place in a classroom.

This approach received the co-operation and endorsement of the New South Wales Department of Education and by the end of 1976, it had also attracted interest in many other States. At this stage, the national Curriculum Development Centre decided to co-fund the project for two years. This support enabled the project to greatly expand its teacher training activities and to develop and publish a set of comprehensive law-related resources in the 'Eaglebook' series, besides continuing publication of the popular 'Legal Eagle' newspaper.

The High School Education Law Project is the only national venture in law-related education in Australia. It is also uncommon, if not unique, in this country to find an educational project which has been brought about and supported through co-operation between educational and non-educational bodies.



## INTRODUCTION

### Community Legal Education in Australia

Interest in community legal education has been growing in Australia for some years. Events as diverse as the constitutional crisis of 1975 and the growing strength of the consumer movement creating pressure for new and more stringent laws, have led people to be more aware of how little they know of law and the legal system. Activities of the various Law Reform Commissions, particularly that of the Australian Law Reform Commission under Mr Justice Kirby, have been well publicised recently and fostered people's belief that they should be shown how to participate in the making of the laws that will affect them.

Many interest groups that have become active in the last ten years are turning to law, law reform and the problems of gaining access to the legal system and information about the law. Women's groups, environment groups, Aboriginal groups and consumer groups, to name only a few, have engaged in law-related activities from fighting test cases to publishing informational pamphlets. The recognition by governments and other bodies that the poor have a right to legal aid has led to educational campaigns run by public authorities, professional associations and volunteer bodies such as the Fitzroy Legal Service and the Redfern Legal Centre. Law-consciousness is probably stronger than ever before.

As commonly happens when a new problem is perceived in a society, there have been calls for the schools and the education systems to do something about public ignorance of the law. Although schools cannot solve the problem alone, they are obviously a convenient place to start community legal education, if only because they contain a largely captive audience. Some initiatives in law-related education have been made in all the State education systems in recent years.

The state of legal education in Australia has been reviewed by R.J. Gilbert in the 'In the Balance: Law Studies in the Junior School' (James Cook University of North Queensland, 1977). He described the different projects in each State and their activities up to that date and discussed the problems facing intending teachers of law-related education: lack of resources, lack of training, lack of knowledge about student needs, interests and abilities and, above all, lack of co-ordination in Australia, so that each new initiative finds it very difficult to draw on the experience and achievements of earlier attempts.

Since the publication of Gilbert's report, the H.E.L.P. project has received the federal support which has enabled it to develop, publish and disseminate resource material containing case studies, exercises and classroom activities that can be used by junior secondary teachers throughout Australia. But a lot more work is necessary before law-related education can be fully implemented in this country.

In 1978, I received a Churchill Fellowship to look at community legal education in U.S.A., Canada and England. This paper is part of my report on that trip. I wish to gratefully acknowledge the help of the Churchill Trust, which made the study trip possible, and the additional support of the Law Foundation of New South Wales.

## RATIONALES FOR TEACHING ABOUT LAW IN SCHOOLS

### Examples

#### Governor's Conference on Criminal Justice System Encourages Law-Focused Education

Approximately 18 months ago, Governor Christopher S. Bond directed the Missouri Department of Public Safety to identify specific action that could be taken to reduce and control crime and delinquency in Missouri and to improve our State's system of criminal justice.

At a time when a need for reform is critical, courts suffer from public disinterest and apathy. The public suffers from misinformation about the adjudication process and from inefficiencies within the system.

(*Communis Scriptura*, May 1976, published by the Missouri Bar Advisory Committee on Citizenship Education)

What ought to be the goals of any law-related education programme? First of all, there is the goal of learning moral reasoning or ethical analysis by continual practice in reaching decisions and having to justify them. I put this goal first because, if I'm right in thinking that some facility in moral reasoning is a product of the introduction of law into the schools, then the result is not limited to the knowledge of the law. It can pervade the entire educational process for the student who has learned the art. It carries over, in other words, throughout his education and, one hopes, throughout his active life.

(Professor Paul A. Freund, *Law in American Society*, May 1972)

Law-related education enables students to use logic, to give reasons for the existence of rules and laws. Hopefully, it helps them understand and respect law - rather than fear police and law enforcement officials.

(Texas Teacher)

But if law isn't currently given major treatment in the social studies, why should the already overcrowded curriculum be enlarged by the inclusion of still another discipline? Because teaching about law provides teachers with a structured way to systematically treat crucial

ethical and social questions in the classroom. Importantly, many of these issues are bypassed or merely surveyed in social studies classes at present.

(Dr Timothy H. Little, Michigan State University, 1973)

#### Goals

To understand the role of law in a democratic society.

To understand that the United States Constitution is the basis of law in our society.

To appreciate the flexibility and viability of the United States Constitution.

To accept the responsibilities of citizenship in a democratic society.

(*Law in American Life* Project, Chicago Board of Education)

A National StreetLaw Institute has been created to provide increased opportunities for citizens to educate themselves in practical law. The goal of this education is that every citizen will possess that minimum amount of practical knowledge of the law needed to understand how the legal system works, and how it can work for them.

(Edward L. O'Brien, Deputy Director, National Street Law Institute, 1975)

We have a long way to go if you believe, as I do, that law-related education is one of the keys to creating a more cohesive and harmonious community, a community that accords a lofty place of pride to such concepts as equity, due process and justice.

(Ewald B. Nyquist, Commissioner of Education, New York, 1976)

The poet Archibald MacLeish, who was trained as a lawyer, has said 'What law tries to do is impose on the disorder of experience the kind of order which enables us to live with the disorder of experience'.

Formal debates and mock trials teach students to reason because they require in addition to an understanding of law, ability to make persuasive arguments and skill in gathering evidence. The skills nurtured in such courses will aid the student when he, as a voter, must make his own decisions on important public issues. Because we can never predict the future with certainty, no education can prepare students for the specific issues which they will have to confront 10, 20 or 30 years after graduation. It is not enough for teachers to recite principles. Students must be able to apply the principles to their daily experiences. Law-related education can help them do so, and therefore do much to insure a generation ready to meet the obligations of citizenship.

(Law-Related Education in America - Guidelines for the Future; Report of the American Bar Association Special Committee on Youth Education for Citizenship, 1975)

Law-related education is a keystone of citizen development, and its focus on understanding laws, political processes and values is a basis on which we build a sense of national civic identity - a collective conception of national history and the knowledge and appreciation of shared values, principles, and national symbols.

*(Social & Political Thinking in Children: Implications for Law-Related Education, Nancy B. Wyner, Ed.D., 1978)*

Since law is a living instrument of society, we must recognise that laws change and are shaped by the needs and demands of the people. Issues of liberty, responsibility and rights are all interwoven into the social fabric. Organised society, however, is to a great degree built upon compromise of conflicts. Thus changes affected and conflicts resolved need to be reconciled for the social and common good. In this process the legal institutions of the nation are engaged. From a study of these legal institutions it is hoped that the student will come to an understanding and appreciation of law as an indispensable part of a civilised society. All too often the true significance and beauty of an ordered society are not appreciated.

(Law, Ontario Ministry of Education, 1972)

With Paul Dobson I would advocate most strongly the teaching of law to fifth and sixth formers. Like him I see no value in the way it is now taught at O and A level, as a body of apparently arbitrary rules to be remembered and regurgitated. But the question he left open is the crucial one - what exactly *would* one teach, given the opportunity? 'Know your rights' exercises would certainly be of some value, if directed towards, say, consumer protection, accident claims, legal aid, and the like. In my view however there are more stimulating and more fundamental questions. I believe law is a subject of immense educative value, uniquely informative in the questions it poses and tries to answer. Essentially it is concerned with balancing the individual's interest against those of society as a whole, which compels us to ask how such decisions are made, and by whom and subject to what constraints.

*(What Should be Taught in School? Michael Whincup, New Law Journal, October 20, 1977)*

## ANALYSIS

As can be seen, there is a wide range of rationales for teaching about law in schools. Basically, they can be grouped under six main headings:

### (1) Citizenship Education

Enhancing commitment to democracy and its values; fostering a sense of national identity and pride in one's country; learning how to participate in the processes of society, through an understanding of government and its institutions; encouraging informed involvement in law reform.

### (2) Crime Prevention

Increasing respect for law; encouraging public co-operation with law enforcement agencies; learning what acts are criminal under the law and what the consequences of breaking criminal laws can be.

### (3) Practical Information

Teaching the details of how law affects people in such areas as tenancy, consumerism, marriage and motoring; equipping the individual with knowledge to help him or her to make informed decisions about every day activities; 'knowing your rights'.

### (4) Study of Society

Learning about a society, its values and the way it operates, through a study of its laws; seeing law as the framework of a society, providing a means of giving order to what is observed.

### (5) Moral Development

Learning the skills of ethical analysis, and how to deal with conflicts in values; developing tolerance and respect for other's views; coping with a world that is not seen in simple black and white terms of right or wrong.

### (6) Skills Development

Developing skills in reasoning, collecting evidence and marshalling arguments; encouraging logical thought; learning techniques for problem-solving.

## The Effect of Relative Priorities

These different aims are not necessarily incompatible and it is possible for a law-related education programme to combine many or all of them. However, the relative importance given to these aims will affect not only the emphases of the programme, but its structure, its curriculum designs, its recommended teaching strategies, the nature of its resource materials and the way teachers are trained to implement it.

## Structure

The priorities of a law-related education programme will affect whether its directors are predominantly lawyers or educators, whether its activities place greater stress on resource material development or teacher training, and the extent to which it involves people from outside the school system.

## Curriculum Design and Teaching Methodology

Programme aims will determine whether law is taught as a subject on its own, or whether it is incorporated into some other subject such as history, civics or social studies. They will also have an affect on whether law is taught over a discrete period of time, or is regarded as a topic to be treated at any time it is relevant to what is happening in the classroom. The aims of the programme will also fundamentally affect the kinds of teaching strategies adopted.

## Resource Materials

A law-related education project may develop its own materials, disseminate materials prepared by some other project(s), or act as a clearing house channelling information on all available materials to teachers. The decision on what to do about resources will be largely dictated by the aims of the project.

## Teacher Training

The relative priorities of the programme will determine whether it is seen as more important to equip teachers with knowledge of substantive law in certain areas, or to demonstrate to them classroom strategies, the use of resources and different ways of implementing law-related education in the school.

This paper looks only at Project Models Curriculum Design and Teaching Methodology. The other topics are considered in the full report of my Fellowship.

First I want to talk about priorities for law-related education in Australia. The relative priorities of different law-related education projects I saw affect the applicability of their experience to Australian conditions. This is particularly true of projects which place heavy emphasis on citizenship education. Civics courses have long been a mandatory part of American education, but in Australia they have been given low priority. In H.E.L.P.'s work with Australian teachers, we have found that they tend to rate this aim very low as a reason for introducing law into schools, whereas it is a popular one in U.S.A.

The perceived importance of citizenship education in the U.S.A., combined with the stress placed on the Bill of Rights and what it represents in American culture, has led to directions in the development of law-related education in that country which are unlikely to be successful in Australia. I do not mean to say that improved citizenship education is undesirable in Australia; I am simply suggesting that there would be less ready acceptance of law-related education programmes whose emphasis is on preparing the citizen to take part in public life.

## PRIORITIES OF THE H.E.L.P. PROJECT IN AUSTRALIA

Since priorities are so important in every facet of a law-related education programme, it is obvious that my own opinion about the relative importance of the different aims will have affected my evaluation of the projects I observed. For this reason, it will be as well if I state my own biases here at the beginning.

While accepting that all of the aims I have grouped under six main headings are important and necessary in Australia, the H.E.L.P. project has tended to see as less important the acquisition of practical information for its own sake, and to rate citizenship education and crime prevention as by-products of introducing law into the school rather than as primary aims. Our emphasis has been on seeing law in the context of a society and on encouraging students to develop the skills necessary to analyse ethical and social issues, make reasoned choices and know how to act on them. We think it is more important to understand the processes of law than to memorise the details of individual laws.

This rationale affected the choice of projects on my original itinerary, and my reaction to the projects I visited. Those who would order the aims of law-related education differently should make allowances for this in reading this report.

## AUSTRALIAN TEACHERS' PERCEPTIONS OF THE PRIORITIES

In general, Australian teachers have been exposed to very little discussion of law-related education and the rationales behind it. To test their initial perceptions of relative priorities for such a development in education, H.E.L.P. asked a group of 37 teachers to rank six suggested rationales in order of priority. The teachers who were about to begin a two-week training course in law-related education, were from high schools in New South Wales, with the exception of some half a dozen from other States. Most of them had had either no involvement with law-related education or very little.

Their priority ranking (based on a preferential voting system) was:

1. Many of my students are concerned with the question of what is expected of them in society. Study of laws helps them to understand what type of society we have and how they can operate within it. (Study of Society)



2. Through discussion of law-related issues and cases, my students will begin to understand the complexities of some human situations and will begin to develop ethical principles they can use in their own dealings with people. (Moral Development)
3. Students need to have greater appreciation of the need for law and the legal system and the importance of responsibility and obedience to the law. (Crime Prevention and Citizenship Education)
4. My students need to understand the specifics of various laws, such as tax law, contract law and criminal law, so that they can protect themselves if problems arise later in their lives. (Practical Information)
5. I am concerned that young people often get into trouble with the law. I hope to help them have fewer contacts with the police, and to stay out of children's court or gaol. (Crime Prevention)
6. If citizens do not understand the working of a Parliamentary democracy and the nature of a Federal system of government, then Australia's political future is doomed. (Citizenship Education)

(This instrument was adapted from an American model and unfortunately did not include a skills development rationale)

As can be seen on a general ranking basis, the teachers' priorities are similar to those of H.E.L.P., in that citizenship education, crime prevention and the learning of specific laws, are rated lower than learning about the structure and values of our society. A more accurate appreciation of the teachers' responses is possible from analysis of graphs.

When the priority ranking is plotted against the frequency with which it was chosen, the highest priority and the lowest priority show fairly smooth exponential curves, indicating a high degree of consensus on their relative importance. (See Figure 1)

FIGURE 1

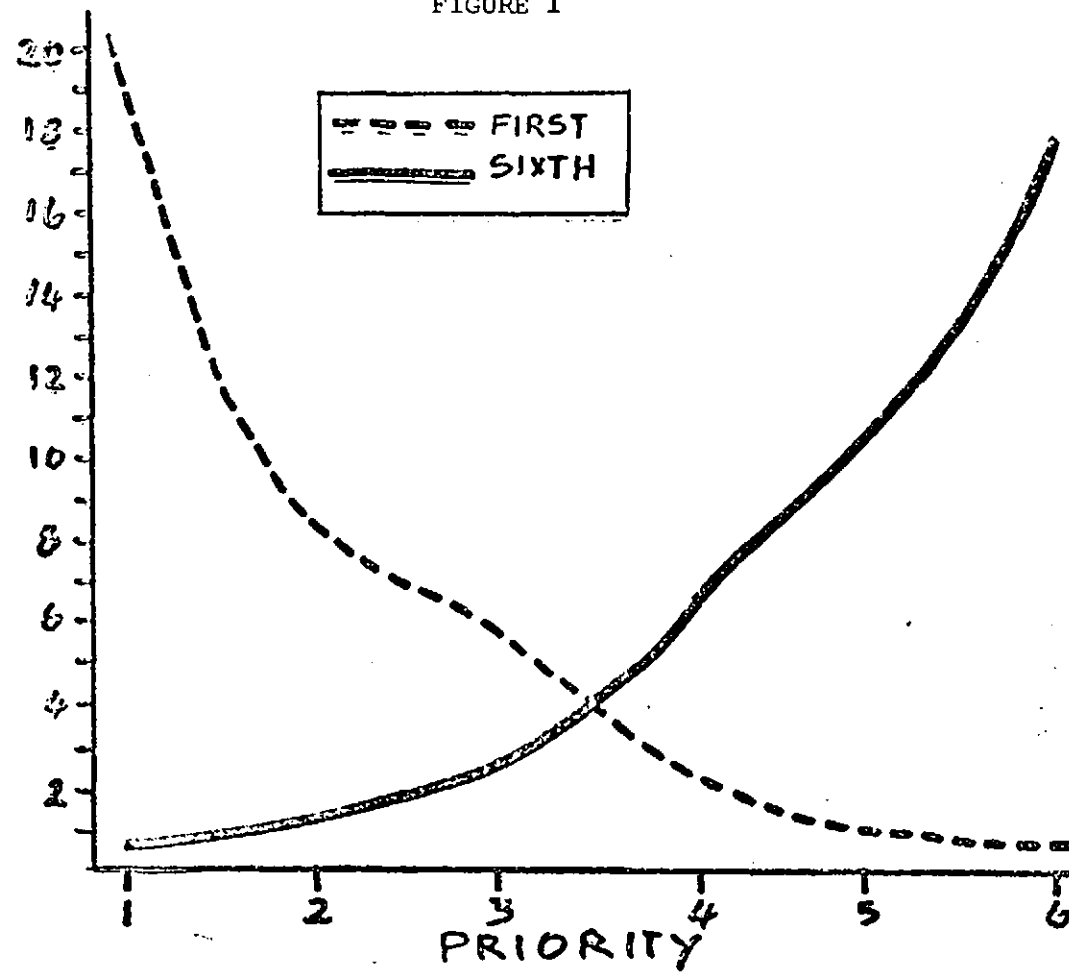
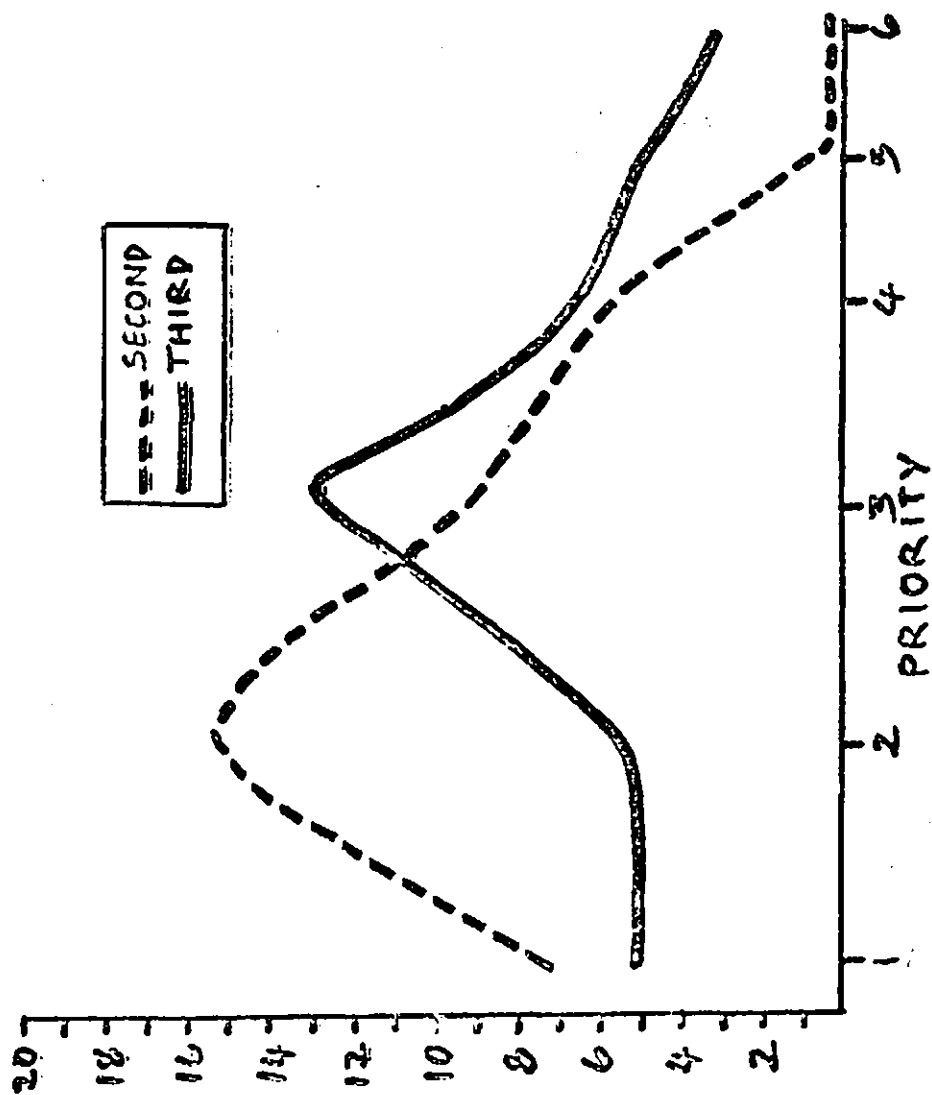


Figure 2 shows that the rationales chosen as second and third priorities, represented graphically, show peaks on the second and third ranking respectively, indicating quite a high level of consensus with their ranking.

Figure 2



This consensus is not maintained with the fourth and fifth priorities as can be seen from Figure 3.

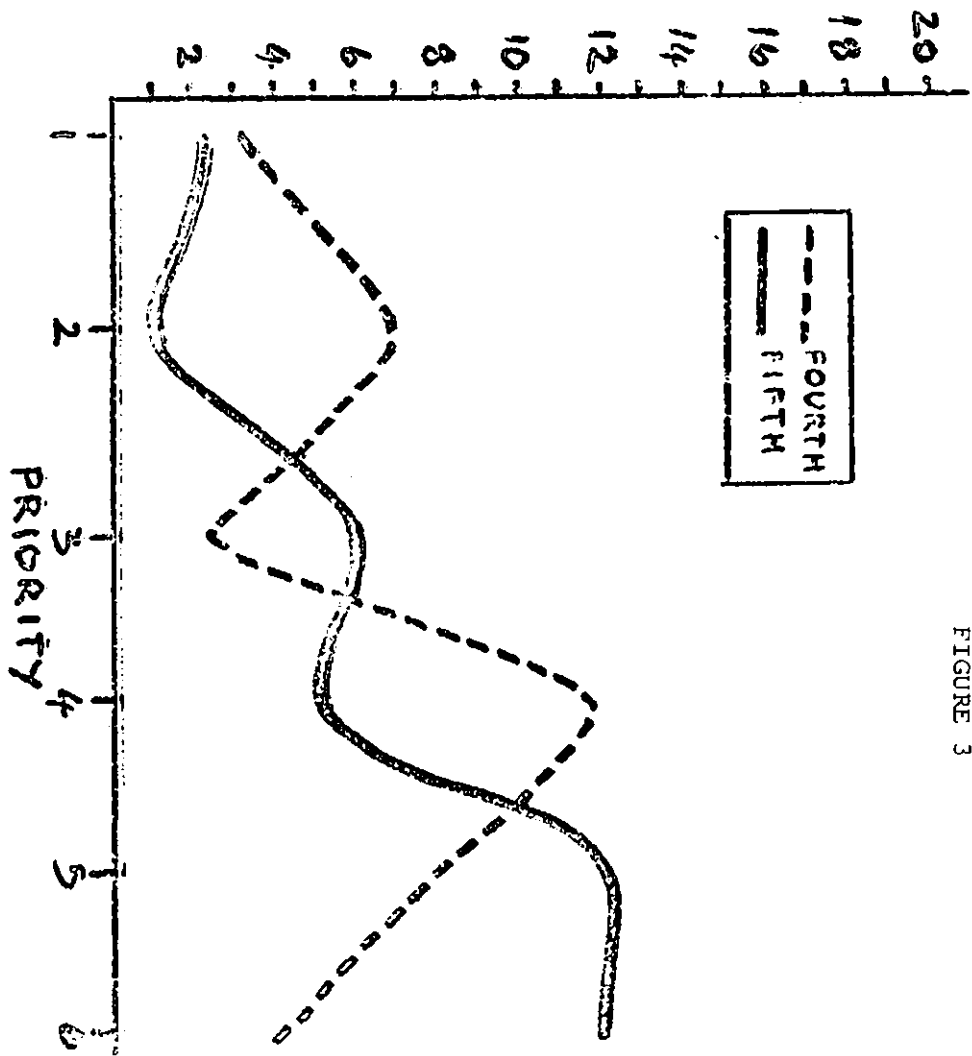


FIGURE 3

Although these two rationales peak at the fourth and fifth priorities, as one would expect, they both show earlier if lower peaks at a higher priority rating. This suggests that a substantial proportion of teachers would tend to rate these rationales as more important than the general assessment.

These two rationales, showing a diversity of opinion among Australian teachers about their relative importance, are those of crime prevention and the learning of specific laws. This suggests that there would be some teachers in Australia interested in initially making use of law-related education projects that place more emphasis on these objectives than H.E.L.P. does.

## PROJECT MODELS

### Significance of Project Structures

With over 500 law-related education projects in U.S.A., different initiatives in various provinces of Canada, and several groups interested in England, it is useful to study how the most successful projects are set up and run, and what factors or special local conditions lead to their success.

There are two main groups of people likely to be interested in law-related education: lawyers and educators. I have tried to categorise the projects I saw into those that are lawyer-initiated and those that are educator-initiated, and into those that exemplify co-operation in between these two extremes. Then it is possible to look at the differences in programme operations produced by the structure of the project and the qualifications of its personnel.

### Lawyer-Initiated Projects

#### (a) Street Law

In 1972, Jason Newman, a professor at Georgetown University's Law Centre, and Ed O'Brien, a law student and former high school teacher, organised the first year-long Street Law courses in two D.C. high schools. Now, Jason Newman is the Director and Ed O'Brien the Deputy Director of the National Street Law Institute.

The main rationale of Street Law is to teach practical information about areas of criminal and civil law relevant to ordinary people. Its courses are given in schools and in correctional institutions, and are usually taught by law students. The law students get credit from their law schools, and the school students from their high schools, for completing the course. The resource material prepared by the Institute staff has been published for use as a text in Street Law courses throughout the country. One of the major features of Street Law is its mock trial competition in D.C., in which participating schools argue cases before real judges. The students are assessed on their performance, and the general standard is very high.

Street Law has been well received and its courses have been established in over thirty states. It obviously fulfills a felt need for education in the practical, nitty-gritty aspects of law. Its main drawback is that since it is law-focussed, it relies heavily on legal expertise in its teachers. It is taught by law students, attorneys, paralegals or social science and business education teachers, who have studied some law during their tertiary education. Its teacher training courses, run in the evenings or at summer schools, teach a good deal of substantive law.

The problem is that ordinary teachers may feel hampered in teaching Street Law because of their lack of legal expertise, and legal experts are not always good teachers. The law students teaching the course, during the year in which they are involved with Street Law, get considerable experience in teaching. In D.C. a Street Law staff member attends classes periodically to advise the law student on teaching techniques, as well as assessing the student for the purposes of the Law School. By the end of the year, most of the law students become relatively competent teachers, but in the beginning, both they and their class may suffer from their lack of teaching experience.

On the other hand, the experience of teaching Street Law is likely to be of lasting value to the law students themselves. Through it, they learn about laypersons' perceptions of the law and the difficulties of communication between lawyers and non-lawyers.

This should be an essential part of training future legal practitioners. The N.S.W. Law Reform Commission, in its inquiry into the legal profession, has found communication between lawyer and client to be a major problem in the delivery of legal services. Australian law schools could do much towards fostering better legal training and community legal education, by giving law students academic credit for taking part in a programme where non-lawyers are taught about the law.

As a project model, Street Law illustrates the highest degree of involvement of lawyers in law-related education. Many of the staff of the National Street Law Institute have educational qualifications, but most of them are also lawyers. The project was initiated by lawyers, its resource materials were prepared by lawyers, (although they were extensively trialled in schools before publication) and most of those teaching the course have legal training. The support of law schools, in giving students academic credit, and the support of judges, in taking part in the mock trial competitions, are also important elements in Street Law's success.

#### (b) State Bar Associations: California

Street Law was begun by some energetic individuals, but it is far more common to find organisations involved in initiating a law-related education programme. This is particularly true of Bar Associations, which, as the professional organisations of lawyers, become involved in community legal education for reasons of altruism and of public relations.

The State Bar of California initiated its civic education project, Law in a Free Society, in 1970. The policy-making body of Law in a Free Society is appointed by the Board of Governors of the State Bar, although most of the funding now comes from various foundations. Law in a Free Society develops resources for classrooms and for teacher training and provides consultants for schools and school districts wishing to establish a law-related education programme.

Although initiated by lawyers, Law in a Free Society is not run by lawyers in the sense that Street Law is. Its materials are not law-focussed, and its teacher materials deal largely with issues such as curriculum and lesson planning, as well as legal content. It is designed to assist regular classroom teachers to introduce law-related education into their schools, rather than to provide legal experts to do it for them.

A unique feature of the Law in a Free Society project is the way that its materials are organised around a set of basic concepts, using many other disciplines besides law as part of the content for study. These concepts are Justice, Property, Authority, Privacy, Participation, Diversity, Freedom and Responsibility. The materials, lesson plans and curricula cover students in kindergarten to year 12.

#### (c) Lawyer in the Classroom Programmes

These programmes are usually run with the co-operation of state and local Bar Associations and operate to some degree in nearly every State of U.S.A. Usually, some co-ordinating body maintains a list of volunteer attorneys and arranges for a lawyer to visit a classroom in response to a request from a teacher.

In some cases, the lawyer will just give a lecture on the law or answer students' questions. In other places, existing law-related education projects co-operate with the attorneys to provide other services for teachers. For instance, the Constitutional Rights Foundation, in co-operation with the Los Angeles County Bar Association, provides lawyers who will play the role of the judge in a simulation game, co-operate with the teacher on developing a lesson plan for consideration of specific law cases in the classroom, discuss with the students a visit they have made to a court or a film they have seen, help students prepare debates or research projects, or invite students interested in legal careers to their office.

An association between the volunteer lawyers and some educational organisation or law-related education programme, is usually beneficial. As New South Wales experience also shows, putting a lawyer into a classroom 'cold' often leads to an unfruitful experience for lawyer, classroom teacher and students alike. The lawyer is unsure of the interests of the audience and at what level to pitch his or her speech; the teacher finds that the lawyer's talk does not fit into the structure of what he or she has been teaching the class, either covering old ground or taking too much knowledge for granted; and the students are confused, or even bored.

One carefully thought out and organised lawyer in the classroom programme is the High School Legal Education Project in Kansas City, Missouri. Gordon Gee became interested in the area as a volunteer classroom speaker himself. He is still in legal practice, but he recruits other lawyers to visit classrooms and has prepared materials to help them. In this way, the lawyers are given an outline of what the students will want to know, and they are spared the need to research areas of law with which they personally may be unfamiliar.

Co-ordination of the programme is done by Sally Mahe Ackerley, a teacher who has been involved in developing law-related resource material. She puts each lawyer in touch with one teacher, and then this relationship is continued for as long as they both are interested. In this way, lawyer and teacher can get to know each other and to appreciate each other's abilities and needs. Sally keeps in touch with them both by 'phone, and if she discovers some block to communication between them, helps them both to understand and overcome the problem.

A lawyer in the classroom service provided by volunteer lawyers is potentially very helpful, particularly to law-related education teachers who themselves have no legal training. But some thought needs to be given to preparing the lawyers for this new experience. They need to be given a realistic idea of the students' interests, abilities and attention span and they need to appreciate the educational aims of the teacher in the classroom and to co-operate with him or her in fulfilling those aims.

#### Co-operation between Lawyers and Educators

##### (a) State-wide Programmes; Missouri and New York

These two states have large, well-established projects which are a miracle of co-operation, involving mutual commitment and support between Bar Associations, Departments of Education and State Universities.

The funding for these projects comes through the Bar Association in each case, although they get some financial support from other agencies. Curriculum materials have been produced as a result of a co-operative effort by lawyers and educators, teacher training courses are arranged through the Universities, which award academic credit to the participants, and the Bar Associations provide a complementary lawyer in the classroom service.

American State Departments of Education do not prescribe syllabi in the sense that this is done in Australia. But they do often set basic objectives, or competencies, which are tested by a state-wide exam. The New York test includes questions on law-related concepts and the Missouri Basic Essential Skills Test (BEST) includes some understanding of the law in its Government/Economics objectives. In this way, teachers and school districts are encouraged to include some law-related education in their curriculum planning.



The advantages of this project model are obvious. Curricula, resource materials, expert advice and recognised training programmes are all made available to teachers to support them in introducing law-related education, and they are encouraged to make the attempt by the support given at the highest level of the education world. The state-wide resources of the organisations involved ensure wide dissemination of information about the ideas behind law-related education and the support available to teachers wishing to implement it.

The only drawback to this model is that it is difficult to set up. Even if the organisations involved can be brought to agree on the principle of co-operation, the scheme will fail without the personnel to carry it out. In both Missouri and New York, I found that all the people involved in the law-related education programme were extremely energetic and personally committed to what they were doing.

#### (b) Legal Services Commission of British Columbia

This model shows a different type of co-operation, where lawyers and educators have more clearly defined roles in the way they work together. Through the Legal Services Commission, the legal side of the partnership, (in this case, the Provincial Government) provides the material resources necessary for the educators to develop a law-related education programme.

The Legal Services Commission was set up to provide legal services to the people of British Columbia, and the Act specifically includes education and information about law as part of the meaning of 'legal services'. The Commission has organised or supported many community education projects under this charter and in 1974, it set up the Public Schools Legal Education Project (PSLEP).

As is the case in many Canadian provinces, law is taught as a separate academic discipline in the senior school in British Columbia. PSLEP was established after the Legal Services Commission conducted a survey which showed that students were bored with the course, teachers were under-trained to teach it, the existing text books were inadequate and the curriculum was irrelevant to what the students wanted to learn. Public Schools Legal Education Project seeks to develop new, relevant and interesting law-related curricula from kindergarten to Year 12.

The Commission provides small grants to classroom teachers for the development and trialling of law-related resources that can be used within existing social studies, guidance or commerce courses. The resulting curriculum units are published and disseminated to teachers by the Legal Services Commission. Workshops for further teacher training are held and in addition, the Faculties of Law and Education at the University of Victoria have co-operated to present a summer school course for teachers, with accreditation towards a masters degree in education. The project publishes a newsletter which keeps teachers informed of the latest developments and of new publications available from the Commission.

The Legal Services Commission thus provides the impetus and funds for the project and the organisational base for co-operation with universities and other agencies. But the co-ordination of the project is done by teachers employed by the Commission. The first co-ordinator, Gary Onstad, 'recycled' himself to the classroom after a couple of years and the Commission accepted a proposal from Wanda Cassidy and Peter Ellis that they be employed in his place as co-directors of the project. Wanda and Peter are both classroom teachers who had earlier taken part in developing law-related resource material under the PSLEP scheme.

Much of the vigour of the PSLEP approach comes from the fact that practising teachers are intimately involved. Materials are developed by enthusiastic practitioners, with the support and assistance of the project, instead of by academics or others who have more formal qualifications, but are remote from the real world of the school. This approach has also led to the development of a wide range of materials to suit the needs of many different teachers. The day to day direction of the project is in the hands of regular teachers, who know the problems of working in the classroom and plan to return to it but they have the full support and assistance of an organisation containing a lot of legal expertise.

#### Educator-Initiated Projects

##### (a) Tri-County Law Related Education Project

Three counties in the vicinity of Portland, Oregon, have come together for this project, with the assistance of the Oregon State Bar. The project aims to have the concepts of law-related education permeate the entire curriculum, although the main areas of implementation will be in the social studies and in citizenship education. The idea of integrating certain concepts into all areas of the curriculum is also recommended in the Instructional Programme of Portland Public Schools for Multi-Ethnic, Career and Consumer Education. The project goals stress values clarification as a reason for introducing law-related education.

The Tri-County Project is concerned with implementation of law-related education, rather than the design of curriculum materials. It uses existing materials and concentrates its resources on dissemination and teacher training. The key to its plan lies in organising and training teacher-consultant implementation teams. These teams are made up of secondary and elementary teachers, a curriculum administrator and a lawyer consultant, provided through the State Bar. One teacher from each school is to be trained in law-related education in order to act as a representative and advisor in that school. These 'building representatives' are chosen by the consultant team in each area. The consultant teams are also responsible for choosing the resource materials for use in their area, with the help of recommendations from a materials' assessment team.

With this structure, the project is mainly concerned with organising and co-ordinating the work of the consultant teams, providing adequate support for the teams to carry out their functions and arranging teacher training.

(b) Law-Related Education Programme for the Schools of Maryland

The Maryland project is also aimed at providing services in the areas of teacher training, curriculum development and materials preview and evaluation. It ran a leadership training course for teachers who were to play an important role in dissemination and in addition, trained a group of high school students to help elementary (i.e. primary) school teachers to implement law-related education in the middle grades. Teacher training is still a major project activity.

The project develops its own materials, as well as using existing resources. These materials are prepared by educators who call on volunteer lawyers for advice and information when necessary. The Maryland project draws on a wide range of community resource people for assistance in its training programmes and the field experiences it arranges, and many community agencies also contribute to its financial needs.

This wide range of supporting agencies in the community, many of which are involved in the criminal justice system, may be one reason why the Maryland project concentrates more on crime prevention and information about the criminal system in its materials and teacher training than is the case with the Oregon project. This emphasis is by no means exclusive, but the Maryland project is more concerned with the operation of the law, as compared to the Oregon project's stress on the values behind the law. The many similar features in the projects' structures show what an adaptable model this is.

(c) Pennsylvania's Justice Education and Community Action Project

The Pennsylvania State Department of Education initiated this project in 1974 and it has led to over half the high schools in the state incorporating law-related education into their curricula. One key factor in the project's success has been the decentralisation of its activities after the initial development phase of two years.

The first step was the development of a set of law-related competencies for different age groups, the attainment of which could be assessed by the Education Department through student tests. This gave teachers throughout the state common goals about which they could share resources and ideas, but enough freedom for the use of their own creative and innovative ideas to give them a sense of ownership in law-related education.

This stage was accompanied by extensive in-service and teacher training activities, making heavy use of community resource people. However, these people were coached away from viewing themselves as authoritative lecturers, by involving them in role plays and simulation games which took them outside their normal sphere of operation.

After two years, the programme was decentralised. To institutionalise it at the local level, community advisory teams were established. These groups were given small grants of up to \$1,000 with which to organise in-service training and obtain resource materials. The grants of money had the effect of increasing the enthusiasm and commitment of the people involved and decentralisation led to many more teachers being made aware of law-related education.

#### ANALYSIS

The choice of project model will depend on many factors, such as the priorities and aims selected, the resources available and local conditions. However, lawyer-initiated projects seem to be most successful at developing seminal resource materials, which can then be trialled and the necessary teacher training undertaken with the help of educators; educator-initiated projects are often the most effective in achieving dissemination of the ideas and methods of law-related education, right down to the grass roots level of teachers; and co-operative ventures offer the most opportunities for the development of further materials successfully integrating legal and educational aims, and the organising of the comprehensive academic training courses necessary to produce a core group of highly qualified law-related education teachers.

All of these results are necessary if law-related education is to become accepted and thoroughly integrated into the regular studies of school students. Lasting educational change of this nature is only brought about with the support of all interested bodies. No project is operated solely by one side of the law/education partnership and those projects which are predominantly from one side rely on the efforts of other projects involving the other side in having their work lead to successful implementation of law-related education in the schools.

There is room in Australia for several projects showing different degrees of co-operation. The development of further resource materials, the training of teachers in law and the training of lawyers in talking to non-lawyers are all essential and can best be done when lawyers and educators work together. The provision of necessary funding should also be a joint responsibility. But for long term institutionalisation of law-related education in Australia, there are several immediate needs where lawyers and educators can come together.

### 1. Educational Recognition

In each State, educators, with the advice of lawyers, need to define and highlight those areas of existing syllabi which are law-related. Where the operation of a syllabus is evaluated through State-wide examinations of moderation, these tests should include questions examining the students' understanding of the relevant legal concepts.

### 2. Legal Recognition

In each State lawyers, with the advice of educators and other communication experts, need to make public statements on the importance of effective communication between lawyers and non-lawyers and arrange training courses for practitioners and law students on the problems and techniques of effective communication about the law, emphasising the responsibilities of those trained in law to participate in community legal education.

### 3. Tertiary Institutions

Faculties of law and education need to work together to devise undergraduate and post-graduate courses for those interested in community legal education. This need will be discussed further in the chapter on Teacher Training.

### 4. Law-Related Institutions

Systems need to be established to bring together personnel from government departments, courts and law enforcement agencies to work on the most effective way of using these community resources in legal education programmes, co-operating with interest lawyers and educators. Local committees, maintaining liaison at a fairly informal level with the assistance of some more central co-ordinating body, may be the most effective way of doing this.

All of these initiatives could be undertaken by different voluntary bodies with varying compositions of lawyers and educators. There would only be loose structural connections between these different projects, but all of them would be working towards the same end of fostering and institutionalising law-related education.

## CURRICULUM DESIGN AND TEACHING METHODOLOGY

### Putting Law into the School Programme

The ways in which the study of law can be incorporated into school programmes vary from the teaching of law as a separate subject discipline for senior students, to the infusion of various law-related concepts into the existing curriculum of students from kindergarten through to Year 12. The curriculum design chosen will depend upon the priorities in goals of the responsible agency and the practical difficulties or restraints inherent in the school system where legal studies are to be implemented.

For instance, the organisation of a senior school course in legal studies will depend largely upon the ease with which new courses can be accredited for school diplomas or university entrance. For this reason, such courses are most common where for historical reasons, they have been offered for a long time, either in their own right or as an adjunct to commercial studies. This is the case in most Canadian provinces and also in our own State of Victoria. Most school systems tend to be quite resistant to the introduction of new disciplines at the senior level, requiring a degree of academic integrity in the course content and formal qualifications in the intending teachers which it is not easy to demonstrate. The relative flexibility of such a system as that presently prevailing in the Australian Capital Territory, where colleges for senior students are able to offer a wide range of subject options, is not common.

The idea of such courses is often attractive to those interested in legal studies, particularly those legal academics or lawyers who wish to institute an area in schools where they can teach or share their legal expertise. The students of these courses will be those few highly motivated people who both stay on at school and choose to study the law. The courses usually make very heavy intellectual demands on the students, particularly if the law is slightly watered down but not fundamentally re-organised and re-presented, so that it is comprehensible and interesting to non-lawyers. Such legal studies courses require a lot of energy to institutionalise and are of value only to a small audience. Because of this small return in terms of a cost-benefit analysis, the H.E.L.P. project has always preferred to spend its time and resources trying to foster curriculum designs which will reach a larger number of students.

Another method of incorporating law into schools, common throughout U.S.A., is to build legal studies into existing courses, particularly American history and citizenship education. Statutes, law cases and hypothetical examples illustrating other aspects of themes and issues which are already part of the syllabus, are included in the content of the course. This is probably the most established curriculum design for law-related education in the U.S.A. Since these school subjects are already concerned with constitutional development, forms of

government and the structure and regulation of the public life of society, it is relatively easy to persuade teachers that law has a place in their classrooms. In America, these subjects are studied by all students at several different ages and so law presented in this context reaches a large audience.

A disadvantage of this method of planning is that it concentrates almost entirely on public law, particularly criminal, administrative and constitutional law. Students learn about the legal process as it regulates conflicts between the individual and society, but they see very little of how those same processes deal with conflicts between individual and individual, and the relevance of those conflicts and how they are resolved to the whole social fabric. This curriculum design is best suited to those whose highest priority is citizenship education. The low priority given to this aim in Australia means that citizenship and national history courses are far less common in Australia and so this method of incorporating law into school programmes would not reach nearly such a wide audience as in the U.S.A.

In order to reach a larger student audience, including pupils of all ages, the approach of infusing law-related education into citizenship and history courses can be extended into other subject disciplines. Law forms a part of almost all areas of study at some stage. It is involved in the study of the family, ownership, communications, work, property, land use, the environment, pluralism, sport and business organisations, to name only a few concepts which are drawn upon in many areas of school studies. It is also intrinsically bound up with values such as justice, freedom, authority, and with decision-making skills such as evaluating evidence and investigating the cause and effect reactions when a variable is changed in a social system. In short, law is part of all learning that is relevant for living and as such has a vital part to play in education at all ages. It can be taught within the context in which it operates, rather than as a separate entity unconnected with other areas of study.

The potential benefit of this approach to curriculum design is great, but in order to implement it effectively, a wide range of teachers must be contacted, made aware and given the necessary tools to use in the classroom. It is an ambitious approach and one that I saw very few full-scale examples of in any of the countries I visited.

The programming of law-related education, in terms of the subject area where it is incorporated and the age level for which it is intended, will obviously have a great impact on the type of resource materials developed and the nature of the teaching methods recommended. It is the effect of teaching methods on the way law-related education is implemented that we now have to consider.

## Classroom Teaching Methods

The content of what is taught cannot be separated from the way in which it is taught and this in turn is related to the context in which it is taught, that is the curriculum design. One can teach constitutional law, but the learning experience will be different according to whether it is taught as part of a study of politics, of history, or incidental to a study of inter-state trade; and according to whether it is presented as a legal document containing a series of definitions and rules to be learned, a settled framework for the structure of government to be studied, or as a starting point for investigating the dynamics of the relationships between several institutions and concepts and the effect of these relationships upon the society we know. It is this presentation of law-related education in the classroom that is here described as 'teaching methods'.

The relationship between what is taught and the way it is taught has been discussed by Joel Henning, formerly staff director of the American Bar Association's Special Committee on Youth Education for Citizenship, in the context of citizenship education. He pointed out the counter-productive nature of teaching about democracy, the rights to free speech, due process, and so on, in a classroom where the teacher held complete authority and acted as law-maker, judge, policeman and executioner combined. In this situation, what is officially taught is in conflict with what is observed and experienced and leads to the fatalistic cynicism among students about the expressed ideals of their society which has often been deplored in America and elsewhere.

When the hidden curriculum works against the overt curriculum in this way, the final effect on the students can be very different from what the teacher intended. Conversely, when the two work together, they can reinforce each other considerably because the students are learning theory and practice at the same time and perceiving their complementary relationship. This is especially true in law-related education, where the students are aware that they are learning about something real, which can be tested against their every day experience. Law is not a topic about which only the teacher has any knowledge.

For this reason, the teacher of law-related education is likely to be confronted by questions and contributions from his or her students, describing things that have happened to them or to someone known to them. To plan lessons in the flexible way that will allow time for the exploration of these issues as they arise is sometimes difficult, especially in schools where the programme is designed around the assumption that a certain amount of subject matter will be covered in a given number of weeks. On the other hand, if the teacher tries to cut off these personal contributions, it is likely to lead the students to believe that what they are studying has no connection with the real world and their lives outside the classroom. It gives them the impression that despite its surface appearance of relevance, the study of law is something which must be kept separate from their everyday experiences. This attitude causes cynicism and loss of motivation to learn.



The teacher wishing to teach law as something relevant to students' lives, then must to a considerable extent remain open to personal contributions and questions from the pupils. A further question remains as to how these are to be treated.

In many classes, one part of the teacher's role is as an information source. The students have become accustomed to asking a question and getting an answer, or making a contribution and getting some response that assesses the worth of what they said. The teacher's answer comes imbued with the teacher's position as an authority on that topic and is accepted at face value.

Many teachers are reluctant to introduce law into their classrooms because they feel that they will not be able to fulfil this information role adequately, having little or no training in law. In fact, this perceived lack of knowledge can be an advantage in teaching school students about the law. The teacher who provides an answer, or rather what is seen as *the* answer, to a student's question, will encourage a view of law as a body of pre-determined information from which 'right' answers can be extracted by 'experts'. If the teacher turns the question around and asks the student, or the class as a whole, to explore it and to suggest possible satisfactory answers, the law will be seen as a series of general principles which can be applied in a variety of ways to particular situations, so as to respond to the complexities of the circumstances which occur in real life. In other words, law will be seen predominantly as a process for conflict resolution, rather than as a fixed body of knowledge.

In talking about teaching methods, I am referring more to the atmosphere in the classroom than to the particular strategies adopted by the teacher, although these are of course related. Student attitudes to and perceptions of the law will be affected according to whether the class is teacher-dominated or encourages discussion, debate and the sharing of ideas. Which environment is better for learning and promotes a more accurate view of the law, is of course a matter of opinion. All I am trying to emphasise here is that the teacher's attitudes, both to law and to education, will inevitably affect what and how students learn. However, teachers' attitudes will often be expressed, at least in part, by the teaching strategies they use in the classroom and so it is worth considering some of those here.

### Classroom Strategies

Law-related education is a relatively new area of study and so in most of the projects I saw, there was a heavy use of games, excursions, role plays, peer-teaching, audio-visual resources, community surveys, interview techniques and all the other new classroom activities which have been popular since 'chalk and talk' went out of vogue with the educational theorists. This is not to say that these new strategies are not desirable, but I am suggesting that the use of a novel strategy alone does not necessarily create a worthwhile educational experience.

As suggested before, the attitudes of the teacher to law and to the learning experience are of critical importance to what students learn and unless the teaching strategies adopted complement the teacher's approach, they are likely to be merely confusing to the students.

### Games

I found several board games in America and Canada. The Constitutional Rights Foundation's 'Jury Game' and 'Police Patrol' are very popular and there are also several games which simulate political processes such as the selection of a presidential candidate.

None of these games is applicable to Australia, because of differences in the law and the organisation of government and political institutions. Most of them also seemed rather unimaginative. They faithfully followed the real life steps of whatever process they were examining, but there was little room for the student to express any individuality within the system, or become engaged in perceiving possible flaws and looking for methods of improvement. The aim of these games seemed to be simply that students should learn the steps in the process, rather than examine the assumptions behind it. The novelty of the game format was often used to disguise the fact that students were largely engaged in the learning of facts.

That educational games can be used for more inspiring purposes is demonstrated by the games in the Man: A course of Study (MACOS) Kit. Games simulating the hunting of the caribou and the fishing for seals lead students to discover for themselves the most effective way of catching caribou and the necessity of sharing their supply of seal meat, before they see films showing how the Eskimos do this. Other imaginative games I saw outside the field of law-related education were 'The Ugame' and 'The Social Security Game', where players, according to the fall of the dice, are directed to engage in various activities involving communication and the sharing of experiences and feelings. There is no scoring system and nobody is designated as 'winner' or 'loser'. Most law-related games, by comparison, seemed to have limited aims.

Perhaps the best I saw was the 'Law Game', produced by the British Columbia Public School Legal Education Project for senior students. Through the fall of the dice and various chance cards, groups of students are assigned different legal problems to solve. The scoring is made up of three elements - legal accuracy and awareness of wider social issues shown in the answers to the problems (as assessed by the teacher), and 'money points' which depend on a mixture of luck and quick thinking. The game format and the element of luck add interest for students to what is basically a set of research and problem-solving assignments.

### Excursions

Visits to courts, legislatures, lawyers' offices, prisons and city halls were a common element in many projects. As is usually the case with such excursions, they were most fruitful when the students had been prepared with some background knowledge about the institution they were to visit and were allowed to see something that would stimulate further questions. Observation of a dynamic process, such as a trial or debate, had most impact on students. Teachers who arranged their visit for a time when a case or debate of interest to students was in progress, were able to use the experience of the visit to reinforce the classroom learning about the process being carried out. Visits to empty buildings, where the students are shown around and given a lecture by a guide are likely to give students an impression of something static and dead.

### Role-Plays

Role-playing personnel in various legal institutions, or the people involved in a conflict situation, is a common technique for getting students to experience different points of view. Sometimes a policeman or lawyer is brought into the classroom to play some role other than his or her own in the drama, thus breaking the ice, and then discuss his or her real life reactions with the students.

Role-play is particularly successful for younger children, who in this way can express ideas and feelings they might not otherwise be able to articulate. In this kind of activity, the purpose is that the student should 'feel' the role, rather than have a script or pattern for behaviour directing him or her what to do. There must be room for individual response to the problem confronting the player, but also some idea of what the possible options in real life are. Students can best role-play people who are not too close to them, but with whose behaviour and lifestyle they are relatively familiar, if only from films, books or television.

The most common and most elaborate form of role-play is the mock trial. Mock trials are popular with students, who are less inhibited than teachers about following exactly the 'correct' legal procedure for a trial. Like games, mock trials can be used merely to learn the steps in a real life trial, or to explore the assumptions behind the adversary system, the examination of witnesses, the roles of judge, jury and advocate and so on. For the latter purposes, it does not really matter if the students are less than completely faithful to the procedures that would be acceptable in court. As long as the rudimentary principles are followed, the mock trial can provide valuable learning experience about the nature of justice, besides teaching something about wider issues, such as the gathering, analysis and presentation of evidence and the ways personal opinions are formed. Playing the roles and simulating the activities of other legal institutions, such as legislators or conciliators, can also give rise to important learning experiences.

As with all such classroom activities, role plays can be constructive learning experiences when they are not done solely for their own sake or to provide a bit of variety in the classroom. For this type of learning, it is essential that the teacher allow adequate time for debriefing, where students can discuss, analyse and compare their own reactions to the play, thus consolidating what they have experienced.

### Peer Teaching

One technique for peer teaching is to give some assignment to a student or group of students, the results of which they then have to present to the rest of the class. This is often very valuable to the presenters, who must do their work thoroughly and then gain some experience in the problems of communicating information and ideas to other people. The drawback is that occasionally the presenters are, at least initially, not very good at this communication and the rest of the class is left uninvolved or disinterested.

The Constitutional Rights Foundation has put a lot of emphasis on peer-teaching, particularly in the area around their Chicago office. Under their approach, an older student prepares and delivers law-related lessons on a regular basis to a class of students who are three or four years younger. While this has the advantage of partially breaking down the authority aura of a regular classroom teacher, so that students are more willing to explore issues with someone who is closer to equal with them, it suffers from the same problem as the Street Law law student teachers in that the teacher may take a long time to learn about teaching, during which time the class is suffering. There are also considerable practical difficulties in arranging school timetables so that a senior student can be released to teach a junior class.

### Audio-visual Resources

Teachers are frequently attracted to the idea of using audio-visual resources because they are popular with students and provide a new approach to a concept for those pupils who are less proficient in verbal, reading and writing skills. However, there are some difficulties with their use. Almost all school students have been exposed to professional film productions showing a high degree of technical skill through television and commercial films. They are relatively sophisticated in their appreciation of films and often respond with ridicule or at least, boredom when shown an amateurish production. Films are also very expensive to produce and therefore to buy and they date quite quickly. For instance, a film in which students are supposed to identify personally with some of the protagonists can have its impact and hence its usefulness destroyed if the clothing or social mannerisms of the characters are a few years out of date.

Because of the high expense of film production, I was particularly interested in trying to find audio-visual resources overseas which could be used in law-related education in Australia. I found that even in America, filmstrips were more common than films. Most of them, I thought, were over simplified, too didactic or merely boring. The films and film strips that specifically related to law usually concentrated on the Bill of Rights and the institutions in the American justice system too heavily to be of even peripheral use in Australia. Other resources that were intended for use largely in the exploration of values and conflict situations were also too noticeably American in their language, clothing and preoccupations for children in this country to be likely to identify with them.

The only audio-visual resources not currently available in Australia I thought worth bringing back a sample of were those of the Law in a Free Society Project. It is interesting that these were developed by a law-related education project, whereas most of the other audio-visual resources I saw came from commercial publishers. This reinforced my impression that the development of good educational resources is such a complicated and expensive undertaking that it is difficult to do it on a commercial profit-making basis, even in a country the size of America. It is also indicative of the high calibre and level of personal and professional commitment I encountered in the personnel of the projects I visited throughout North America.

In terms of choosing audio-visual resources for use in law-related classes in Australia, the most effective are often those films already available to schools which are catalogued under some other classification. With a little imagination, teachers can find many films to illuminate law-related concepts for their students. 'Lord of the Flies' and 'Twelve Angry Men' are two examples.

#### Community Surveys and Interview Techniques

The value of this type of classroom activity is that it emphasises the relationship between what is learnt in school and what is going on in the real world outside. In community surveys, students are involved in assessing actual attitudes, opinions and experience in the society around them; in interviewing, they learn something of how to find out from a resource person what they want to know and how the press and other media work, and in addition, when the interviewee is someone connected with the legal and political system, such as a legislator, policeman, lawyer or lobby group member, they learn about the personal views and reactions of somebody involved in making legal processes work on a day to day basis.

To realise the full potential of this type of exercise, the information should be collected for some defined purpose, so that the students feel that there is a real point to their work. This purpose can be worked out between teacher and students, often arising from some topic discussed in the classroom or a newsworthy issue in the local community. Then the class as a whole can work out the survey or interview questions which will be most likely to provide the information they need. They can also decide what they will do with this information, even if it is only to send a letter to their local member of Parliament, explaining their findings. When this type of work is treated as simply a paper exercise, the students are likely to learn that it is bound to be ineffective; involvement in the preliminary work and the follow-through will show them the reality and effectiveness of citizen involvement in our legal system. Sometimes, quite spectacular results can be achieved, as with the students in Pennsylvania who managed to get stricter pollution control on one of the Great Lakes and the children in Minneapolis who found out for the local council how many trees in the area were suffering from a certain disease, thus making a treatment campaign possible.

## THE ROLE OF THE NATIONAL CURRICULUM DEVELOPMENT CENTRE

*J. McArthur*

### 1. INTRODUCTION

This seminar is of particular importance to the area of law-related education because:

- (a) it has brought together - educationalists and lawyers from all States and Territories, - institutions such as the Australian Institute of Criminology and the Curriculum Development Centre, into a joint venture, - people from closely related fields, such as C.C.H., Film Australia and the Law Consumers Association, and,
- (b) it is already raising questions and issues which need to be considered, such as:
  - legal and law - related education,
  - should schools initiate social change or are they institutions of social control,
  - subject teaching and integration,
  - development of guidelines - rationales, aims design of curriculum, strategies, etc.,
  - need for a Clearing House,
  - resources,
  - teacher education.

### 2. WHAT IS THE CURRICULUM DEVELOPMENT CENTRE? (CDC)

It is a statutory authority of the Commonwealth responsible to the Minister for Education. It has a Council with representatives from the States, Independent schools and teacher training institutions.

Its functions are:

- development and publication of materials, both for students and teachers,
- dissemination and diffusion of materials and ideas,
- evaluation of projects, especially the 'Teachers as Evaluators Project',
- co-ordination, especially with Clearing House functions through its Curriculum Information Service. (CIS)

### 3. CURRENT CDC PROGRAMMES

- (i) Victorian Commerical Teachers Association -

attitudes survey materials

Direct support

- (ii) High School Education Law Project -

Law Foundation  
N.S.W. Department of Education  
National Committee of Social  
Science Teaching - Small scale  
grants especially 'In the Balance'.

Indirect support

Social Education Materials Project  
Consumer Education  
Environmental Studies  
Human Rights (with other Commonwealth  
Departments)  
Electoral Education (Australia  
Electoral Office)  
National Heritage (Australia Heritage  
Commission)

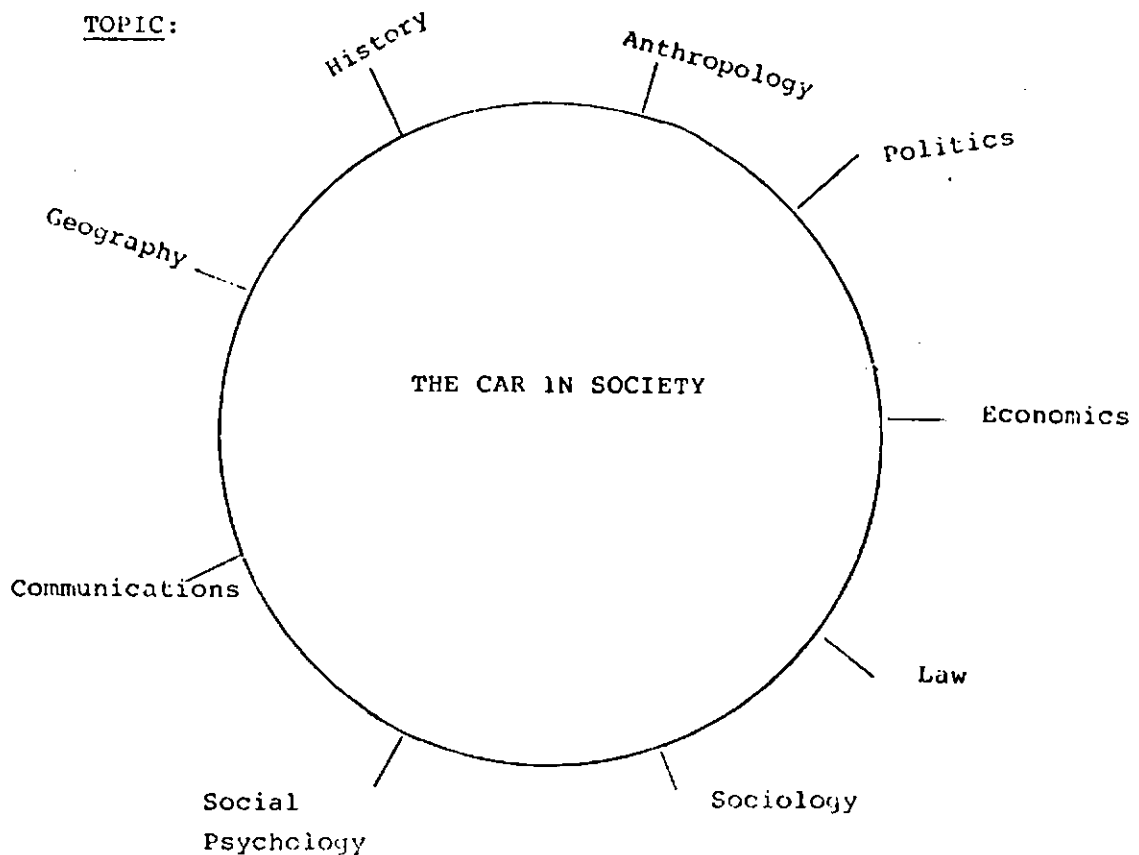


#### 4. FUTURE PROGRAMMES - where legal aspects should be considered:

Multicultural  
 Drug Education  
 Foreign Policy (with Department  
 of Foreign Affairs)  
 Quarantine (Department of Health)  
 Redevelopment of ASEP (Australian  
 Science Education Project)  
 Redevelopment of SEMP

#### 5. CDC'S FUTURE INITIATIVES:

- (i) It is interested in the influence of the law or social processes and institutions and how aspects of the law can be incorporated into school programmes so that it can have a meaningful and important place within social education programmes. An example of this may be.



Aspects of each of the above disciplines can be incorporated into the topic - the car in society.

(ii) Through Dissemination/Diffusion

Through Co-ordination - materials  
through C.I.S./ national seminars

(iii) Through Skills Development and the  
development of the skills of Case  
Studies -

Role Play  
Simulation  
Interviews  
Surveys  
Mock Trials  
Film

(iv) Through development of guidelines  
around -

Skills of Inquiry  
Decision-making  
Values Analysis

When we are dealing with aspects of law we are very much in  
the area of *Clarifying Values* and of *Making Decisions*.

6. CONCLUSIONS:

For the remainder of the conference and beyond we should consider  
the following questions and issues:

(i) Should programmes be subject - based  
or integrated? (Law-related/legal  
education).

(ii) Development of guidelines documents:

Rationale  
Aims  
Curriculum Design  
Strategies

- (iii) Resources/Clearing House  
function
- (iv) Teacher Education
- (v) Future seminars
- (vi) What roles do we seek for CDC.,  
the Institute, Education Departments,  
other groups?



## LEGAL AND LAW RELATED EDUCATION IN AUSTRALIAN CAPITAL TERRITORY SCHOOLS

*S. Kyburz*

### HIGH SCHOOLS (YEARS 7-10)

In the Australian Capital Territory High Schools there is no centrally prescribed syllabus, each school has its own school-based curriculum. The curriculum is designed, implemented and evaluated by teachers in each subject area. Four of the fifteen high schools have a unit of Legal Studies as part of a Social Sciences subject area. However, most of the high schools cover law related material within the confines of the traditional subject areas. For example:

English - Drama	Moot Courts
Commerce	Consumer Protection
Science	Environmental Law
Career Education	Jobs and the Law
Social Science	The Family and the Law

At Weston Creek High School, Legal Studies has been taught for four years. The school year is divided into semesters and the same course is taught in both semesters. In the past three years two classes of thirty students have operated in each semester. The course is selected by students in Years 9 and 10.

Legal Studies at Weston Creek High aims to enable the student to appreciate the purpose of the law. Through this the individual is able to gain a greater understanding in the need for social and legal institutions, law enforcement authorities and the individual's role in the operation of those institutions.

The course aims to impart at a very basic level a knowledge of basic legal procedure, necessary and fundamental rules and laws. The students visit Parliament and view both the Senate and the House of Representatives. The Law Courts (magistrates and the Supreme Court) are also viewed.

The course content concentrates on modern living and its problems. It consists of topics (Juvenile Delinquency, Law and Drug Abuse, Violence in Society, The Family and the Law) that are of a direct and current concern to the students and to the ordinary members of the community. In a course such as this it is essential that the student and members of the community, especially from social and legal institutions, interact. Members of some social and legal institutions (legal aid, welfare, solicitors and the police) are involved to discuss varied and topical issues.

#### SECONDARY COLLEGES (YEARS 11 and 12)

Legal Studies as a separate subject is taught in five out of six colleges. At each college approximately 70 students are studying Legal Studies as a four hour per week accredited course of study. Students may complete either a Minor (3 term units) or a Major (5 term units) and these course patterns have been approved by the Australian National University as being acceptable for tertiary entrance.

These courses are written by the teachers in each college and are examined by the Legal Studies Courses Accreditation Panel. The Panel's 1978 membership was as follows:

- 3 Legal Studies teachers from A.C.T. colleges.
- An Australian National University Law Lecturer.
- A Canberra College of Advanced Education Law Lecturer.
- A member of the A.C.T. Law Society.

A typical Year 11/12 course contains the following units of study:

- Australian Legal System.
- Crime and Tort.
- Consumer Law.
- Family Law and Succession.
- Citizen and State.
- Legal Agreements.
- Legal Issues.

The objectives of the Year 11/12 Legal Studies courses include:

- To create an awareness of the existence and purpose of law as it relates to the individual in society.
- To provide the student with a better understanding of our legal system.
- To increase the students knowledge of selected aspects of the law which are of direct concern to them as members of the community.

To reason logically, dispassionately and equitably.

To communicate effectively in the oral and written form.

To interpret the essence and relevance of various kinds of legal documents in an elementary way.

#### TEACHER DEVELOPMENT

The typical Legal Studies teacher in the Australian Capital Territory possesses a Commerce degree which has in it a number of Commercial Law Units. The Staff Development Section of the Schools authority has organised a number of In Service Courses which have aimed to develop the Legal Studies teacher's knowledge of course content and teaching methodology. These courses have used the expertise of such persons and organisations as the Australian Capital Territory Law Society, New South Wales H.E.L.P. Project, the Victorian Commercial Teachers' Association, members of the Australian Capital Territory Judiciary.

#### RESOURCES

The size of the Australian Capital Territory schools system has meant that there has been a heavy reliance on interstate teaching and resource materials. At the high school level the New South Wales H.E.L.P. materials are used extensively and at the secondary college level there is a strong reliance on the resources which emanate from Victoria. The only Australian Capital Territory based material which would be suitable for teacher use is the Australian Capital Territory Supplement to the Redfern Legal Resources Handbook. This will be widely used when it becomes available.

The audio visual domain presents the greatest problems in terms of resources for classroom use. With the exception of the ABC TV Broadcasts and the V.C.T.A. Video productions there is a dearth of Australian material.

## LEGAL AND LAW-RELATED EDUCATION IN QUEENSLAND : AN OVERVIEW

*R. Herschell*

### INTRODUCTION

While the situations, constraints, decisions and implications of curriculum development are place and time specific, the teacher's role in this process can best be described by considering three (3) contexts within which teachers in Queensland currently function. The *first* of these relates to the situation where teachers work within broad curriculum guidelines which are centrally developed; the *second* where teachers work within their *own curriculum guidelines* by developing courses of work to meet specific student needs; while the *third* context involves teachers in working within *general education guidelines* to develop programmes for a child's total education.

*Broad curriculum guidelines* outline the rationales of specific subject areas together with their aims and objectives. Statements are made to outline the conceptual design of such subject guidelines, and suggestions are made regarding appropriate methodologies by which these designs may be translated by teachers into student learning experiences. Specific content suggestions are included in such documents, to provide examples of the practical applications of the use of the conceptual designs. These content suggestions, however, are not intended in any way to be prescriptive.

These broad guidelines are developed by appointed committees whose members represent a wide range of educational interests. Draft guidelines are submitted to official bodies such as the Primary Curriculum Committee and the Board of Secondary School Studies for ratification and approval to undertake trials and evaluations in schools. Following such trials and evaluations, the revised guidelines are submitted to the appropriate authorizing bodies for approval for general implementation throughout the State.

The *second curriculum development strategy* is where teachers work within their own curriculum guidelines to identify specific student needs and develop special courses to meet these needs. These developments are influenced by the overall programme of the school or college, and the particular curriculum choices being offered to students. These guidelines often follow the format of the centrally developed broad guidelines but usually contain quite specific statements of content, skills and experiences because they are used in specific schools and colleges, rather than for general State-wide implementation. Secondary School 'School Subjects' and Technical and Further Education courses are of this type.



The *third* curriculum strategy is where teachers work within general education guidelines to develop programmes for a child's total education. This strategy relates specifically to the area of pre-school education. Pre-school programmes vary from centre to centre as strong emphasis is placed on the professional competence of the individual teacher to design learning experiences appropriate to the needs and abilities of each pre-school child. Teachers are responsible for developing their own curriculum guidelines and develop programmes that attempt to realize the four functions of pre-school education by being creative in their design and development of programmes, organisational patterns, and style of interaction.

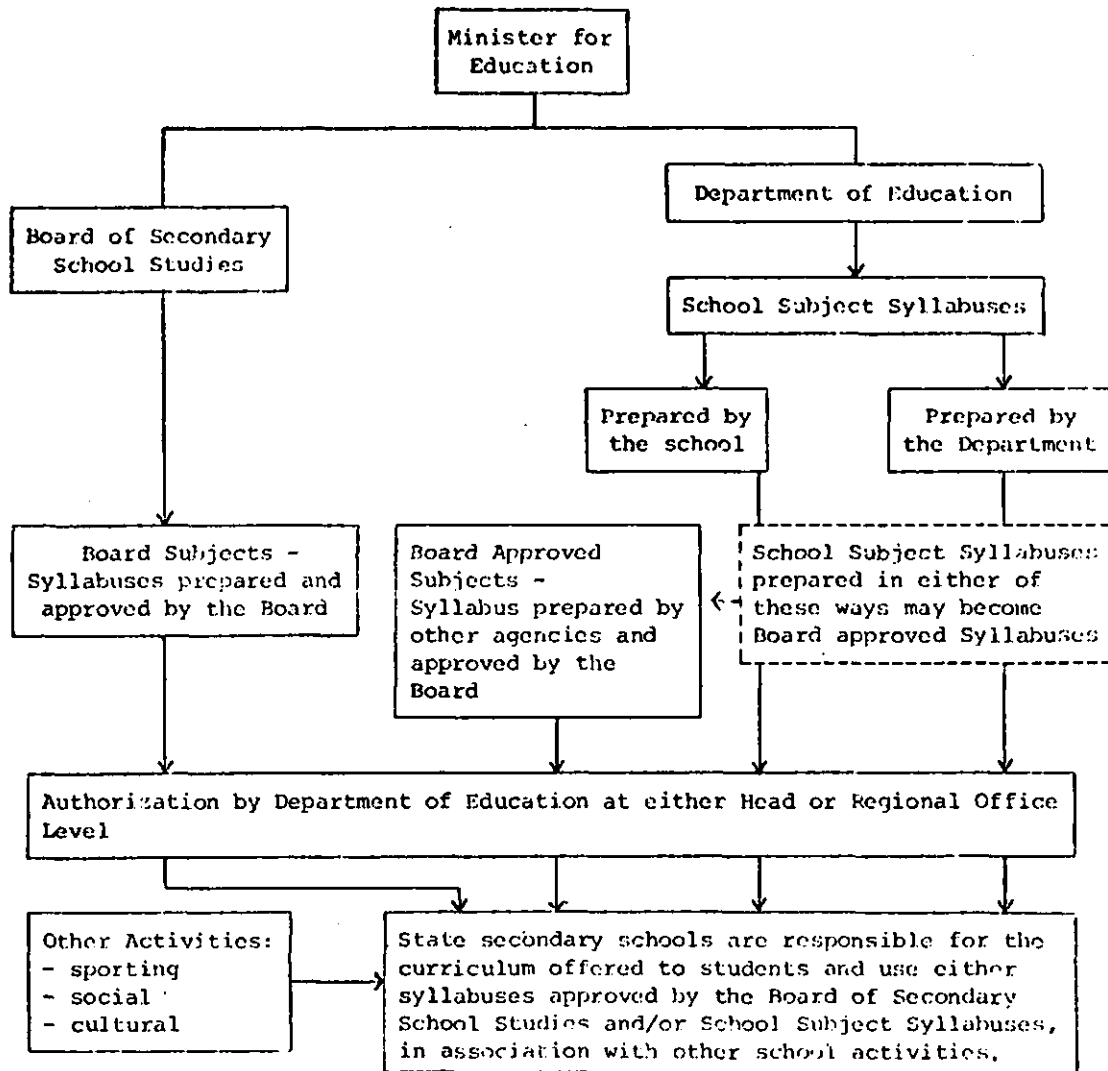
Table 1 identifies the contexts of curriculum development that are used in the various sections of Queensland education.

TABLE 1

Curriculum Context	Sectors of Education in Queensland				
	Pre-school	Primary	Special	Secondary	T.A.F.E.
Broad Guidelines	-	✓	✓	✓	✓
Teacher Developed Guidelines	-	-	-	✓	✓
General Education Guidelines	✓	-	-	-	-

Each school and college is responsible for operating within these curriculum development contexts to the design and development of its particular programme. Figure 1 illustrates, for example, the various responsibilities of the Board of Secondary School Studies and the Department of Education with respect to the curriculum offered in State Secondary schools.

FIGURE 1



(Department of Education, 'The Preparation and Authorisation of Syllabuses for Secondary Schools : A Background Paper prepared for the Parliamentary Select Committee on Education in Queensland,' June 1978 - p.15)

Curriculum Developments in Pre-School, Primary, Special, Secondary and Tertiary Education in this State usually fall within one or more of these three curriculum development contexts outlined in this introduction.

### 'Legal' Education in Queensland Schools and Colleges

In the Queensland situation, education about the law does not exist as separate, discrete and easily identifiable subjects of sections of the curriculum. There are no 'legal studies' courses *per se*. Because of the curriculum development policies and procedures that have been adopted, studies about the law are integrated into a number of subjects and courses at various levels in the education system. Other programmes such as those involving Consumer Education, Work Education and Environmental Education, are also dealt with in a similar manner.

R. Gilbert (James Cook University) in his 1977 project report to the National Committee on Social Science Teaching entitled: *'In the Balance: Law Studies in the Junior School, a Curriculum Guide for Legal Education in Secondary School'* identified five major areas of emphasis for legal education. These are:

1. Knowledge of Law.
2. Attitudes to the law.
3. Increasing the individual's civic competence.
4. Understanding society through a study of its law; and
5. Developing thinking skills.

While the courses that are offered in Queensland schools and colleges often include some of these five main areas of emphasis, few of such courses attempt to include all of them. The courses that are offered are often quite specific, and are designed to fulfil a particular role within the total curriculum offered to students. However these courses usually focus on one or more of the following aspects of education about the law.

#### A. Studies of the legal rights of the individual

*Broad curriculum guidelines* such as those for Citizenship Education, Years 9 and 10 (See Appendix 1) when dealing with *Protection of the Individual* may be developed by particular schools and teachers to focus, for example, on Consumer Protection for the individual. Such courses could attempt to - (a) examine the courses of action that are appropriate for individuals to take when their rights and obligations may or have been breeched, (b) develop students' skills of the market place, (c) assist students to understand the nature of consumer protection, (d) assist students to understand the dynamic nature of the law and the processes that apply. The focus of such courses may be related very closely to the rights and responsibilities of the individual.

Similarly the Commercial Law I Subject conducted as part of the Management/Commerce Courses at Technical Colleges focuses on the rights and responsibilities of individual businesses.

#### B. Studies of the Law in Society

These studies focus on the processes of the law in regulating and sanctioning the interactions amongst individuals, and groups in society. Students develop an understanding of how the legal and political systems affect them.

For example, the Year 2 Primary Social Studies programme investigates issues related to - (a) 'Rules of co-operation are necessary in the home, the school and the neighbourhood' and (b) 'Many community laws relate to safety'. Unit I of the Year 7 Primary Social Studies programme has a range of legal and political 'main ideas' such as those listed below:-

- . The family is the basic unit of social control in most societies.
- . Group living requires co-operation within and between groups.
- . All social groups develop systems of social control.
- . Governments make laws to provide for the well-being of society.
- . Governments provide some community services.
- . Governments make laws for the protection of people and property.
- . Democracy is a form of government in which the ultimate power lies with the people.
- . In any society, people have duties and responsibilities as well as rights and privileges.
- . The form of government may differ from society to society.
- . The form of government in a society may change.
- . Change in the form of government presents problems.

(Department of Education, Year 7, Social Studies Syllabus, p43)

Similar developments occur within the Years 11 and 12 *Study of Society* Semester Unit entitled 'Rights and Responsibilities in Society'. Sections of this course developed specific aspects related to: (a) Theory and analysis of political and legal behaviour; (b) Law and government in their social context; (c) Links within and between political and legal systems in Australia; and (d) Comparative studies and case studies of political and legal systems.

The Business Law Course (BLC 204) conducted at the Kelvin Grove College of Advanced Education has been specially developed to provide trainee Secondary Commercial Teachers with a background that will assist them in the teaching of various Consumer and Business topics in the Years 9 and 10 Business Principles, and Years 11 and 12 Secretarial Studies and Accounting courses. The K.G.C.A.E. Subject (BLC 204) consists of:

1. An introduction to general legal principles through the study of the nature of law, the development of law and the current legal framework;
2. an introductory study of those areas of law which are relevant to the business world and, in particular, secondary school commercial studies. Areas covered include contracts, sale of goods, bills of exchange partnerships, company law, bankruptcy, income tax and trade practices, and
3. a consideration of actual applications of the law through case studies and visits to legal institutions.

#### C. Legal Aspects of a chosen career

Many courses are conducted at Colleges of Technical and Further Education to assist students, apprentices and career persons to develop an understanding of their legal responsibilities in a chosen career. Most courses of study contain subjects that assist the students to have a working knowledge of the specific area of the law that relates to their career. Such courses assist students to know the procedures for seeking professional advice in matters that concern them. The Building, Business Studies, Engineering, Mineral Industries, Rural Industries and Welfare Studies Courses, all contain subjects of this type. Many of the Service and Revision Courses such as Aluminium Fabricators Course,

Electrical Linesman's Course, Mariner's Courses, Shotfirer's Course, Dental Assistant's Course ... contain specific subjects to assist students to understand their legal rights and responsibilities in a chosen career.

Thus a number of strategies are currently used to provide a range of subjects and courses to assist Primary, Secondary, and Technical students to come to an understanding of the role of law and education. While these aspects are not necessarily dealt with in a coordinated or sequenced manner, the range of courses to some extent fulfil all of Gilbert's five main areas of emphasis in Legal Education as outlined earlier.

#### Future Prospects:

Currently, a review of Education in this State is being undertaken by a PARLIAMENTARY SELECT COMMITTEE ON EDUCATION. Written and oral submissions were received by this committee in 1978, and interim reports are currently being prepared. Concurrent with these developments, a Review of School-Based Assessment in Queensland Secondary Schools was commissioned by the Board of Secondary School Studies. The report of this review committee was released in 1978. It is expected that as a result of these initiatives, changes will be made to the system and processes of education in Queensland.

Some of these could possibly relate to:

- (a) Improved liaison between schools, parents and the community.
- (b) Greater communication between the various sections of the education system and within each section.
- (c) Reorganisation of the school curriculum with the possible introduction of 'core and elective' studies.
- (d) Greater emphasis being placed on the development of 'school subjects' in the Secondary School (eg. Australian Law 215, Commercial Principles 276, Legal Studies 588, Police Studies 735).

- (e) Development of 'Link courses' to assist students to cope with transition from school to school, school to college ... and
- (f) the implementation of a competence or performance based assessment and certification system to replace the current norm-based system.

## CONCLUSION

The current role in Queensland schools and colleges of education about the law is that of being 'integrated' into a number of subject areas across Primary, Special, Secondary and Technical Education. While no one subject could be designated as 'legal studies', there are a number of areas in the curriculum guidelines that teachers could use as a basis for developing student programmes of work that are 'law-related in their context'. There is no guarantee, however that 'legal approaches' will be taken to the development of these sections of work. These may be developed by teachers into programmes of student work which have a 'legal' focus but teachers have the responsibility for developing classroom programmes of work. It is this process of the translation of curriculum guidelines into student programmes of work that determines whether 'law-related' programmes are operative in schools and colleges in this State.

## LEGAL AND LAW-RELATED EDUCATION IN WESTERN AUSTRALIA

*G. Power*

### INTRODUCTION

In Western Australia there has been a growing recognition of the place of legal and law-related education in the school curriculum. Broadly it has been accepted that the law is part of our social environment and every person needs to understand it. As the Canadian Prime Minister Trudeau stated there is a need for the 'law to come home to the people'. It has also been suggested that this understanding must be considered to be part of democratic government, for 'what we do not understand, we do not fully possess'.

With these broad justifications in mind several assumptions have been guiding developments in Western Australian schools.

- . Law should not be a study of a conglomeration of detailed rules which the legal profession have difficulty in interpreting in some cases.
- . Some effort should be made to assist in the discovery of the principles of law (e.g. precedent, judges and parliament make laws etc.).
- . A common sense, problem-solving, broadly-based approach to law should be adopted - you have to know the 'general town plan not the name of every street'.
- . Care should be taken to ensure co-ordination of legal and law related education in individual schools (Social Studies, Business Education, English, Geography, History, Politics and Economics all have a role to play).
- . Principles related to the law should be developed from an early age and not be considered exclusively for senior secondary school (Years 11 and 12).



## LAW IN SOCIAL STUDIES

### 1. K-10 Social Studies Syllabus

Legal and law-related education is considered as one of the major themes across the curriculum in the Social Studies K-10 Draft Syllabus, published in October 1979. It is suggested that while law-related education can be recognised as a theme across the curriculum, the role of Social Studies is significant in its proper development. Law-related education ... seeks to improve the student's understanding of law, the legal process and the legal system.

It is also recognised within the draft syllabus that an understanding and awareness of certain legal principles and concepts can be progressively developed through the years K to 10, and not be the exclusive concern of the senior years. Hence the following units are designed to deal with aspects of law-related education:-

- . Family Rules (Year 1) and School Rules (Year 2)  
develop an awareness of the necessity for rules in achieving group co-operation, personal protection and safety.
- . Community Rules (Year 3)  
focuses on the laws in the local community related to group co-operation, personal protection and safety.
- . Community Decisions (Year 5)  
examines the responsibilities of the local councils.
- . Carrying Out the Law (Year 6)  
focuses on rules and laws in the community and examines agencies responsible for administering and enforcing these rules and laws.
- . Government in Australia (Year 7)  
develops an understanding of how laws are made in the community by examining the structure, functions, responsibilities and aspects of co-operation involved in State and Federal Parliaments.
- . Law in Australia (Year 9)  
draws attention to key questions related to the reasons for having laws, who is responsible for making them and how they are made and their effect on everyday life.

- . The Australian Political System (Year 9)  
emphasises the law-making process and the court system.
- . The Consumer and The Australian Economy (Year 9)  
in part deals with consumer protection.
- . Global Environmental Issues (Year 10)  
includes a brief study of laws related to the conservation of the environment.
- . Career Decisions (Year 10)  
draws attention to the legal implications of working (apprenticeships, industrial relations, wages, accidents).
- . Social Issues in Australia (Year 10)  
identifies, in part, the importance of laws in attempting to overcome some of the human problems in our society.

## 2. Law

The Curriculum Branch has prepared a Year 9 topic entitled 'Law' with both student and teacher materials. These materials are currently being reviewed in the light of developments with the K-10 Social Studies Syllabus and reactions from the Attorney-General's Department and the Law Society in Western Australia. Updated stimulus materials in this area should be available to schools in 1980.

## 3. Legal Eagle and Eagle Books

A limited trial of the H.E.L.P. materials was undertaken in a small selection of schools during 1978. The 'open-ended' trial of these materials was intended to identify the applicability of the materials to Social Studies. Feedback from these schools has indicated that the materials will be of value as support resources in Social Studies programmes. Likewise similar interest has been indicated by teachers in the Business Education area.

## LAW IN YEARS 11 AND 12

The most recent development in Years 11 and 12 has been the approval of a new course *Law* for introduction in Year 11, 1979 with subsequent certification on the Certificate of Secondary Education in Year 12, 1980. This course is not examined as part of the Tertiary Admissions Examination and replaces the course *Commercial Law* which currently applies to Year 12, 1979 (see Appendix).

As can be seen from the Appendix the course outline LAW aims:

- . to provide students with a general knowledge and understanding of the legal system and how it works, specifically in Western Australia and generally in Australia;
- . to acquaint students with a knowledge and understanding of their rights and responsibilities in a number of aspects related to life experiences in our society;
- . to help students understand their rights and responsibilities in relation to the rights and responsibilities of others and in relation to the legal system and its operation specifically in Western Australia.

#### CONCLUSION

There have been significant developments in legal and law-related education in Western Australia. However considerable work in resource development needs to be undertaken, despite the applicability of the HELP materials.

## APPENDIX

This course is an extract from 'Syllabuses 1979' prepared for the Certificate of Secondary Education and Tertiary Admissions Examination in Western Australia.

### LAW

#### Needs

In our complex society every individual should know his or her rights and responsibilities as a member of that society. There is a need for students in our high schools to learn more about and discuss this aspect, amongst other related ones, in a special course, designed for this purpose.

Among the issues or aspects of importance here, are rights and responsibilities in regard to contracts, sales of goods, insurance, real estate, family law, industrial relations, consumer protection, credit and finance. The large majority of our students will become involved in all these aspects, sometime in their life. It is accepted that schools should provide 'education for life'. That is, they should prepare students for their role in society. This course should acquaint students with a knowledge and understanding of the laws in the above areas from the consuming, industrial, employee and employer points of view.

There is also a need to examine the aspects mentioned above, within the general context of our legal system and its operation, specifically within Western Australia and more generally, Australia. This perspective is important because the individual's rights and responsibilities need to be seen in relation to the rights and responsibilities of others in society.

The need for this type of course should increase with time. It is hoped that more high school students will elect to study this course as part of their general education and for preparation as an independent member of our society.

### GENERAL AIMS

The broad aims of this course are to:

- to provide students with a general knowledge and understanding of the legal system and how it works, specifically in Western Australia and generally in Australia,

- to acquaint students with a knowledge and understanding of their rights and responsibilities in a number of aspects related to life experiences in our society, and

- to help students understand their rights and responsibilities in relation to the rights and responsibilities of others and in relation to the legal system and its operation specifically in Western Australia.

## SPECIFIC AIMS

### Knowledge and Understanding

By studying this course it is expected that students:

- \* will learn the legal method of working to the solution of a problem;
- \* will develop a reasoning ability by practice in solving a variety of legal problems;
- \* will be better prepared to manage their own financial and personal lives as it relates to a knowledge and understanding of the legal system in Western Australia and Australia;
- \* will investigate and analyse some important interactions in our society which have legal implications;
- \* will have a knowledge and understanding of their rights and responsibilities in regard to a number of specific legal areas;
- \* will learn to communicate effectively in both written and oral form on specific legal areas;
- \* will learn to interpret the essence and relevance of various kinds of legal documents in an elementary way;
- \* will have a general knowledge and understanding of the law and its operation, specifically in Western Australia and generally in Australia.

## ATTITUDES AND INTERESTS

Students should gain:

- \* an appreciation of the importance of interpretation;
- \* a recognition of the rights and responsibilities of others in regard to a number of specific legal areas;
- \* a questioning and enquiring attitude to general legal problems;
- \* a respect for the law, together with respect for law making and law enforcing authorities;
- \* a sense of responsibility and maturity in initiating modifications to the present laws;
- \* a better appreciation of problems of society in regard to legal areas.

## CONTENT

The following content should be taught through lectures, discussions, assignments, debates, report writing and interviews. Especially too, students should be involved in case studies, role playing and moot courts and, they should make a number of local court visits.

## CASE STUDIES

In general, a case study is an investigation of a single institution, decision, situation, individual or group of individuals. Students should collect, analyse, display neatly and clearly and evaluate the arguments and data for the particular study.

There are two (2) general ways of approaching case studies. The first:

- . is to present the students with the rules of law and ask them to apply this in the solution of other cases.

The second:

- . is present the students with the facts and extracts from the judgements of various cases and ask them to deduce the law.

Students should have experience in both methods.

## ROLE PLAYING AND MOOT COURTS

A moot case is an exercise in arguing litigation between two (2) or more fictitious parties before a court constituted by a Moot Master (usually the teacher) acting as a judge or magistrate. All other legal personnel and witnesses are played by the students. The case should be based on prepared records of fact and some law has to be presented before judgement is given. Each party to the litigation is represented by a solicitor and a senior and junior counsel. It would be the responsibility of the parties assisted by other class members, to prepare the brief, analyse the factual situation in relation to the law and suggest arguments which best advance their client's case.

## COURT VISITS

All students should make two (2) or more visits to a local court during the two (2) year course.

## NATURE OF THE LAW AND ITS ORIGIN

Historical development of law.

Law in Australia

- the beginnings and development of the legal system in Australia.

What is a law?

Sources of law, common law, equity and statutes

-

Parliament and its powers

Initiation of legislation

Court hierarchy

- Petty Sessional, Supreme and Federal Courts.

Rights of Appeal

Jurisdiction of Courts and Personnel

Criminal Law and the jury system

Torts

- initiation of civil action, procedure and remedies.

## CONTRACTUAL LAW

Law of Contract

What constitutes a contract?

Formation of a contract

Parties to a contract

Terms of the contract

Enforcement of contract

Termination of contract

- performance, breach of contract, remedies for breach.

(Example: Sale of Goods Act)

## INSURANCE

Personal and Property

Definition

- Elements of a contract of insurance

Indemnity, Disclosure, Insurable Interest, Good Faith

- Good Faith

Various types of insurance contracts

- examples  
house insurance, accident insurance etc

## INSURANCE (continued)

- Motor Vehicle Insurances - Third Party Compulsory Insurance  
Comprehensive motor vehicle insurance
- Rights and responsibilities  
of car owners  
Accidents, Damages and Compensation

## REAL ESTATE - PROPERTY LAW, MORTGAGES AND REPAYMENTS

- Purchase and Sale of Land  
and House - Contracts involved  
Ownership of land  
Insurance  
Systems of Land Tenure  
Principles of registration  
Mortgages and repayments  
Strata titles  
Landlord and tenants - Leases and Tenancies

## SOCIAL LAW

## Family Law

- Marriage  
Divorce and Separation  
Rights and Property and Financial  
Support  
Children - Relationships with Parents  
- Responsibility and liabilities  
of parents.

## ESTATES OF DECEASED PERSONS

- Wills - Importance, requirements,  
charges and revocation,  
intestacy.

## PROPERTY

Legacies  
Executors, Administrators,  
Trustees

## INDUSTRIAL RELATIONS

- Contractual relationships - master and servants, employer and  
independent contractor, bailor  
and bailee, principal and agent



## INDUSTRIAL RELATIONS (contd)

- Restrictive Trade Practices
- Employee Organizations
- Arbitration in Australia
- Workers Compensation
- Industrial laws including Commonwealth and State wage fixation Systems
- Labour and Industry legislation
- Industrial Awards

## CONSUMER LAW

### Consumer Finance and Credit

- Importance of credit in Australia
- Legal tender
- Types of credit purchasing including credit cards
- Hire Purchase
- Repossession of goods

- Pledge or pawn
- Liens
- Bill of Sale
- Cheques

## CONSUMER PROTECTION LAW (STATE AND COMMONWEALTH)

- Responsibility and Protection of Consumers
- Examples:
  - Motor Vehicle Dealers Act
  - Consumer Protection Act
  - Unsolicited Goods Act
  - Trade Descriptions and False Advertisement Act
  - Pyramid Sales Scheme Act
  - Clothes and Fabrics Labelling Act
  - Trade Practices Act
  - Small Claims Tribunal Act
  - Door to Door Sales

## ASSESSMENT

### Internal

Formal evaluation should be based on the stated objectives of the course. This should be of two (2) general types:

- . a progressive assessment over the two (2) year course

and

- . revision assessment at a number of points in the two (2) year course ie. mid year Year 11, end of Year 11 etc.

It is suggested that the schools internal assessment should comprise:

- . research assignments (about 20% of marks allotted)
- . case studies (about 20% of marks allotted)
- . role playing and moot courts (about 10% of marks allotted)
- . oral communication (about 10% of marks allotted)
- . tests (about 40% of marks allotted)

### EXTERNAL

Under the direction of the Board, teachers at schools approved to teach this course must meet to plan a test or series of tests which will be used to moderate the school assessment and be combined with it in the ratio 1:1 to form the grades for the Certificate of Secondary Education.

## LEGAL STUDIES IN SECONDARY SCHOOLS, TECHNICAL SCHOOLS AND TECHNICAL AND FURTHER EDUCATION IN VICTORIA

*J.A. Sonneman and M. Sherry*

### A. Senior Secondary School

A major development in the teaching of legal studies in Victoria occurred in 1972 when the subject 'Commercial and Legal Studies' was introduced across the State at Year 11. The subject replaced the subject 'Commercial Principles' which has existed as a commercial law subject at Year 11 (and for some time at Year 12) for more than fifty years. Year 12 (or HSC) Commercial and Legal Studies was accepted in 1972 by the Victorian Universities and Examinations Board and the three Melbourne Universities for university entrance purposes, and so was introduced into Victorian secondary schools in 1973.

The rapid growth of the subject was unprecedented in Victoria and fully tested the energies and resourcefulness of all concerned with its development. The subject is now offered in almost all secondary schools with an estimated 16,000 students taking the subject at Year 11, and more than 7,000 students at Year 12, making it the second largest subject (apart from the compulsory subject, English) in the senior secondary school.

The subject aims to provide an understanding of the inter-relationship of law and society, the social function of law and the position of the individual within a social legal framework. Students should appreciate that law is basically a social mechanism developed and maintained by man to implement the social values and policies which he selects from time to time for his community. In developing a critical attitude to the law and its role of regulating social behaviour students should achieve a deeper understanding of the relationship between law and social change.

Through a study of the operation of selected aspects of the law in our society and in other societies students should also develop a better appreciation of how laws developed, the need for a community to articulate its goals and to decide its own legal rules and legal structure, the ability of the community to change the legal rules and structure in response to the changing needs of the community, and the effect of these community decisions on the rights and responsibilities of individuals and institutions in the community.

Commercial and Legal Studies was developed by the members of the Victorian Commercial Teachers' Association with the active support and encouragement of some of the most highly respected academic and professional lawyers. In the advancement of the subject V.C.T.A. works in close co-operation with the Education Department, academic and professional lawyers, the judiciary, personnel in the Childrens, Magistrates, County and Supreme Courts, the Victoria Police, and organisations such as the Law Foundation of Victoria, Law Institute of Victoria, the Community Legal Education Council, the 'Age' and the Australian Broadcasting Commission. A number of co-operative projects have been undertaken. An Education Department teacher is located full time at the Law Institute of Victoria to co-ordinate court visits and to ensure effective liaison between teachers and the legal profession.

Two of the major concerns of those responsible for the development of the subject were the provisions of appropriate teaching and student resource materials, and the ability of teachers to cope with the new course. As will be demonstrated in later papers these are no longer considered to be major problems. Considerable resource materials have been developed for use at the senior secondary level. Through in-service education programmes and the development of legal studies departments at La Trobe University and State College of Victoria, Rusden and Melbourne, the ability of teachers to handle the subject is not now seriously questioned.

Minor changes only have been made to the courses of study since their introduction, however with the introduction of new Victorian Institute of Secondary Education accreditation and assessment procedures at Year 12 in 1981 changes will be necessary.

#### B. Junior Secondary School

Law related studies have always had some part in subjects such as Commercial Principles and Practice, and Consumer Education in the middle secondary school. These subjects have included basically commercial law topics such as Insurance, Cheques, Banking, Buying and Selling, Advertising, Buying a Home, Credit Purchases, and Hire Purchase. However it was not until after the introduction of Commercial and Legal Studies in 1972 that attention was raised to the development of more general legal studies units in the middle secondary school. Units with titles such as 'The Motorist and the Law', 'Youths and the Law' and 'The Police and You', began to be introduced into schools at Years 9 and 10.

A Victorian Commercial Teachers' Association group investigating the place of legal studies in the middle secondary school concluded that although the fundamental objective of the study is to contribute to the development of a well informed and effective member of society, the contribution of this discipline is essentially that of attempting to achieve a better understanding of the general nature of law, to develop an understanding of some basic legal concepts, to develop attitudes to the law, and to enable the individual to become more involved in the legal system.

It was considered important that the students be assisted in developing the ability to critically appraise the law and our legal system, and the social values on which much of our law is based, for example, the notions of property and sanctity of life.

A further important objective is to bring about a positive attitudinal change in students so that they can recognise that citizens can and should (a) play a role in shaping the law and the structure of our legal system, (b) feel responsible for the way the legal system works, (c) ensure that laws reflect the values of society, and (d) attempt to change the values of society if they are considered to be unsatisfactory.

Assisting individuals to solve their own immediate practical legal problems is not an objective of studies at this level. Whilst it is recognised that individuals often require this type of assistance it is inappropriate to aim specifically in schools to meet this need. At best such an approach could yield relatively short term benefits.

More importantly, many of the practical legal problems are issues which should only be taken up at some length by a professionally trained person. Assistance with the resolution of practical legal problems is therefore limited to the assistance which could be expected to accrue to the individual in the long term with having certain knowledge, skills and attitude with which to avoid or reduce future legal difficulties.

A project team has co-ordinated the trialling in several Victorian Schools of units on 'You and the Police', 'Family Law - Authority', 'Crash ... So you have had an accident', 'Authority, Acceptance and the Law', 'You and Jobs', and 'Consumers and the Law of Buying'.

### C. Tertiary Orientation Programmes

These are designed to fulfil the pre-requisites for entry into degree and diploma courses in business studies at colleges of advanced education. They are conducted as Year 12 courses in technical colleges and selected technical schools and exist as a preliminary year of a diploma or degree in the advanced colleges themselves.

The normal pre-requisite for entry to the courses is a satisfactory pass in five Leaving or Leaving Technical subjects including English.

Courses conducted are called Legal Studies, Law and Society, Commercial and Legal Studies, Law or Law Studies.

The content of Commercial and Legal Studies for example is, in some institutions, virtually identical to that of the existing HSC Commercial and Legal Studies syllabus.

Legal Studies for example has as its object:

...to bring the students to a greater awareness of basic legal reasoning and an understanding of the law as a social institution. It is hoped that the students will gain an awareness and appreciation of the purposes of law, the machinery of law-making and enforcement, as well as a knowledge of selected aspects of the law of direct concern to ordinary members of the community. Some of the basic topics covered include the history and development of the Australian law court system; the process of law making through cases and statutes; a study of the distinctions between civil and criminal law; and a general coverage of law relating to individual rights, consumer affairs, employment, business operation and transactions, property and wills.

Or, in another college:

This subject is based on a study of the purpose of the law as it relates to the individual person and groups of persons in modern society. Particular emphasis is placed upon:

Law as a social system. Sources and structure of the Australian legal system. The law relating to the provision of defective or unsuitable goods. Crime and criminal sanctions. Studies of areas of substantive law of particular relevance to students.

Or:

To develop an understanding of the impact of mercantile law upon the organisation and operation of business and the individual in a modern commercial society.

Most courses operate on four/five hours class time and provide a mixture of assessment methods. Some courses are moderated.

#### D. Middle Level Vocational Courses (Certificate of Business Studies)

These courses are undertaken mainly by part-time students who take a minimum of four years to finish courses, though this is currently under review. They are designed to train immediate support personnel for

professional officers and higher level management, and to train small operators who need to be proficient in a variety of technical or business tasks as well as in small scale management decision making.

There are two types of law-related subjects; a general subject called 'Introduction To Law' which is taken in two parts, and specific subjects allied to particular areas. Examples in this latter category would be subjects such as Banking Law, Building Society Law, Credit Law etc.

'Introduction to Law' has as its general aims:

To enable the student -

to understand the origins and sources of law in Australia;

to understand and use the principles of law in his personal, civic and business affairs;

to realise and understand the role and complexity of the law;

to have respect for the role of the law;

to understand the more common legal concepts.

The syllabus for Introduction to Law 1A and 1B is a prescribed one and measurement is by a three hour internal paper which has been authorised by the regional moderation meeting, and also by assessment of work completed during the year. Approximately 2,400 students sat for these courses in 1978.

#### E. Secondary Technical

At Year 11 in technical schools courses in Legal Studies and General Business Education are offered. There is no prescribed course, although if a school wishes to offer a Leaving Technical Certificate the course must contain approved subjects.

Legal Studies courses follow basically the same pattern as those in Secondary High Schools; while General Business Education has a different emphasis. The emphasis is more on those aspects of the law which impinge more directly on the operation of commerce. For example, more attention is given to contract, insurance, house buying, income tax, investment etc. The emphasis is less on an examination of the legal system and its effect on the individual and more on a somewhat unrelated set of topics relating to business. This course is currently under review.

Three hours per week would be a common allotment for either subject.

At Years 10 and 9 there are subjects offered which contain elements of law-related studies. Subjects such as Consumer/Business Related Studies, General Business Education and Consumer Education all contain elements relating to the legal system and its operation as it affects individuals. The last few years has seen a rise in interest among Business Studies teachers in teaching law-related topics, although there are still many who would argue that such studies have no place in Business Studies courses.

Allotments vary at these year levels from one hour per week to three.

#### F. Non-school Law-related Studies.

An interesting development in the last few months has occurred through the Council of Adult Education in Victoria. They advertised during January a series of discussions co-ordinated by a Lecturer in Legal Studies titled 'Youth and the Law'. The series was designed for youth officers, probation officers, clergy, in fact anybody working with young people. Sessions covered areas such as Youth Rights, Contact with Police, The Social Welfare Department, Children's Court, Institutions, Probation Officers.



## LAW RELATED EDUCATION IN SOUTH AUSTRALIA

*Helen A. Sanderson and D. Murphy*

### 1. GENERAL INTRODUCTION

We are pleased to present the following outline of the development of law related education in South Australia.

At present law related education is advancing in two separate fields. Firstly, as an integral component of the new Social Science curriculum, and secondly, as a subject in its own right, namely Legal Studies. The purpose of this paper will be to set out the progress of these two subjects.

### 2. LEGAL STUDIES

#### Background

In South Australia Legal Studies as a secondary course was initially conceived as a Matriculation Course for those students who had taken Commercial Studies in Year 11. Such students found great difficulty in continuing to matriculation as the number of 'commercial' subjects at matriculation level was limited. As a result, students had to 'pick up' at least two new subjects in their matriculation year. To alleviate this problem a matriculation course in Legal Studies was devised and submitted to the Public Examinations Board for its approval. After considerable debate the Joint Matriculation Committee returned the syllabus for further consideration by the Legal Studies Committee. Rejection was based on two areas - 1) lack of 'suitably trained' teachers and - 2) lack of materials.

In view of this, the committee decided to turn its attention to the formulation and implementation of a Year 11 Legal Studies course, and await the outcome of the Jones Committee investigation into public examinations, before resubmitting the Year 12 course. In this way materials could be developed, and training programmes undertaken on our own initiative, whilst the committee continued negotiations with tertiary institutions for the introduction of a course in Legal Studies.

Secondly it was considered that present courses were not meeting the needs of a wide range of student abilities in relation to understanding aspects of the Australian legal system. In this respect, the decisions taken by the committee in relation to Year 11 represent a digression from the earlier commercial connotation for Legal Studies to a broader general Year 11 subject in what may best be described as 'survival law'.

A broad framework for a core and optional course was formulated at curriculum committee meetings, and writing of materials commenced at a three-day conference in March of 1978.

Refinement of the material is continuing, and the present time perspective envisages completion by mid 1979.

#### Pilot Programme

An initial trial of the Year 11 materials and course was undertaken at Vermont, Blackwood and Christies Beach High Schools in the second semester of 1978.

Materials were also introduced to prospective teachers of the subject at a series of conferences held in the second half of 1978. Arising from these trials and conferences further refinement of the materials and course have been undertaken, and it is hoped that further trialling will result in a completed package by the end of 1979.

Units completed include:

- Law and Law Making
- The Constitution
- Family Law
- Consumers and the Law
- Young People and the Law

### 3. PRESENT POSITION

With writing of materials almost completed, attention has been turned to the development of a teachers' guide and the refinement and expansion of our syllabus statement. Such a broad statement is required for final approval of the subject by the Education Department. This work will be undertaken at a four-day conference in April of this year, with the final package being presented to the Central Curriculum Committee in June. If approved, it is envisaged that Legal Studies will be introduced into secondary schools on a limited basis in 1980, with full introduction in 1981.

The findings of the Jones Committee were made public in January of this year.

Of importance to the future of Year 12 Legal Studies was the committee's recommendation that the number and type of subjects offered for public examination be expanded; Legal Studies being amongst those subjects mentioned. A review of the original matriculation course has been undertaken, and this has been sent to the Public Examination Board for comment. However, the eventual fate of the Year 12 course is still very much in the future.

Negotiations over the introduction of a course in Legal Studies at the tertiary level are continuing. Given the uncertainty with regard to the Year 12 course, and the present economic situation, tertiary institutions have been unable to give a firm commitment until such matters are resolved. Therefore, teacher training, for some time into the future, will have to be met through inservice conferences, and the ability of the curriculum committee to make available suitable resource materials.

## SOCIAL STUDIES

The South Australian Education Department Social Studies Curriculum Committee has developed a Year 8-12 Social Studies Curriculum called 'Learning and Living'. In this suggested curriculum six themes are developed with increasing sophistication from Years 8-12.

*Organising and Governing* is one of the themes and includes law-related materials in the units suggested for each year level. A brief outline of each unit, its aims and concepts to be developed are outlined below.

### Year 8

Unit: LAW MAKERS AND LAW ENFORCERS

Unit Aims: The purpose of this unit is to develop enquiry into the making and enforcing of rules, regulations and laws at various levels within society.

<u>Key Concepts:</u>	Group	Roles	Social Change
	Social Control	Interdependence	Values
	Culture	Change through time	Power
			Justice

### Year 9

Unit: THE GOVERNMENT AND SOCIETY

Unit Aims: To develop enquiry into the nature and organization of government in Australia and to investigate the role of the individual in the process of government.

<u>Key Concepts:</u>	Power	Social Control
	Roles	Needs

Year 10

Unit: SOCIAL ISSUES AND THE GOVERNMENT

Unit Aims: To develop enquiry into the areas of government activity, the influence that groups and individuals exert on government and the role of government as a proponent and opponent of Social Change.

<u>Key Concepts:</u>	Group	Social change	Power
	Interaction	Values	Justice

Year 11

Unit: THE LAW AND THE TEENAGER

Unit Aims: To develop enquiry into the legal rights and responsibilities of individuals and into the range of services and agencies available to help young people cope with their legal responsibilities, and to defend their legal rights.

<u>Key Concepts:</u>	Social control	Values
	Interaction	Justice

Year 12

Unit: THE POLITICS OF POWER

Unit Aims: To develop enquiry into the distribution, use and abuse of power within the Australian social system.

<u>Key Concepts:</u>	Social Control	Social change	Power
	Group		Justice

Draft copies of the document 'Learning and Living' are available to any school wishing to develop such a course of study. However the course is not compulsory in any way and at this stage it is difficult to assess the extent to which law-related materials are being used in social studies courses.

## LAW-RELATED EDUCATION ACROSS THE CURRICULUM

In order to assist in the orderly development of law-related education in South Australia we have proposed a 'K-12 Law Related Studies Workshop' from 10-14 June 1979 where we would invite representatives from

the following areas to be involved:

- Legal Studies
- Social Studies (Primary and Secondary)
- Career Education
- Commercial Studies
- Consumer Education
- Environmental Education
- Driver Education

All of these areas include aspects of law-related studies in their courses.

However, at this stage, we do not know whether this conference will be approved or funded. This will depend on the education department priorities for funding conferences, over which we have no control.

## THE ROLE OF THE LEGAL SERVICES COMMISSION OF SOUTH AUSTRALIA

*Regina Graycar*

The South Australian Legal Services Commission has commenced a training programme in basic law which it is hoped will enable legal para-professionals to make valuable contributions to the provision of legal services in South Australia. This is a pilot project which is being developed essentially as in-house training for six lay interviewers who presently perform the function of advisers or counsellors for the Commission. With the exception of one trainee, these interviewers have many years of experience, despite their lack of any formal training, and were previously employed by the Law Society of South Australia in its Legal Assistance Scheme.

The interviewers handle personal and telephone inquiries from members of the public. The Commission provides free legal advice of this nature to any person on any matter. Approximately 70 percent of these inquiries are dealt with entirely by the interviewers, who either refer the clients on to more appropriate agencies (for example The Department for Community Welfare, Public Trustee, Department of Public and Consumer Affairs), or attempt to resolve disputes they may have through helpful suggestions, often based more on commonsense, than on law. Their basic function, in essence, is to ascertain whether in fact the client *has* a legal problem, since it is the experience of the Commission that many members of the public are unable to discern the distinction between legal and other related problems.

Those of the clients who do need legal services going beyond the provision of simple advice are then referred on to lawyers, subject to the Commission's guidelines for legal assistance. Even at this stage, with no formal training, the interviewers fulfil possibly the most important function for the Commission and because of the valuable service they provide, many expensive and unnecessary legal costs can be saved. Also, in many cases these people would be viewed as more open and sympathetic by the clients, a large number of whom find the thought of lawyers quite intimidating.

The interviewers also have more time for advising and counselling clients with difficult problems than could be spared by busy lawyers.

As well as members of the staff of the Legal Services Commission, the course will be attended by three representatives of community information organisations, who were nominated by the Adelaide Citizens' Advice Bureau.

The course itself is a twelve month programme and was devised after consultation with the interviewers about which areas of the law they most needed to be instructed in. It will cover such areas as family law, welfare and social security law, industrial law and simple judicial remedies which can be pursued without legal representation. Although relevant material will be prepared for the course, the basic text will be the Legal Resource Book (N.S.W.) and the level of instruction and detail will be about that standard.

The Commission is presently planning to co-ordinate the production of a South Australian edition of the Legal Resources Book, already published in Victoria and N.S.W. and although no formal arrangements have yet been made, it is hoped that the South Australian edition will be completed by the end of 1979.

As the basic cost of legal services is not expected to drop in future years, it will become more and more necessary to rely on para-professionals in the provision of legal services to the public. Moreover, at the end of the training programme it is to be hoped that these people will know more about many simple basic aspects of law as it affects ordinary people, than would a qualified lawyer trained with a background of constitutional law, and Privy Council and House of Lords decisions. The use of legal paraprofessionals which has already become very extensive in the U.S.A. is a basic adjunct to the more efficient use of qualified lawyers whose services will always be required in cases where legal representation is necessary or desirable.

Fully trained paraprofessional legal service employees can play a far more active role in the provision of legal services than merely interviewing clients. Hopefully, they will develop advocacy skills and be able to appear in various tribunals which either do not provide for legal representation (for example the Social Security Appeals Tribunal) or in which qualified legal representation is simply unnecessary (for example the Industrial Court). Although this pilot training programme is at the moment a predominantly 'in-house' arrangement, it is hoped that once it has been established and carried out, it will be available as a training 'package' for community workers, migrant information officers and various other organisations and people whose jobs involve dealing with general inquiries from the public.

The Commission has had discussions with the S.A. Department of Further Education and there appears to be every prospect of both agencies co-operating in providing future, possibly shorter term, regional training programmes of this nature.

When the S.A. Legal Resources Book is completed, it is hoped that the material contained in that book will form a basis for any future paraprofessional courses in South Australian Law. At the moment, as the book is in the formative stages only, much of its development will occur concurrently with the development of the training programme - many of the materials being prepared for the course will, with minor modifications, form the basis of the various chapters in the book.

The Commission is also beginning a community education programme by preparing simple English and foreign language pamphlets on various law related matters. While attempting to keep these as simple as possible, they are intended to be legally accurate and are aimed at people with somewhat more than basic literacy skills. The Commission acknowledges the fact that for some people, written information in any form will be totally inappropriate, but it is hoped that these pamphlets, if circulated widely enough, will at least answer some preliminary queries that some people, who recognize the nature of their problem, may have. In any case, although these pamphlets are essentially aimed at the general public, it is expected that they will most usefully be employed by information resource people, such as Department for Community Welfare staff, the Ethnic Affairs Branch and other similar bodies.



## TEACHER TRAINING IN LEGAL STUDIES IN VICTORIA

*M. Sherry*

### SYNOPSIS

#### Teacher Qualifications

1. Legal Studies Method 1978 (excluding SCV Hawthorn) Graduates in Commerce, Economics, Art, Education who had legal studies or law subjects in their studies:-

70% had 3 or more full one year subjects in legal studies or law.

2. At Monash University since 1975, 98 students have enrolled in Legal Studies Method. Those with sufficient background (according to the lecturer) totalled 81.

Insufficient background = no background,  
or  
Industrial Law only.

19% of exit students with Legal Studies Method over the 5 years have had no background in law except their teacher training.

3. At Melbourne University in 1979, of the 15 students taking Legal Studies Method, all except one have at least 3 full one year subjects in their studies.

20% had combined Arts/Law degrees.

4. Industrial Experience. It is becoming increasingly common for students entering Diploma in Education courses to have some industrial experience (compared with, say SCV Hawthorn).

Teacher Training      A - Pre-service  
                              B - In-service  
                              C - 'On the Job'

#### A. Pre-service

Typical structure of about 18 weeks includes both a legal studies component and teaching practice.      For example -

<u>Topic</u>	<u>Title</u>
1	Historical Development and Reasons for Teaching of Legal Studies
2	Courses in Legal Studies
3	Classroom Techniques, including Lesson Planning
4	Resources and where to find them.
5	Methods of Teaching - Formal, Group Work, Excursions
6	AV Resources, and other non-print resources
7	Micro-teaching
8	Methods - Assignments, Case Studies, Simulation, Role-Playing, Case Studies.
9	Evaluation in Legal Studies
10	Workshops - preparation of topics/units
11	Alternative courses.

Student Assignments - include such things as:

Observation/Reporting in the Classroom  
 Using equipment  
 Lesson preparation  
 Familiarising yourself with Legal Studies  
 Using newspapers, film, video, tapes etc.  
 Test construction  
 Organising a resource file.

SCV Hawthorn - programme organised differently; average age of students around 28 (College 32 years) and they teach full-time two days/week all year (up to 7½ hours per week).

Programme competency-based.

At all institutions some of the activities are integrated with, for example - Economics or Consumer Education.

NOTE: Legal content is incidental. No time, assumption that each has it.

#### B. In-service

Three areas provide ISE:-

- a. Victorian Commercial Teachers Association
- b. Education Department
- c. Other

a. Victorian Commercial Teachers Association provides extensive support at a range of levels. Ranges from inexperienced teachers; activities to specific content. Also back-up through COMPAK, and other publications.

b. The Education Department has only recently ventured into this area.

There is currently a 10 week course which runs 5pm-7pm on Tuesdays and which has attracted the maximum enrolment of 80. One hour content, followed by one hour method.

Future:                      Areas  
                                    Problems

c. Other

Monash Centre for Continuing Education  
La Trobe Diploma of Legal Studies.

#### C. 'On the Job'

'Those activities which increase a person's understanding of the teaching of Legal Studies, and which increase a person's knowledge of aspects of Legal Studies.'

## RESOLUTIONS

## Preamble

This seminar agrees that the majority of Australian children do not receive sufficient exposure to law-related education which would equip them with the basic understanding of the operation of the legal system. Such an education should provide students with a variety of learning experiences designed to promote the development of appropriate attitudes to law and society. A range of initiatives should be taken as a result of this seminar to suit the various authorities and to further develop the notion of legal/law-related education.

The Law Council of Australia be asked to consider establishing an on-going body which would undertake a role of co-ordination in law-related education in Australia; or that Australian Legal Education Council be requested to adopt that role. In the latter case the charter of the Australian Legal Education Council would need to be broadened to accept this role and also include substantial representation from school education.

That the Curriculum Development Centre be requested to call together a working party of representatives from all States and Territories to prepare a national directory of resources in law-related education, which would include:

- (a) courses being conducted with synopsis of content
- (b) resources available
- (c) in-service programmes
- (d) organisations involved in curriculum or resources development.

The directory should include reference as to availability of resources etc for use in all States and Territories.

The seminar supports the initiative being taken by the Australian Legal Education Council in its planning and preparation of a proposed national conference of law-related education and suggests that it would be highly appropriate to bring such a conference forward to be conducted at the end of 1979.

## PARTICIPANTS

Mr C.R. Bevan	Assistant Director (Training) Australian Institute of Criminology Canberra
Mr W. Brewer	Supervisor of Curriculum Centre Education Department 57 Brisbane Street Hobart            Tasmania
Mrs H. Bridgen	Nightcliff High School Ryland Road Nightcliff       N.T.
Ms S. Churchman	High School Education Law Project The Law Foundation of N.S.W. 282A Lyons Road Five Dock        N.S.W.
Mr I. Clunie	Tennant Creek Area School P.O. Box 546 Tennant Creek    N.T.
Mr T. Dusseldorp	Legal Eagle High School Education Law Project 282A Lyons Road Five Dock        N.S.W.
Mr M.C. Filan	Senior Training Officer Australian Institute of Criminology Canberra
Mr J. Goldring	College Fellow in Law School of Administrative Studies Canberra College of Advanced Education P.O. Box 381 Canberra City

Mr J. Gorman	Melrose High School Melrose Drive Pearce A.C.T.
Ms R. Graycar	S.A. Legal Services Commission Education and Research Office 24 Flinders Street Adelaide S.A.
Mr R. Hanna	Secretary Australian Commercial and Economics Teachers Association Copland College Copland Drive Melba A.C.T.
Mr R. Herschell	Research Officer Curriculum Branch Department of Education P.O. Box 33 North Quay Queensland
Mr R. Jackson	Dubbo South High School Boundary Road Dubbo N.S.W.
Mrs J. Kay	Principial Education Officer Curriculum Directorate Education Department G.P.O. Box 1152 Adelaide S.A.
The Honourable Mr Justice M. D. Kirby	Chairman Australian Law Reform Commission Box 3708 G.P.O. Sydney N.S.W.
Mr S. Kyburz	Teacher Legal Studies and Consumer Education Weston Creek High School Badimara Street Waramanga A.C.T.

Mr J.A. Leech	Staff Inspector (Secondary) Department of Education Treasury Building Box 33 P.O. North Quay      Queensland
Professor K.E.Lindgren	Professor of Legal Studies Head of Department of Legal Studies University of Newcastle Newcastle      N.S.W.
Mr J. McArthur	Curriculum Development Centre P.O. Box 632 Manuka      A.C.T.
Mrs E. McNally	Gymea Bay High School Gymea Bay      N.S.W.
Mr D. Murphy	Senior Master Christies Beach High School P.O. Box 71 Christies Beach      S.A.
Mr G. Power	Education Officer Curriculum Branch Education Department of W.A. Claver House 823 Wellington Street Perth      W.A.
Mr T. Purcell	Executive Director The Law Foundation of N.S.W. G.P.O. Box 4262 Sydney      N.S.W.
Miss H. Sanderson	Deputy Principal Para Hills High School Beafield Road Para Hills West      S.A.
Dr J. Seymour	Senior Criminologist (Legal) Australian Institute of Criminology Canberra
Mr M. Shanahan	Manager Education Division CCH (Aust) Ltd P.O. Box 230 North Ryde      N.S.W.

Mr M. Sherry	Technical Schools Division Department of Education Nauru House 80 Collins Street Melbourne                      Victoria
Mr R. Smith	Liaison Officer Law Consumers Association 62 Alfred Street Milsons Point                      N.S.W.
Mr J. A. Sonneman	Victorian Commercial Teachers Association 304 Nicholson Street Fitzroy                      Victoria
Mr G. Suitor	Launceston Matriculation College Launceston                      Tasmania
Ms J. Sharp	Producer Film Australia P.O. Box 46 Lindfield                      N.S.W
Mr D. Wallace	Senior Legal Officer Commonwealth Legal Aid Commission P.O. Box 1551 Canberra City                      A.C.T.





