

DIFFERENT SEATING CHARTS? THE PROCESS OF LEGAL EDUCATION AS REPRESENTED IN NEW ZEALAND AND UNITED STATES FICTION

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Both New Zealand and United States fiction examines the nature of legal education. After comparing and contrasting fictional representations in both jurisdictions, it is clear that there are more similarities than differences. Many of these similarities relate to the negative effects that the process of legal education has upon students. The Socratic Method serves as a ready symbol of this pedagogical failure, but it is only one of many ways in which New Zealand and United States fiction affirms the findings of legal education research. Fictional imaginings of law schools emphasise problems relating to teaching methods and teaching staff. As Duncan Kennedy has argued, the question of power permeates law school and heavily influences these problems. Confusing assessment, limited feedback, extremely high workloads, a lack of practical training, and emotional stress are all represented in New Zealand and United States fiction. There are some minor differences between the fictional representations from the two jurisdictions but the overall message is very similar. These are real issues and fiction portrays this in a powerful way. Legal educators in both jurisdictions should pay careful attention to fictional representations, in addition to education research, in the quest to improve law school teaching.

I INTRODUCTION

Legal education and legal fiction have much in common. First and foremost, the former appears as a subject in the latter. *The Paper Chase*¹ and *Legally Blonde*² are

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only the two most famous examples of a sub-genre of American legal fiction: law school fiction.³ These texts have proved popular tools for academics analysing the nature of American legal education.⁴ New Zealand written and visual fiction also contains references to legal education.⁵ These references raise pertinent issues about how law is taught and reveal some of the popular perceptions about law schools which exist (whether accurate or not). If the criticisms that exist in the texts have validity, then the texts perform an important function in highlighting them. As I have argued in previous work, fictional texts should be added to the conventional research literature available on legal education. They provide another source of information in an area of study which should utilise all available information. Fiction does not have all the answers to what are very complex problems, but if it can assist in the answering process, then it should not be ignored.

With a primary focus on fiction, this short article adopts an unconventional approach to analysing education practice and it is, therefore, important to explain

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- 1 *The Paper Chase* (directed by James Bridges, Twentieth Century Fox, 1973); John J Osborn *The Paper Chase* (Coronet Books, London, 1973).
 - 2 *Legally Blonde* (directed by Robert Luketic, Metro-Goldwyn-Mayer, 2001); Amanda Brown *Legally Blonde* (Time Warner, London, 2003); *Legally Blonde: The Musical* (Music and Lyrics by Nell Benjamin and Laurence O'Keefe, 2007).
 - 3 Other examples include George P Fletcher *The Bond* (Hart, Oxford, 2009); Lisa Scottoline *Daddy's Girl* (HarperCollins, New York, 2007); John Grisham *The Summons* (Arrow Books, London, 2002); *The Socratic Method* (directed by George Hunlock, Pothole Productions, 2001); *Rounders* (directed by John Dahl, Miramax International, 1998); Amanda Cross *An Imperfect Spy* (Ballantine Books, New York, 1995); *The Pelican Brief* (directed by Alan J Pakula, Warner Bros, 1993); John Grisham *The Pelican Brief* (Arrow Books, London, 1992); Michael Levin *The Socratic Method* (Simon and Schuster, New York, 1987); *Soul Man* (directed by Steve Miner, New World Pictures, 1986). While only some of these examples are set exclusively in a law school, all use a law school as an important part of the plot.
 - 4 Examples include William MacNeil *Lex Populi: The Jurisprudence of Popular Culture* (Stanford University Press, Stanford, 2007) ch 6; John J Osborn "Bleak House: Narratives in Literature and Law School" (2007) 52 *New York Law School Law Review* 339; Michael Vitiello "Professor Kingsfield: The Most Misunderstood Character in Literature" (2005) 33 *Hofstra Law Review* 955; David R Papke "Crusading Hero, Devoted Teacher, and Sympathetic Failure: The Self-Image of the Law Professor in Hollywood Cinema and in Real Life, Too" (2004) 28 *Vermont Law Review* 957; Christine A Corcos "'We Don't Want Advantages': The Woman Lawyer Hero and Her Quest for Power in Popular Culture" (2003) 53 *Syracuse Law Review* 1125; James R Elkins "Troubled Beginnings: Reflections on Becoming a Lawyer" (1996) 26 *University of Memphis Law Review* 1303; Stacy Caplow and Spencer Weber Waller "Images of Law School and Law Teaching in *An Imperfect Spy*" (1996) 8 *Yale Journal of Law and the Humanities* 261; Arthur D Austin "The Waste Land of Law School Fiction" (1989) 2 *Duke Law Journal* 495; Michael Ariens "The Politics of Law (Teaching)" (1988) 13 *Law and Social Inquiry* 773; Catharine W Hantzis "Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching" (1988) 38 *Journal of Legal Education* 155; Audrey Schwartz "The Paper Chase Myth: Law Students of the 1970s" (1985) 28 *Sociological Perspectives* 87.
 - 5 There are over 500 texts referenced in the New Zealand Law and Literature/Law and Visual Media Database: Grant Morris *New Zealand Law & Literature/Law & Visual Media Database* (2009) Victoria University of Wellington <www.victoria.ac.nz/lawlit>.

the methodological approach. By co-opting texts from New Zealand and United States fiction, legal education theory can engage with a more contextualised understanding of how law is taught. In this particular study, that understanding extends to identifying similarities and differences between the New Zealand and United States. As MacNeil argues, fiction can show us "alternatives for legal education".⁶

These texts can partly uncover the aims and outcomes of legal education by detailing the teaching approaches that exist in law school and then by exposing the nature of law school through the exaggeration of strengths and weaknesses. Consciously or subconsciously, readers are forced to confront problems in fictional literature that also appear in educational debates about the most effective way of learning the law. Each text, to a greater or lesser degree, urges us to question the effectiveness of legal education in New Zealand and the United States and the extent to which it is meeting the needs of students. What becomes clear is that the processes by which students learn, and the teachers whom they learn from, can fail to create an empathetic and nurturing learning environment.

Most New Zealand legal education studies criticise, or at least relay criticisms of, the approaches used by legal educators.⁷ This criticism can also be seen in United States discourse, and perhaps most famously, in the seminal work of Duncan Kennedy. Many of the negative aspects of legal education are located in the novels, short stories, films and television shows cited in this article. One New Zealand text in particular, *The Miserables* by Damien Wilkins,⁸ tackles the controversial Socratic Method of teaching, pioneered at Harvard Law School in the late 19th century and still practised at Victoria University of Wellington Law School (VUW).

Fictional literature can be used as a form of evidence to highlight issues in legal education. As legal educators, when we read legal fiction, our attention is drawn to critiques of legal education and, as Barthes would have it, we have the right as

6 MacNeil, above n 4, at 98.

7 Three articles in particular highlight the inadequacies of New Zealand legal education: Carmel Rogers "How Legal Education will Assault You as a Woman" (1993) 23 VUWLR 167; Leah Whiu "A Maori Woman's Experience of Feminist Legal Education in Aotearoa" [1994] Waikato Law Review 161; Caroline Morris "A 'Mean Hard Place?' Law Students Tell It as It Is" (2005) 36 VUWLR 197. An article that addresses the process of legal education at Victoria University of Wellington Law School (VUW) is Jennifer Moore "It Could Have Been Otherwise: Emphasising Student Empowerment (Voice, Agency and Needs) in Modern Legal Education" (2009) 2 New Zealand Law Students' Journal 131. Three of these four articles specifically relate to VUW. VUW is also the focus in most of the New Zealand fictional texts.

8 Damien Wilkins *The Miserables* (Victoria University Press, Wellington, 1993).

readers to interpret the texts in a multiplicity of ways rather than being constrained by seeking a single "true" authorial perspective.⁹

The methodology adopted for choosing texts for this article is relatively straightforward. For the New Zealand examples, the article draws on the New Zealand Law and Literature/Law and Visual Media database, completed in September 2009. This database is a comprehensive annotated bibliography of New Zealand's written and visual fictional texts containing legal references. Most New Zealand fictional texts have been examined and those containing legal references analysed and incorporated into the database. The database can be searched by topic and this article features those texts that refer to legal education. For the United States examples, the article uses a range of well-known and lesser known texts.

One important aspect that New Zealand and United States writers have focused on when portraying legal education is the process of education. This includes the method by which law is taught and also the effect that this method has on students. In analysing literary and visual media references, it is apparent that New Zealand and United States authors portray a powerful representation of legal pedagogy — powerful enough to shape popular perceptions. This article is structured in a way that highlights some of the key aspects of these pedagogical representations. Of particular interest is the role the Socratic Method plays. This is discussed in section two. Other important issues addressed in the texts form the content of sections three to six, including the relationship between lecturer and student, arbitrary and arduous assessment practices, the absence of practical training, and the negative impacts of legal education on students.¹⁰

II THE SOCRATIC METHOD

The Socratic Method continues to be used in contemporary legal education, although it has experienced a decline in recent years.¹¹ Traditionally, this teaching method involves the lecturer calling on students to answer questions. It is designed to make students prepare for lectures and be alert during them. Through answering questions, it becomes clear whether students understand the legal material. The Socratic Method also enables them to think clearly and concisely on their feet, training them for the public speaking required in legal practice. Rosato defines the

9 Roland Barthes *Image, Music, Text* (Stephen Heath (ed) trans, Noonday Press, New York, 1977).

10 Similar issues are discussed in Duncan Kennedy "Legal Education as Training for Hierarchy" in David Kairys (ed) *The Politics of Law* (Pantheon Books, New York, 1982) 54.

11 Morrison Torrey "You Call that Education?" (2004) 19 Wisconsin Women's Law Journal 43 at 43.

method as "education by interrogation".¹² Similarly, Kennedy claims that the Socratic Method is an "assault" on students who experience humiliation when unable to answer a question, often leading to the dehumanisation and mystification of the law.¹³ The Socratic Method exaggerates the unequal relationship between teacher and student, as the teacher is seen in a position of obvious power and authority.

There has been a significant move away from this teaching style to a watered-down version, which embraces techniques to lessen the anxiety of being called upon; for example, being able to pass on a question.¹⁴ The Socratic Method has been rejected and deemed outdated in some law schools. Nevertheless, it serves a vital role at other law schools: for example, VUW and Harvard Law School. These two law schools will be used as the principal examples in this article. Both law schools dominate fictional representations of legal education in their respective jurisdictions. Possible reasons include historically strong reputations and the use of the theatrical Socratic Method, a teaching approach well suited to the drama and tension required for fictional works.¹⁵ It is almost as if the VUW and Harvard models act as symbols of law teaching for the general public, whether representative of usual practice in legal education or not.

New Zealand legal fiction provides valuable insights into the New Zealand version of the Socratic Method. VUW is the only New Zealand law school that consistently uses this teaching approach.¹⁶ New Zealand's Socratic Method is less abrasive than that seen in American representations which are usually set at the home of Socratic teaching, Harvard Law School.¹⁷ Despite this, there is still a focus on the Kennedy-like depiction of the Socratic Method, an adversarial game in

12 Jennifer Rosato "The Socratic Method and Women Law Students: Don't Feminize" (1997) 7 Southern California Review of Law and Women's Studies 37 at 40.

13 Duncan Kennedy "How the Law School Fails: A Polemic" (1970) 1 Yale Review of Law and Social Action 71 at 73.

14 Vitiello, above n 4, at 957; Torrey, above n 11. See also Orin S Kerr "The Decline of the Socratic Method at Harvard" (1999) 78 Nebraska Law Review 113 at 125–126.

15 MacNeil, above n 4, at 98.

16 Amelia Keane "The Socratic Method or 'How to Put Up Your Hand in Class'" in Ed McGimpsey (ed) *Insider's Guide to Law School 2009* (Victoria University of Wellington Law Students' Society, Wellington, 2009) 9 at 9.

17 See *The Paper Chase*, above n 1; Osborn, *The Paper Chase*, above n 1; *Legally Blonde*, above n 2; Brown, above n 2.

which teachers show that they have the answers and power.¹⁸ There is one comprehensive example in New Zealand legal fiction that portrays the significance of the Socratic Method. Damien Wilkins, in his novel *The Miserables*, describes it in the following passage:

In the law class at university, a seating plan was instituted in the large lecture hall ... Healey saw how this opening of the sheet which contained the seating plan affected everyone in the room, fixing in their minds the image of themselves answering a question when their name was called ... Healey could see that the friend who sat next to him in class, although he said that he also feared the so-called Socratic Method, was really learning how to imagine himself five or ten years from then, a trick which Healey himself could never master.¹⁹

The Socratic Method is one way in which students are "transformed" into lawyers. Wilkins' representation of the Socratic Method portrays the "sado-socraticism" of legal education²⁰ but more subtly than the vivid representation of Elle Woods²¹ and James Hart's²² "first class of their first day of their first year at law school".²³ Wilkins' deft handling of this idiosyncratic teaching approach effectively portrays the social conditioning and power relations discussed above. The reader is exposed to Healey's detachment and alienation in a way that empirical research literature would struggle to replicate.²⁴ In comparison, in *Legally Blonde*, Professor Stromwell begins questioning Elle Woods at her very first lecture at Harvard Law School. Elle is unable to answer the question as she is clearly unprepared. As a result, Stromwell humiliates Elle, asking her to leave the class. She also encourages another member of the class, Vivian, to condemn Elle's lack of preparation. In *The Paper Chase*,²⁵ Hart also turns up to his first Harvard

18 Duncan Kennedy *Legal Education and the Reproduction of Hierarchy: A Polemic against the System* (Afar, Cambridge (Mass), 1983) at 61.

19 Wilkins, above n 8, at 104.

20 MacNeil, above n 4, at 100.

21 *Legally Blonde*, above n 2; Brown, above n 2.

22 *The Paper Chase*, above n 1; Osborn, *The Paper Chase*, above n 1.

23 MacNeil, above n 4, at 99. See also *Legally Blonde*, above n 2; Brown, above n 2; Moore, above n 7 and Keane, above n 16.

24 See also *Scarflies* (directed by Robert Sarkies, Essential Films, 1999) at 0:58:00. A large lecture is presided over by an authoritarian professorial presence, with the lecturer speaking formally to a class about the importance of ratio decidendi. For a discussion of the "pedagogic stress" involving anxiety and fear which results from this method of teaching, see Edward Rubin "Balancing Symposium: Curricular Stress" (2010) 60 *Journal of Legal Education* 110 at 114.

25 Above n 1, at 0:03:00.

Law School lecture unprepared. Professor Kingsfield makes him stand up to answer a question and mocks Hart by telling him to "fill this room with your intelligence". Immediately after class, Hart rushes into the nearest restroom to vomit. There are several Socratic exchanges between Kingsfield and Hart in the film, all of them emphasising the confrontational and intimidating nature of Socratic teaching.

It would be easy to conclude that the more aggressive Socratic style found in *Legally Blonde* and *The Paper Chase* reflects the supposed extroverted nature of Americans in general and, conversely, the less aggressive New Zealand style reflects New Zealander's stereotypical "laconic" nature. Despite this rather subtle comparative difference, both styles are essentially portrayed as terrifying for students, and pedagogically dubious.

III THE RELATIONSHIP BETWEEN LECTURER AND STUDENT

The relationship between lecturer and student is obviously central to the process of legal education. This relationship is portrayed by New Zealand and United States writers as inherently unequal with a substantial power differential. Legal education is definitely not an example of mutual learning. Representations mirror Kennedy's depiction of the teacher-student relationship as "master and disciple"²⁶ and MacNeil's Lacanian interpretation positing the teacher as "Master".²⁷ Kennedy asserts that this type of relationship has the potential to be either "fruitful and satisfying or degrading or both at once".²⁸ Witi Ihimaera's *The Dream Swimmer* portrays the relationship as degrading. Tamatea, a young Maori law student at VUW, encounters "lecturers and professors whose attitudes, questions or statements bordered on racist".²⁹ The in-class argument that Tamatea has with a law lecturer regarding the way the legal system exploits Maori highlights disturbing dynamics between lecturer and student:³⁰

[Tamatea:] 'Sir, it is not correct to consider New Zealand prior to the Pakeha as being uncivilised and needing a legal framework. We, the Maori, had a system of law based on tapu, noa and hierarchical structures'.

26 Kennedy "How the Law School Fails", above n 13, at 73.

27 MacNeil, above n 4, at 98. MacNeil's chapter is heavily influenced by the theories of French psychoanalyst, Jacques Lacan.

28 Kennedy "Legal Education as Training for Hierarchy", above n 10, at 68.

29 Witi Ihimaera *The Dream Swimmer* (Penguin, Auckland, 1997) at 313.

30 At 326.

The lecturer was patronising. 'I take your point', he answered, 'but English settlers provided a better law for Maori people'.

'But if your laws are better than ours', I asked, 'Why are we worse off? Why are we suffering? Why do we no longer have our land? Where are our rights?'

The lecturer deflected the question with charming urbanity and forgiveness. I threw the force of my anger at him.

The lecturer is patronising and voices without hesitation his ethnocentric views. Despite this power imbalance, Tamatea is able to challenge his lecturer by questioning his point of view, using the Socratic environment to make his voice heard.

Tamatea's relationship with his lecturer has similarities with the Hart-Kingsfield relationship in *The Paper Chase*.³¹ When Hart is unable to answer a question properly in class, Kingsfield calls him down to the front and says, "Go call your mother, and tell her you'll never be a lawyer". In reply, Hart screams, "You're a son of a bitch, Kingsfield". This futile student defiance against authority merely emphasises the unequal relationship between lecturer and student. In one of the final scenes in the film, Hart and Kingsfield share a lift. Hart compliments Kingsfield on his class. Kingsfield replies by asking Hart for his name, despite their frequent Socratic encounters and Hart's short-lived career as Kingsfield's research assistant. Kingsfield has no interest at all in equalising the unequal relationship.

In many United States texts, students experience intimidating and distant teachers. Elle Woods in *Legally Blonde* is taught by the arrogant and exploitative Professor Callahan and the strict disciplinarian Professor Stromwell.³² Mark Watson, in the 1980s comedy *Soul Man*, is taught by the particularly gruff Professor Banks.³³ Both Stromwell and Banks turn out to be decent people willing to help a student in trouble but that does not make their pedagogical style any less alienating. The question here is not whether these teachers are good or bad people, but whether they are good or bad teachers. As to be expected, there are exceptions to this unforgiving line-up of harsh lecturers. Professor Petrovsky in *Rounders* is portrayed not only as a wise and gentle mentor but also as a kind and perceptive

31 *The Paper Chase*, above n 1, at 1:37:00. See also representations of American professors: Scottoline, above n 3; Cross, above n 3; *Legally Blonde*, above n 2; Brown, above n 2; *The Pelican Brief*, above n 3; Grisham, *The Pelican Brief*, above n 3; John Grisham *The Rainmaker* (Arrow, London, 1995); *The Socratic Method*, above n 3; Levin, above n 3; *Soul Man*, above n 3; Grisham, *The Summons*, above n 3; *Rounders*, above n 3.

32 *Legally Blonde*, above n 2.

33 *Soul Man*, above n 3.

teacher.³⁴ Professor Nat Greco in *Daddy's Girl* purposely departs from the traditional law lecturer stereotype when she inspires her class by making them act out the trial scene from Shakespeare's *The Merchant of Venice*.³⁵ Greco appears to be an ineffective teacher until this transformative moment.

Despite these few exceptions, it is the Kingsfield model that dominates fictional portrayals of legal educators. The Kingsfield model is the popular stereotype of the law teacher. Fictional portrayals from both jurisdictions emphasise power and way that power is used by law lecturers to assert dominance over law students. This is particularly apparent in Socratic teaching environments, which appear to exacerbate the power differential between staff and student.

IV ASSESSMENT PRACTICES: ARBITRARY AND ARDUOUS

New Zealand and United States writers of fiction portray assessment in law schools as arbitrary, having the effect of instilling self-doubt in students. Kennedy argues that students merely receive a grade on a single examination and, ultimately, there is no correlation between the grade and "how much you worked, how much you liked the subject, how much you understood going into the exam, and what you thought about the class and the teacher".³⁶ This inability of students to fully understand how to succeed in law is exemplified by Brett Healey in *The Miserables*. Healey comes to the realisation that when writing legal assignments, "it seemed to make no difference as to the quality of the prose in which these words were discovered".³⁷ Furthermore, when he receives his marked assignment, he "first felt surprised that he had passed, then disappointed that he hadn't achieved a better mark".³⁸

This frustration with assessment transcends jurisdictions as Kevin Brooks in *The Paper Chase* struggles with law and cannot achieve good grades despite his diligence and excellent memory recall. In the filmatic version of *The Paper Chase*, the final scenes show Kingsfield reading Hart's paper, which reflects the entirety of Hart's arduous year of Contract Law study. Kingsfield notes a few numbers on the paper then simply places an "A" on the front cover. Upon receiving the envelope containing the grade, Hart throws the unopened envelope into the ocean.³⁹ This

34 *Rounders*, above n 3.

35 *Daddy's Girl*, above n 3, at 1-8.

36 Kennedy "Legal Education as Training for Hierarchy", above n 10, at 63.

37 Wilkins, above n 8, at 110.

38 At 110.

39 Above n 1, at 1:47:00.

action could symbolise Hart's loss of faith in the way in which he has been taught and assessed during his first year at Harvard Law School. The earnest student seen at the beginning of the film has become cynical about legal education, and in particular, the arbitrary nature of grading.

These examples from both New Zealand and the United States suggest that many students believe law assessment merely reflects some inherent ability and that the quest to have control over their grades is futile.

New Zealand and United States writers of fiction emphasise how much work law school entails. Law students are usually depicted as slaving away, spending hours on their law readings and preparing for assignments. Zena in *The Waimate Conspiracy*,⁴⁰ Caro in *Book Book*,⁴¹ Ted in *Mortmain*,⁴² Kohimarama in *He Tangi Aroha*,⁴³ Cam in *A Red Silk Sea*⁴⁴ and the second- and third-year law students in *The Miserables*⁴⁵ all comment on how demanding a law degree is.⁴⁶ The following passage from *Book Book* alludes to the amount of dense work involved in a law degree:⁴⁷

Caro was doing law. The books on her desk were enormous, dense with detail: Adams on Criminal Law. Cheshire and Fifoot ... It should have been interesting: The Carbolic Smokeball Case! Donoghue v. Stevenson! Frazer v. Walker! But in reality, the discussion revolved around tiny points of debate. There was no grand sweep, not around the kitchen table at any rate, no sparkling dialogue, no revelatory climax, just dry resolution and precedent.

In this respect, New Zealand literature reflects the reality of law school. It is hard work and, substantively, it can also be rather dry.⁴⁸ Repetition of these

40 *The Waimate Conspiracy* (directed by Stefen Lewis, Dark Horse, 2006).

41 Fiona Farrell *Book Book* (Random House, Auckland, 2004) at 257.

42 Judy Corbalis *Mortmain* (Random House, Auckland, 2007) at 184.

43 Apirana Taylor *He Tangi Aroha* (Huia, Wellington, 1993) at 125.

44 Gillian Ranstead *A Red Silk Sea* (Penguin, Auckland, 2005) at 322.

45 Wilkins, above n 8, at 106.

46 In *The Waimate Conspiracy*, above n 40, at 0:48:00, Zena states that she "worked flippin hard to get through that law school George". See also Taylor, above n 43, at 125: Pitama says of law student Kohimarama, "You've done nothing but work, work, work".

47 Farrell, above n 41, at 257.

48 See also Graeme Lay *The Fools on the Hill* (Century Hutchinson, Auckland, 1998) at 22–23. Simon, a law student, is consistently spending time on assignments and preparing for law exams and finds the lectures

stereotypes through fiction, accurate or otherwise, potentially creates a self-fulfilling prophecy; that is, law schools are like they are because that is what the public expects them to be.

United States fiction also stresses the incredibly demanding hours worked by law students, especially at the ubiquitous Harvard Law School. In *The Firm*, Mitch's wife Abby is told by a friend that "...I'll show you some of the partners' homes. When you see them, you won't mind the eighty-hour weeks [that Mitch will work at the firm]." With reference to Mitch's law school workload, Abby replies, "I'm used to them now."⁴⁹ In the musical version of *Legally Blonde*, Elle's mentor/tutor, Emmett, sings a big number in which he stresses the huge amount of work involved in legal study, including the line, "There's just no way around it, you've got to plough through."⁵⁰

V ABSENCE OF PRACTICAL TRAINING

Kennedy argues that skills taught at law school do not prepare students for the practical side of becoming a lawyer.⁵¹ Students mistakenly believe that they are coming to law school to be fully equipped to become a successful lawyer. Many students would like the law degree to provide comprehensive practical training. On the other hand, there are those students who prefer not to be taught with the assumption that they will become practising lawyers.

New Zealand fiction rarely touches on practical training as part of the law school curriculum. There are only two specific references to a moot court exercise. Healey's law school friend in *The Miserables* speaks of the "fearful second and third years of law, in which there were mock trials and endless opportunities to be called upon by name to act as a lawyer".⁵² *Just Jane* by James Duncan depicts a group of female law students who act for the prosecution in a mock trial of an industrial company for polluting a river.⁵³ The lack of references to practical

boring and the lecturers incompetent: "You should hear the one we've got for Jurisprudence. He's an utter fool."

49 John Grisham *The Firm* (Arrow Books, London, 1991) at 22, see also *The Firm* (directed by Sydney Pollack, Paramount Pictures, 1993).

50 The song title is "Chip on My Shoulder": *Legally Blonde: The Musical*, above n 2.

51 Kennedy "Legal Education as Training for Hierarchy", above n 10, at 60. This lack of practical training is also discussed in Kennon Sheldon and Lawrence Krieger "Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory" (2007) 33 *Personality and Social Psychology Bulletin* 883.

52 Wilkins, above n 8, at 106.

53 James Duncan *Just Jane* (James Duncan, Mahau Sound, 1996) at 56.

training reflects the limited emphasis that is placed on this type of training in a New Zealand law degree.

In the pilot episode of New Zealand legal drama *Street Legal*, Tim O'Connor is a recently graduated law student who is about to start work at Wyeth & Associates. On his first day of work, Tim meets David Silesi who gets him to defend a client on a traffic charge. The judge picks up on Tim's inexperience and lack of ability. David states: "this isn't law school, this is real life".⁵⁴ This suggests that law school does not prepare students for the practical side of becoming a lawyer.

However, some United States texts tend to exaggerate the extent to which law school practically prepares students to become lawyers. This enables a director to create dramatic effect whilst audiences are (mis)led to believe that law students are capable of handling complex legal matters such as court trials. For example, Elle Woods successfully acts for the defence in a murder trial.⁵⁵ It is highly unlikely that a law student would be capable of defending an alleged murderer. Similarly, John Grisham in *The Firm*⁵⁶ unrealistically portrays a law graduate, Mitch McDeere, as able to handle complex taxation transaction matters.

This emphasis on the practical benefits of legal education is not uniform across the United States texts. Some representations are more in line with New Zealand ones. For example, in John Grisham's *The Rainmaker*, Memphis State University law student Rudy Baylor laments:⁵⁷

Law school is nothing but three years of wasted stress. We spend countless hours digging for information we'll never need. We are bombarded with lectures that are instantly forgotten. We memorize cases and statutes which will be reversed and amended tomorrow. If I'd spent fifty hours a week for the past three years training under a good lawyer, then I would be a good lawyer. Instead, I'm a nervous third year student afraid of the simplest of legal problems and terrified of my impending bar exam.

VI NEGATIVE IMPACTS ON STUDENTS

The effects of the legal education process on students can lead to a "hostile, pressured social and educational environment that is destructive to the individual

54 'Hit and Run', *Street Legal* (directed by Chris Bailey, Screenworks, 2000).

55 *Legally Blonde*, above n 2; Brown, above n 2.

56 *The Firm*, above n 49.

57 Grisham *The Rainmaker*, above n 31, at 26–27.

student ... they become competitive, hostile and aggressive".⁵⁸ MacNeil argues that law school not only trains for hierarchy, but also for hysteria.⁵⁹ This hysteria is captured in *The Miserables* when Healey speaks of students complaining about law tutors, "a complaint which really had to do with the speed at which their dreams were receding from them, a feeling not dissimilar from being shut out by a foreign language".⁶⁰ Similarly, Ted Thurston in *No Escape* shows that this "hysteria" can take the form of jealousy, indicating the lengths law students will go to get ahead of their peers. The following extract demonstrates the jealousy law students can have towards students who are more successful:⁶¹

All my hopes and aspirations lay in that scholarship, and when Roderick Temple came out a good 10 per cent better than I the whole world seemed to come crashing about my head. I think it was the thought, too, that Temple would have access to all the things I loved so well.

Years later, Thurston gives false evidence at a military trial against Temple, leading to Temple's execution. The motivation for this was the bitterness the protagonist still felt after Temple was more successful than him at law school. Here, the effects of legal pedagogy are not only confined to the 'destruction of the individual' but also extend to the premeditated destruction of another student. The power of what is effectively a parable exaggerates the "hysteria" while simultaneously forcing the reader to confront the issue.

58 Schwartz, above n 4, at 92. There has been much scholarship on the severe mental effects a law degree has on students. Legal education can lead to detrimental effects on health, eventually leading to depression. The high workload, extremely high standards students set themselves coupled with self-criticism, the high level of competitiveness, the emphasis placed on good grades, and the lack of social connection leads to a loss of autonomy, self-worth and sense of self. Sheldon and Krieger argue that "the intense pressures and competitive success norms at most law schools begin a process that reorients students away from positive personal values and towards more superficial rewards and image-based values, leading to a loss of self-esteem, life satisfaction, and well-being": Kennon Sheldon and Lawrence Krieger "Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-being" (2004) 22 *Behavioral Sciences and the Law* 261 at 263. For a discussion of the effects of law school on students' wellbeing generally, see the preceding article and also Kennon Sheldon and Lawrence Krieger "Understanding the Negative Effects of Legal Education on Law Students", above n 51; Massimiliano Tani and Prue Vines "Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?" (2009) 19 *Legal Education Review* 3 at 17–20; Kenneth Rice and others "Perfectionism, Stress and Social (Dis)Connection" (2006) 53 *Journal of Counseling Psychology* 524 at 524; Martin Seligman *Authentic Happiness* (Free Press, New York, 2004) at 177.

59 MacNeil, above n 4, at 99.

60 Wilkins, above n 8, at 107.

61 Marion Davidson "No Escape" in John Kingston (ed) *Pataka: Selected Short Stories by New Zealand Authors* (K System Publishing, Auckland, 1936) 37 at 40.

Similarly, in *Legally Blonde*, Vivian assists in sadistically humiliating Elle Woods in the first class of the year. Vivian agrees with the lecturer that Elle should leave due to lack of preparation.⁶² A more accurate representation (because it is less extreme) can be seen in *The Paper Chase* when Hart's study group breaks up with one reason being the students become worried that helping others will pose a threat to their placing in the class.⁶³

In many ways, New Zealand and United States fictional depictions of the process of education reflect the reality of how law is taught in particular law schools. For example, the New Zealand version of the Socratic Method is accurately portrayed through Healey's VUW experience in *The Miserables*.⁶⁴ *The Paper Chase* is dated but captures the pressure-cooker environment of Harvard Law School during the 1970s, confirmed by several best-selling non-fiction memoirs.⁶⁵ As is to be expected, there are the exaggerations and simplifications inherent in the process of fiction writing. Some of the examples cited simply illustrate the challenging nature of a professional degree, but others indicate that the process of legal education is more than just a challenge to be undertaken.⁶⁶ It can have detrimental effects on students. As legal educators, we can acknowledge these fictional voices in our quest to create a more accessible and effective learning experience.

VII CONCLUSION

A comparative study of New Zealand and United States fiction shows more similarities than differences in the portrayal of legal education. The fiction in both jurisdictions paints a worrying picture of way in which law students learn and the way in which law teachers teach. The most powerful fictional representations relate to the Socratic Method as practiced at Harvard and VUW law schools. The Socratic Method is used to symbolise the oppressive nature of legal education in both jurisdictions. While exaggerated for the purposes of fiction, the portrayals resonate with real-life educational research. The United States portrayals are harsher and more dramatic than in New Zealand as perhaps befits the home of this "infamous" teaching method.

62 *Legally Blonde*, above n 2.

63 *The Paper Chase*, above n 1, at 1:19:00.

64 Wilkins, above n 8.

65 For example, see Scott Turow *One L* (Putnam, New York, 1977).

66 Moore, above n 7, at 150. Moore compares legal and medical education and concludes that medical education is more nurturing.

Not surprisingly, the process by which students are taught is largely mirrored in the nature of the people who teach them. Relationships between law lecturers and students are portrayed as unequal, unsatisfactory and out-dated in both jurisdictions. Kennedy's claim that power relations dominate law schools is confirmed if these fictional representations reflect reality.

Assessment in law schools is another symbol of legal education's oppressive and bewildering nature. Law school assessment is portrayed in both jurisdictions as arbitrary and arduous. The work involved in legal education seemingly overwhelms every aspect of a student's life, undermining any hope of a "work-life" balance and, as Kennedy might argue, grooming students for law firm culture. In New Zealand fiction, this inadequate assessment approach is exacerbated by a complete lack of practical training, to the chagrin of law students. While practical skills training does actually occur in New Zealand law schools, it is very limited, which is a source of frustration for many students. In one of the few clear divergences between the two comparative jurisdictions, some United States fiction actually over-emphasises the amount of practical training received by law students.

This host of unsatisfactory pedagogical factors culminates in negative impacts on student learning. MacNeil's use of the term "hysteria" is perhaps an accurate summary of the overall effects of the above issues on the fictional law students. Again, both New Zealand and United States studies show a disproportionately high level of psychological stress amongst law students and suggest that fiction is mirroring fact, albeit in an exaggerated fashion.

New Zealand and United States legal educators should pay close attention to fictional representations of legal education. If, as argued in this article, there is some truth in the portrayals, then legal education has some serious problems that need to be addressed, in particular, the way in which the process of legal education impacts upon students.

