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Notes for contributors

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Foreword

Welcome to the second edition of the Journal for 2004.

The Edinburgh 2004 conference:

The continuing success of the Journal was reflected in the continuing success of the Journal's international clinical conferences. The second of these was held in Edinburgh in the Summer of 2004 and attracted delegates from across the world, with papers from jurisdictions as diverse as the United States and Uganda, South Africa and the South Pacific. The broad theme of the conference – Who benefits from clinic? – was broad enough to encompass wide-ranging reviews of the development of the clinical method in legal training and of the development of a Best Practice models for clinic, alongside more narrowly focused papers on the development of clinical representation at housing representation schemes, and the particular issues of sustainability in setting up clinics in law schools.

This edition of the Journal:

This edition of the Journal draws on both this year's conference and on last years' – with Roy Stuckey's masterful review of the development of legal education in the US and the UK, and its consequent impact on the development of clinic; with Hugh Brayne and Adrian Evans' paper on the development of a Quality-lite model for clinics; and with Liz Curran's paper from the previous year's London conference looking at the development of law reform work within one Australian clinic. Alongside these papers, readers will also find food for thought in Ross Hyam's review of the potential for case management and assessment software to be used within law clinics as an integral part of the clinical process. Finally, in the student review section, there is a short article from Martin Wilson, a Northumbria University student, who was in the enviable position of having won the first Irwin Mitchell International Clinical Scholarship, a generous £1000 award which funded Martin to spend a month during the Summer of 2004 attending the Springvale law clinic at Monash University, enabling Martin to reflect on the student experience at two different types of clinic in two different legal jurisdictions. His paper is a valuable reminder to all who work in clinic of how much we can all learn from one another.

Change of Editor:

This is the first edition of the Journal where I have taken the helm as Editor. I could not be more fortunate in my predecessor, Cath Sylvester, who will be known to many of the readers of the Journal. Cath was the founder editor of the Journal, customarily a thankless task – but one which she carried out to the highest standard. The success of the Journal has been due to her hard work over the first years of the Journal's publication, and to the support of the impressive editorial board which she put together. I know that I will be reliant on that work and on her continuing advice and support in the production of these future editions of the Journal.

The 2005 IJCLE conference – Melbourne, 13–15th July 2005

Building on the huge success of the London and Edinburgh conferences in 2003 and 2004, the 2005 conference is to be held in conjunction with the 8th Australian clinical legal education conference in Melbourne, Victoria, Australia.

The title of the conference is: *Flowers in the Desert: Clinical Legal Education, Ethical Awareness and Community Service* and the conference will bring together justice educators, clinical legal educators, NGOs, community legal centres, legal aid lawyers and legal ethicists from both hemispheres, with the objective of expanding the impact of clinical legal education, operating in a multi-disciplinary ethical framework, in the re-invigoration of legal education, justice education and client service. Specific themes for the conference will include the clinical-ethics interface, clinical sustainability, specialist clinics, political pressure on clinical programs, justice clinics, clinics as Trojan horses in legal education, the clinical IT environment, innovation and evaluation.

The conference dates are 13 – 15 July 2005, and the conference will take place at the Novotel, St Kilda, Melbourne. The registration fee will be $AU 330 for payment by 31st March 2005, $AU 420 thereafter. Full information will be distributed in January–February 2005. In the meantime, enquiries from those who are interested in submitting papers or in attending, are welcomed by the Conference Co-Convenors: Adrian Evans, Monash (adrian.evans@law.monash.edu.au) and Philip Plowden, Northumbria University (philip.plowden@northumbria.ac.uk).

We look forward to seeing you there!

Philip Plowden

Editor

The Evolution of Legal Education in the United States and the United Kingdom: How one system became more faculty-oriented while the other became more consumer-oriented.

A story of British military failure, Jacksonian Democracy, elitism, snobbism, Thatcherism, bigotry, political intrigue, the Great Depression, World War II, and, most of all, the Germans.

*Roy Stuckey**

* *Professor of Law, University of South Carolina School of Law, USA.* *A draft of this article was presented at the Conference on Clinical Legal Education sponsored by the International Journal of Clinical Legal Education in Edinburgh, Scotland, on July 14–15, 2004. I appreciate the encouragement of the Journal's staff, especially its editor, Philip Plowden. I owe thanks to Paul Maharg and Nigel Duncan for referring me to helpful resources in the United Kingdom. My research assistant Camey Everhart provided diligent and thoughtful support in preparing the article.*

Introduction

Who benefits from legal education? In most British Commonwealth countries, law schools could reasonably claim that the beneficiaries of their services are their students and, to some extent, the legal profession. A law school education provides a basis for learning to be a lawyer, but the profession is responsible for preparing law graduates for practice. Even the vocational programs run by organizations of practicing lawyers do not shoulder the full responsibility for practice preparation because no law graduate is allowed to practice law without serving a period of time working under the supervision of an experienced lawyer. As a general matter, the public has reason to believe that new lawyers are adequately prepared to provide legal services.

In the United States, law schools bear the entire burden of preparing students for practice, therefore, they should be striving to serve the interests of their students, their students' future employers, their students' future clients, and the public in general. In short, everybody who may be affected by the work of lawyers. Unfortunately, the educational goals and methods of most law schools in the United States are not designed to prepare students for practice, other than with large firms or governmental agencies that have the resources to complete their education and training. Consequently, newly admitted lawyers in the United States are ill-prepared to represent common people who have common legal problems. Although law schools in the United States are not adequately meeting the needs of their students or most other constituencies, the members of law faculties are quite happy with the structure of legal education. It serves their personal needs quite well.

From common roots, the United States and the United Kingdom developed very different systems for preparing lawyers for practice. Around the time when we took different paths in the late 1800s,

James Bryce wrote, "I do not know if there is anything in which America has advanced more beyond the mother country than in the provision she makes for legal education."[1] If Bryce's evaluation was ever valid, he would likely change his opinion today.

This paper explores how our approaches to preparing lawyers for practice became so different. It traces the evolution of the systems for preparing lawyers for practice in the United Kingdom and the United States, and it examines the relative merits of our current situations. Part I describes the key differences in our systems. Part II recounts major events in the histories of legal education in the United States and the United Kingdom. Part III describes new initiatives in the United Kingdom and the United States that may improve legal education.

Part I: The Processes for Becoming a Lawyer in the United Kingdom and the United States[2]

This section highlights the most dramatic differences between the processes for educating and training lawyers in the U.K. and the U.S. The descriptions are purposefully oversimplified to avoid burying the reader in details.[3]

the undergraduate stage

In the United Kingdom and the United States, a prospective lawyer begins the process of becoming a lawyer around the age of eighteen years by entering college and receiving a degree three or four

1 *James Bryce, THE AMERICAN COMMONWEALTH, Vol. II, 503 (2nd ed. McMillan & Co. 1891).*

2 *Rather than including repetitive, lengthy citations, I am listing here my primary sources for the information in this section. My source of information about the education of United States lawyers is my personal knowledge acquired during thirty years of law teaching and accreditation work. For English and Welsh solicitors: Nigel Duncan, Gatekeepers Training Hurdlers: The Training and Accreditation of Lawyers in England and Wales, 20 GA. ST. U. L.. REV. 911 (2004); Nigel Savage, The System in England and Wales, 43 S. TEX. L. REV. 597 (2002); the website of the Law Society of England and Wales, Qualifying as a Solicitor, http://lawsoc.org.uk/dcs/ (last visited June, 2004). For Scottish solicitors: Paul Maharg, Professional Legal Education in Scotland, 20 GA. ST. U. L.. REV. 947 (2004); the website of the Law Society of Scotland, How to Become a Scottish Solicitor, http://www.lawscot.org.uk/edu_train/NEW_howtobecome.html (last visited June, 2004). For Irish and Northern Irish solicitors: Paul A. O'Connor, Legal Education in Ireland, 80 MICH. B. J. 78 (2001); the website of the Institute of Professional Legal Education at Queens University Belfast, www.qub.ac.uk/ipls/About Us.htm; the website of the Law Society of Ireland, www.lawsociety.ie. For English barristers: Nigel Duncan, Gatekeepers Training Hurdlers: The Training and Accreditation of Lawyers in England and Wales, 20 GA. ST. U. L.. REV. 911 (2004); Nigel Savage, The System in England and Wales, 43 S. TEX. L. REV. 597 (2002); the website of the General Council of the Bar, Legal Education, http://www.legaleducation.org.uk/ (last visited June, 2004). For Scottish advocates: Paul Maharg, Professional Legal Education in Scotland, 20 GA. ST. U. L.. REV. 947 (2004); the website of the Faculty of Advocates, Entrance Requirements and Education and Training http://www.advocates.org.uk/web/t&ed.htm (last visited June, 2004). For Irish and Northern Irish barristers: Paul A. O'Connor, Legal Education in Ireland, 80 MICH. B. J. 78 (2001); the website of the Institute of Professional Legal Education at Queens University Belfast, www.qub.ac.uk/ipls/About Us.hem; the website of the Bar Council for Ireland, www://barcouncil.ie. Slightly less current sources: Alexander J. Black, Separated by a Common Law: American and Scottish Legal Education, 4 IND. INT'L & COMP. L. REV. 15 (1993); Sandra R. Klein, Legal Education in the United States and England: A Comparative Analysis, 13 LOY. L.A. INT'L & COMP. L. J. 601 (1991); Paul A. O'Connor, Legal Education in Ireland, 80 MICH. B. J. 78 (2001); Clive Walker, Legal Education in England and Wales, 72 OR. L. REV. 943 (1993).*

3 *Despite my intentional oversimplification, I am concerned about clarity and accuracy. The materials I used were sometimes incomplete or vague about details. Therefore, I invite you to let me know where I have failed to present this information clearly and accurately. My email address is: Roy@law.law.sc.edu.us.*

years later.[4] In the United States, there is no prescribed college course of study. A prospective U.S. lawyer can spend his or her college years studying any subject that leads to a degree including, for example, physical education, forestry, or culinary arts.

There has never been a serious effort to mandate a prelaw course of study for undergraduate students in the United States. A mandatory prelaw program would be difficult to impose because each of the fifty states sets its own bar admission rules and different states would be likely to enact different prelaw requirements. Therefore, students who attended college in one state might have difficulty qualifying for admission to law school in another state.

The issue of prelaw requirements has come up from time to time in the United States. In 1909, a committee of the Association of American Law Schools (AALS) concluded that the AALS should not prescribe certain courses or extra curricular activities for prospective law students most importantly, according to the committee, because "any attempt to prescribe a single course of preparatory work would be invalidated by the fact that the quality of instruction necessarily varies among subject matter areas and among schools."[5]

Alfred Reed argued in 1921 that law students should have a general liberal education before law school, even if it is not a necessary pre-requisite for them to succeed in law school. He rather eloquently explained his preference:

> [T]he late war [World War I] has fortified in this country the English tradition that education which conduces in no way, that human calculation can foresee, to the efficient discharge of our particular duties, whether as citizens or as individuals, may nevertheless have a value of its own, by widening our sympathies, teaching us toleration of another's point of view, freeing us from the temptation to subordinate humanitarian impulses to the demands of ruthless logic."[6]

Reed blamed the absence of a general education requirement first on lawyers who "have not realized how much American law has suffered from losing contact with education as a whole" and secondly on "advocates of general education, who have not stated the argument for it as effectively as they might."[7]

In the late 1940's, the AALS issued a statement that the "education of students for a full life is far more important than mere education for later professional training and practice."[8] In 1950 a report on prelaw education following an expansive survey "showed marked agreement against any required courses for prelegal education."[9] A 1972 Carnegie Foundation report[10] endorsed the value of law students having a general education, but it stopped short of suggesting that a particular course of study be mandated. "A basic ability to read, write, and speak the English

4 *In the United States, the norm is four years. In England, the LL.B. is awarded in three years. In Scotland students can obtain an Ordinary degree in three years and an Honours degree in four years.*

5 *Susan K. Boyd, THE ABA'S FIRST SECTION: ASSURING A QUALIFIED BAR 60–61 (ABA 1993), quoting Samuel Thurman, "To What Extent Should Pre-law Education be Prescribed?," a speech before a joint session of the ABA Section of Legal Education and Admissions to the Bar and the National Conference of Bar Examiners (NCBE), August 25, 1959.*

6 *Alfred Z. Reed, Training for the Public Profession of the Law: 1921, in Herbert L. Packer and Thomas Ehrlich, NEW DIRECTIONS IN LEGAL EDUCATION 163, 188–189 (Kate Wallach, ed. McGraw-Hill 1972).*

7 *Id. at 188.*

8 *Boyd, supra note 5, at 60–61.*

9 *Id. at 57–58.*

10 *Herbert L. Packer and Thomas Ehrlich, NEW DIRECTIONS IN LEGAL EDUCATION 78 (McGraw-Hill 1972).*

language is, we think, the principal preparation that law students require. Francis Bacon was right about the qualities that attend these activities. We additionally recommend some study of economics (which is the social science most directly applicable to law), history (for its liberating perspective), and a "hard" science (for its example of how scientific knowledge is pursued)."[11]

In the United Kingdom, most college students who want to become lawyers major in law and receive an LL.B. degree which is recognized as a Qualifying Law Degree if the content of the program of study was approved by the relevant solicitors' and barrister/advocates' organizations.[12] The approved "core" subjects deal with basic substantive law topics.[13]

the post graduate stage

After college, prospective lawyers in the United Kingdom must decide whether to pursue careers as general lawyers ("solicitors") or as trial specialists ("barristers" in England and Ireland and "advocates" in Scotland). The great majority choose to become solicitors.

Law school graduates who want to become solicitors or barristers/advocates are required to attend vocational courses that last about a year.[14] Though some of these courses are offered at law schools, they are controlled by the professional organizations and much of the instruction comes from practicing lawyers. The vocational courses include substantive law and practice skills components, and they are increasingly linking instruction to the competencies that lawyers need at the point of admission.

At the time when lawyers in the United Kingdom are entering the vocational phase of their legal education, a college graduate who wants to become a lawyer in the United States is entering law school. U.S. law students earn law degrees (J.D.) after three years full-time or four years part-time. Almost all U.S. law graduates enter the legal profession whereas fewer than half of U.K. law school graduates become practicing lawyers.

Most U.S. law schools are accredited by the American Bar Association, but the accreditation

11 *Id.*

12 *A significant percentage of new lawyers major in disciplines other than law. In order to qualify for the vocational stage, they must take additional undergraduate courses. In England, students with degrees in other disciplines can take a year long course, the Post Graduate Diploma, leading to the Common Professional Entrance. In Scotland, students with other degrees can obtain an Ordinary degree in two years instead of three. It is also possible to become a lawyer without attending college at all, if one can pass the Common Professional Exam, but this has become a less frequent path.*

13 *In England, the "foundations of legal education" include seven substantive courses in addition to legal research: Criminal Law, Equity and Trusts, Law of the European Union, Obligations I (contract); Obligations II (tort), Property Law, and Public Law. In Ireland, there are eight core courses similar to those in England, except they include Company Law and replace Public Law with Constitutional Law. In Scotland, there are eight "qualifying subjects": Public Law and the Legal System, Scots Private Law, Scots Criminal Law, Scots Commercial Law, Conveyancing, Evidence, Taxation, and European Community Law.*

14 *In England prospective solicitors take the year long Legal Practice Course; Scottish law graduates who want to become solicitors or advocates take a similar 27 week course, the Diploma in Legal Practice; prospective solicitors and barristers in Northern Ireland attend a year long course leading to the award of the Certificate in Professional Legal Studies. Prospective barristers in England must first be accepted into an Inn of Court, then take a year long Bar Vocational Course run by the General Council of the Bar. To become a barrister in Ireland, a student must take a year long course at the King's Inns to receive the Degree of Barrister-at-Law. Things are somewhat different for prospective solicitors in Ireland who begin the process by taking the First Irish Examination, a written and oral examination in the Irish language administered by the Law Society of Ireland. They must also pass the Final Examination to earn a Diploma in Legal Studies. Students spend varying periods of time preparing for the Final Examination, for example, the Dublin School of Law offers a ten week course to prepare students for the examination and the Dublin Institute of Technology offers a one year course. Passage of the Final Examination qualifies a student to begin a two year period of apprenticeship.*

standards do not mandate very much of the content of legal studies. However, the curriculums of most U.S. law schools are very similar and tend to focus on teaching substantive law. All students receive training in legal analysis and research but, although a wide range of professional skills courses are offered by most law schools, few schools provide broad-based skills instruction to all students. Very few U.S. law schools have outcomes-focused programs of instruction, whereas all stages of legal education in the U.K. are becoming increasingly outcomes-focused.

the supervised practice stage

After finishing the vocational course, solicitors in the United Kingdom enter into learning contracts with approved solicitors for two year traineeships during which they have additional course work.[15] Even after completing articles, English solicitors must begin practice as assistant solicitors because they are not allowed to establish their own practices until three years after completing their formal training.

After finishing the Bar Vocational course, prospective barristers in England work under the supervision of experienced barristers for one year ("pupillage") during which they take three training courses. They shadow their pupil masters for six months then, with their master's permission and supervision, they can provide legal services and exercise a right of audience. They also "keep terms" which involves eating and socializing at their Inn's dining hall. In Ireland, students must serve one year as a pupil. In Northern Ireland, once they are admitted by the Honorable Society of the Inn of Court of Northern Ireland, prospective barristers receive two years of education and training administered by the Society to earn a Barrister-at-Law degree.

After the Diploma in Practice course, prospective Scottish advocates who are accepted as Intrants by the Faculty of Advocates begin working for lawyers. They also take a seven week Foundations Course in advocacy skills training and receive additional specialist education in the Supplementary Course. A prospective advocate must serve a period of "deviling," first for twenty-one months in a solicitor's office then nine more months with a member of the Bar.

In the United States, a law school graduate who passes a state's written bar examination becomes fully authorized to practice law in that state without supervision, including trial practice in all courts. No supervised practice is required, except in two states.[16] Admission to practice and

15 *While "serving articles", solicitors in England take a 72 hour Professional Skills Course. In Ireland they attend Professional Course I and Professional Course II and must pass the Second Irish Examination. In Scotland, they take a two week Professional Competence Course. Scottish solicitors return briefly to the Law Society to complete the professional course after finishing articles.*

16 *Delaware and Vermont are the only U.S. jurisdictions that require apprenticeships today. The Supreme Court of Delaware requires newly admitted lawyers to serve "a clerkship in the State of Delaware aggregating substantially full-time service for at least 5 months duration." Delaware Sup. Ct. Rule 52 (a)(8). See also Memorandum dated June 2, 2004, from the Chair of the Board of Bar Examiners to all preceptors describing "Preceptor Duties and Clerkship Requirements" (copy on file with the author), and Rule 9, Duty to Obtain Preceptor, and Rule 10, Qualifications and Duties of Preceptors, Rules of the Board of Bar Examiners of the Delaware Supreme Court at http://courts.state.de.ud/bbe (accessed August 9, 2004). During the clerkship, the clerk must complete 30 specified activities, such as attending a variety of judicial and administrative proceedings and completing a title search under supervision. The supervising "preceptor" can be a judge or a lawyer with at least ten years of practice experience and must attend a preceptor training program. At the end of the clerkship, the preceptor must certify that the clerk has complied with the Rule, but the preceptor is not required to certify that the clerk is adequately prepared for law practice. The Supreme Court of Vermont requires law school graduates to pursue the study of law in the office of a judge or practicing lawyer with at least three years experience for a period of six months, sometime after the first year of law school and within two years of passing the bar examination. Vermont R. Admis. § 6(i).*

discipline is governed by the highest court of each state. There is virtually no oversight of legal education or law practice by the federal government.

Thus, it takes roughly seven years to become licensed to practice law in the United States and the United Kingdom, but in the United States only three of those years are spent studying law and learning how to be a lawyer.

Part II: Histories of Legal Education in the United Kingdom and the United States

Section 1: Common Roots

Legal education in the United States is directly linked to the long tradition of legal education in the British Isles. When the American colonies were established, English law, professional customs, and lawyers were part of the package. For example, when the Puritans arrived in Massachusetts on June 12, 1630, "[a]mong the 1,005 settlers aboard the flotilla of 17 tiny ships were ten legally trained Puritans, products of the Inns of Court and English legal practice. John Winthrop, himself, the first Governor, was a member of Gray's Inn and Inner Temple."[17]

Professional lawyers were recognized in England as early as 1187, and by 1292 the royal courts in England were training lawyers for trial practice. These lawyers became known as "barristers," because they could plead at the "bar" of the court, although the word "barrister" did not appear until 1455.[18] Irishmen went to London to study law at least as far back as the 13th century.[19] By 1488 in Scotland there was a well-established class of professional lawyers referred to as "advocates," "procurators," or "forespeakers."[20]

In early modern England, there was a wide variety of titles associated with jobs involving legal and quasi-legal work, and legal practice was by no means restricted to those who held some recognised professional qualification.[21] The lawyers who would eventually become known as "barristers" and "solicitors"[22] were separated as much by social origins and status as by job function until the mid-1600's. The "barrister" class reflected a social aristocracy, while solicitors became a symbol of middle class achievement. "Younger sons disinherited by primogeniture needed a way to make a living, but trade was beneath them. The 'honorable' professions were three: the Church, the Army, and the Bar, to which was later added colonial governance."[23] "[C]ivilian advocates and

17 *Daniel R. Coquillette, THE ANGLO-AMERICAN LEGAL HERITAGE 368 (Carolina Academic Press 1999). In fact, another lawyer was already in Massachusetts when the Puritans arrived, the notorious Thomas Morton who claimed to be a "gentleman of Cliffords Inn," an Inn of Chancery. "[W]hat he did in the New World was to trade guns and liquor to the Indians [sic] for furs and sex. He even had erected a Maypole on Merry Mount, and had huge, drunken parties. . . . The Puritans sent Morton back to England." Id.*

18 *Id. at 266.*

19 *Colum Kenny, KING'S INNS AND THE KINGDOM OF IRELAND 1 (Irish Academic Press 1992).*

20 *David M. Walker, A LEGAL HISTORY OF SCOTLAND. VOLUME III: THE SIXTEENTH CENTURY 381 (T. & T. Clark 1995).*

21 *Wilfred Prest, ed., THE PROFESSIONS IN EARLY MODERN ENGLAND 64–67 (Croom Helm 1987).*

22 *It was not until about 1800 that legal practitioners in England began abandoning the title "attorney" and exclusively using "solicitor". David Sugarman, Bourgeois Collectivism, Professional Power and the Boundaries of the State. The Private and Public Life of the Law Society, 1825 to 1914, 3 INT'L. J. LEG. PROF. 81, 91–92 (March 1996).*

23 *Walker, supra note 20, at 381.*

common-law barristers claimed and were accorded the courtesy title of esquire, whereas the attorney, proctor, or solicitor was at best a mere 'gent.'"[24] These class distinctions persist to some degree today.

In the mid-1600s, the vocational distinctions between barristers and solicitors became more clearly defined. Over a period of time, the barristers relinquished general counseling and conveyancing to concentrate on trial advocacy, leaving the management of clients' day to day affairs to attorneys.[25] The solicitors came to dominate the provision of legal services at the grass roots by setting up practices in the provinces, especially the cities and market towns, whereas the barristers tended to cluster in and around London where the courts were located.[26] A significant factor in the barristers' decision to concentrate on trial advocacy was the huge inflation of fees for trial work from the 1650s onward at a time when the general consumer price level remained virtually stagnant.[27] In short, they did it for money. From that time forward, no client could employ a barrister directly, but only through a solicitor. This 'bifurcated' legal profession, split between barristers and solicitors, still exists in the United Kingdom and other commonwealth countries.[28]

The education and training of barristers and solicitors was another source of differentiation. The typical solicitor did not a have college degree or any other formal legal training because there was a consensus for centuries that solicitors' mechanical vocational skills could be gained best from practical experience as apprentices rather than book learning.[29] On the other hand, the barristers cultivated their professional image as elevated, intellectual, and even non-mercenary.[30]

The barristers established an early tradition of formal training at the Inns of Court which were located between the law courts at Westminster and the commercial districts of the city proper.[31] The Inns of Court were centers of legal education that combined the characteristics of a powerful trade guild with that of a university. All common law barristers and judges were graduates and members of an Inn.[32]

While the early history of the Inns is somewhat murky, it is clear that by 1400, four "inns" were establishing a dominant position.

Two were named from nobles who either owned or sponsored the original houses: "Gray's Inn", a house of the Lords Grey, and "Lincoln's Inn," which either was named for Henry de Lacy, Earl of Lincoln, or Thomas de Lincoln, a prominent serjeant at law.[33] Two others were founded in the defunct London premises of the powerful Knights Templar, and became known as "Middle Temple" and "Inner Temple." By 1450, these four "inns" were professional schools, with the exclusive right to train common law barristers and serjeants, and the Inns of Chancery – of which there were nine or more – became "feeders," or schools for young students who wished to enter one of the four Inns of Court. Finally, for the very elite who became serjeants, there were two "Serjeant's Inns," although these were more like small clubs than educational institutions. Over time, the Inns of Chancery diminished and disappeared, and the Serjeant's Inns died with that

24 *Prest, supra note 21, at 67.*

25 *Id. at 81.*

26 *Id. at 81–82.*

27 *Id. at 82.*

28 *Coquillette, supra note 17, at 267.*

29 *Prest, supra note 21, at 67.*

30 *Id. at 32.*

31 *Coquillette, supra note 17, at 268.*

32 *Id.*

33 *Author's note: "Serjeants at law" were an older class above the barristers. They not only represented private clients, but took on royal commissions as assize judges when there was a shortage of judicial labor. Until the sixteenth century, serjeants at law were the exclusive source of new royal judges. Id. at 267.*

order at the end of the 19th century. The fours Inns of Court, however, not only remain, but are among the wealthiest and most powerful institutions in London. Although they have now coordinated their educational and regulatory functions into the Consolidated Inns of Court, they are still four separate entities, with magnificent libraries, gardens, dining halls, and common rooms. Three . . . also house the "chambers," or offices, of most practicing London barristers.[34]

In the sixteenth century, a prospective barrister of fifteen years of age or less would either go directly into an Inn of Chancery or spend a few years at Oxford or Cambridge before enrolling. Two or three years later, the student would enter one of the four Inns of Court. After four years, "the student would be admitted as an 'utter barrister,' and by six or seven years, at about age twenty-two or twenty-three, could be 'called to the bar.'"[35]

The faculty were practicing barristers who were graduates of the Inns. Providing instruction was seen as a duty of barristers who wished to become judges. Students at the Inns were required to participate in "moots", public speaking exercises, and "bolts," private speaking exercises. "These combined learning by rote and 'learning by doing,' under close personal supervision. The moots and bolts encouraged 'thinking on your feet' and the kind of quick ingenuity that was the essence of the pleader's skill."[36]

From their beginnings through today, the Inns have been compulsory societies where students, faculty, and other members are required to dine and socialize together.[37] Through such interactions, the Inns of Court aim to build a sense of professional identity and value.

In the early history of the Inns, barristers and solicitors shared the socialization functions of the Inns of Court, though only barristers enjoyed the opportunity of a formal education at the Inns.[38] In the mid-sixteenth century, however, the judges and benchers who controlled the Inns of Court began expelling practicing attorneys and solicitors from the Inns and prohibiting barristers from practicing as attorneys or solicitors.[39] From that time forward, the Inns of Court in England have been the exclusive domain of barristers.[40]

In Ireland, the King's Inns provided similar socialization functions, but they did not provide any legal training until 1870. Beginning in 1542, young Irishmen who wanted to become lawyers were required to spend a period in residence at one of the Inns of Court in London. This was mandated by a provision in the Statute of Jeofailles enacted by the Irish parliament sitting in Limerick. It is not entirely clear what prompted the mandate, since studying in London was already the common practice at the time. Most likely, since the Statute of Jeofailles was enacted six months after a group of lawyers and judges announced that they had formed a King's Inn in Dublin, the mandate was intended as a check on the new King's Inn and to reform the education of lawyers in Ireland.[41] The Statute of Jeofailles was not repealed until 1885.[42]

Although they did not serve a formal educational function, the King's Inns provided "a meeting-place and a common dining-hall for those whose lives revolved around the work of the courts. Sharing the enjoyment of food and wine and engaging in professional gossip have been the most

34 *Coquillette, supra note 17, at 269.*

35 *Id. at 270.*

36 *Id.*

37 *Id. at 269–270.*

38 *Sugarman, supra note 22, at 85.*

39 *Id.*

40 *The exclusion of solicitors from the Inns of Court contributed to the organization of the Society of Gentlemen Practisers around 1739 and the creation of the Law Society in 1825. Id. at 88.*

41 *Kenny, supra note 19, at 40–48.*

42 *Id. at 1, 2, 263.*

enduring features of life at the King's Inns."[43] In contrast to the English Inns of Court, not only barristers, but also solicitors and judges participated in the King's Inns. When the society of Kings' Inns built its library at the Inn on Constitution Hill in Dublin and began providing formal education around 1870, the solicitors left to establish their own association.[44]

There were no inns of court in Scotland, nor any other formal educational system. "Young lawyers learned by attaching themselves to men in practice, watching how they did it and imitating, but not learning in an organized way."[45] Although the University of Edinburgh appointed a chair of civil law in 1732,[46] "[a]ll the teaching and study of law was however part-time and generally regarded as ancillary to legal practice and apprenticeship. There were moreover no degrees in law, apart from occasional honorary LLDs, and no curricula leading to graduation."[47]

The Inns of Court began declining gradually sometime in the middle of the sixteenth century, and they stopped functioning as teaching institutions around 1650.[48] One important factor was the introduction of printing. Students and teachers came to believe that students could now learn everything they needed to learn by reading; lectures were no longer needed.[49] Another disruptive factor was the English Civil War (1642–1648). Efforts to reestablish legal education in the Inns were hindered by the reluctance of the government to challenge the authority of the Bar, although the governing bodies of the Inns at the time found their educational and disciplinary duties distasteful.[50] Thus, the Inns "ceased altogether to teach young lawyers, though they retained monopolistic control over admission to the Bar."[51] The Inns were not to resume educating barristers until the middle of the nineteenth century.

Blackstone, among others, became convinced that the universities should take over the lapsed educational function of the Inns of Court.[52] Roman Law was taught at the Universities of Oxford and Cambridge as early as 1149, but the common law of the royal courts was not a subject for university study due to the existence of the Inns of Court.[53] Blackstone, the first holder of the Vinerian Chair at Oxford (1758–1766), advocated the merits of a university education for

43 *Id. at 3–4.*

44 *Id. at 263. Thus, it appears that the King's Inns began offering formal education before the repeal of the Statute of Jeofailles.*

45 *David M. Walker, A LEGAL HISTORY OF SCOTLAND. VOLUME V: THE EIGHTEENTH CENTURY 374 (T. & T. Clark 1999). This is not to say, however, that education was not valued by lawyers in Scotland. In 1610, the advocates were charged by the Lords to determine the best means of remedying perceived shortcomings in professional behavior, because of which "the name and estimation of advocate had become vile and had lost its former beauty." The advocates' remedy was for the Lords to refuse to admit anyone to the calling of advocation "except those who after they had passed their course of philosophy had been brought up in some university as students to the laws by the space of two years or thereby and who before their admission should give proof of their qualification." Alternatively, a person could apply to be an advocate who "had been brought up with some old learned lawyers or advocates by the space of seven years." Id. at 381–382.*

46 *David M. Walker, A LEGAL HISTORY OF SCOTLAND. VOLUME IV: THE SEVENTEENTH CENTURY 377 (T. & T. Clark 1995).*

47 *David M. Walker, A LEGAL HISTORY OF SCOTLAND. VOLUME VI: THE NINETEENTH CENTURY 266 (Butterworth's 2001).*

48 *W. Holdsworth, A HISTORY OF ENGLISH LAW. VOL. VI 490 (Methuen & Co. Ltd. 1965).*

49 *Id. at 482–486.*

50 *Id. at 486–490.*

51 *Calvin Woodward, The Limits of Legal Realism: An Historical Perspective, in Herbert L. Packer and Thomas Ehrlich, NEW DIRECTIONS IN LEGAL EDUCATION 329, 349 (McGraw-Hill 1972).*

52 *Sugarman, supra note 22, at 86.*

53 *Coquillette, supra note 16, at 268 .*

barristers.[54] He tried to establish the study of English Law as a university subject, but, although his lectures were well-received, he failed to persuade the University of Oxford to establish a law school devoted to the study of English Law.[55] Similar efforts to establish legal education as part of the university curriculum at Cambridge in 1800 and University College, London in 1826 were also short-lived.[56]

Wealthy Americans sent their children to study at the Inns of Court in London until the American Revolutionary War began in 1775.[57] Unfortunately, the years during which Americans from the colonies went to London to study law coincided with the period when the formal educational function of the Inns was in decline. One can assume that American students benefitted from the socialization and networking functions of the Inns and learned about law and law practice from experienced lawyers, even if they did not receive formal legal education at the Inns. By the time the Inns returned to strength, students from the United States were no longer interested in studying in London. The most common route to becoming a lawyer in America was to serve a period of apprenticeship with an experienced lawyer followed by a formal examination, the same path followed by solicitors in the United Kingdom.[58]

American lawyers were influenced by the writings of Blackstone. The first American edition of his *Commentaries* appeared in 1771. Along with Coke's *Second Institutes* these were the repository of the law in colonial America.[59] "In receiving Blackstone, the American legal profession received a vision of legal education that was at once integrated and broadly liberal. Either prior to or concurrent with the scientific study of law, the prospective barrister was to acquire a general university education embracing a knowledge of the classics, logic, mathematics, empirical philosophy ('the law of nature, the best and most authentic foundation of human laws'), and Roman law."[60]

Training for the profession in the United States was initially true to this grand vision. Though no university degree was required for admission to the bar, many of those who came to study law were broadly educated, and their law office training was not always limited to technical legal matters.

The typical apprentice-trained or self-read lawyer of the earlier nineteenth century had a narrowly technical training out of a few ill-sorted books. But there had been a time when the best legal instruction – under a Wythe or a Tucker or some learned leader of the bar – recognized that breadth of study was no matter of ornament, but an essential for a professional grasp of the law. The course assigned John Quincy Adams for his study in the office of Theophilus Parsons in 1788 embraced Robertson's *History of Charles V*, Vattel's *Law of Nature and Nations*, Gibbon's *Rome*, and Hume's *England*; then, closer to the immediacies of the practice, Sullivan's *Lectures*, Wright's *Tenures, Coke on Litigation*, Wood's *Institutes*, Gilbert's *Evidence*, Foster's and Hawkin's *Pleas of the Crown*, Bacon's *Pleas and Pleadings*, Buller's *Nisi Prius*, and Barrington's *Observations on the Statutes*; finally returning to the broad canvas, the *Institutes of Justinian*. The titles ring with some quaintness in our ears, but the underlying principle was one with revived efforts of one hundred and fifty years later, to inform the study of law with closer understanding of main currents in the environing society.[61]

54 *William Twining, BLACKSTONE'S TOWER: THE ENGLISH LAW SCHOOL 1 (Stevens and Sons/Sweet and Maxwell 1994).*

55 *Id.*

56 *Id. at 24–25.*

57 *Martha Rice Martini, MARX NOT MADISON: THE CRISIS OF AMERICAN LEGAL EDUCATION 41 (University Press of America 1997).*

58 *Robert Stevens, LEGAL EDUCATION IN AMERICA: FROM THE 1850'S TO THE 1980'S 1 (University of North Carolina Press 1983).*

59 *Martini, supra note 57, at 44.*

60 *James W. Hurst, THE GROWTH OF AMERICAN LAW 266 (Little, Brown 1950).*

61 *Id.*

The Revolutionary War of 1775–1783 severed access by Americans to the Inns of Court. This led to the immediate disappearance in southern states of the separation of the legal profession along the lines of the solicitor-barrister model, though the bifurcated system persisted for some period in the north. Thus, the failure of the British military to hold onto the American colonies was the first reason why our systems of legal education diverged. This is also our first opportunity to blame the Germans for the system of legal education in the United States, for the British forces in the colonies relied heavily on hessian mercenaries to fight the rebels.

The quality of the legal profession in the United States began declining after the Revolutionary War with the disappearance of the "priest-like replicas of the English legal profession."[62] The problems became even more pronounced under the influence of Jacksonian Democracy following the ascendancy of President Andrew Jackson and the Democratic party after the election of 1828. Jacksonian Democracy alludes to an entire range of democratic reforms that occurred during the late 1820s through the mid 1850s.[63] Jacksonian Democracy's origins actually "stretch back to the democratic stirrings of the American Revolution, the Antifederalists of the 1780s and 1790s, and the Jeffersonian Democratic Republicans;" however, more directly it arose out of the "social and economic changes taking place in the early 19th century."[64] In broadest terms the movement attacked various citadels of privilege, "aristocracy", and monopoly, and sought to broaden opportunities for white males who lacked property.[65] For example, prior to 1815 in the United States, in order to vote one had to be a white, male property owner, tax payer, and church member in good standing. By 1828, a growing number of states had reduced the requirements to simply being a white male.[66]

Essentially, Jacksonian Democracy promoted a social vision in which any white male would have an opportunity to "secure his economic independence, would be free to live as he saw fit, under a system of laws and representative government utterly cleansed of privilege."[67] The Jacksonians' basic policy thrust was to rid government of class biases and dismantle the "top-down, credit driven engines of the market revolution."[68] In the Northeast and the old Northwest, transportation improvements and immigration led to the collapse of the older yeoman and artisan economy and its subsequent replacement with cash crop agriculture and manufacturing. In the South, the growth of cotton revived a lagging slave economy, and in the West, the seizing of land from Native Americans and Hispanics opened up new areas of white settlement, cultivation... and speculation.[69]

The targets of the Jacksonian movement included the expectation that a person needed some education or supervised experience before practicing a profession, including the legal profession. As one lawyer explained the logic of the times:

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62 *Stevens, supra note 58, at 10.*

63 *Sean Wilentz, Jacksonian Democracy, in Eric Foner, ed., THE READER'S COMPANION TO AMERICAN HISTORY 582–586 (Houghton Mifflin 1991), available at http://college.hmco.com/history/readerscomp/rcah/html/ah_jacksoniande.htm (accessed 8/2/2004).*

64 *Id at 582.*

65 *Encyclopedia – Jackson, Andrew (Jacksonian Democracy), THE COLUMBIA ELECTRONIC ENCYCLOPEDIA (6th ed., 2004), available at http://www.factmoster.com/ce6/people/A0858962.html.*

66 *The Rise of Jacksonian Democracy, (accessed 8/2/2004), available at http://www.historybytes.net/webnotes/chp15html; and "MSN-Encarta-United States (History)," (accessed 8/2/2004), available at http://encarta.msn.com/encyclopedia_1741500823_8/United_States_(History).html.*

67 *Wilentz, supra note 63, at 584.*

68 *Id. at 583.*

69 *Id. at 582.*

> I am tired of the clamor against lawyers, and of being told that we have exclusive privileges, without being able to reply – you are a lawyer, too, sir. The lawyer and advocate under the Roman commonwealth needed no special license to practice his profession. Open the door wide to free competition; and integrity, learning and ability, will be a sufficient certificate, and without such certificate, a man will have but a poor practice."[70]

In other words, the governing philosophy of the times was to give a man a chance to do anything he wanted then let market forces determine whether he succeeded or failed. As a consequence, for a period of time in the United States anyone could practice law without studying the law, taking a bar examination, or serving an apprenticeship.

Before continuing, it should be noted that, although there was no institutionalized system of legal education in the United Kingdom or the United States for roughly two hundred years, the period "produced some of the most civilized and learned lawyers ever to grace the Bar in England and [the United States]. Indeed, rather paradoxically, the law's claim to be a learned profession dates in many ways from the period 1650 to 1850."[71]

Efforts to improve the quality of the legal professions in the United States and the United Kingdom eventually took shape. The Law Society of England and Wales was created in 1825 to distinguish its members from unprofessional elements of the profession and to encourage its members to practice at a high level of competence and character. The Law Society was created to be a public institution whose members "are to be composed only of the most respectful and leading in the Profession (it being intended carefully to exclude all disreputable characters) will serve to impress the Public with a higher opinion than it at present entertains of the weight and respectability of the profession at large."[72] The Law Society's Hall at 113 Chancery Lane was formally opened in 1832.

> [T]he hall symbolized the hopes and aspirations of the profession's elite. It was a significant act of conspicuous consumption, self-definition and social exclusion, testifying to the construction of a new collective identity, designed to attract people of "character" who saw themselves as serious, cultured, learned, responsible and, above all, respectable.[73]

A Royal Commission on the Universities of Scotland was appointed in 1826 and issued its report in 1831. It adopted the principle that "in law, medicine, and divinity professional training should follow a full liberal education, i.e. an Arts degree; law should be studied as a `liberal and enlightened science' rather than be merely a course of practical training."[74] It would be some years later, however, before this principle was fully realized in the training of lawyers in Scotland.

In Ireland, Tristam Kennedy's unsuccessful attempt to open a law school in Dublin in 1839 stimulated the academic study of English law at universities in Britain and Ireland and hastened the introduction of qualifying examinations for both branches of the profession. [75]

An Act passed in England in 1843 reenacted the provisions for service with a practising attorney

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70 Stevens, supra note 58, at 9, n. 70, quoting John B. Niles as reported in James J. Robinson. Admission to the Bar as Provided for in the Indiana Constitutional Convention of 1850–1851, 1 INDIANA L. J. 209, 211–212 (1926).

71 Woodward, supra note 51, at 350–351.

72 Sugarman, supra note 22, at 91 quoting Birks, GENTLEMEN OF THE LAW 156.

73 Id.

74 Walker (Vol. VI), supra note 47, at 266.

75 Colum Kenny, TRISTRAM KENNEDY AND THE REVIVAL OF IRISH LEGAL TRAINING 1835–1885 10–11 (Irish Academic Press, 1996).

or solicitor under articles: "five years – reduced to three years for persons who had taken a degree at Oxford, Cambridge, London, Durham, or Dublin, one of which years could be spent with the attorney's or solicitor's London agent."[76] All admitted attorneys and solicitors were required to register. "The office of registration was entrusted to the Incorporated Law Society, which was thus enabled to exercise an effectual supervision over every practitioner during the whole of his professional career."[77]

The most significant development, however, was the appointment in 1846 of a Select Committee of the House of Commons to "enquire into the state of legal education in England and Ireland."[78] The committee issued its report the same year, concluding that "[n]o legal education worthy of the name, is at this moment to be had in either England or Ireland."[79] It recommended that "the universities should undertake the teaching of law – Roman law and English law and that they should give degrees in the law. The legal training by the universities should be comparative and philosophical in nature."[80]

The Select Committee also recommended that the ultimate preparation of lawyers for practice should be the responsibility of the profession, not the universities. It called on the Inns of Court "to appoint professors to teach the principal branches of law, and it would be well if they made provision also for the teaching of legal history and jurisprudence. These lectures should be combined with a system of class teaching and with examinations; and no one should be called to the bar unless he had attended lectures and passed the examination. Moreover, there should be a preliminary examination to test the general education of an intending student. The Inns of Court thus acting in combination would form a law college controlled and guided by the benchers and judges."[81] The Select Committee also called on the Incorporated Law Society to institute an appropriate educational scheme for the professional qualification of solicitors.[82]

"The governing principle which underlay the recommendations of the committee was a tripartite division of legal education between the Inns of Court, the Incorporated Law Society, and the Universities. The adoption of this principle, and the acceptance of some of the other recommendations of the committee have . . . affected the whole future history of the legal education in this country."[83]

The Inns of Court responded immediately and soon decided to combine forces to establish a system of lectures and examinations. In 1852, the Inns of Court established the Council of Legal Education.[84]

Before long, the universities accepted their assigned role of giving a more philosophical and theoretical training in legal principles than the Inns of Court or the Law Society, and they introduced subjects into their curriculums such as Roman law, jurisprudence, international law, legal history, and constitutional law.[85]

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76 Sir William Holdsworth, A HISTORY OF ENGLISH LAW. VOLUME XV 224 (Methuen & Co. Ltd. 1965).

77 Id., citing H. Gibson, Centenary Address to the Law Society, 19.

78 Id. at 234.

79 Twining, supra note 54, at 25, quoting Report from the [House of Commons] Select Committee on Legal Education, no. 686 (1846) B.P.P. Vol. X.

80 Holdsworth (Vol. XV), supra note 76, at 235.

81 Id. at 236.

82 Id. at 236–237.

83 Id. at 237.

84 Id.

85 Id. at 241.

In 1856 in Scotland, lawyers were required to "have a general education, evidenced by a university degree or by passing examinations in certain subjects which were the core of a Scottish MA, Latin, Greek, ethical and metaphysical philosophy and logic or mathematics. It was left open whether two modern languages might be substituted for Greek. This should be followed by a short university course of legal study, one session on Civil Law, one on Scots Law, and during either year or in a third year, another session on Civil or Scots law or one on conveyancing, and one on medical jurisprudence."[86]

From that time on, university education was the norm in Scotland.[87] In 1862, the University of Edinburgh was authorised to offer the degree of LL.B., "open only to graduates in Arts and required attendance over three sessions at six courses, three (Civil Law, Scots Law and Conveyancing) of at least eighty lectures and three (Public Law, Constitutional Law and History, and Medical Jurisprudence) each of at least forty lectures. The degree was to be considered 'a mark of academical and not of professional distinction . . . .'"[88]

In 1860 legislation provided that in England and Ireland "a person who had served as a clerk to an attorney or solicitor for ten years could be admitted after three years service under articles."[89] Other modes of entering the legal profession, other than service under articles, were gradually abolished around the same time.[90]

"In 1871 another joint committee of the four Inns resolved that there should be a compulsory examination for call to the bar. It also rejected a proposal for the joint education of articled clerks to solicitors and students for the bar. . . . This reformed Council instituted the system of legal education for the bar which, in its main outlines, still exists."

The Law of Agents Act of 1873 in Scotland required uniform sets of three examinations for entry into law practice. These were a preliminary examination in basic knowledge, an intermediate examination of general educational achievement, and a final examination in professional competence. "A graduate of a university, or one who had attended for three full years, was excused from the first two sets. Therefore, those who presented themselves for admission as apprentices on the basis of having passed the examinations were those who had not attended a university."[91]

Thus, by the mid-1870's, significant efforts had been made to improve the quality of legal education in the United Kingdom. Legal education was "more marked in academic training than apprenticeship, particularly by developments in the university curriculum, by a more academic faculty, and by national standards of professional competence tested by examination."[92] The general process for becoming a lawyer that exists today was in place, although the details are still being worked out.

For most aspiring lawyers, however, full-time formal legal education would not become the primary route into the profession for many years. "As late as 1913–14, when there were 236 law students at Glasgow, only thirteen graduated LLB and seven BL. The vast majority of students attended only Scots Law and Conveyancing and sat the profession's examinations."[93] Prospective lawyers considered law courses as ancillary to apprenticeship, legal studies were organized part-time, and law courses were too frequently of indifferent quality.[94] "The Law Faculties of the

86 *Walker (Vol. VI), supra note 47, at 280.*

87 *Id. at 281.*

88 *Id at 266, citing General Report of Commissioners under the 1858 Act, xxxvi (1863).*

89 *Holdsworth (Vol. X V), supra note 76, at 225 .*

90 *Id.*

91 *LAW, LITIGANTS, AND THE LEGAL PROFESSION 160 (E.W. Ives and A.H. Manchester, eds., Swift Printers 1983).*

92 *Id. at 161.*

93 *Walker (Vol. VI), supra note 47, at 268–269.*

94 *Id.*

universities were simply the profession's training schools."[95]

It does not appear that very much changed in legal education in the United Kingdom until rapid expansion of enrollment in law schools following World War II refocused attention on the preparation of lawyers for practice. The story was just the opposite in the United States.

Unlike countries in the United Kingdom, there was no centralized, national body in the United States with the authority to reform or regulate legal education in the 1800s nor, for that matter, is there today. Qualification for admission to the bar was, and remains, controlled by the highest judicial authority in each of the fifty states. Thus, it is difficult to accomplish significant changes to legal education in the United States, and the process is confounded by local political and economic considerations.

After the American Civil War ended in 1865, industry and finance grew rapidly and the structure of corporate business and investment took on new complexities. These events "created pressures for more thorough and rigorous intellectual training in the law."[96] The emergence of the corporate lawyer led to the birth of the law firm,[97] and "[b]usiness leaders needed skilled and effective lawyers to maximize their opportunities and manage their interests."[98]

As mentioned earlier, although a few law schools existed, most jurisdictions did not require any formal education or training to become a lawyer. The chief method of legal education well into the second half of the nineteenth century was the apprenticeship, but the typical apprenticeship in the 1800s was not very effective at producing highly skilled lawyers. "At its best, apprenticeship at that time was all that clinical legal education is claimed to be today: close supervision of a student by his principal in real-life encounters. Yet few apprenticeships worked out that way. Indeed, even when principals were diligent, the chances of any one office offering a good all-around training were small."[99]

> The student read law in an older lawyer's office; he did much of the hand copying of legal instruments that had to be done before the day of the typewriter; and he did many small services in and about the office, including service of process. Sometimes the older man might take these incidental services as his pay for his preceptorship. But stiff fees were paid for the privilege of reading in the office of many a leader of the bar. Legal biography amply witnesses that such training was of widely varying thoroughness and quality; that it was typically not of great length of time; and that much of it, as in the interminable copying of documents, was of a rote character.[100]

As more law schools began appearing in the mid-1860s, many aspiring lawyers and leaders of the profession came to view the systematic, academic educational experience promised by law schools as a beneficial supplement to the somewhat happenstance education acquired through apprenticeships. Enrollment in law schools increased dramatically in the second half of the nineteenth century.[101] However, "[n]o one at that time was suggesting that all three years of training should be spent in law school. The leadership of the bar was fighting for something much more fundamental: a generalized requirement of apprenticeship, part of which might be 'served' in law school, and an effective bar examination."[102]

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95 *Id.*

96 *Hurst, supra note 60, at 260–261.*

97 *Boyd, supra note 5, at 3 .*

98 *Philip Gaines, The "True Lawyer" in America: Discursive Construction of the Legal Profession in the Nineteenth Century, 45 AM. J. LEGAL HIST. 132, 132 (2001).*

99 *Stevens, supra note 58, at 24.*

100 *Hurst, supra note 60, at 256.*

101 *Stevens, supra note 58, at 24–25 .*

102 *Id. at 25.*

Between 1870 and 1890, many licensing authorities reinstated mandatory apprenticeships or formal study requirements, and the written bar examination became the norm.[103] Thus, into the late1800s the preparation of most lawyers for practice in the United States was similar to that in the United Kingdom.

Section 2. The Traditions Diverge

Two developments in the second half of the nineteenth century were responsible for the United States developing a very different approach to legal education than the United Kingdom.

The first development was the introduction of the case method at Harvard Law School which not only became the exclusive method of law school instruction but also came to be accepted as an adequate substitute for apprenticeships. The case method changed the content and nature of legal study, creating deficiencies in the education of American lawyers that persist today.

The late nineteenth century also marked the beginning of efforts to increase the regulation of legal education and admission to the legal profession. The story of how law teachers and "elite" lawyers accomplished this, sometimes working together and sometimes opposing each other, is essential to understanding the system of legal education in the United States today – and who controls it.

The Case Method Makes Its Appearance

A law school class in the mid-1800s involved a law teacher, usually a retired judge with long experience at the bar, lecturing about "the law." Lectures usually consisted of a series of rules that students transcribed and memorized.[104] "The result of rule-teaching law can be readily surmised; it produced lawyers who regarded the law as a body of rules, a bar that argued cases in terms of rules, and courts that decided cases on the basis of rules."[105] "The presumed omniscience of the lecturer as a source of authoritative rules, together with learning by rote, produced something of a priestly class of lawyers with a priestly attitude toward the law."[106]

A radical change in the method and content of legal education was on the way. Many American educators studied in German Universities during the mid-1800s, and they returned touting the advantages of Germany's system of higher education. The Germans emphasized research and the production of new scholarship over the transmission of known wisdom, and they stressed scientific investigation over instruction in moral or cultural traditions.[107] American educators began implementing the German vision of university instruction in American universities, and it dominated the thinking of most American colleges by the beginning of the twentieth century.[108]

Charles Eliot, a professor of analytic chemistry at MIT who became president of Harvard University in 1869, was one of the educators influenced by German universities.[109] When Eliot appointed Christopher Columbus Langdell as Dean of the Harvard Law School in 1870, Langdell

103 Id.

104 Woodward, supra note 51, at 352.

105 Id. at 353.

106 Id. at 354.

107 Mark Bartholomew, Legal Separation: The Relationship Between the Law School and the Central University in the Late Nineteenth Century, 53 J. LEG. EDUC. 368, 377 (AALS 2003).

108 Id. at 374.

109 Id. at 377; and Martini, supra note 57, at 57.

decided to bring German educational philosophies into the legal lecture hall.[110]

Langdell's "primary fame lay in the introduction of case method to the teaching of law. . . . In Langdell's opinion, '[t]he principles of law are 'embodied' in cases, as gold in ore. The shortest and best way, surely, and maybe the only way of discovering these principles is by studying the cases in which they appear. Cases, that is to say, the opinions of judges comprise the matter of the science of law.'"[111] Langdell articulated a vision of the law as an organic science with several guiding principles rather than as a series of facts and rules to be memorized. It was the law professor's job to mine the language of appellate cases for general principles of law.[112]

Although they supported structured legal education, the leaders of the legal profession were not natural allies of the case method nor of legal education limited solely to the study of legal rules.[113] "The fashionability of the case method was in many ways ironic, for that was the period when the leadership of the profession was passing from courtroom lawyers to the office lawyers who sought to avoid litigation. Meanwhile, the law schools were favoring a system that appeared designed to produce litigators," something the new breed of corporate lawyers viewed with increasing disdain and dislike.[114] These corporate lawyers were "attracted to English procedure, which, with its system of costs, discouraged litigation. Although the case law schools were training lawyers for the emerging corporate law firms, those very firms believed the case method to be a Trojan Horse in their midst."[115]

As it turns out, Langdell was wrong both about the usefulness of the case method for discovering the basic principles of law and about the similarities of his approach to German scientific inquiry. "Later academics, like William Keener, were more sophisticated and saw the law as more complex, with an infinite variety of principles."[116] It became "clear to a rising generation of young academics that the Langdellian claims that all law could be found in the books and that law was a series of logically interwoven objective principles were, at most, useful myths."[117] "This led Keener and others to place less emphasis on the genius of the case method as a means of teaching the substantive principles of law, but to stress more strongly the case method's unique ability to instill a sense of legal process in the student's mind. In other words, the main claim for the case method increasingly became its ability to teach the skill of thinking like a lawyer. Methodology rather than substance became the nub of the system."[118] The avowed primary purpose of law school in the United States henceforth was not to teach the law but how to think like a lawyer[119] though that claim, too, proved to be a myth.

When properly used, the case method can be an effective tool for achieving limited educational benefits, however, it is impossible to prepare students for the practice of law by relying exclusively or even primarily on the case method.

> All criticism [of the case method] traced to one radical defect. The case method isolated the study of law from the living context of the society. The student of law needed to be aware of the pressure of politics, the strands of class, religious, racial and national attitudes woven into

110 Bartholomew, supra note 107, at 378. Langdell served as Harvard's Dean until 1895. Stevens, supra note 58, at 37.

111 Martini, supra note 57, at 58.

112 Bartholomew, supra note 107, at 378.

113 Stevens, supra note 58, at 57.

114 Id. at 57–58.

115 Id. at 58.

116 Id. at 55.

117 Id. at 134.

118 Id. at 55.

119 Martini, supra note 57, at 59.

> the values and patterns of behavior with which law dealt; he needed some appreciation of the balance of power within the community, the clash of interests, and the contriving of economic institutions, as all these influenced and were influenced by the effort to order the society under law. But of all this, so far as the law school was concerned, the student was made aware only incidentally – as he glimpsed the social context through recitals of fact and appraisal, of widely varying accuracy and imagination, in the reported opinions of appellate courts.[120]
>
> In no respect was the case-method curriculum more narrow than in ignoring the bulk of the lawyer's special skills. A lawyer must draft documents; he must untangle complicated tangles of raw fact (and not merely handle the predigested "facts" stated in reported opinions of courts); he must weigh facts for the formulation of policy in counseling clients; and know how to choose and employ legal tools as positive instruments of policy. But of all these things, the student learned under the case method only as neglected by-products of reading the assigned opinions, or from passing classroom references drawn from his instructor's experience. The new law curriculum put a firm intellectual discipline in place of lax apprenticeship; but it offered no substitute for other aspects of training that had been a valuable part of the better office education.[121]

The most amazing claim for the case method was not that it was a superior method for teaching law but that it was an adequate substitute for supervised law practice. Langdell claimed that the case method was a practical way to legal competence.[122] His claim was based on the combination of the case method with the question-and-answer technique that law teachers were using to lead students through their analysis of appellate cases. The technique was similar in purpose and form to the traditional law school "quiz," and it "rather pretentiously came to be known as the Socratic method."[123] Keener argued that, by participating in classes involving the use of the case method and Socratic dialog, "the student is practically doing, under the guidance of an instructor, what he will be required to do without guidance as a lawyer. While the student's reasoning powers are thus being constantly developed, and while he is gaining the power of analysis and synthesis, he is gaining knowledge of what the law actually is."[124]

The assertion that the case method and Socratic dialog sufficiently replicated the experience of working in a lawyer's office was, of course, just plain wrong. Supervised law practice plays important symbolic and functional roles in the preparation of lawyers that are quite different from any role played by the case method or Socratic dialog. While supervised practice is an ineffective method for imparting information about the law or legal processes, supervised practice is more effective than classroom instruction at teaching the standards and values of the legal profession and instilling in students a commitment to professionalism. This is why most countries in the world, including those in the United Kingdom, require lawyers to engage in a period of supervised practice before allowing them to be fully licensed. In explaining why English solicitors and barristers have always highly valued articles and pupillage, Michael Burrage wrote:

> By forcing clerks and pupils to submit to a period of hardship, drudgery and semi-

120 *Hurst, supra note 60, at 266.*

121 *Id. at 270.*

122 *Id.*

123 *Stevens, supra note 58, at 53.*

124 *Id. at 56–57, citing William A. Keener, A SELECTION OF CASES ON THE LAW OF QUASI CONTRACTS. Cambridge, Mass., 1888–89, iv; and William A. Keener, The Inductive Method in Legal Education, 17 REPORTS OF THE AMERICAN BAR ASSOCIATION 473, 482 (1894).*

> servitude, it necessarily conveyed a due appreciation of the value of membership in the profession. It also instilled respect for one's elders, for their experience, for their manners, conventions and ethics and for their sense of corporate honour. Articles and pupillage could, therefore, provide cast iron guarantees about the attitudes, demeanor and commitment of those who were to enter the profession.' A university degree, by contrast, guaranteed only the acquisition of legal knowledge of uncertain relevance to the actual practice of law.
>
> . . . They were forms of moral training, of initiation into networks that linked every past and present member of the profession, by ties of obligation, loyalty, and possibly affection, that enabled to [sic] newcomer to belong, to empathize with its aspirations and concerns and to share its sense of honour.[125]

In the United States, however, enough people were eventually convinced that Harvard's "practicality" claim for the case method was valid, and they accepted law school education as an adequate substitute for apprenticeships or any other form of supervised practice.

Some segments of the legal profession recognized early on that law schools using the case method were not adequately preparing students for law practice and that the case method was not, in fact, an adequate substitute for apprenticeships.

In 1882, the American Bar Association's Standing Committee on Legal Education called on law schools to implement "a method of study directed to the development of basic lawyer skills. Students should 'learn the abstract framework first, then learn how the courts apply it.' The Committee said that a change was needed because students were learning 'a mass of rules but not how to use them.' In furtherance of this goal, it recommended that law schools should encourage apprenticeships in law offices."[126]

An 1891 report of the ABA Committee on Legal Education attacked the case method as "unscientific." "The report argued that the ideal work of the lawyer was to be done by knowing the rules and keeping clients out of court. Teaching decisions without systematically instilling rules led to the "great evil" manifested by young lawyers who were all too willing to litigate, did not restrain their clients, cited cases on both sides in their briefs, and left all responsibility to the court."[127] The Standing Committee recommended that practice courts should be established in every law school. "The student cannot practice by simply listening to a teacher expound principles of practice, but opportunity must be afforded him for doing himself the things which he will have to do in case of actual litigation."[128]

The committee was just as vigorous in its assaults on the case method at the 1892 annual meeting of the ABA. "'The result of this elaborate study of actual disputes, and ignoring of settled doctrines that have grown out of past ones, is a class of graduates admirably calculated to argue any side of any controversy, or to make briefs for those who do so, but quite unable to advise a client when he is safe from litigation. . . . The student should not be so trained as to think he is to be a mere hired gladiator.' This was praise for the English model . . . ."[129]

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125 *Michael Burrage, From a gentlemen's to a public profession: status and politics in the history of English solicitors, 3 INT'L J. LEG. PROF. 45, 54 (March 1996).*

126 *Boyd, supra note 5, at 6.*

127 *Stevens, supra note 58, at 58.*

128 *Boyd, supra note 5, at 10.*

129 *Stevens, supra note 58, at 59, quoting "Report of Committee on Legal Education," 15 ABA Proceedings 317, 340–341 (1892).*

In the end, the ABA's vision of the appropriate direction for legal education was not the vision that law schools in the United States would follow. "As it turned out, the ABA meetings of 1891 and 1892 were the last serious doubts the legal establishment expressed about the case method. By the 1893 annual meeting, the Harvard and Keener forces were much more in control and, although there was criticism of the case method, it was relatively muted."[130]

Once the case method was entrenched and the apprenticeship requirement was abandoned, it proved very difficult to reinstate apprenticeships, though efforts to reinstate them continued into the twentieth century.[131]

> At the 1909 ABA Meeting, Franklin Danakher of the New York Board of Examiners said his state had made a "grievous error" in allowing students to take the bar examination without serving some time in a clerkship. In 1910 the American Bar Association recommended that, after three years of law school, students have a mandatory one-year clerkship, and the Association of American Law Schools was urged to support the recommendation. In 1913, the ABA formally asked the Association of American Law Schools to accept the rule, but, led by Henry Rogers, the academics balked. To them it was abundantly clear that the case method was practical; the obtuseness of practitioners seemed to know no bounds."[132]

The case method was subjected to systematic, critical analysis for the first time in *The Common Law and the Case Method*, a report prepared by Josef Redlich, an Austrian observer for the Carnegie Foundation, that was published in 1914. Redlich described the strengths and shortcomings of the case method, and he concluded that the case method was essentially geared to teaching common law rules and that "for teaching statutory and other materials, different methods of instruction would be more appropriate."[133] Redlich also noted the absence of a practical side to law school. Although the leading academics of the day assimilated clinical studies in medical school to the study of appellate cases, Redlich was unconvinced by their arguments.[134]

Redlich's analysis, however, did not stem the tide of university law schools that were following Harvard's lead and adopting the case method.[135] "By 1900 a remarkable uniformity was apparent in legal curricula across the land. With respect to core curriculum virtually all schools had accepted the Harvard model by 1920. In fifty years one school had intellectually, socially, and numerically overwhelmed all others."[136] One can only speculate about the content and structure of legal education in the U.S. today if Eliot and Langdell had admired the English method of education rather than Germany's.

The most famous reaction to Langdell's approach, the so-called Realist movement, occurred in the 1930's. The Realist movement cultivated the idea that one should view the law whole or, alternatively, to see the law as it is.[137] The most influential scholars in the Realist movement were Roscoe Pound, Leon Green, Karl Llewellyn, Jerome Frank, and Oliver Wendell Holmes, Jr., "the

130 *Id.*

131 *Delaware and Vermont are the only U.S. jurisdictions that require apprenticeships today. For more information see supra note 16.*

132 *Stevens, supra note 58, at 119–120 .*

133 *Id. at 117.*

134 *Id. at 119–120.*

135 *Bartholomew, supra note 107, at 378.*

136 *Robert Stevens, Two Cheers for 1870: The American Law School, in LAW IN AMERICAN HISTORY 405, 434–435 (Donald Fleming and Bernard Bailyn, eds., Little, Brown 1971).*

137 *Martini, supra note 57, at 60.*

most famous of all Realists, surely the most influential."[138]

Jerome Frank's pleas for 'lawyer schools' were an attack on the heart of the Langdellian assumption that the case method was both practical and in the intellectual tradition of German scientism. Frank argued that law schools had become too academic and too unrelated to practice:

> The Law Student should learn, while in law school, the art of legal practice. And to that end, the law schools should boldly, not slyly and evasively, repudiate the false dogmas of Langdell. They must decide not to exclude, as did Langdell – but to include – the methods of learning law by work in the lawyer's office and attendance at the proceedings of courts of justice. . . . They must repudiate the absurd notion that the heart of a law school is its library.[139]

"The major contribution of the Realist movement was to kill the Langdellian notion of law as an exact science, based on the objectivity of black-letter rules. When it became acceptable to write about the law as it actually operated, legal rules could no longer be considered value-free."[140] "After Holmes, the structure of Langdell's pedagogy remained intact but its heart had been torn to shreds."[141]

In light of such strong and well-founded criticisms of the case method, one might reasonably ask why the case method survived and flourished. In the end, the persistent preeminence of the case method in American legal education has much less to do with its usefulness for preparing lawyers for practice, either by transmitting knowledge or teaching analytical skills, than it has to do with the economics of legal education and the political power of law professors.

> [T]he case-method system . . . held a trump card – finance. The vast success of Langdell's method enabled the establishment of the large-size class. Although numbers fluctuated, Langdell in general managed Harvard with one professor for every seventy-five students; the case method combined with the Socratic method enabled classes to expand to the size of the largest lecture hall. . . . The case method was thus both cheaper as well as more exciting for both teacher and student. Such was the prestige of Harvard that law schools emulating its teaching method could scarcely ask for a "better" faculty-student ratio. Any educational program or innovation that allowed one man to teach even more students was not unwelcome to university administrators. The "Harvard method of instruction" meant that law schools could be self-supporting.[142]

In other words, the case method's success had a lot to do with money. Law schools in the United States were accepted into the universities in part because they could be self-supporting – or actually produce a cash surplus. The expectation that law schools would be self-supporting, however, has made it difficult to introduce alternatives to the case method. "Even the leading law schools had always had faculty-student ratios that would have been unheard of in any marginally acceptable college and unthinkable in any other graduate or other professional school. This underfunding of legal education was almost certainly attributable to the Langdellian model, for the

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138 Id.

139 Stevens, supra note 58, at 156–157, quoting Jerome Frank, "What Constitutes a Good Legal Education?," a speech to the Section of Legal Education in 1933, as cited in Edward T. Lee, THE STUDY OF LAW AND PROPER PREPARATION (Chicago 1935).

140 Id. at 156.

141 Martini, supra note 57, at 66. Even Harvard's students criticized the case method. During a curriculum study in 1935, Harvard students attacked the case method and the overall blandness of the curriculum. They thought the case method lost its value after the first year, and they wanted the faculty to replace it with lectures and discussions. Stevens, supra note 58, at 137 & 161.

142 Stevens, supra note 58, at 63 (citations omitted).

case method seemed to work as well with two hundred students as it did with twenty . . . ."[143]

The other reason for the survival of the case method is the political power of law teachers which has its roots in Langdell's appointment of James Barr Ames as an assistant professor in 1873. Until then, most law professors were current or former practicing lawyers or judges. Ames had graduated from the Harvard law school a year earlier and had no experience in practice.[144] Ames' appointment reflected Harvard's embrace of another German educational practice – appointing former students with little practical experience but with research potential.[145] As Langdell explained, "What qualifies a person . . . to teach law is not experience in the work of a lawyer's office, not experience in dealing with men, not experience in the trial or argument of causes – not experience, in short, in using law, but experience in learning law . . . ."[146]

Ames' appointment arguably had a more significant impact on legal education than any other innovation by Langdell because it began a process that separated the interests of the academic community of law teachers from those of practicing lawyers. Ames' appointment "created, for the first time, a division in the legal profession between the 'academics' and the 'practitioners,' a separation that would not only logically lead to the creation of the Association of American Law Schools (AALS) in 1900 as an entity separate from the ABA, but would also cause increased confusion and controversy in the disputes over standards in the early twentieth-century."[147]

"Law teachers liked the German model of higher education because it conferred prestige on their profession. Use of German educational methods allowed law professors to compare themselves with other academics; they were advancing the boundaries of knowledge, not merely instructing students on how to ply a trade."[148] "When the law school became a separate school and instituted a four-year program of study, one Berkeley professor commented approvingly that this was an attempt to structure the law school along the lines of the German university, where pure scholarship and research mattered most."[149]

"No doubt part of the method's popularity was snobbism; once elite law schools had decided to approve of the system, those aspiring to be considered elite rapidly followed. Such elitism, however, may have been not only on the part of the institutions but also on the part of the individuals within them. Law professors undoubtedly relished their increasing power and influence in the classroom and happily made the change from treatise-reading clerk to flamboyant actor in a drama."[150]

Today, many law professors in the United States use a wide variety of teaching methods, but the case method remains entrenched as the primary method of instruction during all three years of law school.

The Struggles Over Regulating Legal Education and Admission to the Profession

In the 1870s, as mentioned earlier, many lawyers were concerned about the quality of the legal profession – with good reason. They wanted to impose restrictions on access to the legal profession, contrary to the principles of Jacksonian Democracy. They were also concerned about the diploma privilege, the practice by which graduates of some law schools could be admitted to law practice in certain states without taking a bar examination. The lawyers felt it took control of

143 Id. at 268.
144 Hurst, supra note 60, at 264.
145 Bartholomew, supra note 107, at 378.
146 Hurst, supra note 60, at 263.
147 Stevens, supra note 58, at 38–39.
148 Bartholomew, supra note 107, at 379.
149 Id.
150 Stevens, supra note 58, at 63.

entry into the profession away from practitioners and gave it to legal educators.[151]

Leaders of the legal profession decided to try to establish some control over legal education and admission to practice. Their effort began at the American Social Science Association meeting in Saratoga, Florida, in 1876. This was six years after Langdell arrived at Harvard and three years after he appointed Ames to the faculty. The president of the Social Science Association was Lewis Delafield, the leading opponent of the diploma privilege. Delafield attacked the Jacksonian "notion among laymen, which is shared by many professional men and has found expression from certain judges, that the gates to the bar should be wide open, and easy admission allowed to all applicants."[152] Delafield called for higher standards that would ensure that lawyers had character and learning. At the next meeting of the American Social Science Association in 1877, the organization urged the formation of a national lawyers' group, and the American Bar Association (ABA) was created in 1878.[153]

Although the ABA controls the accreditation of law schools throughout the United States today, its primary function in its initial years was to recommend courses of study that state and local bar associations should require for admission to the practice of law.[154] The ABA created a Standing Committee on Legal Education as one of the ABA's first subgroups.

As it turned out, the Committee on Legal Education was frequently more or less in the hands of what Alfred Reed would later call "the schoolmen," that is, "those who were connected with or believed in legal education in law schools rather than in law offices."[155] This meant that the Committee's views about how to improve the quality of the legal profession were not always in line with those of the overall membership of the association. For example, the Standing Committee recommended in 1879 that a law school diploma should be an essential qualification for admission to the bar. "The Association rejected that declaration and several like it in later years despite frequent dilution."[156]

Apparently still under the control of schoolmen in 1881, the Committee recommended that the course of study in law school should include "an ambitious, three-year course of study for all lawyers to include: moral and political philosophy, law of England (feudal, municipal, and origin of the common law), law of real rights and remedies, law of personal rights and remedies, law of equity, the Lex Mercatoria (Law Merchant), law of crimes, law of nations, admiralty law, Roman law, Constitution and laws of the United States, including federal jurisdiction, state constitution and laws, and political economy."[157]

Only one year later, however, the composition of the Committee seems to have changed for it proposed "'a new Practical Course of Study' that included real property, personal property, torts, contracts, procedure, and testamentary law. It stated that legal education must prepare the working lawyer for his job as a lawyer and therefore should teach practical common law, not diplomacy, history, political economy, or other social sciences."[158]

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151 Id. at 26.

152 Id. at 27.

153 Id.

154 Boyd, supra note 5, at 3.

155 Preble Stoltz, Training for the Public Profession of the Law (1921): A Contemporary Review, in Packer & Ehrlich, supra note 10, at 227, 233. Packer and Ehrlich define "schoolmen" as "the leaders of legal education and the 'elite' members of the bar." Packer & Ehrlich, supra note 10, at 26.

156 Id.

157 Boyd, supra note 5, at 6 .

158 Id.

In 1891 the Committee opposed another attempt to require college study before law school.[159] The Committee's position on the issue did not matter in the end because Harvard began requiring a college degree for prospective law students by 1896, and most other university-related law schools followed Harvard's lead fairly quickly.[160]

The political tide shifted back in favor of the schoolmen when the Section on Legal Education and Admissions to the Bar was formed in 1893. It was the first section created by the American Bar Association.[161] Whereas membership on the Committee on Legal Education was by appointment only, the Section was open to any member of the ABA who wanted to participate. To the leaders of the Section "[l]egal education meant law school education and the focus was on ways of improving law schools."[162] It naturally developed that members of the Committee on Legal Education and the broader association frequently had somewhat different opinions about legal education than members of the Section of Legal Education and Admissions to the Bar. For example, the Section passed a resolution in favor of lengthening the period of law study to three years in 1895, but, although the ABA membership passed a similar resolution in 1897, it left out the words "in law school."[163]

Although law professors and practicing lawyers were to continue wrestling over control of legal education throughout the twentieth century, they were united at the end of the nineteenth century in their desire to raise the standards for admission to the legal profession. "The elite lawyer in the 1890s headed for the newly emerging law firms in Wall Street might well graduate from Yale College and the Harvard Law School and then spend his first few years working for the firm learning practical skills. The typical lawyer, however, in almost any state, might begin practice on his own without any institutional training, perhaps without even a high school diploma, and often with no or only minimal office training."[164] "No state required attendance at law school, and the majority of lawyers in the 1890s saw the inside neither of a college nor of a law school. Several states did not even require graduation from high school for admission to the bar. It was galling to the leaders of the bar that there had been a dramatic revival in formal training for divinity and medicine but, at best, a desultory revival in law."[165]

Although there were good reasons to be concerned about the quality of legal services, the elite lawyers and the law teachers also had less altruistic motives for wanting to raise the standards for admission to the legal profession. The law teachers wanted to protect and enhance the exalted status that their use of case method produced for them in the university systems. The elite lawyers wanted to make it more difficult for immigrants, or at least those who were not Caucasian and Christian, to become lawyers. The Anglo-Saxon Protestants who dominated the top levels of the legal profession were concerned about the rising number of second generation immigrants who were entering the legal profession. America had changed from its days as a collection of colonies on the east coast that were populated by immigrants from one country who shared common ideals and traditions. It had become a large country serving as a melting pot of diverse peoples from all over the world, as well as thousands of former slaves who were set free by the civil war.

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159 Id. at 10.

160 Bartholomew, supra note 107, at 388. Yale held out until 1912. Michigan did not require a college degree until 1928. Id. at 391.

161 Stoltz, supra note 155.

162 Id. at 233.

163 Id.

164 Stevens, supra note 58, at 96.

165 Id. at 95–96.

It is difficult to determine how much of the interest in "improving the profession" was for *bona fide* reasons and how much was not. Some people claimed that the efforts to raise standards were primarily concerned with keeping out Jews, blacks, and immigrants.[166] Yet others concluded that "it would be wrong to view the issue solely from such limited points of view; the motives behind raising standards were numerous. The overall thrust of the movement to raise standards was part of a far larger movement of institutionalization, and, whatever motivated the leaders of the bar, they were committed to an ethical, educated bar."[167]

One should keep in mind that the admission and regulation of lawyers was controlled on a state by state basis and, consequently, the standards for admission to the legal profession were quite varied. The American Bar Association did not have any power to control the standards for law school or bar admission. All it could do was to make recommendations and try to persuade schools and states to implement them. It did not have much success in its early years.

In the meantime, a new political force was in the making. The new profession of "academic lawyers" initiated by Ames' appointment at Harvard did not have an organization of its own, and the academics were unhappy that the ABA was not devoting more time to legal education and that it had dared to criticize the case method. "In 1899, the ABA, under pressure from the new breed of academic lawyer, called for the establishment of an organization of 'reputable' law schools, which came into being in 1900, with twenty-five members, as the Association of American Law Schools."[168]

Despite their differences on some issues, the ABA and the AALS quickly joined forces against part-time, evening law schools that catered to less affluent members of society, and their efforts to "improve" or destroy these schools continued from the beginning to the middle of the twentieth century. "Although the academic lawyers often argued the need to rid society of the night schools to insure competent, public-spirited, and ethical lawyers as the basis for exclusionary moves, ABA leaders were more blunt. World War I made matters worse. Legal politicians found that the legal profession was a means by which Jews, immigrants, and city-dwellers might undermine the American way of life."[169]

> [T]he attack on night and part-time schools that opened the twentieth century seems to have been a confusing mixture of public interest, economic opportunism, and ethnic prejudice. Another factor, related to all of these, yet somewhat different, was "professional pride." It had its roots in the "culture of professionalism" of the late nineteenth century. Lawyers and law professors had recently founded their professional organizations; they jealously guarded these institutions from any who might be considered interlopers. "Science" and the orthodoxy of the case method had given them a solid basis for their pride, and anyone who did not follow the new religious creed was robbing them of their solidarity and standing.[170]

Various proposals were initiated during the early part of the twentieth century to "improve" the legal profession. These included regulation of admission by the supreme court of each state, disapproval of the diploma privilege, candidates must be U.S. citizens, two years of college before law school, preliminary inquiry into a student's character and fitness when he entered law school, candidates must speak English, submission of affidavits of character from attorneys personally known to members of the admissions committee (or a letter from a teacher or minister), passing a

166 Id. at 100.
167 Id.
168 Id. at 96.
169 Id. at 100–101.
170 Id. at 101.

college entrance exam, three years of law school study (four for part-time).[171]

Most of these proposals were implemented by the middle of the century and remain in place today. At the beginning of the twentieth century, however, they were quite controversial because, collectively, they made it more difficult to establish law schools and more difficult to enter the legal profession. They also tended to make legal education and the legal profession more homogeneous and less diverse.

In his report for the Carnegie Foundation in 1914, *The Common Law and the Case Method*, Josef Redlich noted that students from all classes of the population were found in each of the law schools in the United States and that the schools were serving at least two markets. He discovered that the proprietary schools "supply the needs primarily of those social strata whose sons are not thinking of university education in either the American or continental sense. They consider the legal profession as a trade, like any other, and regard legal education in the same light as commercial education in a commercial school."[172] Thus, Redlich identified two issues that the legal profession in the United States has still not satisfactorily confronted. One is the reality that most lawyers are in business to make money, not necessarily to provide a public service. The other issue is that the graduates of some law schools enter different practice settings than graduates of other law schools. Seven years after Redlich's report, Alfred Reed would more fully consider the ramifications of the fact that the United States has a *de facto* stratified bar with diverse educational and training needs.

At its 1917 meeting, under pressure from the AALS which wanted to streamline the structure of regulating law schools, the ABA established a Council on Legal Education to replace the Committee on Legal Education.[173] The AALS' plan was to "pattern the Council after the Council on Legal Education in England, where 20 judges and barristers appointed by the four Inns of Court supervised the subjects, the teachers, and the examinations of those desiring to be called to the bar."[174] The ABA made the Council less powerful than the AALS had hoped in order "to prevent control of the section [of legal education] from passing into the hands of . . . the Law School Association."[175] "To placate the AALS, the ABA staffed the Council with the pillars of the academic legal establishment – the deans of Harvard, Wisconsin, Minnesota, Columbia, and Northwestern."[176] "[T]he 'schoolmen' forces thought they were riding high and were in control of what the ABA was likely to do with respect to legal education."[177]

In the next year, 1919, the schoolmen suffered a reversal of fortune. The Executive Committee of the ABA refused to give any financial support to the Council on Legal Education for reasons that are unclear.[178] Furthermore, in a general reorganization of the ABA, the Executive Committee made the Council subject to the control of the Section.[179] The leading law schools fought the change. A resolution from the AALS to preserve the Council was debated at the ABA meeting, but it was defeated 63 to 123.[180] The AALS was displeased, and it developed "a strategy to take over

171 *Boyd, supra note 5, at 19–20.*

172 *Josef Redlich, THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS 70 (University Microfilms International 1979).*

173 *Stevens, supra note 58, at 114.*

174 *Boyd, supra note 5, at 22.*

175 *Stevens, supra note 58, at 114, quoting Alfred Z. Reed. PRESENT DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA 39 (1928).*

176 *Id. at 115.*

177 *Stoltz, supra note 155, at 236.*

178 *Id. at 237.*

179 *Id. at 236.*

180 *Id. at 237.*

the ABA Section of Legal Education through the simple expedient of attending meetings in force, since the ABA, unlike the AALS, was based on individual membership."[181]

"The AALS plan worked; professors packed the 1920 meeting of the ABA Section of Legal Education and Admissions to the Bar and were able to ensure that established law teachers had a strong say in section policy."[182] Some people were concerned "that the AALS would take over the Section and that the Standards would not represent the opinion of the profession or even of the ABA."[183] A committee, chaired by Elijah Root, was appointed under pressure from law teachers to report on how to "improve the efficiency of persons to be admitted to the practice of law."[184]

While the Root Committee was meeting, Alfred Z. Reed was preparing a report on legal education for the Carnegie Foundation. In *Training for the Legal Profession*, Reed, a nonlawyer, pointed out that law, like medicine, is a public profession because lawyers do more than provide a social service. They are part of the governing mechanism of the state because "private individuals cannot secure justice without the aid of a special professional order to represent and to advise them."[185] Unlike the leaders of the profession, however, Reed did not view the public functions of lawyers as a justification for raising standards. Rather, "[h]e saw the America of the 1920s as a pluralistic society being presented with a theoretically unitary bar.[186] He concluded that there had been improvements in the quality of the leaders of the profession due to the development of law schools, but the other end of the profession was progressively worsening.[187]

Reed believed that a unitary bar was doomed to failure. "He opposed the establishment of those universal standards – either through bar examinations or through accreditation – designed to drive out the intellectually less fashionable schools. In the long run, he saw the need for lawyers of differing skills and qualifications serving different purposes and different elements in society."[188] He recommended that part-time law schools redirect their goals "to graduate men competent to perform the relatively routine tasks within the confines of a single jurisdiction. They would be well-trained to do that and no more."[189]

"As Reed saw it, the issue was whether to improve the quality of the profession by forcing everyone into the mold of the Harvard graduate (undergraduate college followed by full-time legal education) or to improve the quality by building a differentiated bar with some members trained to do some things and some trained to do others, with competence enforced by civil-service-type examinations for the various tracks."[190]

The Root Committee had advance copies of Reed's report but chose to ignore his recommendations. Instead, the Root Committee recommended requiring at least two years of college before law school[191] and three years of full-time or four of part-time study in law school. In other words, it wanted schools to follow the Harvard model. The committee also endorsed abolishing the diploma privilege and requiring applicants for bar admission to be examined by public authority. Another recommendation was to revive the Council on Legal Education and

181 *Stevens, supra note 58, at 115.*

182 *Id.*

183 *Boyd, supra note 5, at 23 .*

184 *Id. at 24.*

185 *Stevens, supra note 48, at 113.*

186 *Id.*

187 *Id. at 114.*

188 *Id.*

189 *Boyd, supra note 5, at 26.*

190 *Packer & Ehrlich, supra note 10, at 26.*

191 *In 1921, no state required law school training "for admission to its legally privileged bar." Reed (1921), supra note 6, at 213.*

invest it with the power to accredit law schools.[192]

The Root Committee's proposals were presented at the 1921 ABA meeting. Reed's report was still two months away from publication, and two delegates proposed withholding action on the Root Committee's recommendations to see how consistent Reed's views were with the committee's. "Root answered that argument with the bland statement that the Report had been available to the Committee (which was true), and that 'the recommendations of the committee were based upon their study of the report.'"[193] The ABA adopted the Root Committee's recommendations at the 1921 meeting without considering Reed's report.

The ABA's action in 1921 set a pattern that still defines legal education in the United States. "Reed felt that legal education should not be exclusively patterned on the Harvard mold; the schoolmen disagreed, and it was they who successfully maneuvered the 1921 meeting."[194] The rejection of Reed's idea of a differentiated bar ended any real chance that a state's admissions authority might try to create a system of legal education that prepared some lawyers to provide specialized, limited legal services in order to improve access to legal education and the legal system by poor and underprivileged members of society[195]

In 1927, the ABA appointed its first full-time advisor on legal education, Claude Horack, who was at that time also the secretary to the AALS. "His primary assignment was to raise the standards of law schools and bar admissions. In keeping with this goal, the two associations continued to press on relentlessly with heightening requirements."[196] This "significant reproachment between the two associations"[197] further solidified the law teachers' control over legal education.[198]

Alfred Reed's second report, *Present-Day Law Schools*, appeared in 1928 in an atmosphere of rising standards and increasing conformity. Although a handful of states still had no requirements for any law training, almost every jurisdiction had a compulsory bar examination, some states required attendance at law school and, in almost every other state, law school and law office training had become alternatives. Only four states still insisted on some office training for all students.[199] Reed was particularly concerned about the rapidly accelerating homogenization of law schools, which pressures from the ABA and the AALS were promoting. Reed feared that eventually the standards would be applied to all schools, even those catering to the least affluent sections of the population. He was right, but his concerns went unheeded.

The conflicts between university-based and unaccredited law schools became increasingly heated as the 1920s ended. The meeting of the ABA Section of Legal Education in 1929 was "probably one of the most unpleasant on record."[200] This was the meeting at which the recommendations of the Root Committee became part of the accreditation standards, although some people complained that the approval of the Root report at the 1921 meeting was unfair because it had been packed

192 *Boyd, supra note 5, at 24 .*

193 *Stoltz, supra note 155, at 239.*

194 *Packer & Ehrlich, supra note 10, at 28.*

195 *Stoltz, supra note 155, at 249.*

196 *Stevens, supra note 58, at 173.*

197 *Id.*

198 *The ABA's practice of hiring a person from academia as its advisor on legal education is a tradition that continues today, although current title for the advisor is "Consultant on Legal Education to the ABA." Because the Consultant is responsible for administering the law school accreditation process, this is one of the most influential positions in the United States regarding legal education.*

199 *Stevens, supra note 58, at 174.*

200 *Id. at 175, citing Edward T. Lee's "In re The Selection of Legal Education and the American Bar Association: Is the Association to be Controlled by a Bloc?"*

with AALS representatives.[201] Among other incidents during the 1929 meeting, Edward T. Lee, the dean of a part-time evening law school in Chicago, accused the elite law schools of using the ABA Section of Legal Education and Admissions to the Bar to further the interests of the AALS. "A group of educational racketeers – deans and professors in certain endowed and university law schools of the country – have used the American Bar Association as an annex to the Association of American Law Schools, a close corporation of 'case law' schools, entirely irresponsible to the American Bar Association . . . . They have been boring from within our Association in the interest of their own . . . ."[202] It would still take until the eve of World War II, however, before most states required two years of college before attending law school.[203]

In the end, the unaccredited law schools and the proponents of differentiated standards for law schools in the United States were defeated by two events that had nothing to do with the merits of the debate: the Great Depression and World War II. During the Great Depression, which began in 1929 and continued until the United States entered World War II in 1942, marginal law schools found it economically difficult to survive. The ABA also continued to adopt increasingly stringent accreditation standards. "By 1937, the ABA's standards required two years of college study, and three years of full-time or four years of part-time study at a law school that had a library of at least 7,500 volumes, a minimum of three full-time professors, and a student-faculty ratio of no more than one hundred to one."[204] Although it is impossible to determine accurately how much the decline of unaccredited law schools in the 1930s was due to the Depression or how much was due to the continued raising of standards, "one clearly fed on the other."[205]

"World War II merely accelerated the directions taken in the 1930s. Even before the outbreak of the war, the numbers of law students fell rapidly because of the selective service law."[206] By 1943, enrollment in law schools was 1/6 of what it was in 1938.[207] By September, 1944, law school enrollment had decreased 83% since 1936.[208]

"Several unaccredited schools closed, never to reopen. What the ABA and the depression had begun, Hitler helped to complete. [The German influence again.] Moreover, although, for the most part standards were waived for the emergency, the ABA established library standards for approved schools for the first time in 1942 and in 1944 moved to inspect all schools. The postwar path was clear. Law was supposed to be an 'intellectual' profession. To the leaders of the profession, it also was evident that law schools were training for a homogeneous profession rather than providing a gateway qualification for diverse careers."[209]

At the end of World War II, the G.I. Bill made legal education affordable to many, and the majority chose to exercise this opportunity at accredited law schools. Many unaccredited schools went out of business.[210] "The phenomenal influx of students into accredited schools after the war rapidly restored the confidence of the ABA and the AALS. In the years after 1945, standards leaped and structures hardened."[211]

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201 Boyd, supra note 5, at 35–36.
202 Stevens, supra note 58, at 175.
203 Stoltz, supra note 155, at 242.
204 Id. at 179.
205 Id. at 177–178.
206 Id. at 198.
207 Boyd, supra note 5, at 47.
208 Id. at 48.
209 Stevens, supra note 58, at 199.
210 Id. at 205.
211 Id. at 207.

In hindsight, one of the curious things about the movement to raise the standards for law schools and entry into the profession is that there was never any evaluation of the relationship between law school accreditation standards and the quality of legal services. "The contention that the public might be adequately protected by bar examinations alone was apparently not mooted; only accreditation of law schools was acceptable. That the new scheme might make it more difficult for minority groups to obtain a legal education, or might hold back those wishing to specialize, was immaterial. The American bar, as everyone knew, was unitary. 'Higher' standards meant 'better' lawyers; the public must be protected at all costs, and that protection was clearly best arranged by the existing members of the profession."[212]

The Modern Era of Legal Education in the United States

The normal route into the legal profession became three years at an ABA-accredited law school following four years of college.[213]

> By 1950, three years of college became the norm, and by the 1960s, four years of college. The two-year law school had long since evaporated; in its place were three-year full-time schools and four-year part-time schools. The ABA-AALS minimum standards had rolled ever on, requiring increasing numbers of volumes in libraries and even fuller full-time faculties. The clerkship route to the bar had become a rarity. The success of the campaign had taken a long time, but the movement had had the effect desired by its leaders. A law student of 1970, thoroughly indoctrinated in the unyielding standards of his time, would probably have difficulty believing that it was not until roughly 1950 that the number of lawyers who had been to college exceeded the number of those who had not.[214]

In describing the goals of legal education in 1950, Arthur Vanderbilt wrote that "[t]he keynote we should strike is that all education in the last analysis is self-education . . . that in law schools we are only going to attend to two things, giving them the art of legal reasoning and some of the main principles of law."[215]

Vanderbilt's analysis of the objectives of law schools in 1950 was probably accurate, and it demonstrated the gap between the objectives of law schools and the needs of their graduates to be prepared for law practice. Ever since legal apprenticeships first fell into disfavor, the failure of the law school to teach legal skills, other than purely analytic ones, had been criticized.[216]

The first organized attempt to try to articulate the rationales underlying legal education was a 1944 report issued by the AALS Curriculum Committee, written primarily by Karl Llewellyn. "The report noted, first of all, that with the increasing complexity of the law the regular case course was no longer, except for the best students, an adequate vehicle for indirect conveyance of the basic legal skills – 'current case-instruction is somehow failing to do the job of producing *reliable professional competence* on the byproduct side *in half or more of the end product*, our graduates.'"[217]

In the 1950s and 1960s, "[d]iscussion of curricular reform increasingly centered on skills such as negotiation, drafting, and counseling – legal skills that had had no place in the Langdellian scheme of things."[218] Leaders of the legal profession began increasingly to express concerns that law

212 Id. at 206–207 (citations omitted).

213 Id. at 206.

214 Id. at 209.

215 Boyd, supra note 5, at 59.

216 Stevens, supra note 58, at 214.

217 Id. citing AALS Proceedings (1944) 168 (emphasis included in original text).

218 Id. at 212.

schools were not living up to their expectations.[219] The bar was irritated by an apparent reluctance on the part of leading schools to be concerned with those skills that the profession regarded as important; leaders of the profession also felt that the broadening of legal education had gone too far. By the 1960s at most schools, the second and third years had become largely elective, and the course titles bore little resemblance to the courses taken by leading lawyers when they had been in law school. The implications of this were to come to the fore in the friction between practitioners and academics during the 1970s.[220]

The confusion of U.S. law teachers about what they were doing and why they were doing it was apparent in 1971 when Paul Carrington made the following remarks at the AALS Annual Meeting.

> While most law teachers would assert that they are teaching much beside legal doctrine, few are eager to say precisely what. Some have been content to describe their work as teaching students 'to think like lawyers,' although that phrase is so circular that it is essentially meaningless. Perhaps the reluctance to be more specific is borne in part by a distaste for platitudes. Or perhaps it reflects the instinct of lawyers (shared by others who are experienced in human conflict) that it is more difficult to secure approval of goals than means. This reluctance should be overcome, partly to try to help students get a better sense of direction, but also in order to direct attention to the "hidden curriculum" which serve to transmit professional traits and values by the process of subliminal inculturation.[221]

In 1972, a Carnegie Commission report concluded that U.S. "[l]aw teachers often are confused about legal education and the form that it has been forced to take by the interplay of bar admission requirements, professional organization, and the law schools. They are unclear about the goals of the second and third years of legal education. They are often frustrated in their scholarship and uncertain about their professional and academic roles. Increasingly disappointed and impatient students interact with increasingly frustrated and confused teachers and emerge with a patchwork professional education and an ambivalent view of themselves as professionals."[222]

By the 1970s, law schools had effectively become the only portal to entry to the profession.[223] The case method was still the predominant method of instruction in law schools, though no one had an adequate explanation of why.

> [T]he case method continues to dominate legal education in three ways. First the notion of "fundamental" courses, those making up the first year and upon which everything else depends, stems directly from Langdell's scientific conception of the law. Secondly, the body of knowledge (law school law) that students are required to master is still found in "casebooks." And thirdly, classes are still conducted in some variation of the socratic method, as if the prime aim of the teacher were to teach the student to extract principles from cases scientifically.
>
> Each of these features of legal education, I must reiterate yet again, has become part of legal education only since 1870 as an adjunct to Langdell's case method. This is not to say that

219 *Id. at 238.*

220 *Id.*

221 *Carrington, Training for the Public Professions of the Law: 1971, Part One, Section II, Proceedings, Association of American Law Schools, 1971 Annual Meeting (Carrington Report) reprinted in Herbert L. Packer and Thomas Ehrlich, NEW DIRECTIONS IN LEGAL EDUCATION 93, 129 (McGraw-Hill 1972).*

222 *Packer & Ehrlich, supra note 10, at 33–34.*

223 *Stevens, supra note 58, at 238.*

> since Langdell and his disciples introduced these ideas to they must be replaced by something else. It is, however, to say that the rationale for these three ideas – the "fundamental" first year courses, casebooks, and classes conducted along socratic lines – was first provided by the case method, and insofar as that rationale is no longer valid I should think these adjuncts would likewise be suspect, unless they are valid for some other reason than that given by Langdell. They may well be, but I nonetheless suspect that much of the present unrest in law schools stems from the fact that no satisfactory justification for the continuance of this extremely stylized form of legal education has been given to the ever growing number of social science-conscious lawyers.[224]

"Langdell's first year is our first year; his method – briefing cases, analyzing holdings, socratic probing – is our method. In other words, legal education remains in form a kind of Procrustean bed in which all learning for lawyers is forced to lie. I think I know why Langdell and his colleagues made it so. Frankly, I do not know why we do, unless it is pure inertia. For the above reasons, I conclude that though we have more or less thoroughly rejected the philosophy of the case method, like Maitland's forms of actions, it still rules us from the grave."[225]

In 1973, U.S Supreme Court Chief Justice Warren Burger complained that traditional law school education was not providing adequate advocacy skills to law graduates. "[H]e suggested that a two-year program of basic legal education be followed by specialized training under the guidance of practitioners along with professional teachers."[226] His concerns about the quality of advocacy in the federal courts were symptomatic of the profession's unhappiness with the quality of preparation of lawyers for practice.[227]

The Clare Committee was appointed by the U.S. Court of Appeals for the Second Circuit following Burger's remarks "to develop minimum educational requirements for lawyers appearing before the courts of that circuit. The Clare Committee proposed the successful completion of courses in five subject-matter areas: evidence, criminal law and procedure, professional responsibility, trial advocacy, and civil procedure, including federal jurisdiction, practice, and procedure. Both the Section and the AALS opposed the Clare proposals, which were not implemented."[228]

Other structural changes to legal education were advocated in the 1970s. In 1971, the AALS Curriculum Committee, chaired by Paul Carrington of Michigan, issued its report, *Training for the Public Professions of the Law: 1971* (the Carrington Report). The Carrington Report called for a basic standard two-year J.D. degree, followed by a series of post-J.D. alternatives designed to respond to the different types of legal practice. The report denigrated the assumption that acquiring a store of information is the principal value of legal education. The committee viewed the present reliance on the case method as "a precious elaboration of details of little value to the generalist."[229] The report suggested changing the goals of the first year of law study to focus on macroissues, as opposed to microissues, of doctrine.[230] A 1972 Carnegie Commission report[231] endorsed the Carrington Committee's recommendations, including the proposed two-year model, again as part of an overall freeing up of the alternative structures of legal education.[232]

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224 Woodward, supra note 51, at 366–367.

225 Id. at 372.

226 Boyd, supra note 5, at 115.

227 Stevens, supra note 58, at 238.

228 Boyd, supra note 5, at 115 .

229 Packer & Ehrlich, supra note 10, at 51–52.

230 Id. at 50–51.

231 Id.

232 Stevens, supra note 58, at 242.

No one knows for sure why Harvard in the 1800s or the Root Committee in 1921 decided that law students should attend law school for three years. "Unfortunately, no very good explanation can be given for the third year requirement because it was a totally noncontroversial part of the Root resolution. It was noncontroversial because what the A.B.A. decreed in 1921 simply reflected what was then the practice of all but a few law schools. It had not, however, been standard for very long . . . ."[233]

> The sum of the matter is that there never was a well-articulated basis for requiring three years of law school; perhaps the most persuasive reason is that English custom requires a prospective barrister to dine at an Inn of Court for three years before he can be called to the bar. The Root Committee departed from its task of defining *minimum* standards when it required three years of law school. At the time the Root Committee spoke, three years had been standard for no more than a decade and it is hard to believe that there were not other combinations of more college and less law school that they would have regarded as minimally satisfactory.[234]

For a while, the two-year law school option seemed close to being accepted as an alternative early in the new decade.[235] In fact, the "ABA Section of Legal Education and Admissions to the Bar recommended to the mid-year meeting of the ABA in 1972 that Rule 307 of the law school standards be modified to allow the two-year law school. Many assumed the change would go through. They could not have been more wrong."[236]

The deans of Harvard, Columbia, Yale, and Pennsylvania opposed the idea, only the dean of Stanford supported it. "Dean Abraham Goldstein of Yale, emphasizing that lawyers had to be trained as generalists, opposed shortening law school at the very moment that law was becoming more complex and students needed to be trained in history, philosophy, and the social sciences."[237]

Although the ABA proposal was defeated, the debate about the lockstep of seven years of higher education continued. "Justin Stanley, president of the ABA in 1975–76, continued to argue for a two-year law school, and once again the profession's heightened interest in professional competence kept the pressure on. In 1978, Chief Justice Burger called for a two year conventional law school followed by a year of clinical work. Again, the law school establishment was not amused. The two-year law school movement, which had seemed so vigorous in 1970, seemed virtually dead by 1980."[238]

233 Stoltz, supra note 155, at 259.

234 Id. at 260.

235 Stevens, supra note 58, at 242.

236 Id.

237 Id. Of course, the subjects listed by Dean Goldstein were never added to the curriculums of most U.S. law schools.

238 Id. at 242–243.

Prestigious groups of academics, lawyers, and judges have continued calling for reforms in legal education in the United States consistently from the 1970s to today.[239] Not much has changed, however.

At the beginning of the 21st century the goals and methods of legal education in the United States remain much as they were at the end of the 19th century. The primary educational goals of U.S. law schools are to teach legal doctrine and analysis. The case method/Socratic dialog continues to be the primary method of instruction through all three years of law school. A recent survey of U.S. law school curriculums surprisingly concluded that "[i]t has been a decade of dynamism in legal education."[240] The report shows that law schools are giving more emphasis to skills and professionalism and have added more second and third year electives. The report also documents, however, that the content of the first year curriculum has not changed significantly. Although simulated and live-client clinical courses have grown in number and sophistication, the survey found that only 24% of responding schools require students to take *any* of these courses.

Although the curriculum survey did not investigate this topic, very few U.S. law schools have made a serious effort to integrate the teaching of knowledge, skills, and values or to provide sequenced, progressive programs for teaching and learning professional skills. Instruction about the values of the legal profession is not wide-spread or pervasively taught. Ethics instruction is mostly limited to instruction about the mandatory rules of conduct in a single course on professional responsibility.

Law teachers are firmly in charge of legal education in the United States, not the legal profession, the judiciary, or the government, and they would strongly resist any efforts to reduce their power over legal education. They have too much to lose collectively and individually. Consider the comments of historian Robert Stevens about the status and circumstances of law professors in the United States.

> To foreign lawyers, *especially the professorate*, the American law school is frequently a subject of admiration as well as envy. The leading American law schools appear to have an

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239 The most recent call for change is the Conference of Chief Justices' NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM (ABA 1999) (Chief Justices' Action Plan) (available at http://www.ncsc.dni.us/ccj/natlplan.htm). Other important reports include Legal Education and Professional Development – An Educational Continuum, The Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (Robert MacCrate, ed.) (ABA Section of Legal Education and Admissions to the Bar 1992) [the MacCrate Report] (reporting on the status of legal education and promoting more attention to teaching professional skills and values); TEACHING AND LEARNING PROFESSIONALISM: SYMPOSIUM PROCEEDINGS (ABA American Bar Association Section of Legal Education and Admissions to the Bar Professionalism Committee and the Standing Committee on Professionalism and Lawyer Competence of the ABA Center for Professional Responsibility 1997) (reporting proceedings of Symposium on Teaching and Learning Professionalism, October 2–4, 1996); Report of the Professionalism Committee, TEACHING AND LEARNING PROFESSIONALISM (ABA Section of Legal Education and Admissions to the Bar 1996) (calling on law schools to place more emphasis on teaching professionalism); Karl E. Klare, The Law-School Curriculum in the 1980s: What's Left?, 32 J. LEGAL EDUC. 336 (1982) (concluding that law school curriculum does not adequately prepare students to become successful attorneys); Special Committee for a Study of Legal Education of the American Bar Association, LAW SCHOOLS AND PROFESSIONAL EDUCATION (ABA 1980) (examining the inadequacy of legal education in preparing students for a legal career and recommending changes to improve and correct perceived problems); American Bar Association Section of Legal Education and Admissions to the Bar, REPORT & RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS (ABA 1979) (stating that improvement in legal education is an important part to increasing future lawyer competence).

240 A Survey of Law School Curricula 1992–2002, Executive Summary (Curriculum Committee of the ABA Section of Legal Education and Admissions to the Bar 2004).

> entrenched position of power in the profession, in American life, and, indeed, in the country at large, a position that is frequently denied to the academic branches of the profession in other industrialized societies. Students from American law schools go out into a profession that appears to wield far greater power in politics, business, labor, and even in social reform than in other common-law countries. Law professors within the university appear to live something of a charmed life and, within the profession, to have a profound impact on thinking about law, procedure, and institutions.[241]

A charmed life indeed. Law teachers in the United States are well-paid, they have virtually complete control of which courses are offered at their schools, and within their assigned areas they teach what they want and how they want (there is limited peer review of teaching before tenure, none afterwards). U.S. law teachers have light teaching loads (9 to 12 credit hours a year), have little contact with students outside of class, grade on the basis of one final exam a semester (an exam that individual teachers prepare and grade with no oversight), and have their summers off, often with stipends to write law review articles. After U.S. law teachers receive tenure (in six years or less), most engage in research and publication, though relatively few produce noteworthy scholarship. If a tenured law teacher chooses not to publish anything else after receiving tenure, not much happens. Though many U.S. law teachers supplement their salaries lucratively by "consulting" or actively practicing law, there is no requirement that they share their outside earnings with their institutions (as teaching physicians in U.S. medical schools must), nor do they involve students in their outside work. Some schools require law teachers to report their outside activities, but there is virtually no oversight or accountability.

Although no one could dispute Stevens' point that the organization and structure of legal education in the United States is good for the professorate in U.S. law schools, one might reasonably inquire as to whether legal education in the United States is as good for its intended beneficiaries as in other countries, specifically British Commonwealth countries.

The Modern Era of Legal Education in the United Kingdom

The relatively uneventful period in the history of legal education in the United Kingdom came to an end soon after World War II. "The modern English law school is in most important respects a post Second World War creation."[242]

A significant expansion of legal education occurred between 1945 and 1960. Enrollment in law school effectively doubled, as it did in other undergraduate schools. Although law schools were not highly regarded by the universities or the profession, law schools gradually became the primary route into the legal profession.[243] During the 1960's, law school enrollment doubled again,[244] and for the first time the majority of new solicitors were entering the profession after obtaining a law degree.

Legal education in the United Kingdom began to change in the mid-1960s. Dissatisfaction about law schools and the system of professional training and qualification, especially apprenticeship, increased.[245] In 1963, Gerald Gardiner Q.C. and Andrew Martin published LAW REFORM NOW in which they called for a thorough overhaul of the legal system, including legal education.[246]

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241 Stevens, supra note 58, at xiii (emphasis added).

242 Twining, supra note 54, at 26.

243 Id. at 28–31.

244 Id. at 32.

245 Id.

246 Id. at 33.

Gardiner became Lord Chancellor[247] in 1964 and appointed the Law Commission in 1965. "Lord Gardiner also appointed a committee chaired by Mr. Justice Ormrod to conduct the first major review of legal education since the Aiken Committee of 1934 – or, as that had been rather feeble, one might say the first since 1846."[248]

The Ormrod Committee presented its report in 1971.[249] Although the report eventually had a significant impact on legal education in England, the committee did not achieve its primary objective of creating an integrated and unified system of legal education and training.[250] In the face of the three main interest groups' refusal to cooperate, the committee could do little about the bifurcated system other than to clarify the lines of responsibility: the academic phase would be the responsibility of the universities and polytechnics; the Bar and the Law Society would be responsible for professional and continuing education, although they did not agree on a joint professional qualification. Instead, they insisted on conducting separate courses and examinations for the vocational stage in their own privately funded schools.[251]

Some recommendations of the Ormrod Report were never implemented and others took many years to become practice. However, the report marked a turning point in the history of legal education in England by making legal education an important topic of discussion, establishing patterns and stability, and articulating a philosophy about legal education that continues to influence decision-makers today.[252]

The Ormrod Report also marks the modern starting-point for defining a "core" of undergraduate legal education in England. The committee set five "basic core subjects" as satisfying the "academic stage" of professional formation: Constitutional Law, Contract, Tort, Land Law, and Criminal Law. English Legal System was assumed to be a part of the core curriculum. Some additional requirements were imposed after the Ormrod Report.[253]

The academics "fought attempts to prescribe the detailed content of core subjects and their methods of assessment, with mixed success."[254] "By 1994, the *de facto* 'core' effectively filled nearly two thirds of many curriculums and most students chose vocationally 'important' options."[255] "[T]here seems to be a fairly regular divergence between the conceptions of teachers, students and employers about what is 'vocationally relevant' at undergraduate level. Academic lawyers, no doubt with varying degrees of conviction and credibility, may echo Karl Llewellyn's claim that the best practical training, as well as the best human training, that a law school can give

247 The office of Lord High Chancellor of Great Britain, or Lord Chancellor, is one of the oldest offices of state in the United Kingdom, and the second Great Officer of the State, ranking only after the Lord High Steward. Among other significant responsibilities, the Lord Chancellor is the Cabinet member who heads the department responsible for the administration of the courts (http://en.wikipedia.org/wiki/Lord_Chancellor (last visited June 16, 2004)). In 2003 the Lord Chancellor's Department was renamed the Department of Constitutional Affairs, which claims on its website that it is "responsible for upholding justice, rights and democracy." (http://www.dca.gov.uk/ (last visited June 16, 2004)). Also in 2003 the Prime Minister announced his intention to abolish the office of Lord Chancellor to create a separate supreme court and a separate speakership for the House of Lords, but it is not clear whether the House of Lords will implement these changes (http://www.dca.gov.uk/ (last visited on June 16, 2004)).

248 Twining, supra note 54, at 33.

249 Report of the Committee on Legal Education (Ormrod Report) (1971) Cmnd. 4594.

250 Twining, supra note 54, at 35.

251 Id.

252 Id. at 36.

253 Id. at 162–163.

254 Id. at 165.

255 Id. at 162–163.

is the study of law as a liberal art. Students, however, tend to think that courses in areas like commercial law, procedure and evidence are 'practical' and subjects like jurisprudence, legal history and even human rights are 'theoretical.'[256]

Defining the core curriculum in undergraduate and vocational courses continues to be a subject of debate in the United Kingdom, but the consistent trend has been to move away from a knowledge-based core and toward an outcomes-based curriculum.[257]

Legal education in England began moving toward a vocational education built around skills in the 1970s. The public became increasingly dissatisfied with the legal profession and began questioning the benefits offered by lawyers to clients as consumers and the wider society. The public came to view lawyers as being more interested in their own power, privilege, and wealth than in the public good. Governmental agencies became increasingly interested in regulating the provision of legal services during the 1970s and 1980s. Ultimately, "the staff of the National Board for Prices and Incomes, the Monopolies and Mergers Commission of the Office of Fair Trading had not only redefined the professions as vested interests but also, with consumer groups, redefined their clients as customers."[258]

"The undermining of the profession's public image prepared the ground for the political onslaught on the profession's jurisdiction by the Thatcher governments of the 1980s."[259] The Thatcher government was encouraged to take on the legal profession by the popular support for a successful bill to end the solicitors' conveyancing monopoly. In the Green Papers of 1989, Mrs. Thatcher "outlined her new vision of state-profession relationships" and made it clear that "the legal practice was to be regulated, like any other industry by the state and the market."[260]

One result of governmental intervention was the demise of the five-year articles route into the legal profession. There was also a growing challenge to two assumptions: first, that professional expertise was found and transmitted only within the body of the profession and, second, that a rigid distinction between academic and professional programmes was inevitable.[261]

Pressures increased on both the universities and the professional organizations to modify their programs of instruction to place more emphasis on teaching generic skills, to "learn how to learn," to communicate effectively, and to work in teams, in accord with other common law jurisdictions and trends in higher education.[262]

The barristers responded first. The Bar Vocational Course that began in 1989, "represented a radical switch from emphasis on knowledge to emphasis on skills. The selected skills are developed largely through practical exercises, which as far as is feasible simulate the kind of work that young barristers can expect to do in the early years of practice. This represented a genuinely sharp break from the past in objectives, methods, and spirit."[263]

In 1990 the Law Society proposed changes to the Legal Practice Course which moved in a similar direction, although it claimed to maintain "more of a balance between knowledge and skills than

256 *Id. at 84.*

257 *Id. at 166.*

258 *Burrage, supra note 125, at 68.*

259 *Andrew Boon, History is Past Politics: A Critique of the Legal Skills Movement in England and Wales,* TRANSFORMATIVE VISIONS OF LEGAL EDUCATION *155 (Blackwell 1998), published simultaneously in 25 J. LAW & SOC. 151 (1998).*

260 *Burrage, supra note 125, at 69.*

261 *Boon, supra note 259, at 156.*

262 *Id. at 156–157.*

263 *Twining, supra note 54, at 166–167.*

the Bar Vocational Course."[264] "Trainee contracts" were introduced at the same time, making articles "more like normal employer-employee relationships."[265] The Law Society also encouraged the universities to give more attention to skills instruction at the undergraduate stage, including legal research, problem solving, oral and written communications, initiative, leadership, and teamwork, particularly where this can be done in a legal context.[266]

The Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) was created in April 1991 under the Courts and Legal Services Act 1990[267] to assist "in the maintenance and development of standards in the education, training, and conduct of those offering legal services."[268] The Act gave the Committee statutory powers over barristers and solicitors, including the power to determine what role, if any, they were to play in educating or disciplining lawyers.[269] The Committee initiated "a series of reforms designed to convert legal practice into a more efficient, competitive and market-oriented industry."[270]

The ACLEC commenced a major review of legal education in England and Wales in 1992 and produced its "First report on legal education and training" in 1996.[271] The report encouraged a partnership between the universities and the professional bodies, and it called for an end to the rigid demarcation of responsibilities. It recommended that "the degree course should stand as an independent liberal education in the discipline of law, not tied to any specific vocation."[272] It also recommended that all teaching institutions should consider the adoption of active learning methods."[273]

The Report also called for "a clear set of guidelines on minimum standards in respect of such matters as: . . . internal quality assurance mechanisms."[274] These would be set by a "new audit and assessment body"[275] that should "assess law schools in terms of the subject outcomes proposed in

264 *Id. at 166–167. The new Legal Practice Course was implemented in 1993.*

265 *Burrage, supra note 125, at 67.*

266 *Twining, supra note 54 at 160, citing Law Society Training Committee, Training Tomorrow's Solicitors: Proposals for Changes to the Education and Training of Solicitors (1990) para 4.1 and para 5.1.*

267 *News Release of the Lord Chancellor's Department, 22 April 1996, at www://www.newsrelease-archive.net/coi/depts/GLC/coi7764b.ok (last visited on June 16, 2004). The Lord Chancellor's Advisory Committee on Legal Education and Conduct was abolished in the Access to Justice Act 1999 and replaced by a Legal Services Consultative Panel appointed by the Lord Chancellor (Access to Justice Act 1999, part III, section 35 (1) and 18A (1), http://www.hmso.gov.uk/acts/acts1999/90022-c.htm (last visited on June 16, 2004)). The Consultative Panel assists in the "maintenance and development of standards in the education, training, and conduct of persons offering legal services." (Access to Justice Act 1999, part III, section 18A (3), http://www.hmso.gov.uk/acts/acts1999/90022-c.htm (last visited on June 16, 2004)). A "Standing Conference on Legal Education" including representatives from the profession and academia also exists to provide a forum in which "those responsible for the provision of legal education could discuss matters of common concern" and to provide a mechanism for communication between the world of legal education and the Lord Chancellor's Advisory Committee on Legal Education and Conduct. (The Institute of Advanced Legal Studies website, http://www.ials.sas.ac.uk/library/archives/scle.htm (last visited on June 16, 2004). See also the Department of Constitutional Affairs website, http://dca.gov.uk/dept/legeduc/standcomf.htm (last visited on June 16, 2004)).*

268 *Courts and Legal Services Act 1990, part III, section 20 (1), http://www.hmso.gov.uk/acts/acts1990/Ukpga_19900041_en_3.htm (last visited on June 16, 2004).*

269 *Burrage, supra note 125, at 69.*

270 *Id.*

271 *UK Centre on Legal Education website, http://www.ukcle.ac.uk/resources/aclec.html (last visited on June 16, 2004).*

272 *Lord Chancellor's Advisory Committee on Legal Education, First Report on Legal Education and Training (April, 1996), R. 4.1.*

273 *Id. at R. 4.3.*

274 *Id. at R. 7.1.*

275 *Id. at R. 7.2.*

this Report, the guidelines on minimum standards, and the law school's own mission statement."[276]

The ACLEC report concluded that "[e]ducation and training leading up to the point of initial qualification can no longer be considered as providing a sufficient base of knowledge and skill for the whole of one's career . . . [but] the function of the prequalification stages of legal education and training . . . must be to lay the broad foundations in legal knowledge and skill which practitioners will be able to use throughout their careers."[277]

The Dearing Report in 1997 added support to the movement toward skills instruction in undergraduate education by encouraging educational institutions to help all university students to develop key generic and specific subject skills in part by involving students in experiential learning and encouraging them to reflect on their experiences.[278]

The institutionalization of skills instruction in undergraduate law schools was probably assured in 1997 when the Quality Assurance Agency for Higher Education (QAA) was created to "provide an integrated quality assurance service for UK higher education."[279] The QAA helps schools to define clear and explicit standards including frameworks for higher education qualifications and subject benchmark statements that set out expectations about the standards of degrees in a range of subject areas, including law.[280] The QAA also conducts audits to determine if schools are providing education of an acceptable quality and at an appropriate academic standard.[281]

In 1999, the QAA developed benchmark standards for law schools that set levels of various abilities and skills that a student should demonstrate before being awarded a degree in law.[282] These are minimum standards that apply to all law schools. Each school is free to set higher benchmarks for its students.

The Law Society of Scotland launched a new Diploma in Legal Practice program in 1999 designed to help law school graduates convert their existing knowledge of the law into action on behalf of their future clients. The curriculum is outcomes-focused. At the Glasgow Graduate School of Law, for example, the program and each course in it emphasizes the integration of skills and knowledge, effective communication, and transactional learning.[283] Skills including negotiation, interviewing, legal drafting and writing skills, advocacy skills, and legal research skills are taught within the contexts of subject matter specific courses such as criminal law, tax law, and conveyancing.[284] Each course has specific learning objectives that are described in terms of the competencies that

276 *Id. at R. 7.2 (3).*

277 *ACLE 1996 Report.*

278 *Boon, supra note 259, at 154–155, citing Higher Education in the Learning Society: Report of the National Committee (1997) ch. 9 (Dearing Report).*

279 *QAA website, http://www.qaa.ac.uk/ (last visited June 16, 2004).*

280 *Id.*

281 *Id.*

282 *The benchmarks are on-line at http://www.qaa.ac.uk/crntwork/benchmark/bencheval/law.html (last visited June 18, 2004). "Commentary for Law Schools" about the benchmarks is on-line at http://webjcli.ncl.ac.uk/1999/issue2/aclec7c.html (last visited June 18, 2004).*

283 *Glasgow Graduate School of Law, Diploma in Legal Practice 2003–2004 Course Handbook 16 (copy on file with author).*

284 *To obtain a Degree in Legal Practice, students must receive passes in Conveyancing, Law and the Legal Process, Constitutional Law and History (Public Law I), Scottish Private Law I (Contract and Delict), Scottish Private Law II (Family Law and Property Law), Criminal Law, Mercantile Law, Tax Law, and Evidence. Although it is not required for the Degree, a pass in European Law is required for admission to The Law Society of Scotland and the Faculty of Advocates. Glasgow Graduate School of Law, Diploma in Legal Practice 2003–2004 Course Handbook 5 (copy on file with author).*

students should develop during the course and which will be assessed by various means. For example, by the end of the Company and Commercial course, students should be able to "prepare and draft appropriate documentation in connection with the incorporation of a company, including basic articles of association," "advise on the more commonly encountered duties and responsibilities of directors and secretaries," and perform thirteen other tasks.[285]

Part III. New Initiatives in the United Kingdom and the United States

New Initiatives in the United Kingdom

In 2003, the Training and Framework Review Group of the Law Society of England and Wales proposed a new training framework for solicitors.[286] One motivation for developing a new framework is that, under the Disability Discrimination Act, the Law Society "will shortly be under a new duty to demonstrate objective justification for all of its competence requirements. It will need to be able to demonstrate that any competence requirements that will be hard (or impossible) for some disabled solicitors to achieve are essential for the qualification of a solicitor; that they are an integral attribute required of all solicitors in practice."[287]

The Review Group recommended that the Law Society should develop a new qualification scheme that includes the following, and more, "essential features:" a new framework based on what solicitors must know, understand and be able to do and the attributes they should be able to demonstrate at the point at which they qualify, that is, an outcomes-based framework. The compulsory outcomes should focus only on the essential knowledge, skills, and attributes that all solicitors should have at the point of qualification. Proposed descriptions of the compulsory outcomes are delineated in some detail by the Review Group. The Law Society expects to finalize its descriptions of compulsory outcomes sometime in the fall of 2004 and to implement new programs for achieving them by the fall of 2006.

The Review Group also called for a final, verifiable, and objective confirmation of an individual's readiness for practice, with a particular focus on the person's understanding of and commitment to professional responsibilities, ethics, and client care. This assessment is to take place "only in the light of significant experience in practice."[288]

The Review Group is also urging the Law Society to encourage innovation in developing a broader range of pathways into the profession. If the training framework is valid and accurate assessment tools are developed to measure whether a solicitor is adequately prepared for practice, theoretically it should not matter how a person achieves those outcomes. However, the Review Group recommended that all pathways should include the following key features: completion of an honours (undergraduate) degree or equivalent; learning of law and law practice to at least an honours degree level; a rigorous assessment strategy; a period of work-based learning; successful completion of a course and assessment covering professional responsibilities, ethics, and client care; and completion of a learning record and formal confirmation of an individual's readiness to practice.[289]

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285 *Diploma in Legal Practice 2003–2004 Course Handbook, supra note 283, at 24–25.*

286 *Training and Framework Review Group of the Law Society of England and Wales, Second consultation on a new training framework for solicitors (2003). The document is posted on the Law Society's website, http://www.lawsociety.org.uk/ (last visited May 2004).*

287 *Id. at ¶ 30.*

288 *Id. at ¶ 43.*

289 *Id. at ¶ 58.*

In June, 2004, the Law Society of Scotland released a working draft of "A Foundation Document" for the future development of professional legal training in Scotland. (The Foundation Document was available on-line at http://www.lawscot.org.uk/public/home.html on November 10, 2004.) The document sets out the principle goals and specific objectives of the Law Society of Scotland in relation to the education and training of those intending to become Scottish solicitors. It describes the fundamental values of the legal profession and the fundamental principles of professional legal education, taking as its core educational concept the benchmark of competence in legal practice. The document defines competence in professional legal practice as "the distinguishing but minimum performance standards characteristic of the performance of a novice legal professional," and it also describes the characteristics of competence more specifically. The Law Society is in the process or developing a common benchmark set of skills and knowledge for entry into the profession.

The Scottish Foundation Document recognizes that the ongoing revolution in business practice and communication create the prospect of continuously changing requirements for law practice. Thus, it aims to identify how best to prepare lawyers to cope with and manage all the changes which they will encounter during their careers. The document endorses the concept of "deep learning" that is designed to foster understanding, creativity, and an ability to analyse material critically. It challenges the philosophy of "coverage" which asserts that new lawyers should not be permitted to practise unless and until they have demonstrated knowledge of the key provisions of numerous branches of Scottish law. It views the 'coverage' philosophy as encouraging passive, unreflective learning, while discouraging analysis, reasoned argument, or independent research. In addition to continuing its emphasis on skills training in the three years between the granting of a law degree and the grant of a full Practising Certificate, the Society joins the Joint Standing Committee on Legal Education in Scotland and the Quality Assurance Agency in calling on undergraduate law programs to increase their emphasis on teaching generic, transferable skills such as communication, reasoning and analysis, problem-solving, teamwork and information technology.

There are ongoing debates in the United Kingdom about the movement toward outcomes-focused instruction and increased governmental regulation of legal education and the profession. Some people believe that the lack of close coordination between the professional organizations and the universities and among the universities, creates inconsistencies in the preparation of law graduates for the vocational courses and fails to provide a sufficiently strong theoretical foundation for skills development.[290] Others point out that little attention is being paid by either the universities or the professional organizations to teaching values.[291] Another complaint is that the trend is too much toward vocational education instead of liberal education.[292] And neither academics nor practitioners have conclusively determined what knowledge, skills, and values are the most important for lawyers to have before they begin practice.

Finally, some are worried that, although "[t]here is no reason to suppose that the more formally educated and certified new solicitors profession in England and Wales will merely provide a re-run of [the] American experience," the cumulative effect of the changes will erode professionalism and

290 *Boon, supra note 259, citing Higher Education in the Learning Society: Report of the National Committee (1997) ch. 9 (Dearing Report).*

291 *Julian Webb, Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education, TRASFORMATIVE VISIONS OF LEGAL EDUCATION 134, 135 (Blackwell 1998), published simultaneously in 25 J. LAW & SOC. 134 (1998).*

292 *Id. at 136; and Boon, supra note 259, at 151.*

make new lawyers in England and Wales "less inclined to defer to, or respect, collective customs and rules than the gentlemen's profession, less inclined to think that their collective honour matters."[293]

Despite the concerns, uncertainties, and practical implementation problems being encountered in the United Kingdom, at least lawyers and law teachers are making an effort to consider and debate how best to prepare lawyers for practice and to implement necessary changes. There has never been a serious, broad-based discussion about the preparation of lawyers for practice in the United States. Hopefully, that will change.

New Initiatives in the United States

A variety of organizations have the ability to influence legal education in the United States. The highest appellate court in each state is typically responsible for regulating the legal profession, including setting the criteria for admission to practice. Although there is a federal court system that could establish its own standards, admission to practice in the federal courts is presumptive for lawyers who are admitted to practice in any state. In addition to the state supreme courts, four independent bodies have significant influence on legal education. The Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association (the Council) is recognized by the federal government as the official accrediting body for law schools. The Council establishes and monitors compliance with accreditation standards. The Association of American Law Schools (AALS) sets additional standards for member schools of the Association, and most law schools are members of the AALS, or aspire to be. The Law School Admissions Council (LSAC) prepares and administers the Law School Admissions Test (LSAT) for prospective law students. The National Conference of Bar Examiners (NCBE) develops components of the examinations for bar admission that each state administers, and it facilitates dialog among bar examiners throughout the country.

Pressures to reform the processes for preparing lawyers for practice are coming from a variety of sources, and the Council, AALS, LSAC, and NCBE are reexamining, in one form or another, the validity of their tests and standards.

Although judicial challenges to the validity of bar examinations have failed, so far,[294] it is evident that bar examinations in the United States do not measure a person's ability to practice law competently.[295] The Society of American Law Teachers (SALT) issued a report in 2002 concluding that the current bar examination "inaccurately measures professional competence to practice law" and "has a negative impact on law school curricular development and the law school admission process."[296] SALT urged states to consider alternative ways to measure professional competence and license new lawyers.

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293 *Burrage, supra note 125, at 72.*

294 *See Cecil Hunt, Guests in Another's House: An Analysis of Racially Disparate Bar Performance, 23 FLA. ST. U. L.. REV. 721, 733–763 (1996) (criticizing judicial decisions involving challenges to the validity of bar examinations).*

295 *See Id. and Andrea Curcio, A Better Bar: Why and How the Existing Bar Exam Should Change, 81 NEB. L. REV. 363 (2002).*

296 *Society of American Law Teachers Statement on the Bar Exam, July 2002, 52 J. LEG. ED. 446 (AALS 2002) (also available at http://saltlaw.org/positiononbarexam.htm).*

The appellate courts, acting through the Conference of Chief Justices, are encouraging reforms. In the late 1990s, the Conference of Chief Justices developed an action plan to improve the professionalism of lawyers in the United States.[297] Among its recommendations are that "the subject areas tested on the examination for admittance to the state bar should reflect a focus on fundamental competence by new lawyers" and "[t]he format of the bar examination should be modified to increase the emphasis on the applicants' knowledge of applied practical skills, including office management skills."[298]

The ABA Section, the AALS, the NCBE, and the National Conference of Chief Justices formed a Joint Working Group on Legal Education and Bar Admission in 2003.[299] The Working Group organized a conference focusing on bar examinations and law school assessment methods, however, the Working Group has not yet formulated any recommendations.

The LSAC is supporting a project to identify predictors of success in law school and in law practice. One objective is to identify job-related competencies of effective lawyers. The idea is that, if such competencies can be identified, perhaps the Law School Admissions Test can be modified to determine if law school applicants possess or can acquire those competencies. In phase I which took two years, the project identified 26 factors that seem to constitute lawyering effectiveness and developed items for multiple behavioral rating scales for those factors to help appraise lawyers' performance.[300] In phase II, which expected to continue until July 1, 2006, the project is developing tests that might predict competency on those factors.[301]

It appears that the Council may finally be ready to require law schools to improve the preparation of students for practice. Important changes to the accreditation standards were approved by the Council at its meeting on August 7, 2004. An effort to derail the changes, led by law school deans, was defeated by a 9 to 8 vote. The proposed changes would require ABA-approved law schools to provide each student with substantial instruction in legal analysis and reasoning, legal research, problem solving, oral communication, writing in a legal context, and "other professional skills generally regarded as necessary for effective and responsible participation in the legal profession."[302] An interpretation of the standard explains that "other professional skills" include trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting. The revised standard also requires law schools to provide substantial opportunities for live-client or real-life practice experiences "appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence."

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297 *CONFERENCE OF CHIEF JUSTICES NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM (ABA 1999). Included in the same document is REGULATORY AUTHORITY OVER THE LEGAL PROFESSION AND THE JUDICIARY: THE RESPONSIBILITY OF STATE SUPREME COURTS: A REPORT OF THE CONFERENCE PROCEEDINGS, RANCHO BERNARDO, CALIFORNIA, MARCH 1997.*

298 *Id. at 32.*

299 *Erica Moser, President's Page, THE BAR EXAMINER 4 (February 2003).*

300 *A preliminary list of competencies identified by the LSAC project are currently posted on-line in an appendix of CLEA's Best Practices Project's work product, at www://professionalism.law.sc.edu (look in the "news" section on the main page).*

301 *Email from Marjorie Shultz on September 13, 2004 (on file with the author).*

302 *Proposed Standard 302(a), ABA Standards for Approval of Law Schools.*

If the proposed changes are approved by the ABA House of Delegates in February or August, 2005, each law school will decide on its own how to comply with the amended standard. The Council will eventually determine whether schools are in compliance through its reaccreditation process (the Council sends an inspection team to each law school every seven years). If a school is not in compliance, the Council will report this and direct the school to comply, but the Council is unlikely to revoke the accreditation of a school that is not in compliance. Thus, any real changes produced by the amended standard are likely to take a significant period of time to become evident.

The Carnegie Foundation undertook a major study of legal education in 1999 to engage faculty, national organizations, and members of the legal profession in active dialog about how educational programs can be made better. Intensive field work was conducted at a cross section of 16 American and Canadian law schools during the 1999–2000 academic year, and data analysis and writing has been underway since then under the leadership of Senior Carnegie Scholar Judith Wegner, a former dean and current professor of law at the University of North Carolina. More details about the project are available on-line at http://carnegiefoundation.org/PPP/legalstudy/index.htm.

Independent of the other initiatives, the Clinical Legal Education Association (CLEA) undertook a project in 2001 to describe best practices for preparing lawyers for practice in the United States. The author of this article chairs the steering committee. Although the project was initiated by and is operating under the auspices of the CLEA, it is proceeding in an open manner to provide a national forum for academics, lawyers, judges, bar admissions authorities, and others to engage collaboratively in a search for better ways to educate new lawyers. The most current draft of the project's work product is posted on-line at http://http://professionalism.law.sc.edu (look in the "news" section on the main page). CLEA invites comments from anyone who is interested in improving the practice of law in the United States. CLEA also seeks opportunities to discuss the project at conferences and other forums. It plans to host a national conference about the Best Practices Project during the spring of 2005 and to complete the document shortly thereafter.

The Best Practices Project is focusing on three aspects of legal education: setting educational goals, delivering instruction, and evaluating the effectiveness of programs of instruction. For the moment, at least, the project is focusing on how law schools can do a better job. It is not presently considering how the entire process for becoming a lawyer might be improved. The steering committee assumes that changing the entire process in fifty jurisdictions would be even more difficult to accomplish than reforming law schools. As much as one might prefer significant changes to the entire process, the state chief justices who regulate admission to practice have not given any sign that they are interested in restructuring the qualification process.

There are two things that make the Best Practices Project different from previous efforts to reform legal education in the United States. First, the project is grounding its work as much as possible on recognized sound educational theories and accepted standards of good educational practices. The second difference is that the work product should be useful as a tool for measuring the quality and effectiveness of a law school's program of instruction.

The most interesting aspect of the project is its consideration of the goals of legal education. One does not have to ask many questions to discover that legal educators in the United States do not have a clear vision of what law schools, or even specific courses in law schools, should be trying to accomplish. There is a lot of talk about teaching students how to think like lawyers, but the

curriculums and examinations are largely focused on teaching and assessing doctrinal knowledge, not whether students know how to think like lawyers. Even with respect to doctrinal knowledge, there is little agreement about what students should learn in law school. The ABA accreditation standards do not even describe what the core curriculum of a law school should include.

One of the key elements of the Best Practices Project is its recommendation that U.S. law schools should switch from knowledge-based curriculums to outcomes-focused curriculums. It did not take much work to figure out the good sense of moving in that direction. In light of the ongoing work on outcomes-focused instruction in the United Kingdom and other jurisdictions, the Best Practices Project is recommending that law schools in the United States adopt the descriptions of outcomes that were proposed by the Law Society of England and Wales in 2003. The descriptions seem to fit the needs of students in the United States as well as those in England and Wales for the most part, and legal educators in the United States will be able to observe the Law Society's programs for achieving and measuring those outcomes. Law schools in the U.S. should also develop detailed descriptions of outcomes for each course in their curriculums, and the Best Practice Project provides examples from the Diploma in Legal Practice program at the Glasgow Graduate School of Law.

The Best Practices Project is also encouraging U.S. law schools to reduce their reliance on the case method of instruction and to utilize other active learning techniques such as discussion, problems, simulations, and experiential learning. Many U.S. law teachers already use techniques other than the case method, but the majority do not seem to be inclined to change. This is in part because the case method is how they were taught, it is the only technique they have ever used, and they are familiar with the materials. In other words, it would take a bit of time and effort for case method teachers to change what they teach and how they teach it. Hopefully, the Best Practices Project will succeed in convincing some people that there are good reasons to change, and others will find ways to motivate the remaining teachers to come along.

The biggest challenge facing legal educators in the United States is to find ways to provide new lawyers enough supervised practice experience to protect their initial clients. As mentioned earlier, only two jurisdictions in the United States requires a new lawyer to spend any time working under the supervision of an experienced lawyer before becoming fully licensed. It is difficult to defend this practice. Clinical teachers supervise third year law students who represent their first clients, and they see that very few are capable of performing competently without supervision. The U.S. system of legal education simply does not prepare students for practice.

The Steering Committee for the Best Practices Project easily concluded that it is absolutely essential for every law student to have some exposure to actual law practice during law school. There is no such requirement now. The project will also encourage law schools to expand opportunities for students to participate in clinical programs in which students actually provide legal services. It is still debating how to determine how much supervised practice it takes to protect new lawyers' initial clients sufficiently. Even if every law school provides every law student with a meaningful clinical experience, would this be enough? Probably not. Then, how can we protect our graduates' initial clients, their employers, and the public in general?

There seem to be two primary options. The first option is to limit the services that new lawyers can perform without supervision to those competencies that law schools agree to teach and bar examiners agree to assess. They could not become licensed to perform other tasks without supervision until they demonstrated their abilities through assessment.

The second option is to require all new graduates to associate with an experienced lawyer or a law firm for some period of time after finishing law school, that is, they should "serve articles" until they demonstrate, through assessment, an acceptable level of competence to practice without supervision. This may not sound very radical in the United Kingdom, but it is a radical proposal to U.S. audiences.

Conclusion

In considering the common and divergent histories of legal education in the United States and the United Kingdom, we have seen that many decisions about legal education were made that had nothing to do with the merits of the most important question, "How should a democratic society prepare its lawyers for practice?" Historical events, politics, world and local economic factors, greed, self-interests, prejudices, and personalities all played roles in shaping the very different systems we have today.

There is no doubt that James Bryce would change his opinion about of the relative merits of our systems of legal education. The United Kingdom's system is superior for a number of reasons, but especially because countries in the United Kingdom do not allow new lawyers to ply their trade without gaining some practice experience under the supervision of experienced lawyers. Despite the quality control issues associated with articling and pupillage/devilling, at least those traditions perform socialization functions that are absent in the United States except for law school graduates who join firms that take their mentoring responsibilities seriously.

There are probably some new lawyers in the United Kingdom who do not have the requisite knowledge, skills, and values to represent common people with common problems effectively and responsibly, but it is almost guaranteed that most lawyers who are admitted to law practice in the United States are not well-prepared to represent common people with common problems. They may be ready to begin law practice in large law firms or governmental agencies that have the time and resources to finish preparing them for practice, but they are not ready to undertake professional responsibility for individual clients' legal problems.

The United Kingdom is moving even farther ahead of the United States today as it creates outcomes-focused programs of instruction that aim to develop the competencies that new lawyers need when they begin practice.

Our systems for educating and training lawyers have moved so far apart, can they ever be alike again? One would like to hope so. The most unlikely change in the U.S. would be to require college students to major in law. What is more likely is that U.S. schools will eventually adopt outcomes-focused programs of instruction. It makes sense to do this, others are showing us how to do it, and there are growing pressures on law schools to become more accountable. This change will not come easily or quickly, but I think it will come.

We should also end our practice of giving new lawyers unrestricted licenses to practice law. There are viable alternatives that would provide more protection to consumers. It is puzzling why licensing authorities continue this harmful practice. Perhaps in the near future governmental and consumer protection groups will focus on this issue and provide sufficient incentives for change.

The major impediment to reforming legal education in the United States is the long-standing resistence of law teachers to reexamine legal education periodically and implement appropriate

reforms. Unfortunately, the legal profession, the judiciary, and state and federal governments have ceded control of legal education to the law teachers for all practical purposes. Most law teachers are highly intelligent, well-meaning people, but they have are few incentives to change the content or structure of legal education. There are several entities that could provide those incentives, but so far none has shown a commitment to do so.

Hopefully, someone with the power to change legal education in the United States will develop a commitment to take action to protect the interests of students, clients, employers, and society in general, even if doing so would not serve the self-interests of law teachers.

Quality-*Lite* for Clinics: Appropriate Accountability within 'Live-Client' Clinical Legal Education.

Hugh Brayne and Adrian Evans[1]

Context:

Adrian Evans has run clinical programmes within a community context at Monash University for some time. Students lucky enough to get on the Monash programmes can get credit for their work towards their undergraduate and vocational qualifications. The bureaucracy is minimal. The Monash team train and supervise the students closely to ensure that they know what they are doing and provide a quality service; they discuss the issues which interest them; the staff then grade the students according to the quality of their work for the client, in court or in community development environments. Little time is spent on unnecessary paperwork, since there is already much that must be produced and recorded to comply with legal professional obligations.

In July 2003 Adrian invited *Hugh Brayne* to do a mock quality assurance audit on the Monash live-client clinical programmes. Hugh brought ten years of experience as an auditor with various English quality bodies, the Quality Assurance Agency, the Higher Education Funding Council, the Law Society and the Bar Council. The English experience has been to specify with more and more apparent precision what an educational programme is designed to achieve, and to claim with more and more precision that the assessment instruments match those achievements, and to involve more and more people in self-monitoring, paper trails and external verification.

Where clinics depend on legal aid franchises, which tend to carry astoundingly onerous bureaucratic requirements designed to nail quality to one centralised regime (well beyond any normal legal professional obligation) – jettisoning that QA regime may not be realistic.

Our paper will explore the tensions. We are not going to be able to jettison quality assurance, even if we wish to. So we will propose a 'quality-*lite*' agenda for law clinic objectives and student outcomes, asserting that self-governance and our own QA processes will protect live-client clinics

1 *Hugh Brayne is visiting professor at Thames Valley University, and has been involved in clinical legal education in England for 20 years. Adrian Evans is Associate Professor of Law and Convenor of Legal Practice Programmes at Monash University, Australia.* *We thank Roy Stuckey, Philip Plowden and Jeff Giddings for their helpful comments on the approach to quality assurance described in this article.* *Comments on this article are welcomed: email hugh.brayne@blueyonder.co.uk; Adrian.evans@law.monash.edu.au*

from ill-designed, externally imposed bureaucratic pressures. Encouragement of innovation in clinical legal education – and its support via quality-*lite* – need not be restricted to a few institutions that are independently funded. Ultimately, QA must be facilitative of development in technique and policy or there will be less and less to 'assure', let alone deliver to communities in need.

Introduction

Law centres and law schools combine in various ways to offer legal services to disadvantaged persons and to better educate law students. While these dual educational and public service objectives define and constrain the mix of methods and available outcomes, it is an article of conviction among many involved in live-client clinical education that each needs the other: that education without service is selfish and impoverished and that service without continuous learning is barren.

The view amongst clinicians that their clinics can be effective in achieving both educational and service goals is deeply rooted, but we know we have our critics and detractors. Is a faith-based justification of our effectiveness sufficient? One way in which both sectors – education and legal services – are increasingly called to account for the effectiveness of their work is quality assurance. It is our view that clinics will be increasingly subject to scrutiny for quality assurance purposes, and that the clinic movement should begin to debate how to respond to such demands. But demonstrating that what we consider to be a potent combination of objectives delivers genuine educational and service quality is not straightforward, since conventional quality assurance regimes for both sectors do not ordinarily take account of each other. This article seeks to suggest a number of composite and *appropriate* approaches to educational quality within live-client clinical legal educational settings, and although the issue of service quality is not our focus, it is unavoidable that educational quality assurance will also impact positively on client service quality.

We have not ourselves reached a view whether we should welcome the advent of quality assurance requirements in our clinics, but in a sense that is irrelevant. We have to respond in any event. Thus our primary focus will be on the educational quality assurance aspects, and that is where our own work has started.

Quality assurance in HE

Quality Assurance (QA) is a management tool designed to ensure that products and services achieve uniform *minimum* standards of quality, as a part of the enhanced accountability requirements of modern professionalism.[2] QA does not inevitably mandate standards as minimums, but the process is as much a psychological one as anything else and the eventual reaction to a standard is to treat it as a minimum.[3]

2 *Steven K Berenson, 'Is It Time for Lawyer Profiles?' (2001) 70 Fordham Law Review 645.*

3 *In England, the Quality Assurance Agency for Higher Education has set out subject 'benchmarks' for different disciplines, indicating what a student taking a first degree in that subject ought to have achieved. Those for Law can be viewed at http://www.qaa.ac.uk/crntwork/benchmark/law.html In theory the benchmark statements are not mandatory. In practice they are treated as minimum requirements, and to the authors' knowledge no law degree explicitly departs from them. Additionally the QAA sets generic outcomes for degrees, and each level of study below the award of degree. It is not optional to adhere to these, and quality assurance processes are designed to monitor adherence.*

The illusion is that the process is reliable and objective. However it requires assessors to reach conclusions and even gradings which inevitably are the result of judgement.

Despite doubts as to the predictive capacity of a (minimum) standard and who benefits from them,[4] the technique is entrenched and there is every reason to believe that, where this has not already occurred, compliance with some sort of QA process will shortly impact upon clinical legal education.[5]

QA processes will require, successively, thought about and then documentation of, every stage of the clinical legal education process, sufficient to ensure fairness, transparency in outcomes and the relevant, balanced assessment of results.

So far so good: no one will argue that the above goals are not worthwhile. The problems with the process lie in their psychological effect upon staff and the contribution quality assurance processes make not only to measurement of quality – which is their purported remit – but conceptualization and design of learning and teaching. We know that students focus on what is assessed rather than learning for its own value, and law schools are subject to the same pressures to design and deliver programmes to comply with the assessment which QA brings.

Much of the experience of quality assurance regimes within higher education has been salutary. Teachers who must meet compliance agendas are conscious of the potential for quality reporting to become a deadening influence, devaluing reflection on what might happen and substituting a merely positivist description[6] – the accuracy of which can often be doubtful – of what has been and gone. Those who design educational programmes to meet quality assurance prescriptions start from external indicators of what their outcomes and objectives should be, and of course they always report that they have then met all of these. A climate of conformity, bureaucracy and even mendacity is, at least potentially, created, though whether professional integrity and effective inspection succeeds in overcoming such pressures is debatable. If we can take the opportunity, as a coherent group of scholars in legal education, to design and implement our own quality assurance processes, we pose the question: what kind of regime is appropriate for legal clinics – their lawyers, their students and their clients? We propose that all might benefit if, in this type of educational programme, indicators of quality can be agreed and, to the extent necessary, formalized which are light on prescription and strong on inspiration.

The limitations of quality assurance processes, once they begin, are that constant change ('improvement') in procedural requirements and the measurement of achievement leads to a lowering of morale, failure to encourage programmes to grow organically, and increased staffing changes[7]. We argue that each of these negatives can be reduced within legal clinics (at least) if those responsible for QA in these workplaces recall why these clinics were established and opt for a

4 *Christine Parker, Just Lawyers, Oxford University Press, Oxford, 1999, pp 22–25*

5 *for example, the Australian national Professional Standards legislation (www.professionalstandards.nsw.gov.au), which is intended to cap liability for negligence in exchange for agreed minimum standards in service delivery, including complaints handling and risk management, will apply to most Australian clinics because their principal solicitors will be bound by these standards*

6 *As John Nelson has commented, 'This is in part because a knowledge of doctrinal law in specific curriculum areas is comparatively a more measurable outcome when it comes to demonstrating that accountability standards have been met'. See 12 (2) Legal Education Digest p 10 (October 2003), reviewing Anthony Bradney, Conversations, Choices and Chances: The Liberal Law School in the 21st Century, Hart Publishing, 2003*

7 *'Inspection fatigue' in schoolteachers in England and Wales is known to the authors as a not uncommon reason for experienced teachers not just to move on but to leave the profession. We are not aware of any data collection in relation to this.*

quality-*lite* approach, preserving the culture of innovation, altruism, mutual respect and systemic advocacy that has attracted highly motivated staff to relatively low paid positions.

Existing QA Norms

Our perspective is informed by the methodology used by the Quality Assurance Agency for Higher Education in England and Wales, which is replicated in many respects by the Bar Council and the Law Society. It may be useful to set out aspects of the current elements:

External examiners. Apart from first year courses at undergraduate level, the setting of assessments and marking of student work is moderated by a senior academic from another institution. This external examiner confirms the appropriateness of the assessment and the marks, that the standards are consistent with the sector norms, and comments on quality issues.

The QAA has specified in detail the requirements for the external examiner and how the University must respond to reports.[8] The external examiner's reports are used as evidence of quality when the institution or the subject is reviewed by the QAA. From 2004 a summary report confirming the maintenance of standards is also posted on the institution's website.

There is then provision for *peer review of quality*. The peers are external subject specialists, appointed by the QAA as part of a relatively small cadre of reviewers[9]. Evidence for the judgments about quality made by these external reviewers which has to be exercised is then derived from reviewing course documentation; inspecting minutes of relevant school and university committees; sampling assessments; reviewing student feedback and meeting students; checking on internal classroom observation protocols (and if necessary observing classes); talking with staff and stakeholders; and evaluating the *reality* of resources (physical, staffing and financial). Over the past 11 years this process has been applied to all subjects in all higher education institutions, with varying degrees of intensity, ranging from the three day swoop including classroom visits to the 'light touch' adopted more recently, which, through *institutional audit*, involves verifying the institution's own quality assurance processes rather than duplicating them.

In a formal review documentation is the primary source of evidence of quality, and is available to a reviewer in advance and during the evaluation. This would include programme specifications (that is the aims, objectives, and student outcomes for the programme as a whole); individual unit specifications; unit guides; sample assessments; samples of marked work; internal course reviews; minutes of boards of study and assessment boards; external examiner reports; and minutes of staff-student liaison committees. It includes the institution's own assessment of the quality of the relevant programmes, once known as a self-assessment document, but because of the unfortunate but perhaps apt acronym SAD now renamed the self-evaluation document.

No programme of study under this system can be commenced until the course provider has set out, in advance, a statement of learning outcomes for the programme as a whole, and identified where in the programme each of these outcomes will be assessed. This process is known both as validation and course review. It requires learning – knowledge, skill and attribute development – to

8 *see UK Code of Practice for External Examiners at http://www.qaa.ac.uk/public/COP/COPee/contents.htm*

9 *Most of the subject specialists appear to the authors to be in it not for reward but to understand the process so that they can cope when their own provision is inspected.*

be broken down into discrete, measurable, and attainable outcome statements which are then parceled out into the various elements of teaching and assessment making up the programme. The quality assurance process will expect the institution then to demonstrate exactly where these outcomes are intended to be, and are in fact, achieved.

All of these measures are well intended, but without exception, they progressively define and measure the social and educational impact of a course or unit as a limited series of numerical assessments or ticks on a checklist. The qualities we described above which we think characterize clinics, and other vibrant aspects of learning culture – imagination, motivation, altruism, respect – do not lend themselves, except in rhetorical and probably hyperbolic contexts, to paper-based measurement. Crucial intangibles such as the sense of vision possessed by the course leader and acknowledged by the staff; the degree of inclusiveness which students feel; the extent to which staff and students act with emotional intelligence in their own working relationships and in their regard for clients; the sophistication of staff ethical awareness and articulation and whether the clinic is making both one-to-one casework and systemic differences to the surrounding community – these are beyond the explicit scope of a typical QA investigation. (They are not necessarily removed from the implicit scope of such enquiry, however, since quality assessors only purport to make objective evidence-based reliable judgements. In fact they are not immune to impression, charm, enthusiasm, idealism etc, and must make evaluations as well as tick boxes. These positive judgements are often made as a result of exposure to the culture of an institution but any final outcome of the quality assurance process denies such influence and spuriously claims that paper-based audit trails supplemented by short and linear interrogation of small numbers of staff and students have captured the relevant information.)

The problem, for those who wish to navigate their educational provision through inspiration and vision as well as objectives and outcomes, is that QA is an unpredictable process. What the quality assurance assessors are looking for is auditable data. While the qualities listed in the previous paragraph, and manifested at any gathering of clinicians, are generally absent from conventional educational quality assurance, we firmly believe that they are the signs of a transcending (clinical) legal education. These are the factors that determine whether the clinic will make a real difference to a student's self-image, to their sense of vocation and to their career choices. In a sense clinicians know that what they do is change people – their outlooks, their futures, their passions. But it would be indulgent and grandiose, not to say demeaning and unrealistic, to reduce such changes into discrete and measurable course outcomes. Then we would have to reduce them to measurable identifiable behaviours that could be assessed.

We can't do that, so we can't be quality assured against such outcomes. What matters and motivates is not actually on the current agenda for quality assurance measurement. If and when the current QA model arrives to measure the achievements of the clinics we value so dearly, what they will measure using available methodologies is restricted to that which we have purported to deliver and assess, which is particular behaviours we want our students to manifest rather than existential change.

Our own experience is that mechanistic quality assurance procedures can result in game playing by academics, supervisors and administrators. To guarantee achievement of stated learning objectives by all students, these objectives may have to be specified at an unnecessarily low level; documents may be produced for quality assurance purposes which do not reflect the reality of what is taught and assessed, or which minute discussions which took place merely for the purpose of creating the

minute; assessments may be produced which purport to assess outcomes which they do not – perhaps cannot – assess; claims may be made as to reliability and equivalence of outcomes and assessments which cannot be justified, and teachers/assessors may knowingly assess according to a holistic and subjective judgment while pretending to be objective; ambitious and meaningful learning may be sacrificed in order to achieve what is quantifiable; meetings on course design, teaching and assessment may concentrate on what is recorded for the purpose of the quality assessment rather than what needs to be freely aired for the purpose of identifying opportunities for improvement and innovation.

Because of the distorting and subversive effect of these now traditional aspects of the quality assurance approach described, we do not place great weight on most of the issues or potential methodologies listed above, in so far as they relate to demonstrating reliability of assessments. In particular, we are sceptical, even to the point of disbelief, that the legitimate desire of government for value-for-money in legal education (via onerous but predictable external assessments) – and legal aid funding (via franchised legal service delivery) – can or will ultimately produce the crucial indicators that distinguish the legal clinic: for example innovation, motivation, excitement, and engagement. But we would suggest that there may be some less onerous approaches to QA which could be considered because of their potential to develop, rather than frustrate, an innovative climate, particularly in clinical legal education.

Quality-Lite Recommendations

This raises the question: should clinics devise and trumpet their own QA processes, including their own version of self and external audit, before these are imposed on us? Our intention is to explore whether we can pre-empt the rather mechanistic UK approaches to quality assurance in higher education, so that they do not devalue the clinical programmes that are now becoming progressively more commonplace in legal education worldwide, and do not degrade the process of inspiring students (and thereby serving the community) by reducing all of what we do to predictable and measurable outcomes.

Even moderate measuring of outcomes against targets, and even a hint of auditing of activities, can reduce creativity and innovation. One of the key achievements of the clinic is one which is rarely stated as an objective, and it focuses on the quality of the working relationships. This, we suggest, rather than a paper-based audit trail, is the key element within a quality-lite approach. In a vibrant programme students seem to find motivation and enjoyment not only in the task, but in the close, almost intense, quality of the relationship with the supervisor and the team.[10] Learning is fostered as much, perhaps more, through mentoring and role modeling as through instruction. This quality of 'modeled trust' dominates our underlying assumptions as to the values of live-client clinics[11] and we do, for the sake of clarity, affirm that personal trust among clinic director, supervisors, students and, if this is not obvious, between students and their clients, is both our objective and that trust between the assessors and most or all of these would become the defining mechanism for a quality-*lite* regime.

10 *See generally Hugh Brayne, Richard Grimes and Nigel Duncan, Clinical Legal Education: Active Learning in Your Law School, Blackstone, London, 1998*

11 *We do not wish to imply that there are not further underlying assumptions for clinical work. Shared belief in improving access to justice, in a credible rule of law and in reasonable social wealth distribution are all a part of the package, but we do not explore these in this paper because that discussion (necessary though it is in other contexts) would divert us from our primary focus of quality assurance.*

As we have observed above, quality assurance has, at least in the UK, mainly relied on paper. An audit trail is used to demonstrate that aims match objectives, which are consistent with planned and achieved outcomes. But if we claim that relationships, imagination and engagement characterize the clinical experience, we have a difficult question: how do we measure these? We posit quality-lite assurance mechanisms that obtain data and evidence which cannot be reduced entirely to paper, which depend in part on trust by the auditing authority in its assessors, in trust by assessors in clinical supervisors and in trust of students by their supervisors: in other words, in the respectful, energetic, engagement by assessors in the spirit of the clinic, its supervisors and students. While, of course, paperwork should be of sufficient quality to show, at least, that procedures and expectations have been thought through, we do not expect to find the main evidence on paper that outcomes are met.

Given that QA is – and perhaps rightly – about auditing what goes on against what was intended, as a first step for a quality-lite approach we suggest identifying some of the key characteristics of what in our view makes clinics valuable. Then we have to suggest some possible auditable indicators of achievement.

At this point in our thinking we would like to explore a two-stage process for identifying this quality-lite process. First we flag those qualities of clinical objectives and student outcomes, which we consider are essential elements of a viable and creative clinical programme. Secondly, in relation to each of these qualities, we try to demonstrate some of the relevant and valid quality-*lite* things to do, to assure the delivery of both objectives and outcomes. We will also briefly mention some of the things to avoid doing, in trying to achieve these objectives and outcomes. Our proposals, which are spelled out in the table below, are tentative and consultative: we seek the evaluation, advice and judgement of readers and clinicians, and would like our ideas to be judged on their capacity to assure and nurture the forward-thinking inspirational approach, rather than recite and prescribe monochrome content.

Qualities of the Clinic	Qualities Encouraged in the Student	Demonstrating these with Quality-Lite
Creativity in programme objectives and organisation	Creativity of student responses to client dilemmas.	Ask • Does acknowledgment of creativity figure in supervisor feedback to students during supervision and following assessment? • Is there an energy/frisson visible in student-supervisor conversations, in out-of-hours activity as well as scheduled activity and in student evangelism in the wider law school? • Is there evidence of the supervisors exploring with the student whether unrealistic ideas were based on imaginative conceptualization of the problem, or merely because of failure to grasp essential detail?
Inwardly and outwardly focused ethic of clinic reflection on its own vision and processes	Students' *reflections* on • the extent of clinical legal services users' autonomy • understanding of how legal services meet the needs of the community or not, in the case of specific clients, and why this might be the case	Ask if there is evidence of critical and reflective analysis • within reflective journals • in staff publications • in supervisor discussion with students • within staff meetings • in written campaign strategies • in submissions on law reform issues • in community development plans and strategy documents • in funding submissions?

Qualities of the Clinic	Qualities Encouraged in the Student	Demonstrating these with Quality-Lite
Clinic policy on contemporaneous client intake related *supervisor-student discussion of the immediate clinical experience*, having regard to the above quality-*lite* indicators	Habituated, student *discussion* with each other and their supervisors, concerning immediate client needs	Ask Is/are there • Facilitated meetings among supervisors and students, held close in time to relevant client intake sessions? • A process for students to provide their own views as to the quality-lite approach? • A list or statement for the student of the ideals of the clinic and what is hoped it will do for them? • Evaluations within student journals of what has happened to them in relation to each of the above ideals?
Clinic *confidence* in its processes and outcomes	Student confidence in their personal and professional development as a consequence of participation in clinical process	Ask • what the policy documents, submissions and annual reports of the clinic indicate about clinic confidence in its contribution to legal education • what clinical students say about their own experience of the clinic? • what other law students report about what the clinic gives to its students
Interdisciplinary focus of clinic operations – to achieve 'whole of problem' approaches re systemic injustice and individual client satisfaction.	Students' *interdisciplinary* process in dealing with clients' work – including recognition of non-legal dimensions of clients' problems.	Ask • Do students record in journals, their wholistic assessment of the client's needs and possible 'solutions'? • Do teaching materials evidence interdisciplinary awareness and approach? • What are the opinions of related agencies? • What is revealed in conversation with students?

Qualities of the Clinic	Qualities Encouraged in the Student	Demonstrating these with Quality-Lite
Clinic development and engagement with *normative* community development and law reform possibilities	Student engagement with *normative* community development and law reform models	Ask For examples of current client case plans containing an element of the socio-legal story around each client's dilemma. Ask community partners for their opinions. Consider if broader community objectives are present in teaching materials and in student conversations.
Clinical policy and practice re *ethical* behaviour in relation to clinic administration & student-client interaction	Student self-awareness of their own personal values, of the various *ethical* methods which apply to legal practice and of the method which most appeals to them	Ask if • Student reflective journals demonstrate self-awareness of alternative ethical models and of any relevant ethical choice they intend to make? • Students have only a consciousness of conduct rules? • Supervisors' journals articulate first principled-ethical consciousness?
Clinic *attitudes* to • interest in the client as a person rather than as a case, • collaboration between co-students and • staff/student reliability in deadlines/meetings	Student *attitudes* to • interest in the client as a person, • working with fellow students and • punctuality and reliability in achieving deadlines	Ask • Does the client case plan show client respect, or only interest in point(s) of law? • Is the student comfortable with team work? • How effective is the students' diary system?
Clinical policy in relation to development of the range of *students' technical skills* and doctrinal awareness	Student respect for *technical competency*, diligence in legal research and effective client communication	Ask if • Client case files evidence technical skill, an accurate (normative) knowledge of the law and good client communication • Students' journals display awareness of the range of technical skills necessary to competent legal practice • Client feedback via satisfaction surveys supports students' technical competence

Qualities of the Clinic	Qualities Encouraged in the Student	Demonstrating these with Quality-Lite
Clinic expectations of *supervisors' accountability* re students' achievements (as described above), to • promote consistency between supervisors • satisfy Faculty concern that clinical marks are too high compared to mainstream assessment • safeguard against complaint of bias or unfairness • allow sharing of assessment with colleagues delivering other parts of the students' course programme • allow legal, ethical and procedural issues arising from client work to be identified and recorded for regular discussion, staff development activities and analysis leading to publication.		Ask • Do supervisors maintain work journals recording student achievements? • Do supervisors share the contents of their work journals and opinions of individual student performance with each other? • Do supervisors publish jointly and/or in conjunction with non-clinical academics? • Do supervisors meet formally or informally over meals and use some of this time to reflect on clinical policy and/or students' progress? • Are there mechanisms for training and developing supervisors' knowledge base, skills and awareness of clinical policy?

These suggested qualities of creativity, reflection, confidence, collaboration, a normative understanding of law, ethical choice and teacher-learner accountability would be at the heart of quality-*lite* assurance. We admit that these suggestions mix the subjective with the objective assessment of performance; and we opt for a modest compromise of indicators which promote cohesion, collaboration, insight and commitment amongst clinical staff and students. They also encourage a role for quality assurance assessors which it is our experience that many in the UK have indicated a yearning for – the ability to play the role of critical friend rather than conveyor of judgment. In the end, teaching and supervising – indeed any professional function – cannot be reduced in a quality-*lite* context to a total objectivity because the professional function, not just the environment of the successful clinic, demands trust of the clinical practitioner and of their judgment.[12] Such trust and judgment involves acceptance of some subjective elements in QA and ideally, a compromise in approach as to what is measured. We believe that trust and the building of relationship between assessor and their clinicians is in itself a valuable goal, and strengthens and even validates the exercise of judgment. A quality-*lite* process does not falsely pretend to achieve objectivity where subjective elements must and do contribute to judgment.

12 See Onora O'Neill, 'A Question of Trust', Reith Lectures, BBC 2002

Things a quality-lite approach seeks to avoid

Inevitably, there are some QA approaches which we think are unlikely to promote quality-lite trust but will lead to a reductionist atmosphere developing within the clinic. The following would, in the measurement, possibly serve to destroy what would be measured:

- exhaustive listing of case information and case variables on all sampled case files
- mechanistic scoring on a card (or via software) of the possible indicators for creativity,
- names and numbers of interdisciplinary services/agencies which were accessed in dealing with client problems,
- insistence on written reports from any such agencies to evidence their involvement, the areas of client welfare other than law listed by the student on the client record,
- checklists to record whether for example there are written instructions on file from the client to commence proceedings, whether there was an interpreter present in all discussions with the client, whether the students produced interviewed in accordance with predetermined client interaction protocols.

Such strategies do not even offer short-term reassurance to assessors, are of next to no use to the clinic *per se* and promote, among staff and students, merely positivist recitations of events and actions. The normative practice of law recedes in importance as the volume of checklists expands.

Restricting QA assessments to what can be repeated and externally verified, as in the related legal aid franchise environment, reduces considerably the quantity of evidence on which such assessments can be based, omitting in particular the evidence derived from regular and detailed observations of student performance. It is possible to replicate this evidence, as we suggest above, by requiring students to report, for assessment purposes rather than as a normal part of their case management, in writing on their activities under specified headings. Reporting can permit evaluation of the additional outcomes we value, such as critical evaluation or personal insights into learning. However – and this is where a link to service quality is unmistakable – a student whose service delivery is poor has to be tentatively assessed more encouragingly if the account of that service delivery and the reflection on learning is good; or vice versa.

To the extent that educational quality assurance can gain a 'quality' lead over other QA processes, such as franchised delivery and professional risk management regimes, the quality high ground may be retained. With so many commentators now proclaiming clinical method as *the* way out of merely positivist legal education,[13] there is much at stake if student creativity, innovation and emotional commitment to normative learning is not to be sterilised to fit 'objective minimums'.

13 Robert Gordon of Yale University, is one of many who advocates more linked 'clinical-ethics' initiatives in law schools, because of their potential to actively develop a critical morality in future lawyers. See Keynote Address, First International Legal Ethics Conference, Exeter University – July 2004

Conclusion

Heavy-handed, mechanistic approaches to QA such as those commonly used in the current UK protocols are most unlikely to assist a comprehensive understanding, let alone improvement, of clinical legal education in the UK and Australia. In the spirit of creativity which we see as normal in the viable clinic, supervisors ought to see quality-*lite* assurance as a process of ongoing informal peer review; as developmental rather than as onerous; and as encouraging of innovation in all aspects of its operation.

While QA necessarily involves some 'adding-up' – at least in verifying the existence of procedures – it is the existence of good working relationships, of creativity in both approach and solution, of encouragement to critically reflect on the justice system, of experimentation in approach to problem solving, of value-centered ethics and of positive student attitudes to clients and to their fellow students, that are at the heart of valuable QA in clinical legal education.

** Quality-lite assurance in clinical legal education is not yet a formal reality and its detail is likely to vary between jurisdictions and cultures. The effort commenced here to argue for such a regime and to suggest some appropriate assurances, has barely begun. Clinics have too much to offer both disillusioned and doctrinally-focussed law students, for that effort not to be continued.

The 2003 informal review of the Monash clinics provide an anecdotal glimpse into what is possible in quality-*lite* assurance. This review was conducted over about two and a half weeks, from start to finish. The emphasis of the review report was upon trusting assessment, not fault-finding, though it became clear that there were issues which needed to be addressed. When, in early 2004, the new Dean of the law school asked if it was necessary to do a formal review of the clinical programme, the answer was that the clinical staff had had – in the spirit of creative development – much input to the informal review, its recommendations had met with general agreement, assessment sub-committees had commenced improvements and, incidentally, the report was available for him to peruse.

Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change

Liz Curran

"Despite the healthy respect of precedent, which is an essential part of the common law tradition, the law is capable of providing an important impetus for social and economic change. Not only is reform of the law often essential to overcome obvious inequalities and injustices in society, but the reforms can markedly influence community attitudes and behaviour."

Law and Poverty in Australia, AGPS, Canberra, 1975, page 2

"The law, like any other human creation, has defects, some of them serious. It is in constant need of improvement."[1]

The Chief Justice of Australia, the Honourable Murray Gleeson AC

Introduction

This paper will examine why in my view student lawyers who one day soon will be fully-fledged practitioners have a vital role in law reform. It will firstly draw on some of the commentary on the topic and then discuss the program I run at the West Heidelberg Community Legal Service (the legal service) which seeks to actively encourage students to view law reform as their responsibility as lawyers in the community. I should state that the approach of the law reform projects of the clinic I will discuss are still a "work in progress" as we are constantly refining and developing the process to heighten its effectiveness on those who make the laws and administer the laws which impact upon the community.

1 *AM Gleeson, Boyer Lectures 2000: The Rule of Law and The Constitution, ABC Books Sydney 200 page 4*

In 1978 La Trobe University in Australia commenced its clinical legal education program at the West Heidelberg Community Legal Service initially with legal studies students. Since 1992 law students under supervision have provided legal services to the local community in an educational and scholarly context. The current clinical legal education (CLE) program is for students in their final years of law. The placement is in one of the poorest suburbs in Victoria, a state of Australia and so, as with the original models in the United States for clinical programmes[2] the aim is to provide legal services to low income people but also to enhance lawyering skills and understandings.

As well as students interviewing, advising, preparing cases for court and running client cases under supervision in a human rights law context, in recent times, a new component has been introduced to the clinic. This involves the students in completing a law reform submission which emerges from case law at the clinic. The students, in conjunction with the legal service, identify emerging problematic patterns in their work and then having conducted research and written a report they suggest recommendations to improve the legal system and lessen negative impacts of the law's operation on the community. The role of students in law reform activities is not new. SCALES a clinical program at Murdoch University had students assist with a submission on behalf of the United Nations in relation to Human Rights and Housing in Australia. The students looked at issues around the provision of accommodation for women and children in situations of domestic violence. SCALES in the Murdoch Law School Newsletter states that "the involvement of clinic students in projects such as this is an important part of a clinical program. It improves students legal and problem solving skills, aims to challenge and broaden the students' sense of the role of lawyers and the law within society."

The legal service/La Trobe "Law Reform Project" is a structured course component and aims to be innovative and challenging for students. It also deliberately emulates the new culture of many larger law firms which require team project work and collaboration rather than individual endeavours which the usual exam or essay assessment of a university can involve. This new course component enhances the effective communication by students with persons who hold positions of power, with government departments, people engaged in direct service delivery in a number of different fields and with other lawyers.

1. Theoretical Background

A number of academics, governmental and statutory enquiries and some common law cases have highlighted the importance of a critical appreciation of the operations of the law for students and the ethical role of legal professionals in enhancing the operation of the law and law reform. Universities can have a role in preparing students for this in later life.

Richard White[3] states that the functions of the legal system and legal services are threefold:

1. To resolve individualized conflicts
2. To individualise group conflicts

2 *Edwin Rekosh, Public Law Initiative, The Journal of Clinical Legal Education, March 2001*

3 *Social Needs and Legal Action, Law in Society Series 1973, Richard White, editors C M Campbell, W G Carson and P N P Wiles, Martine Robinson, United Kingdom, page 16*

3. To strengthen the perceived identity between the individual and society as seen as a unitary whole. He comments that an aspect of the latter is reforms in the legal system that reinforce the concept of equality before the law, to overcome any tendency towards alienation and to encourage people to have constructive perceptions of the system.

He also states that the main functions of legal services research might be formulated as being: to identify those areas in which rights are not at present being enforced, to propose means by which they can be enforced more effectively and to point to further areas in which the creation of a structure of enforceable rights might be desirable.[4]

Philip Lewis in the same collection of commentaries argues that the value of people working and researching in legal services is that "the proposals they make for reform lie in encouraging the further attainment of equality before the law."[5]

Similarly, Brian Opeskin a Commissioner of the Australian Law Reform Commission, states that the need for law reform arises for many reasons noting that some legislation was written a long time ago and can no longer meet the demands placed on them by a growing population in an increasingly globalised economy. He adds, "developments in technology may generate problems that human society has not previously encountered; social attitudes and values may have changed in ways that need to be reflected in the law; old laws may need to be refreshed to modernise their language and remove obsolete provisions."[6] He also observes that law reform relates not just to statute law but also the common law.

The Lord Chancellor's Advisory Committee on Legal Education and Conduct in its Review of Legal Education in 1994[7] was a review of all stages of education and training in England and Wales. The review also considered practical training under supervision. It noted that some "artificial divisions between the "academic" and "vocational" study of law" had emerged. The report concluded that legal education should stress the ethical values upon which the law is based. This includes consideration of the nature and limitations of law and the legal process, the dilemmas faced by individuals, organisations and governments, and the responsibilities placed upon individual lawyers.[8] It also noted the "need for adequate resourcing of university law schools if they are to meet the demands made upon them to produce well-qualified entrants to the specifically vocational stage."[9] The Committee also stated that students should develop knowledge of relevant aspects of the social sciences, in order to appreciate the law's social, economic, political, ethical and cultural context.

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4 *Social Needs and Legal Action, Law in Society Series 1973, Richard White, editors C M Campbell, W G Carson and P N P Wiles, Martine Robinson, United Kingdom page 35*

5 *Social Needs and Legal Action, Law in Society Series 1973, Philip Lewis, editors C M Campbell, W G Carson and P N P Wiles, Martine Robinson, United Kingdom page 37*

6 *Speech by Brian Opeskin, Commissioner, Australian Law Reform Commission to Melbourne University, JD Program Guest Lecture series, Melbourne 4 April 2001 see www.alrc.gov.au/events/speeches/20010404.htm*

7 *The Lord Chancellor's Advisory Committee on Legal Education and Conduct in its Review of Legal Education in 1994, Extracts from Consultation Paper, June 1994 http:www.law.warwick.ac.uk/ltj/3-3i.html This report is published in the Law Technology Journal: Vol 3, No 3 October 1994*

8 *The Lord Chancellor's Advisory Committee on Legal Education and Conduct in its Review of Legal Education in 1994, Extracts from Consultation Paper, June 1994 http:www.law.warwick.ac.uk/ltj/3-3i.html page 7*

9 *The Lord Chancellor's Advisory Committee on Legal Education and Conduct in its Review of Legal Education in 1994, Extracts from Consultation Paper, June 1994 http:www.law.warwick.ac.uk/ltj/3-3i.html page 7*

In the La Trobe clinical programme, students work closely with people from other disciplines as the legal service is based in a community health service. Students, in assisting clients may liaise with psychologists, drug and alcohol clinicians, counsellors, doctors and youth workers who work for the health centre. The emphasis is on the role of lawyer delivering a holistic solution for clients. This is a product of the often complex and multi-layered contexts of the clients and so the students in the course do come to see the aspects of the social sciences that the Lord Chancellor's Advisory Committee suggests. This has also meant that the students' research into their selected law reform projects causes them to examine broader social impacts and contexts affecting their topics. For instance, when students examined the juvenile justice system in Victoria in 2002 they had to consider developmental psychology as one of the important contributors to behaviours and in rehabilitative options and purposeful intervention. Similarly, students examining drug law reform have examined the availability and access points for young people in counselling and detoxification services and the impacts of this on a defendant's capacity to meet the terms and conditions of court orders.

The International Bar Association's Standards for the Independence of the Legal Profession[10] also see a role for both lawyers and educators of lawyers in the promotion of law reform activities. The International Bar Association recognises that lawyers have a "vital role" in cooperating with governmental and other institutions in furthering the ends of justice. It states, in clause 3 of the Standards, that legal education should be designed to promote knowledge and understanding of the role and the skills required in practising as a lawyer, including awareness of the legal and ethical duties of a lawyer and of the human rights and fundamental freedoms recognised within the given jurisdiction and by international law. In clause 14, they state that lawyers should propose and recommend well considered law reforms in the public interest and inform the public about such matters.

In a submission by staff of Murdoch University's SCALES clinic staff to the Australian Law Reform Commission's Review of the Federal Civil Justice System, the role of clinical legal education in shaping attitudes of the profession and promoting its ability to respond to issues of access to justice and the legal system was highlighted.

The Australian Law Reform Commission (ALRC) in its report "Managing Justice – a review of the federal civil justice system"[11] released in 1999 dedicated Chapter Two to education, training and accountability. This report was a very comprehensive examination of the civil justice system in Australia which involved both research and the receipt of many submissions from a variety of bodies including community agencies, legal bodies and universities. The ALRC states that "education, training and accountability play a critical role in shaping the legal culture and thus in determining how well the system operates in practice". They state that it is evident that, "while it is of the utmost importance to get structures right, achieving systemic reform and maintaining high standards of performance rely on the development of a healthy professional culture."[12] This professional culture in my view should be encouraged, fostered and nurtured at law school equipping students to understand the role of the law and the players in the law in the broader operation of the legal system.

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10 The International Bar Association's Standards for the Independence of the Legal Profession (Adopted 1990)

11 see www.austlii.edu.au/au/other/alrc/publications/reports/89/ch2.html

12 Managing Justice, ALRC, 1999, Chapter 2 page 1

The ALRC notes that there are a vast number of American law schools which operate clinical programs but that in Australia, the much lower level of resources available to law schools has meant that only a handful of law schools run clinical programs.[13]

In 1992 in the United States there was a review of legal education.[14] According to this report known as the "Mac Crate Report" the values of the profession were as follows:

1. the provision of competent representation

2. striving to promote justice, fairness and morality

3. striving to improve the profession, and

4. professional self development.

Also in Canada arising from the Canadian Bar Association's Task Force Report on Civil Justice[15] the "Recommendation 49 Committee" concluded that law students should have the opportunity to critically evaluate processes for resolving conflicts in light of the broader public interest in legal rights.[16]

Australia's law schools are very different to those in the United States although similar to those in Canada (for the moment anyway the Commonwealth government of Australia in its most recent Budget has announced greater fee paying and personal autonomy in setting those fees for universities.[17]) But Australia does not have the vast resource base of American law schools[18] both public and private which have substantial tuition fees, large endowments and receive significant support from alumni and benefactors. In Australia, and as I understand it the United Kingdom, clinical legal education courses are primarily part of the undergraduate program and are often combined with another degree. There is a somewhat broader 'liberal education' mission than American law schools which have in the last decade become more narrowly oriented towards 'professional separation' and skilling . In Australia, there is also a unified national system for public universities which is fully accountable to the federal bureaucracy and has periodic reviews and quality assurance processes.[19]

Richard Grimes[20] has noted that the Lord Chancellor's Advisory Committee on Legal Education and Conduct makes specific reference to the relevance of intellectual and personal skills and the importance of seeing law in its operational context. He states that from his own experience of running a live-client clinic, the learning experience for students represents a qualitative leap from simulated methods. It is deep learning at its best he claims. He notes that the services offered in these clinics are predominantly welfare based. The focus of law reform activities enables students to see broader operational contexts of the legal system itself and to be socially active and responsive when they observe the impact of poverty and exclusion on their clients who must also navigate an often unresponsive and inactive legal system.

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13 *Managing Justice, ALRC, 1989, Chapter 2 page 4*

14 *Legal Education and Professional Development – An Educational Continuum (Report of the Task Force on Law Schools and The Profession: Narrowing the Gap) American Bar Association, Chicago, 1992 (The MacCrate report)*

15 *Systems of Civil Justice Task Force Final Report, Canadian Bar Association, Toronto, 1996*

16 *Systems of Civil Justice Task Force Final Report, Canadian Bar Association, Toronto, 1996, pages 45–46*

17 *Federal Budget, 13 May 2003, www.aph.gov.au*

18 *Managing Justice, ALRC, 1989, Chapter 2 page 13*

19 *Managing Justice, ALRC, 1989, Chapter 2 page 13*

20 *Research Reports on Legal Education, Number Two, Legal Skills in Clinical Legal Education, Web Journal of Current Legal Issues in association with Blackstone Press Ltd.*

In a recently published article by two of my colleagues at La Trobe University, Mary Anne Noone and Judith Dickson[21] examine ethical issues and student lawyering. They state "We also accept that as teachers we are role models and we continue to reflect on and communicate with our students what we consider constitutes professional responsibility." They observe that the legal profession uses the public service ideal as a justification for the privileges of monopoly and self regulation but observe that the challenge is to retain this clear commitment to public service in the midst of pressures on lawyers to do the client's bidding, corporatisation and competition.

G. E Dal Pont[22] also comments on the perception of lawyers as more interested in financial benefit than the interests of their client and the community. He observes that "lawyer bashing" is common and that both the public and governments have contributed to it.[23] He cites the Dean of Yale Law School[24] as lamenting the fact that the best graduates go the large law firms where time charging, a mercantile attitude and the client who dictates the course of disputes have become common place. The Dean concluded that legal institutions had a role in stewarding students to beqeath the profession with the quality and integrity it was once seen to have. Dal Pont notes that commentators have argued that law be redefined to suit the purposes of large commercial practice[25] where professional ethics and fearless legal advice can be seen as threatening. Dal Pont argues that the professions most valuable asset is its reputation and the confidence it can inspire[26] and laments the polls[27] which reflect poor professional ethics of lawyers. The challenge as educators is how to best encourage students to think of ethical conduct in the context of justice.[28] And as Ross puts it, to produce "critical and creative law graduates who are self reliant, self determining, and self motivating individuals who can communicate well and work co-operatively as well as independently"[29]

Dal Pont also points out that as a participant in the administration of justice and the legal system, the lawyer must foster respect for law and its administration.[30] This duty manifests itself, in many ways. Case law states that firstly, although lawyers are not precluded from criticising the law or otherwise not supporting laws as lawyers are well qualified to criticise the law and any restriction on critical assessment of the law could hamper law reform. The court however has stated that lawyers must not do this in a manner that undermines the law or public confidence in it.[31] Secondly, lawyers must not engage in conduct which may otherwise bring the legal profession into disrepute or which is prejudicial to the administration of justice.[32] Noone and Dickson comment

21 *Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers, Legal Ethics, Volume 4, No.2*

22 *Lawyers' Professional Responsibility in Australia and New Zealand, Second Edition, Law Book Company Sydney, 2001*

23 *Lawyers'Professional Responsibility in Australia and New Zealand, Second Edition, Law Book Company Sydney, 2001, Part One page 8*

24 *Kronman The Lost Lawyer: Failing Ideals of the Legal Profession, Harvard University Press,1993*

25 *Lawyers' Professional Responsibility in Australia and New Zealand, Second Edition, Law Book Company Sydney, 2001 Part One page 8*

26 *Lawyers'Professional Responsibility in Australia and New Zealand, Second Edition, Law Book Company Sydney, 2001, Part One, page 14*

27 *Morgan Poll 2–3 April, 1994 where of 1,212 people Australia wide only 30% of respondents rated lawyers as high or very high in ethics and honesty which was 14% lower than the same survey in 1984.*

28 *Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers, Legal Ethics, Volume 4, No.2 page 133*

29 *I. Ross, Ethics in Law: Lawyers Responsibility and Accountability in Australia, 3rd Edition, Sydney, Butterworths, Australia, 2000 at page 75*

30 *Re B (1981) 2NSWLR 372 at 382, Moffitt P*

31 *Ambarde v Attorney General for Trinidad and Tobago (1936) AC 322 at 325, Lord Atkin*

32 *Victorian Barristers Practice Rules, Rule 4 and Re Milte (1991) 22 ALR 740*

that "the realities of legal practice, in the community based model of a clinical programme, ensure that issues of public policy, law reform, social and moral questions and the provision of legal services in the public interest will arise, confront students and demand reasoned solutions."[33] Legal educators, they observe in the United States in the 1970s, embraced the clinical method for this purpose. It was seen as offering hope in instilling in law students a conception of professional responsibility that went beyond mere knowledge and the application of rules and which involved obligations of service and commitment to justice including law reform.[34]

The Clinical Legal Education Program La Trobe at the West Heidelberg Community Legal Service

In Australia we have a Federal system of law which means we have national laws and State laws in each of the seven different States and two territories of Australia. This gives rise to complexity and in some senses confusion.

The programme of law at La Trobe University has over the past twenty five years had a strong commitment to access to justice and a commitment to the study of law in context. In fact the latter is the title of the La Trobe Law School's Journal. My position as a lawyer at the legal service is fully funded by La Trobe. This was partly the result of the 1970s National Henderson Inquiry into Poverty that was commissioned by the Federal Government. La Trobe wanted to contribute to the local community after West Heidelberg was cited as one of the poorest communities in Victoria with minimal access to legal services by the Inquiry.[35] By the way, a point of trivia is that West Heidelberg was the Olympic Village for the 1956 Games in Melbourne and after the Games was handed over to public housing.

The Clinical Legal Education programmes at La Trobe are worth double the credit points of other subjects in recognition of the heavy work load and time commitment required from the students. The focus as Noone and Dickson point out in their paper[36] of the clinic is on analysing and reflecting upon what constitutes ethical conduct, not upon skill acquisition. They "come to see legal practice as socially situated and hence ethically complex."[37]

33 *Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers, Legal Ethics, Volume 4, No.2 page 134*

34 *See D A Blaze, Déjà vu All Over Again: Reflections of Fifty Years of Clinical Legal Education (1997) 64 Tennessee Law Review 939 at 950–954 The programme of law at La Trobe has over the past twenty five years had a strong commitment to access to justice and a commitment to the study of law in context.*

35 *Commission of Inquiry Into Poverty (1976) A Study of the Heidelberg (Victoria) Community. Canberra, AGPS pages 15–24 and 75–76*

36 *Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers, Legal Ethics, Volume 4, No.2 page 139*

37 *See A Goldsmith and G. Powles, Lawyers Behaving Badly: Where Now in Legal Education for Acting Responsibly in Australia, in K Economides (ed) Ethical Challenges to Legal Education and Conduct, Oxford, Hart Publishing, 1998 page 119 and Teaching Towards a New Professionalism: Challenging Law Students to Become Ethical Lawyers, Legal Ethics, Volume 4, No.2 page 143*

2. How the law reform component emerged

I came to the clinical program having spent many years working in law reform on both a state and national level around issues of access to justice, poverty, native title and human rights law through two previous jobs, one as a policy, law reform and media commentator for the Federation of Community Legal Centres (Victoria) and the other as Executive Director of a human rights organisation.

During the first year and a half in my new job as a clinical supervisor it became apparent that there were a range of client cases which were in need of law reform responses. Due to the minimal resources of the legal service it was unable to work on public policy dimensions as much as it felt was required. Coincidentally, at the time that this was being discussed at Committee of Management level at the legal service, the students raised in class and in their afternoon debrief sessions their desire to have more ability to respond not just to their case-work but to the opportunity to raise the broader issues that emerged from their cases.

Three issues at the time made the students comment that they wished they had more capacity to raise law reform matters and work on them during the course. These were the bankruptcy laws which exposed clients who were compulsive gamblers to hefty criminal convictions, the treatment of asylum seekers where they had a case involving treatment of a Somali man in detention and finally a sentencing review they had read which raised a recommendation which in the students' view would be of detriment to young people. Although in the latter two cases the students drafted and sent a letter on the topics to government they lamented the lack of space in their course to undertake further work on issues of law reform. It was through the raising of these convergent concerns of the students and the Committee of Management that the law reform project was born.

In addition, during the semester break I had attended a seminar run on ethics in the legal profession and one of the issues raised was the changing approach of law firms to the bigger cases where there is increasing project work style being undertaken by law firms which meant that they were using solicitors to work in teams rather than the more traditional model of solicitors working in a solitary fashion. The firms commented on how difficult it had been to encourage collaboration and that solicitors initially had tended to work in a more adversarial, competitive manner which was not always in the client's best interests as it had led to fragmented advice. They commented that perhaps it was the mode of assessment at law schools that reinforced this approach in addition to the competitive nature of legal practice.

Keeping these issues in mind over the semester break of that year a review of the assessment for the course was undertaken to ascertain whether there was scope to incorporate the student feedback in relation to law reform projects. In early 2001 student assessment involved 45% for placement, 10% for class participation and presentation, 20% for an interview report and 25% for an essay. It was difficult to juggle the assessment too much given the criteria required for subject approval and as any law reform project would involve an increase in effort by the students it was important to make the project worth more. The interview report was reduced to 15% and the final assessment's worth was increased to make it worth 30%. In addition, the essay was now to be described as a "law reform project". Clearly, the project would involve academic research and critical analysis and so from a university point of view was still a very relevant scholarly endeavour and assessment tool.

The students at the clinic attend in groups of four on each day they are on placement. Normally, in the morning they interview clients and prepare cases and do follow up work in the afternoon.

In order to emulate the trend of law firms in doing project work I decided rather than have the student work on individual law reform topics, to establish teams of four (on each day of placement) who could determine and work on the topic together. The Committee of Management was prepared to reduce the students case work by three clients a week on the basis that in exchange the university students would build up the legal service's law reform profile. Students have a client free afternoon a semester to work on their projects. In addition, students often use the regular afternoon debrief session of the placement to discuss their progress on the project and to examine points of contention and clarification with their team or supervisor.

In the first few weeks of placement students are asked to think of their clients and any burning issues that they determine need attention. They are asked to also examine previous work on the possible topics they are considering and any stated gaps in research that they might fill. They come to their afternoon session in the third week with ideas. At the same time the legal service practitioners are asked to also consider topics and with the assistance of "butchers paper" the topics are thrashed out, debated and compromises made on what will be the law reform topic for each team. The students also decide which content they will concentrate on for their 3,000 words each. The students are encouraged to be realistic in what they can achieve in a very limited time frame and to organise their time effectively as they should expect delays in responses to their correspondence.

Generally, the students will determine whether their law reform project will take the form of a law reform submission to a specific statutory or government enquiry or a Report on the topic. They generally divide their project into Chapters (making assessment easier) selecting a student to write each chapter including introduction, conclusion, recommendations and in some cases an Executive Summary. Students with a particular skill will often choose to do a Chapter which takes advantage of their skills. For instance, commerce students will often select to examine efficiencies and funding, another student who has an undergraduate qualification in psychology looked at this aspect of the legal issue, a sleep scientist was able to examine the effect on prisoner health of fluorescent light and the constant waking that occurred in police cells. Students have elected to be marked individually on their chapters and in some cases have asked to be given a mark as a team. The report can then be marked, edited and published by the CLE supervisor. Students have also developed lists of whom the report can be sent to once it is published. For instance, public bodies, people who have assisted in their research, politicians, media outlets, community organisations and so on.

The project has also meant that the experience and networks I had established in my work in the law reform arena are not lost and can be used by the students who then develop their own links in government, the profession and elsewhere. This teaches students not only about legal practice, ethics and legal professionalism but also how to participate in and examine processes of law and guide the students in the acquisition of law reform skills. The new component of the course is designed to demonstrate to students techniques in ensuring that the law can be more responsive and can be improved and it exposes students to the broader role they may wish to play in public life.

Some criteria for assessment will include: relevance, quality of research, conciseness, team cooperation, ability to act under direction, synthesis of information, analysis and evaluation, depth and quality of arguments presented, balance, usefulness and practicality of recommendations made, expression, clarity and innovation.

3. How it has been developed

In the last year the course has also been redesigned to reflect and complement the students law reform project. In week eleven of the two hour class at the university the topic covered is *Mechanisms for Law Reform – Different Tools and Approaches*. This involves examining the potential of the law and other mechanisms such as education, cultural and institutional structures in achieving change, retaining good practices and obtaining justice for economically and socially disadvantaged people.

It examines the power of analysis, research, law reform activities such as submissions to bodies, advocacy, community action and other methods for achieving social change. In week twelve the topic is *Evaluating Mechanisms for Law Reform and Taking Action*. Students in this session critically evaluate the differing methods and their appropriateness to different situations and also engage in discussion of matters that have emerged in their client work and their law reform topics.

We also have a class hypothetical where students are given a fictitious but real life scenario and take on roles of the key players in the operation of our legal system including politicians, civil servants, lawyers, media commentators and lobby groups. Students are placed in a situation where they must take on the perspective from the point of view of the roles they are given. The hypothetical contains ethical and legal professional dilemmas, requires knowledge of the international law frameworks they have learned about during the course and a working knowledge of law reform initiatives that they might be able to explore resulting from the scenario they are given.

In their last class they can meet with their team to discuss the law reform project, sort out formatting, areas of duplication, recommendations and other issues.

4. How it is done

Students having selected their topics then have to determine their methodology for their law reform topic. Students will often undertake surveys or "person to person" and "over the phone" interviews with people who have some expertise in the area. They do not interview or survey members of the public or clients in view of the difficulties involved in getting timely ethics approval. The La Trobe University Ethics policy provides scope to enable surveying of people who are experts in the area in which they are being questioned. Students will research the topic and as a result of their enquiries draw conclusions and devise and discuss solutions to the problems that they have identified.

5. A Case Study: Self-Represented Litigants

I will select an example of one of the students' projects to illustrate the process for the project. Generally, students come up with the title for the projects in the final stage of drafting the report or submission. The project I will discuss is last year's second semester, 2002 project which was entitled, "Unrepresented Litigants: At What Cost: A Report Into the Implications of Unrepresented Litigants in the Magistrates Court of Victoria".

One group of students had undertaken a number of cases in their first few weeks where legal aid had either run out or where the clients were not eligible for legal aid and the solicitor at the legal service was unavailable to represent the client. The students found themselves having to provide

advice to these clients on how to represent themselves in court. In one civil case the student was convinced that no amount of help would equip the person to represent themselves and wanted to attend an initial conciliation with the client as a support person. The students settled on this topic as a result of their experiences.

The first task the students undertook was to conduct a literature review and analysis of the current research and gaps in studies undertaken. They then wrote to the Magistrates Court and the new Federal Court Magistracy of Australia (which does family law and civil matters) advising the court of their intention to do a project, enclosing a set of eight questions they had devised on self represented litigants. They asked if they could interview members of the court. They received a letter from the Chief Magistrate of the Victorian Court who encouraged them in their work and offered to facilitate interviews with the various regional courts on their behalf. In addition, the students sent the same questions to the Managing Director of Victoria Legal Aid (VLA) seeking permission to interview duty lawyers at VLA and then once approved made times to interview both over the phone and in person the duty lawyers and magistrates and registrars at various regional courts about self-represented litigants. The students sat in on court proceedings and observed unrepresented litigants in action using these as case studies in their report without identifying the individuals in any way. Finally, students also attended "do it yourself classes" run by legal aid offices. Having gathered all of this material the students spent some time synthesising the material, analysing and evaluating it and developing suggestions for improvement by way of recommendations. Once they had completed this task they provided a list of persons at the back of their report whom they wished to receive copies of the report. These included interviewees, the judiciary, public servants, parliamentarians the various law reform bodies and members of the media. The students included acknowledgments thanking the people who had assisted them throughout the project. The students also drafted a press release to be sent when their report had been assessed, finalised, edited and approved by the legal service's Committee of Management. Covering letters were written by the CLE supervisor and sent out to the students' addressees with the Report.

6. How it has been received

Once the law reform project had been received by the various recipients, we received a number of letters within the month of the report being sent from the Attorney General of Victoria, the Leader of the Opposition, the Law Reform Commissioner of Victoria, stating that the report raised many issues that needed consideration. They received a letter from the legal aid commission stating the report would be very useful in improving legal aid services to self represented litigants. The supervising solicitor was contacted by various media including radio and the press and asked to report on the student's findings and sat with students in a radio interview. As the students had been exposed to guidance about dealing with media in the class at La Trobe University, they were aware of the limitations of what they should comment upon and so tended to discuss the process of the report and seek guidance from me on the more substantive issues. The media were quite receptive to the idea that it was students who were actively involved and clearly impressed by their energy and commitment in working for the public interest.

About two months after the report had been sent out, the Law Council of Australia sought permission to use the report in its materials and for lobbying purposes. In addition, the Law Institute of Victoria requested permission to reproduce the students work and recommendations

in its criminal law newsletter. The final coup was a notification from the Department of Justice to say that it had met with the court and that the recommendations from the students were to be implemented as part of the Magistrates Court's ten-year strategic plan.

7. Getting into the public consciousness

The importance of educating the public as to the issues that need action in the legal system or in improving understanding of the operation of the legal system is considered as a very important aim in the student's work. This is why they involve themselves in using the media as a tool for broader publication and exciting the media's interest. In addition, some of the projects have also involved an educational component.

In one project the students were concerned about the practices of a lending/ finance company and developed an information kit to be used by health centre staff and financial counsellors in educational classes and focus groups with clients in highlighting questionable practices and legal rights. In another project, students came to realise that counsellors of children often believed they were obliged by law to breach confidentiality with their clients thus exposing them to a breach of their duty of care. The students have been developing an information sheet for counselling practitioners, highlighting their obligations and duty of care to clients and what the law did and did not require. This information is being circulated to counselling organisations throughout the State.

To date the students have not been as directly involved in lobbying as I would like as often requests for meetings with Ministers about their projects occurs after students have completed the subject. There have however been a couple of instances where I have been able to contact students and they have come along to ministerial meetings and been involved in explaining their point of view and why there is a need for a change or to sustain a particular approach. This means they observe first hand the political process and its overlap with law-making.

Some of the other projects students have worked on have included:

1. Juvenile Justice entitled, An Investment in the Future, semester 2, 200
2. Police Behaviour and Standards
3. Finance Companies and Lending Practices
4. Police Prisons: Conditions, overcrowding and length of stay in police cells
5. Citizens and Their Rights: A Report on the Public Transport System and City Link
6. Working Together to break the Cycle: a discussion of current treatment and sentencing initiatives for drug dependent young people in Victoria
7. To Breach or not to Breach: Confidentiality and the Care and protection of Children
8. The Responsiveness of Legal Aid Services

8. Moving forward into the future (succession plan)

As a result of the Law Reform Project on self-represented litigants two students were hired as paid researchers for a Commonwealth Government Report which examined self-represented litigants in the Family Court of Australia. In addition, students who have interviewed members of the legal

profession for instance for the project on police cells were invited to apply for articles at these firms. Students can list their law reform project and media coverage they have received in their portfolio for job applications. Students gain exposure to barristers, magistrates, judges in their research, making links for their future careers but also feedback from these professionals reveals that they found the student contact energising because of the students keeness, freshness and genuine desire to "make the world a better place". As clinical legal education teachers you would be aware yourselves of how much students can contribute with fresh ideas often challenging the cynicism that years of experience can bring.

From a student's point of view the law reform project enlarges their professional networks for their futures in law or other fields and makes them have more choices about the areas of law they may wish to practice in and if they decide not to practice they realise there is a whole realm of activities that a law degree will give them opportunities in from politics, to being a public servant to working in public policy and advocacy.

From the point of view of the profession it may assist in reducing the negative perceptions of lawyers in the community as "money grabbing lawyers" as they see professionals dedicated not just to client work but to the advancement of the community in general. It also means that as one generation moves on there are custodians who will have experienced the benefits of working towards equality before the law and enhancing the rights of citizens.

Conclusion

Not only does the law reform project force students out into the community, honing their skills at dealing with difficult bureaucracies and civil servants, seeing the players who administer and legislate for changes in the law but it also reminds these sectors of the important role they have in being involved with students, by mentoring them and understanding that they are keen to learn and engage.

The project has many other advantages but the most important is that the students' clinical experiences can be garnered to work for positive change in the community through law reform and creates the "healthy professional culture" which the ALRC saw as so important. As Lewis and White suggested in the reference to them at the beginning of this paper, students can strive to "reinforce the concept of equality before the law, to overcome any tendency towards alienation and to encourage people to have constructive perceptions of the system."

Students not only learn about legal practice, ethics and legal professionalism but also how to participate in and examine processes of law and acquire a range of law reform skills. It exposes students to the broader role they may wish to play in public life when they are fully fledged lawyers encouraging their participation in their law association and to be unafraid in speaking out against injustice.

Since the introduction of the law reform component in the clinic, students have received feedback from government, media outlets and parliamentarians that many of their suggestions and recommendations are being examined or are to be implemented. This demonstrates to the students that there is scope for a practical impact on policy-making and law reform to enhance the civil rights of the clients that they have represented as well as the broader community.

Geoffrey Robertson QC in his book, "The Justice Game" states "this was not what I had been taught at Law School, which dunned into me that law was a system for applying rules made by

legislators or by judges to facts elucidated by evidence, through which a just result would be achieved." He goes on however to conclude that "Law is erroneously regarded as a tool for oppression: I have tried to show it can serve as a lever for liberation." Robertson's view of the law can present us as educators with an opportunity to instill as a notion, within our students, not just understanding of the law and its operation but also what its potential can be by exposing students to and exploring innovative and challenging ways of learning about the law. As one student said to me last week in his clinical debrief, "This course has made me realize I don't want to be just a functionary of the legal system. I want to be involved in how the system works and making it work towards the betterment of the community."

Appendix to Conference Paper

A selection from the report and some recommendations made by the students included:

"We recognise the limit of resources to the justice system thus we advocate a balanced response, providing support where appropriate and representation where necessary.

Recommendation 1

Data on litigants in person should be collected and made available for analysis. Particular emphasis should be directed towards;

profiling litigants

• categorizing their legal disputes

• examining the costs involved in resolving the dispute

• litigants in person's impact on court time

• recording satisfaction levels[38]

Recommendation 2

Because the lack of representation may result in an unfair trial, the right to legal representation for unrepresented adult litigants in criminal and civil matters in the Magistrates' Court needs to be strengthened. Arguably, too much is left to the discretion of the magistrate. Legislative reforms are required that guarantee legal representation for the more serious offences, particularly those punishable by imprisonment.

Recommendation 3

Expansion of the eligibility criteria for Legal Aid scheme is proposed along the lines of the Swedish model. The scheme should encompass not just people living below the poverty line, but people who are financially or socially disadvantaged.

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38 Law Reform Commission of Western Australia, Review of the Criminal Justice System in Western Australia: Final Report, Recommendation 198, quoted in Australian Institute of Judicial Administration Incorporated, Litigants In Person Management Plans: Issues For Courts and Tribunals, Victoria, Australian Institute of Judicial Administration(AIJA), http://www.aija.org.au/online/LIPREP1/pdf, 2001, p.10.

Recommendation 5

A scheme is required to give more assistance to litigants who wish to contest or defend criminal charges but who fail to qualify for legal aid. Currently such litigants are pressured to plead guilty because otherwise they must represent themselves (unless they can obtain pro bono counsel) and suffer great disadvantage in the presentment of their case in court.

Recommendation 6

The Duty Lawyer Scheme should be extended to assist litigants involved in certain civil actions, for example, road accident or personal injuries claims where parties may not be insured.

Recommendation 7

The compilation of a comprehensive and user friendly directory of legal and non-legal agencies in Victoria.

Recommendation 8

Moderate and simplify language used within the court arena. This encompasses avoiding legal jargon, sophisticated phrasing and Latin maxims. If there is a simpler way to state a question, ruling or instruction, Magistrates should adopt it.

Recommendation 9

Appointment of an information officer whose function is the provision of assistance and support at court. '...providing staff are prepared to assist any litigant on request there is no basis for any fear or accusation of impartiality.'[39] Such an appointment would provided unrepresented litigants with a focal point of reference within the court and would allow Registrars to more efficiently deal with the administrative matters of the court.

Recommendation 11

Installation of touch screen information kiosks within the Magistrates' court. These kiosks should facilitate those from non-English speaking backgrounds by providing language options and should offer information and answers vocally to assist the semi-literate or illiterate.

Recommendation 12

A publication of 'Ten Commonly Asked Questions.' Registrars interviewed noted that they were often repeatedly supplying the same information to multiple litigants in the one day, thus a leaflet of this kind would not only greatly benefit litigants in person but would additionally assist registrar staff."

In all there were twenty-four recommendations.

39 AIJI, p. 18 op cit.

Clinical Legal Education Management and Assessment Software

*by Ross Hyams**

Lawyers and Technology

Lawyers are notoriously slow at embracing technology. This is not because of any inherent laziness or fear, but a basic lack of acceptance that digital technology is any way related to the practice of law. After all, law is all about human interaction and practicing law is concerned with communication skills, drafting, negotiating, and advocacy – all intrinsically people-centered abilities which have no connection with the world of computer technology. There is another reason that lawyers, in general, have not incorporated technology in their daily practices. Most lawyers are simply lacking in management training and spend the bulk of their time working *in* the business and not *on* the business. They are so concerned with the day to day running of the practice, meeting deadlines, running files and servicing clients (which is their core business) that they have no time to consider whether they could be improving their management systems, and if so, how.

Despite such reluctance to embrace technology being shown in Australia, the last decade has seen a vast increase in the availability of law firm 'case and time management' software programs in the U.S.A. Software programs such as 'Time Matters', 'Amicus Attorney', 'PerfectLaw' all provide various degrees of front office computer related assistance in running a legal practice. There appears to be an understanding amongst U.S. attorneys that providing such forward-looking technology to their employees is not simply a question of efficiency, but also enables them to attract promising recruits –

"The new generation of lawyers leaving law school has been raised in an era of computers. Soon we will have a generation of law students who have never known a time when the Internet was not available. The level of expectations and reliance of sophisticated approaches to information and technology of these lawyers is very high."[1]

This paper will investigate the current use of technology in law clinics in Australia. It will look at the challenge of integrating case management and assessment technology in clinical teaching

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1 *Dennis Kennedy, 'Creating an Environment in Law Firms Where Artificial Intelligence and Knowledge Management Will Work', http://www.denniskennedy.com/kmai01.htm*

practices and propose some creative ways of creating, integrating and managing such software to enhance not only the way clinics are run, but also how students are taught. It will also make some suggestions and provide an analysis of a comprehensive computer package which would provide a resolution to many of the law office management and student assessment issues facing law school clinics around Australia today.

Live client law clinics at Australian Universities now have the opportunity to embrace legal case management technology and to include it as part of the way clinics are run and how students are taught. Clinicians have fought (and, for the most part, won) the legal education credibility battle, which has been raging since the creation of Springvale Legal Service in 1973.[2] Clinics have now finally become an accepted part of the curriculum in many Australian Universities, especially in Law Faculties established in the last ten years.[3] Their pedagogical aims have been, for the most part, accepted as being sound and they have secured a somewhat begrudging tolerance from even the most entrenched members of law school staff, some of whom have continued to adhere stubbornly to Langdellian teaching methodologies. Having achieved all this, legal clinics' futures are by no means secure. There are many challenges currently facing them and their continued existence will only be achieved by acknowledging these issues and dealing with them with creative and inventive techniques.

Current technology

In this author's view, technology can provide clinical practices with a number of benefits that, for the purposes of analysis, are best divided into two main areas:

1. Case and time management issues that are relevant to all legal practices;

2. Educational and assessment issues that are pertinent to the specific needs of a University based clinical legal education practice.

Case and time management

According to U.S. attorney Elliott Zimmerman, a good computer system should be able to:

- Integrate nearly every piece of information that the office works with and make it instantly available;
- Generate the current caseload, key deadlines and case proceedings at the touch of a button;
- Produce calendar reports showing key dates;
- Furnish a phone directory;
- Create reports providing information from which the firm's caseload can be analyzed.[4]

2 *The Springvale Legal Service (now known as the Springvale Monash Legal Service) first opened its doors as a community legal service on 23 February 1973. Its clinical legal education program commenced in 1975.*

3 *For example, University of Newcastle.*

4 *Elliot Zimmerman: 'What To Look For In Case Management Software' Practical Lawyer, Philadelphia, September 1995, Volume 41, Issue 6, p. 29*

Software that assists the 'front office' aspect of a legal practice described by Zimmerman (as distinct from the trust accounting and budgeting facets of the practice) can have various functions. Basically, these functions can be broken down into the following key areas:

- Client database;
- Calendaring;
- Telephone directory and messaging;
- Document management and text searching;
- Legal research.

Each aspect of these functions can be broken down into 'sub-functions' – individual on-screen tools which can be used to streamline the workings of the legal practice. These will be further expanded upon below.

Educational and assessment issues

Specific to clinical legal education are technological requirements that would assist clinical teachers in their pedagogy. Computer programs can be designed that will help teach students effective time management, good file note technique and basic case management skills. In addition, this technology can help in assessment of students by making clinical assessment more effective, thorough, equitable and 'transparent'. Thus, the educational and assessment functions of such a program can be broken down into these key areas:

- Tracking students' progress over time;
- Reviewing students' files on a regular basis (say, weekly or fortnightly);
- Tracking informal mid semester feedback and preliminary assessment;
- Evaluating court appearances (real or simulated) and other discrete tasks such as court reports, written assignments and community development projects;
- Providing final assessment of students' casework and calculating final marks.

Currently, clinical supervisors in the Law Faculty at Monash University have a detailed set of criteria for assessing students which translates specific skills into percentages – for example, the skill of '*Taking Instructions from Clients*' is broken down into five 'sub-skills':

- Approach to client;
- Fact gathering;
- Interview control;
- Communicating advice;
- Assisting client to decide.

These sub-skills are not assigned individual marks, but the major skill of '*Taking Instructions From Clients*' is assigned a mark of 7.5 out of the total 100. There are five other major skills in the marking criteria, all of which are broken down into numerous sub-skills. These criteria greatly assist clinical supervisors in determining case work marks – but, with the exception of a single marking meeting at the end of each semester in which supervisors compare marks, the reckoning

of how specific marks are provided for each skill and sub-skill is an individual exercise left to each clinical supervisor. The level of importance one supervisor attaches to the sub-skill of 'fact gathering' may differ markedly from that of another supervisor and thus students' marks are not being assigned equally. Subjectivity creeps in and there is no way of establishing uniformity.

Furthermore, the Monash clinical program has been recently criticized for possessing no external moderation of marks awarded to students for service provision work.[5] Each supervisor is responsible for his/her student's casework mark and there is very little input from other supervisors or staff. If a locum or new supervisor joins the ranks, they are provided with a copy of the assessment criteria and this is their only training in assessment tasks for this subject.

Currently, students who are dissatisfied with their casework result will be provided with a copy of the assessment criteria sheet, duly filled out by their supervisor in order to show the student's strengths and weaknesses and enlighten the student as to how a particular result was reached. However, as the 'sub-skills' are not individually assessed, it is very difficult for the supervisor to explain or justify how a particular portion of the mark was calculated. There is no other supervisor or external moderator who can assist to explain or justify the calculation. If a student wishes to accuse the supervisor of bias or subjectivity in the marking process (or favouritism to another student), there is little a supervisor is able to do to defend his/her position. Clearly, this current situation is untenable, if not positively hazardous, for clinical supervisors. Clinicians are relying on inherent marking skills and the good graces of their students to 'get it right', but there is very little in the way of checks and balances to protect clinical teachers from allegations of an incompetent and inequitable marking regime.

The need for change

An informal examination of clinical teachers in various Australian Universities[6] reveals that computer technology has had very little impact on case and time management at legal clinics. Most (although not all) client databases in University legal clinics are dependent on the 'CLSIS' (Community Legal Service Information System) provided by the Commonwealth Government for the Community Legal Service sector in 2003. Although a quite sophisticated database, CLSIS is still only a client recording system and provides no other beneficial functions. A handful of clinics use Microsoft Outlook or Palm Pilot for calendaring functions – however, it appears that most clinics' 'calendaring' takes place with individual diaries and perhaps an office 'court diary' in which important court and limitation dates are entered. Further, it appears that there are no legal clinics that currently utilize any form of student assessment technology.

A law school cannot possibly give the right message to its students regarding the importance of clinical legal education, or the value to be placed on appropriate client contact, when the students must perform clinical work with outdated technology, or indeed, with no technology at all! The question of appropriate computer resources is all pervading – considering that law clinics usually have a dual objective (that of servicing a needy client-base, and providing innovative legal education

5 *Informal Review of Clinical Legal Education Programmes at Monash University, Professor Hugh Brayne, University of Sunderland, UK, July 2003 (unpublished) p.4*

6 *A series of questions were put to University staff members of clinical programs at Monash University, (Vic), Southern Cross University (NSW), Flinders Law School (S.A), University of Queensland (Qld) and Murdoch University (W.A.) See Appendix A for results.*

to its students), such under-resourcing fails students in both areas. It disables students from doing their job properly if they are unable to access appropriate legal resources required to conduct a file. It undermines their learning experience if the legal clinic is unable to correctly function due to inadequate and out of date systems. It sends a message to the students that the law clinic is merely paying lip service to the ideal of clinical teaching methods.

Thus, for many legal clinics at Australian Universities, adopting a computer based case and time management program would not be a matter of replacing an outmoded system but of integrating this kind of technology for the first time. In this author's opinion, the time is more than ripe – clinical educators are failing each time that a student is released from a semester at a legal clinic without exposing them to the sort of technology that they may be shortly facing in legal practice.

In order to improve the efficiency of clinics' legal practices and resolve some of the dilemmas surrounding the need to regularize assessment procedures, a computer program is required that can seamlessly blend these areas into one package. Further, such a program should also integrate so-called 'back office' functions such as bookkeeping, trust accounting and budgeting. Exploration of the availability of such programs reveals a scarcity – there are many U.S. law firm programs which would satisfy some of the case and time management requirements common to most legal Australian legal practices,[7] but they would all require a significant level of customization in order to be appropriate for the Australian legal environment. There are also many programs that cater for the needs of medical, dental, engineering, architecture and a myriad of other professional practices. Nevertheless, despite research into educational software packages this author has had no success in discovering any software that is purpose made for a clinical teaching environment, whether it is in law, dentistry, medicine or similar professions.

If pre-packaged or existing legal software systems are already available, why the necessity to create a new product? One of the problems with pre-packaged legal software systems is that they do a lot of jobs well, but there is no job they do as well as a tool designed for that purpose.[8] Accordingly, the simplest way to obtain such software is to design and create it in accordance with legal clinics' unique needs. Enter 'CLEMAS' (Clinical Legal Education Management and Assessment Software), a computer program which currently only exists in the mind of this author. However, a modest financial and professional commitment could turn such a program into a reality and become available to legal clinics across Australia within a short space of time.

Introducing CLEMAS – what would it do?

CLEMAS would have two distinct purposes – managing the clinical legal practice and assisting with the assessment of students. The following provides a detailed analysis of these functions –

1. Managing the Clinical Legal Practice

Client database – This is currently being provided by CLSIS to most community legal services around Australia, including legal clinics. It is a relatively sophisticated database program which enables users to perform client conflict searches, enter basic client data, (such as name, address,

7 *Such programs from the U.S.A. include: Amicus Attorney, Juris, Time Matters (5.0), Needles Case Management Software, Lawex Corporation TrialWorks(tm) and ProLaw Software.*

8 *John Lederer: 'Shoeshines, Coffee and Case Management', Law Office Computing, Costa Mesa, Feb/March 1999, Volume 9, Issue 1, pp 10–12*

level of English, place of birth and such like) and includes fields for information regarding the client's legal problem. It enables users to sort client information in various ways and to create tables regarding problem types, client gender and age, level of income, etc. However, this is the extent of its functions.

The CLEMAS database could either replace CLSIS as a comprehensive client database, or be simply designed to add functionality to it. Realistically, as much money and effort has already been expended on the creation of CLSIS, it would be more logical to utilise its current functions. It is proposed that CLSIS could be enhanced. For example, CLSIS currently has the ability to perform conflict searches and to sort matters by client name and matter type This could be enhanced by providing an ability to also perform searches by other means – student I.D, supervisor, date opened/closed, gender, country of birth, and other ways, customisable by the user. Further, this information (which is presently accessible in CLSIS as statistical data and reports)[9] could become downloadable as Word, Excel, HTML format or PDF files so that the data can be manipulated for documents such as Annual Reports and staff meetings.

Calendaring – Currently, it is quite rare for lawyers to use calendaring systems that are more sophisticated than hand-written diaries. Anecdotal evidence points to some use of Personal Digital Assistants, such as Palm Pilots and it appears that Microsoft Outlook is also favoured to some extent. CLEMAS would include a calendaring system that would be customizable for both office wide and personal use. Such a system would have the ability to manipulate diary data so the user could read data not just in dates, but as monthly summaries, by case name, level of urgency, important limitation dates and the like.

The program would have embedded Court time limitations specific to the relevant jurisdiction. Thus, if a note is entered into the calendar relating to the commencement of litigation, CLEMAS would immediately insert the relevant procedural or time limitation dates (such as the last date to enter a defence) into the diary – and also automatically create seven, five or one day reminders prior to the limitation dates, as defined by the user.[10] Similarly, reminders and prompts could be incorporated for clinical assessment tasks such as student file reviews and items of student work being due. The calendaring system would also be able to provide status reports at start up each morning specific to each user, advising number, type and time of appointments during that day and items of work scheduled for the day or not done on previous days which have carried over. This could be customisable for each user and include a task scheduler and 'pop up' on screen reminders (say, one hour or 30 minutes prior to a scheduled meeting) in a bright and different colour to the normal screen background to differentiate it.

Finally, the Coordinator or Manager of the clinic could be provided with 'God' status which would enable him/her to display multiple staff calendars on one screen along with the 'office' calendar for comparisons and to check RDOs, holidays and times available to all staff to hold meetings.[11] This would provide a huge advantage to the efficient running of the clinic.

Telephone directory and messaging – Most lawyers report that their telephone and messaging systems consist of a personal teledex, diary or again a form of Personal Digital Assistant.

9 *CLSIS Training Course for Community Legal Centres' David J Foreman & Associates, Version 3.0, August 2003*

10 *Brent Roper: 'Legal Technology Superstars' Legal Assistant Today, Costa Mesa, May/June 1995, Volume 12, Issue 5, pp 44–50*

11 *Steve Schmidt: 'When Time (really) Matters', Law Office Computing, Costa Mesa, April/May 1999 Volume 9, Issue 2, p. 39*

It is unusual to find an 'office wide' telephone directory and/or messaging program in operation in legal clinics (or indeed in many law firms). It is proposed that CLEMAS would provide both a personal and office wide telephone directory, customisable to each individual staff user. Thus, a catalogue of often used telephone numbers and addresses could be accessed on screen by all participants at the clinic, including students and volunteers. Passworded users of the program (such as staff members) could personalise the catalogue for individual use, which could include contacts in their particular area of expertise and, indeed, their personal telephone list. Of course, the information could be readily transferred into MS Word or other programs for word processing needs, such as mailing lists.

Further, the 'sticky note' system of phone messages could be abandoned. CLEMAS would include instant phone messaging[12] – the receptionist or anyone who happens to receive an incoming call could instantly type telephone memoranda 'on screen' and send it directly as a 'pop up' on recipient's screen (much like an Email). This can even be achieved while the recipient is on another call to advise that a call is waiting and from whom. This phone messaging ability can be integrated with the calendaring system and thus act as a 'to do' list. The program can be modified to place such messages (if unattended to) on users' calendars and continue to roll over daily if not attended to. This would reduce the risk of little slips of paper or sticky notes floating around the office getting lost, or staff/students forgetting to give the memorandum of a telephone message to the appropriate supervisor or staff member.

Document Management – Straightforward access to useable precedents is a key issue for any legal practice. University legal clinics usually have multiple users, including staff, students and a large roster of volunteers and thus appropriate document management is essential for the efficient operation of the clinic. Unfortunately, this is often done in a piece-meal fashion with supervisors relying on personal precedents held on individual stand-alone computers or a folder of paper precedents. Often, reliance is placed on Web based precedents (such as Family Law forms) which can be slow and frustrating to download, often unreliable or impossible to save.

It is suggested that CLEMAS would introduce an entire set of electronic precedents that would be tailored for the clinic's particular jurisdiction. These could be completed on screen in MS Word and saved. Updates and alterations would only be possible by a passworded system administrator, thus limiting the risks of the precedents becoming corrupted. It is envisaged that full text searching across the entire system could also be incorporated. This would mean that users would only have to remember one salient point about the document (such as the form number, or a word that actually appears in the document) to be able to access it – rather than having to find it under a heading which may not meet the user's memory of how that document is named. Once a document is created and saved, the user would have the ability to later find that particular document using various criteria – by matter, client, date, supervisor, student – or even a word or phrase within it. Further, the addition of a scanner could provide an ability to scan printed forms into the system to create writeable precedents. Medical and other expert reports could also be scanned and excerpts from such reports printed as quotations in affidavits or used in briefs to barristers.

Investigation of the needs of clinical teachers revealed that 91% of clinical teachers questioned about this area of functionality stated that electronic precedents would be 'extremely useful' to the

12 Id.

way they operate their clinic. In addition, 75% believed that it would also be extremely useful to be able to scan documents into the system for later use.[13] There is obviously a dire need for clinicians to operate and maintain a thorough and systematic electronic document precedent system, as it impacts very keenly on both the legal practice and the teaching within it.

Once a matter has commenced, there is often the need to produce numerous documents which require repetition of client and other party details such as name, address, court case number, etc – family law matters are an example of this necessity. CLEMAS would be able to create standard letters and envelopes, pleadings, discovery, and other form documents which will automatically merge party information, rendering this boring and unproductive repetition unnecessary.

Legal Research – It is proposed that CLEMAS could be linked to on-line publications such as the Lawyers' Practice Manual. The relevant web-site reference, or reference to the relevant chapter of the paper edition of the Lawyers Practice Manual (or similar) could be activated or flagged when a particular legal subject matter is entered as the legal 'problem' in the client database. This would allow for greater student self-directed learning. Further, the program would provide the facility to link directly into other Web legal resources (such as Austlii). This could be customizable for both personal use (that is, a list of 'favourite' or most often used sites) and office wide general legal sites which may be of assistance to students and volunteers. It is envisaged that this would be possible without the necessity of moving out of the CLEMAS 'shell' into an Internet site – it would be directly accessible from any of the CLEMAS functions, such as the database or the calendar and also from non-CLEMAS programs such as MS Word.

When research is carried out on a file, it often disappears when that file is no longer active. That is, it is often a file specific line of investigation into a particular legal area, the results of which are often physically placed on the file and filed away when the matter is closed. In this way, the research is 'lost'. It is very frustrating when a similar matter arises weeks or even months later and the supervisor can no longer remember the outcome of the research, the name of the file or the student who handled it! CLEMAS would resolve this issue by enabling research memoranda and opinion letters on any particular file to be placed in an electronic 'Library'[14]. Legal memoranda, written by students, supervisors, other solicitors or Counsel could be scanned into the system and added to the electronic library under customizable headings and be readily accessible when people are working on similar matters and wish to have the benefit of previous research. Of course, once a research document is created and saved, the user would have the ability to later find that particular document using virtually any criteria such as matter name, client name, date, supervisor, student, words or phrases within it.

2. Student Assessment Functions

Tracking Students' Progress and Reviewing Files – Many clinical teachers rely on their memories and infrequent note taking to keep track of their students' progress over the course of the semester. This is haphazard and exposes clinicians to accusations of ineffectiveness in marking. CLEMAS would not only provide a model for systematic on going assessing of students, but (more

13 *Ibid Note 9.*

14 *This concept is derived from the U.S. Amicus Attorney program as described in 'Welcome to Amicus Attorney: The World's Most Widely Used Practice Management Software' http://www.amicusattorney.com*

importantly in this author's opinion) would provide demonstrable evidence of systematic marking techniques. At its simplest would be the provision of a dedicated screen with fields for supervisors' notes and student feedback. Every time a discussion about casework and/or academic progress is held between supervisor and student, this screen could be completed and saved, providing a history of that particular student's progress through the course. Prompts could be automatically generated or manually inserted through the calendaring system to remind supervisors to create regular (weekly, fortnightly, etc) entries.

Again, it is apparent that there is a glaring need for such a straightforward marking tool. Inquiries of clinical teachers indicated that 80% believed such a function would be 'very useful or extremely useful' in their clinical teaching.[15]

Supervisors run clinical client in-take 'sessions' on different days of the week and thus often find it difficult to find a time to discuss their students with other members of their teaching team. This can lead to feelings of isolation and lacks the benefit of colleagues' opinions and observations of students' work.This remoteness can also expose clinical teachers to accusations of bias or prejudice against a disgruntled student. CLEMAS would go some way to resolving this problem by allowing supervisors on-screen access to all other supervisors' notes and student feedback for comparison.

Examples of students' written work could be also scanned into the program and attached to the each student's individual assessment page. This would permit the supervisor to be quite specific in his/her discussion with the students about their written work and allow examples of progress (or lack of it) to be displayed on-screen to the student during feedback sessions. It would also enable other supervisors to observe examples of written work (both good and poor) to compare their own students against.

The comments regarding students' progress and feedback could be linked on screen with notes regarding the files they are operating. The program would automatically provide students' files in alphabetical order or another array, (such as file number or date opened) as customized by the supervisor. Fields would provide space for an ongoing description of the progress of the file. Each file could be scrolled through while the progress and feedback fields remain on the screen. This information would be saved as the semester progressed, so that any clinical supervisor can always check how many files a student is running, what the substantive issues are, what position each file is at and how the student is progressing academically. This information would be extremely useful when it becomes necessary to finalise casework marks at the end of the semester, as it would provide a 'snapshot' of each student's workload and progress at each time such data was entered throughout the semester.

If supervisors found it constructive, preliminary marks or grades could be entered on these feedback screens. An assessment table could be generated that can be viewed as a chart, table or a graph so that the students' progress could be easily evaluated in an ongoing manner throughout the semester. Supervisors would also be able to compare these ongoing marks against other students (both current and past) with the ability to create comparative tables or charts. This would give supervisors valuable insights into the students' learning patterns.

Mid Semester Review / Assessment – It is a feature of many clinics that supervisors will afford an opportunity to students to participate in a formal feedback and discussion session at the halfway

15 Ibid Note 9.

point of the semester. This assessment often consists of a 'spot check' of files, to make sure files are neat, readable, in order and that file notes are up to date. It may include a discussion of each student's personal diary system for file management and is usually also an opportunity for the students to give feedback about how they feel about the course – seminars, tutorials, supervision at the clinic and the like. Most supervisors require students to complete their own 'self-assessment' sheet prior to the discussion to identify their own strengths and weaknesses and provide a starting point for discussion in which they embark on a self critique of their own process. Supervisors usually make informal notes of these discussions and retain the 'self assessment' sheets as part of their later marking. The review is a very important aspect of the marking process as it gives the students a valuable insight into their progress and offers them detailed instruction regarding how they can improve their performance in the subject.

When calculating students' final assessment at the end of the semester, supervisors often look to the mid semester review to provide a benchmarking process as to whether the feedback given to the student was accepted and areas requiring improvement were worked upon. As such, detailed and explicit notes are required for the help of the student and the security of the supervisor! It is this author's opinion that such an important portion of the marking of the course needs to be treated more methodically by supervisors and that CLEMAS could be of assistance in this area. At the outset, supervisors must actually remember to carry out the review at the midpoint of the semester – CLEMAS could easily resolve this by automatically calculating the date for mid semester assessment at the commencement of each semester and inserting an appropriate reminder on that date in the calendaring system. A dedicated review screen could be provided with a reminder checklist to ensure that all areas of discussion are covered with all students – thus providing the uniformity that is currently lacking in these feedback conferences. Again, fields for supervisors' notes and student feedback would be provided. To avoid the problems of assessing in isolation, supervisors would be able to read each other's comments and add theirs on screen, based on their experiences with supervising and observing each other's students.

If students were required to complete 'self-assessment' sheets prior to the meeting, these could be scanned into the system and linked to the on-screen comments, the student retaining the original. If a provisional mark is given, it can be entered on screen and comparative charts and tables generated between current students and/or students from previous semesters. In this way, supervisors can note any trends in the marking process within the current semester – for example, a particular supervisor giving consistently higher or lower marks to his/her students. It may also be useful to observe trends which develop over time – for example, supervisors may wish to determine if their own marking is getting harsher or more generous.

Written Reports and Assignments – In addition to casework, clinical students are usually required to submit at least one piece of written work which provides some reflection on their clinical experiences. It usually relates to an issue of substantive law, the application of law or the operation of legal processes and is often linked with issues that arise in the day-to-day work of the clinic. Again, assessment of this work is most often the responsibility of the student's particular supervisor. Sometimes, supervisors share the marking or will 'second mark' each other's students' papers to provide some consistency in the assessment process. Again this is an area of assessment which would benefit from CLEMAS technology. Assessment data could be entered into established on screen assessment tables setting out uniform assessment criteria. Similar to the mid semester review screens, fields could be provided for supervisors' notes and for comments by other

supervisors if they also read the student's work. Comparisons of comments made and marks given could be accessed by all supervisors, rendering the marking consistent and transparent across the students. The program would save all screens created in an archive so that they can be retrieved later by the supervisors (with appropriate passwords and level of access) for use when explaining marks to disgruntled (or delighted) students or when writing references or other memoranda. Marking trends could be observed with ease and provide clinical teachers with an instant overview of students' learning patterns.

Final Assessment – As many clinical courses comprise diverse elements,[16] final calculation of students' assessments can be a complex and frustrating task for the Chief Examiner of the course. The straightforward ability to enter assessment data into established tables for each supervisor's students would streamline the process markedly. Again, a dedicated screen could be established for this purpose which may be accessed by all supervisors, but have the safeguard that they could only enter and alter their own students' marks. Clinical supervisors who were questioned by the author about this issue were resoundingly positive to such a simple innovation with 81% stating they would find this addition to their practice 'very useful or extremely useful.'[17]

The diverse marks for each element of the course could be entered into a spreadsheet which then converts the mark to a percentage, and then calculates a final mark and grade. If the marking regime alters or a particular student is subject to a special regime, the tables would be alterable by a system administrator to take the changes into account. Fields could be created for comments from both the student's supervisors and other staff members who were involved in the marking of the students. Comparative charts and tables would, of course, also be able to be generated. Most importantly, the data from these screens could also be archived and saved so that a student's mark (and most importantly, how it was calculated) can be accessed quickly and easily if it becomes necessary to do so at a later date.

Accessibility and Security

Because a clinic usually has a large and diverse number of users, differing levels of access would have to be available to ensure security of data. CLEMAS would have two categories of sensitive data:

1. Client information – This includes clients' individual details such as name, address, telephone and fax numbers, as well as personal information given by clients as part of the solicitor/client relationship.
2. Student information – details of students' progress, comments made about them by supervisors, and their marks and grades.

Obviously, the system would have to have built-in access levels which would only provide access to the above data for certain categories of people. It is suggested that the system would encompass four levels of access which could be made available to the various categories of users, as set out in the following table:

16 *The 'Professional Practice' course at Monash University Faculty of Law comprises of a minimum of three separately marked elements – casework, community development task group and assignment. However, if students choose court appearances instead of a written assignment, this adds an additional three discrete marks into the final assessment calculation.*

17 *Ibid Note 9.*

FUNCTION	LEVELS OF ACCESS			
	Students and Volunteers (Level 1)	Staff and Supervisors (Level 2)	Director (Level 3)	System Administrator (Level 4)
Client database	Enter data and view records only. Print information	Access Level 1 + ability to close files	Access Level 2.	Access Level 3 + ability to add and delete users and records
Calendaring functions	Add new calendar dates to Legal Service diary. View dates and reports.	Access Level 1 + ability to create diary reminders, delete entries and use personal customisable diary.	Access Level 2 + ability to view all personal diaries.	Access Level 3 + ability to alter configuration of calendaring system
Statistics and reports	View and print local reports.	Access Level 1 + view and print Australia wide reports of other Legal Services and clinics.	Access Level 2.	Access Level 3 + ability to send Legal Service report to NPC
Trust account information	Add information for own files only, for local file use. View information for all other files.	Access Level 1 + access information for all files (read only)	Access Level 2 + ability to add, delete and alter all financial information for all files.	Access Level 3 + ability to alter configuration of trust account information system.
Telephone directory	View and print office telephone directory. Use phone messaging system.	Access Level 1 + create, view and print personal telephone directory.	Access Level 2 + ability to alter, add or delete information to/from telephone directories.	Access Level 3 + ability to alter configuration of telephone directory system
Document management	Access Precedents. Access full text searching across student and volunteer sub-directories. Access direct links to downloadable Web docs	Access Level 1 + create and save standard letters and other form documents. Access scanning of forms to create precedents	Access Level 2.	Access Level 3 + ability to alter configuration of document management system
Legal research	Link directly into office Web resources. Access research memoranda and opinion office database 'Library', using various criteria (dates, user, alphabetical, etc).	Access Level 1 + ability to create and customize personal list of on-line resources.	Access Level 2 + ability to link to personal and all staff lists of on-line resources.	Access Level 3.

FUNCTION	LEVELS OF ACCESS			
	Students and Volunteers (Level 1)	Staff and Supervisors (Level 2)	Director (Level 3)	System Administrator (Level 4)
External accessibility	Ability to gain access to calendaring functions, telephone directory and document management only.	Ability to gain access to all of the above functions by remote access (except client database).	Access Level 2 + ability to gain access to client database by remote access.	Access Level 3 + ability to alter configuration of external accessibility by limiting or adding functions.
Assessment functions	None.	Ability to access all assessment functions.	Access Level 2.	Access Level 3 + ability to alter configuration of assessment functions

Limiting access to certain categories of workers is also a protection device when something goes awry. For example, in the above table student access to the calendaring functions is limited to adding calendar entries to the office calendar – students would not have the ability to delete a calendar entry. This is deliberate. Without this limitation, if an important court date is missed, an errant student might be able to get into the system and delete a calendar item to 'prove' it was never entered in the first place.[18]

Further, in order to monitor usage and to detect any abuses of the system or attempted incursions into disallowed areas of access, you could have a 'secret' file which is only known about and only accessed by senior management or the system administrator. This can detail all computer activity on each file and thus be like an audit trail.[19]

External Accessibility

The issue of remote access may be a philosophical 'leap of faith' for many lawyers and clinical teachers. In this author's opinion, it is a fundamental issue of fully embracing the possibilities of legal computer software. It is also essential that clinical teachers understand and embrace the technology if they are to attempt to equip students with relevant the skills they will need in technologically advanced legal practices. Richard Hugo-Hamman, Managing Director of Midware (a software firm) states:

"*I expect practice management software will develop to a single interface both in-office and via remote access, through a constant web interface for Internet, intranets and extranets, with practice management data being published and recorded in web view. The interface of the native practice management software will become redundant – it will be part of the firm's own intranet.*"[20]

18 *Paul Bernstein: 'How Secure is your Case Management Software?' Trial, Washington, November 1996, Volume 32, Issue 11, pp. 84–85*

19 *Ibid.*

20 *Krathyn White, 'Practice made easy', Lawyers Weekly, Issue 144, 23 May 2003, pp. 14–15 at 14.*

One of the vast advantages of a system such as CLEMAS would be the ability to link in to the program via a remote computer. Because clinical supervisors often work from a variety of locations (home, the clinic, the law school or clinical outreach services), being able to remotely access letters, precedents, student assessments and such like would be extremely convenient. As one American attorney puts it:

"*Two words: remote computing. Do you want to shovel your car out after a snowstorm or do you want to stay home and telecommute by modem? Do you want to have to cart around boxes of documents or do you want to carry scanned images of all those documents on one CD-ROM? Do you want a case management program that shows you what you need to get done, gives you information you really need and also puts that information on a Palm device for you?*"[21]

Accordingly, for CLEMAS to be truly functional it must have the ability to provide secure access to any of its functions by remote access. This would enable authorised users to get information from – or put information into – CLEMAS, from anywhere with any e-mail enabled device (laptop, mobile phone, etc), or through a Personal Digital Assistant such as a Palm Pilot.

The question of remote access affects the entire architecture of the system and would have to be considered before other significant changes are made. Arguments as to whether students should have access to this function go both ways –

- Students should be able to use it because it is the type of technology that they will be expected to be familiar with in practice. If clinicians are serious about their educational role, then students need to be trained with up-to-date skills which will make them more employable.
- Further, students are currently enabled and encouraged to work from home by letting them Email work to their supervisors. This is just increasing their ability to work more effectively off-site.
- However, remote access always comes with issues of data security. The more people accessing data remotely, the more chance there is of someone hacking into it. It creates an unnecessary level of risk. Students can work collaboratively with their supervisors from home or other off-site location by Email whilst the supervisor has remote access capabilities.

On balance, if clinicians can be comfortable about the minimal possibilities of hacking or data corruption that may result from remote access, students should be provided with limited remote access. This would mean providing them no access to the client database or student assessment functions. It would nonetheless mean access to calendaring, document management, legal resources and telephone directory functions.

In accordance with the access levels set out above, remote access to the client database could be limited to managerial staff only (coordinator/director) in order to further minimise any possibility of computer hacking.

21 Dennis Kennedy, 'A Prudent Approach to Legal Technology Spending in a Slowing Economy', http://www.denniskennedy.com/prudent.htm

Development, Maintenance and Training – Funding issues

One of the oldest and most persistent concerns of most Australian legal clinicians is the constant battle of resources. Academics often complain that they are continually being asked to do more with less. Nowhere is it more keenly felt than in the law clinic. It is not limited to issues like computers and Information Technology, but is felt down to the level of being able to simply purchase enough envelopes with which to write to clients in order to advise them of the progress of their matter. Time and time again, legal clinicians have called upon law schools (and their Deans) to adequately support their own clinical programs. The Pearce Report[22] stated that a "*modern and properly funded law school should be able to develop clinical legal education as a significant dimension of its undergraduate legal education.*"[23]

Use of appropriate technology comes with the basic premise that it must be properly resourced. A once-off payment to purchase software is of no merit unless there is an ongoing financial commitment to train staff and students and to provide continued technical assistance. Technology is only going to be useful if all staff is actually using it. Not only does there need to be a financial commitment, but an ideological commitment to properly train all staff in software on an ongoing basis – "*Basic training will get the staff acquainted with the layout of the system...Advanced training is necessary to continue the progress into more sophisticated areas and to keep the system 'fine-tuned'*".[24]

Furthermore, students cannot be expected to receive any educational benefit from using case management software when they are unable to be adequately trained, due to supervisors' lack of commitment to the software or understanding of it.

Developing and maintaining a system such as CLEMAS is going to be an expensive operation. All legal clinics work with tight budgets and will not necessarily have the funding to maintain such a program and adequately train staff to use it. The question which must be tackled is – where will the funding come from?

It is unlikely that any future Commonwealth Government, from either side of the political spectrum, is going to change the current policy requiring Universities to raise successively higher proportions of their income. This means that law clinics are going to be put under increasing financial pressure. However, law clinicians may have a number of financial options for developing and maintaining such a software system, some of which are more feasible than others.

An attempt could be made to justify this increase in expenses (in a subject already considered by the law school to be expensive) by arguments to faculty managers based on the quality of legal education being provided to the students. The arguments (all fairly hackneyed and used now over many years) go something like this: Skills teaching at Australian law schools are now an accepted part of most curricula. The clinical environment is fertile for the teaching of both 'hands-on' practical legal skills, as well as legal ethics. This sort of legal education cannot be replicated by traditional lecture methodology, small group teaching or simulation exercises, all of which are interesting and useful methods of teaching, but pale by comparison with the immediacy of live-client interaction. Further, a technologically advanced law clinic provides the 'bells and whistles' that attract students to apply to that particular law school, rather than the competitor that cannot

22 *D. Pearce et al (1987) Australia Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission, Australian Government Publishing Service.*

23 *Ibid, para 2.184*

24 *Stacey Hunt: 'Ten Tips for implementing a Case Management System', Legal Assistant Today, Costa Mesa, Nov/Dec 1997, Volume 15, Issue 2, p.62*

offer a clinic. The clinic also breaks down the ivory tower syndrome that alienates law schools and Universities from the general population.

These are all acceptable and persuasive arguments, but they have been employed for a number of years and have lost their currency in today's tense budgetary climate. Faculty finance managers are interested in delivering state-of-the-art quality legal education (as are all personnel who are employed in a law school), but they have difficult financial decisions to make based on competing requirements. Claims based on the notion of 'improved quality of education' just aren't enough.

Accordingly, legal clinics which intend to survive and remain relevant in their teaching need to look outside of the University budget for additional financial support. The obvious place to start is in the private legal sector. There is increasing social and Governmental pressure being exerted on private firms to supply more *pro bono* work to the community. Legal services and law clinics have not yet fully drawn on this important source of assistance in a methodical way. Law firms have a preference for high profile public interest work which is going to enhance their reputation and standing, and inevitably bring in more paid work. Unfortunately the sort of caseload which is the majority of work at legal clinics is not going to provide that level of 'sexiness'. Why should a law firm provide many hours of free service in order to resolve a complicated motor vehicle accident when they can have their name constantly in the newspapers by battling against environmental despoilers in the style of Erin Brokovich? The narrow concept of *pro bono* held by many private firms needs to be altered. *Pro bono* work does not have to be casework – law school clinicians have enough demands on them without having to desperately search for an attractive matter that might entice a private firm to get involved in the work of the clinic. Law firms need to be convinced that genuine *pro bono* assistance can be provided in other ways that would be more beneficial to the continued operation of the clinic. Accordingly, a private law firm could 'sponsor' the introduction of CLEMAS into the law clinic. A law firm could be approached to subsidize the development and maintenance of the program, or to provide funding for a certain amount of staff training sessions. For the firm, this commitment is relatively inexpensive. Such a sponsorship would be readily acknowledged in publications of the clinic (such as the Annual Report), on the clinic's Website and even by an announcement advertising the sponsorship on the desktop display of the system itself, so that every time a student or volunteer logs on, they will notification of how the clinic came by it.

It might be better to approach the introduction of CLEMAS in a piecemeal fashion, rather than as a grand project. If work is commenced on the student assessment aspect of the system first (which, in some ways, is the most urgent) then relatively small amounts of funding can be used to initiate the project – that is, build the skeleton of the 'house' first and furnish the rooms later. The structure to house the student assessment aspects could be constructed and then the other parts of the program could be integrated later when further funding becomes available. The student assessment feature is also probably the most straightforward of the entire program and thus a good place to start as a 'pilot', as it would require a relatively modest amount of funding to initiate. In this way, discrete aspects of the program could be sponsored by different firms or other outside funding bodies (such as charitable trusts). Accordingly, it might be better to approach the introduction of this technology from an 'evolutionary' not a 'revolutionary' outlook. By raising reasonable amounts of funds for separate aspects of the project and adding them on to the current system in a progressive fashion more may be achieved than by holding onto an expectation that such a large project can be initiated all at once.

Sufficient training of staff, students and volunteers will be the means to the success of a system such as CLEMAS. It must be used (and used correctly) by key staff members such as supervisors and managerial staff in order for all staff members to become comfortable and confident in its usage. Training will be a large initial expense. However, the funding involved in ongoing staff training would only result in a modest increase to the clinic's training budget in subsequent years after the instigation of the program. Again, securing the commitment of a law firm to financially subsidise staff IT training would be a way to overcome law schools' concerns about the costs involved. Such a subsidy would be a very small pro bono commitment for most legal firms.

Conclusion

Law school clinics cannot afford to make assumptions about their assured place in law school curricula. Clinicians still fight the credibility battle in law schools throughout Australia every day. A great deal of time and energy is spent justifying clinics' existence, in terms of both community service and pedagogical aims. Because this struggle for credibility is ongoing, clinicians must always keep abreast of changes to the law, developments in technology and changing requirements in the teaching environment.

No legal clinic can be in a position where it is seen by students, other faculty staff or funding bodies, as being 'behind the times' in its supervisors' understanding, or teaching, of legal skills. Such a perception threatens clinics often stated '*raison d'être*'. Because of the hands-on nature of legal clinics, teaching staff usually work closely with small numbers of students and thus assessment of them must always be above reproach. It must be disinterested, thorough, unbiased and systematic. Above all, it must be transparent. The Clinical Legal Education Management and Assessment Software described in this paper would assist in solving many of the legal office administration and assessment issues currently being confronted by law school clinics.

Appendix A

RESULTS OF SURVEY

Universities which responsed:

1. Monash University (Victoria)
2. Southern Cross University (New South Wales)
3. Flinders Law School (South Australia)
4. University of Queensland (Queensland)
5. Murdoch University (Western Australia)

1. Besides CLSIS, do you currently use any other form of file or office management software? If so, which one?

• Outlook

2. Do you use a Personal Digital Assistance, such as a Palm Pilot? If so, which one?

• Hand-Written Diary

• Palm Pilot

1. No use at all
2. Somewhat useful
3. Useful
4. Very useful
5. Extremely useful

CLIENT DATABASE

	Level of Usefulness				
Function	1	2	3	4	5
Conflict searches	8.3%	8.3%	0	8.3%	75%
Production of statistical data regarding clients such as charts and graphs	8.3%	16.6%	8.3%	33.3%	33.3%
File note capability i.e. storing file notes in the database itself	18.2%	0	9.1%	18.2%	54.5%
Ability to sort matters by client name, matter type, student I.D, supervisor, date opened/closed, gender, country of birth, etc	8.3%	0	8.3%	25%	58.3%

CALENDARING

	Level of Usefulness				
Function	1	2	3	4	5
Embedded Court time limitations – i.e. diarizes time limits automatically in computer based diary system	9%	0	0	27%	64%
Task scheduler and "pop up" reminders	9%	9%	9%	36%	36%
Create 7,5,1 etc day automatic reminders	8.3%	8.3%	41.5%	8.3%	33.2%
Customized reminders and prompts for clinical assessment tasks – file reviews, mid semester assessment, etc	9%	0	18%	36%	36%
Ability to compare diaries of staff "on screen" to find meeting dates, etc.	9%	18%	18%	27%	27%

TELEPHONE DIRECTORY AND MESSAGING

	Level of Usefulness				
Function	1	2	3	4	5
Phone messaging ability which acts as a "to do" list – placed on your calendar and rolls over to the next day if not attended to.	0	9%	18%	36%	36%
On screen telephone timer to time calls	27%	36%	9%	9%	18%
Customizable personal and office wide telephone directory	9%	18%	27%	27%	18%
Instant Phone messaging – memo typed "on screen" and sent directly as a "pop up" on recipient's screen.	0	36%	27%	9%	27%

DOCUMENT MANAGEMENT

Level of Usefulness

Function	1	2	3	4	5
Electronic precedents	0	0	8.3%	0	91.7%
Full text searching across entire system	0	10%	30%	20%	40%
Ability to scan printed forms to create writeable precedents	0	0	0	25%	75%
Ability to create standard letters & envelopes, pleadings, discovery, and other form documents which will automatically merge party information	0	0	16.6%	25%	58.4%
Ability to look up documents using various criteria – by matter, client, date, supervisor, student etc	9%	0	0	36%	54%

LEGAL RESEARCH

Level of Usefulness

Function	1	2	3	4	5
Ability to link directly into customizable Web resources, both personal and office wide	0	0	18%	45%	36%
Research memoranda and opinion letters on one file available in an electronic "Library" when you are working on other matters.	0	18%	9%	27%	45%

TRACKING STUDENTS' PROGRESS

Level of Usefulness

Function	1	2	3	4	5
Provide fields for supervisors' notes and student feedback	0	9%	9%	9%	72%
Scan in examples of student work and attach to student assessment page	0	9%	36%	18%	36%
Create ongoing assessment table that can be viewed as a chart or graph	0	20%	10%	20%	50%
Compare ongoing mark against other students with ability to create comparative tables/charts	0	18%	18%	27%	36%
Prompts and reminders for supervisors to create regular weekly, monthly, etc entries through calendaring system	9%	9%	18%	36%	27%

FILE REVIEWS

	Level of Usefulness				
Function	1	2	3	4	5
Provide fields for supervisors' notes and student feedback	9%	0	0	45%	45%
Ability to access all other supervisors' notes and student feedback for comparison	9%	18%	18%	27%	27%
Customisable prompts and reminders for supervisors to hold weekly, fortnightly, etc reviews through calendaring system	9%	18%	36%	9%	27%

MID SEMESTER REVIEW / ASSESSMENT

	Level of Usefulness				
Function	1	2	3	4	5
Reminder checklist to ensure all areas of discussion are covered with all students	0	9%	9%	54%	27%
Provide fields for supervisors' notes and student feedback	0	0	9%	36%	54%
Ability to access all other supervisors' notes and student feedback for comparison	9%	9%	18%	36%	27%
Customizable prompts and reminders for supervisors to hold mid semester reviews/assessment through calendaring system	0	27%	18%	27%	27%
Ability for comment fields by other supervisors	0	0	54%	27%	18%

COURT APPEARANCES/REPORTS

	Level of Usefulness				
Function	1	2	3	4	5
Enter court appearance assessment data into established tables for supervisors' own students	18%	27%	0	9%	45%
Provide fields for supervisors' comments on court appearances and student feedback	18%	18%	18%	18%	27%
Able to create comparative tables/charts of assessment of students' court appearances	18%	45%	9%	9%	18%

STUDENT ASSIGNMENTS/REPORTS

	Level of Usefulness				
Function	1	2	3	4	5
Enter assessment data into established tables for supervisors' own students	18%	0	18%	0	63%
Provide fields for supervisors' notes	18%	0	9%	9%	63%
Able to access all other supervisors' data in a "read only" format	18%	9%	27%	9%	36%
Ability for comment fields by other supervisors	20%	10%	20%	10%	40%
Able to create comparative tables/charts of students' assignment marks	16.6%	25%	25%	8.3%	25%
Ability to compare current students against past students' assignment marks using various criteria semester, year, alphabetical, etc by way of tables/charts	18%	18%	18%	18%	27%

PROVISIONAL AND FINAL ASSESSMENTS

	Level of Usefulness				
Function	1	2	3	4	5
Enter assessment data into established tables for supervisors' own students	0	0	18%	27%	54%
Provide fields for supervisors' notes	0	0	10%	40%	50%
Able to access all other supervisors' data in a "read only" format	9%	0	18%	36%	36%
Ability for comment fields by other supervisors	0	18%	27%	18%	36%
Able to create comparative tables/charts of students' assessments	0	18%	18%	36%	27%
Ability to compare current students against past students' assessments using various criteria semester, year, alphabetical, etc by way of tables/charts	9%	18%	18%	36%	18%

ACCESSIBILITY

	Level of Usefulness				
Function	1	2	3	4	5
Ability to gain access to any of the above functions by remote access to a home desktop or notebook computer.	18%	0	9%	27%	45%
Ability to gain access to any of the above functions through a Personal Digital Assistant such as a Palm Pilot.	45%	9%	9%	9%	27%

Student Contributions

Valuing difference? Experiences in two clinical environments

Martin Wilson

Northumbria University Exempting Law Degree, Year 4

What do most people think of a law degree – plentiful amounts of hard work, boundless reading, an expensive Legal Practice Course or Bar Vocational Course followed by an extremely competitive application process to secure a job in the graduate's respective field of work? What if students were given the opportunity to work in another jurisdiction, such as Australia, for one month in a student run law office, during the summer, with £1000 to get them on their way? 'Sounds good', I thought. 'So what do I have to do to get the chance'? And then the one catch is divulged – the students must complete a compulsory piece of coursework and achieve one of the top 10 marks in their year. (The writer expects a few raised eyebrows at this stage!)

Last summer, Northumbria University in partnership with Irwin Mitchell and Monash University, in Melbourne Australia, offered one Northumbria student a pro bono scholarship to work in the Springvale Monash Legal Service (SMLS) for one month. Irwin Mitchell kindly sponsored this scholarship and provided £1000 to the lucky student. To get the chance of participating in this pro bono scholarship, the chosen student had to complete a compulsory piece of legal research coursework and attain one of the top ten marks in the year. The top students were then invited for interview before a panel of three comprising two Northumbria Student Law Office staff and one partner from Irwin Mitchell, whose selection criteria proved to be which student demonstrated a commitment to pro bono work in the Student Law Office.

Technically, when I was selected for the scholarship, following the high I experienced and the come down to normality, I should not have been anxious whatsoever. I had spent a great deal of my undergraduate studies in preparation for working in Northumbria University's pro bono Student Law Office and besides, Australia's legal system is a common law system partly based upon our system, what could be so different? But I was about to travel to the other side of the world alone and work in a completely different jurisdiction where I knew nobody. The experience however proved to be very different to my anxieties. Working in the Springvale Monash Legal Service was unique in terms of the diversity of experience I managed to encounter and the skills I acquired regarding working in a law office, client care and giving advice to live clients.

Each day provided a different experience to any other. For two days of the week, I worked in the Springvale Monash Legal Service in a client drop in session, in which four hours student time was

dedicated to meeting members of the community on a one to one basis. The legal problems that students were confronted with proved to be more extensive than those that a busy high street law firm would be presented with daily. These ranged from fencing disputes, matrimonial matters, child residency issues, minor criminal offences, employment matters, through to a request to complete a change of address form due to language difficulties. Springvale Monash Legal Service, in terms of the diversity of legal and non-legal matters presented on a daily basis had similarities with a Citizens Advice Bureau in Britain. Moreover, a significant proportion of clients required the assistance of a telephone interpreter due to language difficulties, which posed its own interesting problems when interviewing and advising a client.

During another day in the working week, I had the opportunity to work at the Family Law Courts in a suburb in Melbourne through another Monash University pro bono programme aptly named the Family Law Assistance Programme (FLAP). Students and qualified solicitors provided a mainly advisory service to any Family Court attendees who required it and this could occasionally extend to representation if circumstances so required. Through this programme, students not only had to deliver immediate advice on a quick turnover basis but also had the opportunity to observe the procedural workings of the Family Courts.

During the fourth day of the weekly programme, I was sent to participate in Monash's Intervention Order Support Scheme (IOSS) at the Criminal Law Courts in another suburb in Melbourne. Through this excellent programme students and qualified solicitors manned a drop in session for unrepresented applicants who often found the entire experience of applying for an intervention order extremely distressing and traumatic. It was through this scheme that I gained the greatest amount of personal accomplishment specifically when I sat with an applicant in court providing emotional support for her in the traumatic experience of meeting the respondent in open court.

The final day of the week saw me engage with other students in various lectures and seminars regarding their pro bono course of studies.

Overall, the Monash pro bono programme, encompassing SMLS, FLAP, IOSS and other schemes, proves to be of significant value to both the local community and students who participate in it. Irrespective of the warmth and friendliness of the staff and students at Monash, the programme of events that I experienced during the scholarship were excellent in terms of the professionalism of those involved, the sheer diversity of experience one can take from it and the benefit to all who came into contact with it. However, to make a like for like comparison between Northumbria University's pro bono programme and that at Monash University would be ignorant of the fact that the two programmes seem to be aimed at achieving different objectives and are situated in two wholly different legal climates.

On the one hand Springvale Monash Legal Service is situated in a strategic suburb in Melbourne and is aimed at providing a high turnover of advice to members of the local community, with some varying degrees of language difficulties, and is also intended to take on those more in depth cases requiring more detailed levels of research and student input. There are numerous similar University run schemes around Australia, such as those run by neighbouring Melbourne University. Furthermore, Victoria Legal Aid (the Australian state legal aid provider) see work such as that undertaken by Victorian student run law offices as strategic in delivering legal services to the general public and consequently appear to be much more involved in the funding of certain

aspects of the schemes than occurs at Northumbria's Student Law Office. The students at Monash elect to work in the pro bono law office and spend a period of 3 months in doing so, which differs further from its English counterpart. Students encounter an exceptionally varied range of legal problems spanning across numerous areas of law also.

In comparison, Northumbria University's Student Law Office is situated on campus in the City Centre and seeks to serve a very different legal need. Drop in 'advice on demand' style centres already exist in England and Wales, such as the Citizens Advice Bureau, and therefore the Student Law Office has not been set up to, nor is it required to provide such a service. Another marked difference between the two law pro bono programmes is that the Northumbria model is unique in England and Wales, in terms of the depth of the programme. Australia already has caught onto the idea of student run law offices but England and Wales are yet to follow suit. Students studying on the exempting law degree find working in the Student Law Office a compulsory and extremely important part of their final year. Cases can be taken on and sometimes followed through to fruition due to the greater time available over the academic year to work on specific cases. Additionally, students are placed into firms of students with one supervisor that specialise in a particular area of law and they subsequently focus on one area of law rather than experiencing the wide ranging areas that the SMLS students will encounter. This provides a distinctly different educational experience to that gained at Monash and that is the thrust of the writer's conclusion.

Monash and Northumbria University's pro bono programmes are different; they both intend to serve different legal and educational needs. The Monash model is typically Australian in the way that it has a student atmosphere about the law office, but that it still retains its professional outlook. Upon entering the office one can hear the chorus of 'G'day mate' as the custom welcome and the discussions of where some intend to go surfing later. Whereas the Northumbria office has a typically English feel to it – a professional outlook coupled with a desire to sound professional and look professional in every task. And it is these closing points that ensured that my experience was so interesting; to be able to see, hear and experience the differences between two student run law offices at opposite ends of the world!