Georgia State University Law Review

Volume 20
Issue 4 *Summer 2004*

Article 10

6-1-2004

Gatekeepers Training Hurdlers: The Training and Accreditation of Lawyers in England and Wales

Nigel Duncan

GATEKEEPERS TRAINING HURDLERS: THE TRAINING AND ACCREDITATION OF LAWYERS IN ENGLAND AND WALES

Nigel Duncan*

INTRODUCTION

This Article first presents the structure of the requirements for the education, training, and accreditation of lawyers in England and Wales to provide a context for the discussion that follows. It then provides a more detailed discussion of the requirements of the different stages and explores the quality of the experience for trainees before turning to look at some critical issues in this jurisdiction, which may enrich the current debate about accreditation for the bar in U.S. jurisdictions.

I. THE PROFESSIONAL CONTEXT

A. A Divided Profession

The legal profession in England and Wales consists of two branches. Solicitors are the first contact for the lay client and take full responsibility for most non-contentious work and litigation. The Bar consists of barristers and is a referral profession consulted for a variety of reasons. Barristers develop special expertise in trial advocacy and have the right of audience in any court in the land. Many barristers develop expertise in particular fields, which leads to referrals in non-contentious as well as litigation matters. Additionally, many solicitors' firms consist of specialist departments, and many solicitors also become specialists. However, solicitors are unable to represent clients in the higher courts unless they become

* LL.B., PGCE, LL.M., Hon FSALS, ILTM, Principal Lecturer, Inns of Court School of Law (Institute of Law), City University, London, England.

Solicitor Advocates (a process with which the Bar collaborates, which gives Solicitors rights of audience).

B. Organizational Structures

Solicitors work in partnerships or occasionally as sole practitioners. Partnerships can be small provincial practices dealing largely with conveyances, probate, minor civil litigation, and criminal defense work, or they can be large international firms with an annual turnover of millions of pounds and with thousands of solicitors undertaking major corporate commercial work.

Barristers work as independent practitioners but form sets of chambers to share clerical, library, and telecommunications services and to attract briefs from solicitors. As a referral profession, they do not need to hold clients' money, and their overhead costs are lower than those of solicitors. Thus, clients may retain barristers for their specialist expertise, but barristers also serve as an economical way for a solicitor to ensure effective client representation in court.

C. Professional Bodies

A separate professional body controls each profession. These bodies establish the rules of professional conduct and the requirements for training, accreditation, and continuing professional development.[1]

The Law Society (1) regulates the solicitors' profession, (2) provides for practicing certificates, and (3) represents the profession to Government.[2] The four Inns of Court call barristers to the Bar.[3] Regulatory processes are the responsibility of the General Council of the Bar, which represents, among others, the Inns.[4] The four Inns of

1. *See* THE CODE OF CONDUCT OF THE BAR OF ENGLAND AND WALES (7th ed. 1999), *available at* http://www.barcouncil.org.uk/document.asp?documentid=173; THE GUIDE TO THE PROFESSIONAL CONDUCT OF SOLICITORS (8th ed. 1999), *available at* http://www.guide-on-line.lawsociety.org.uk/.

2. *See* The Law Society, *Law Societies Around the World*, http://www.lawsociety.com (last visited Feb. 9, 2004).

3. The Inns are: Gray's Inn, Lincoln's Inn, Inner Temple, and Middle Temple.

4. *See* The General Council of the Bar, *The Bar Council*, http://www.barcouncil.org.uk/ (last visited Feb. 9, 2004).

Court provide the cultural life of the Bar in London, but outside London, the Circuits are more important.[5]

II. THE TRAINING AND ACCREDITATION REGIME

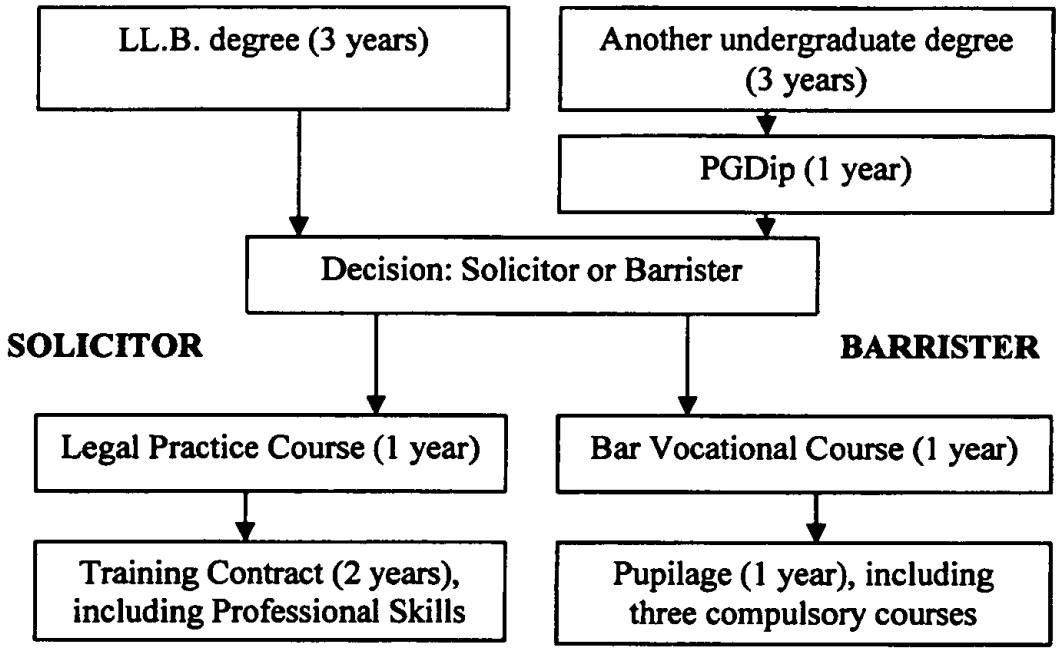
In the United Kingdom, mainstream legal education starts at the undergraduate stage with a three-year LL.B. degree. To be recognized by the professions, a degree program must include the "foundations" of legal knowledge and certain skills.[6] Alternatively, one may obtain an undergraduate degree in another subject and then take a one-year course leading to the Post-Graduate Diploma in Law ("PGDip"). The PGDip uses the same requirement for legal and skills content as the LL.B. degree. Having completed the academic stage of legal education, students must decide which branch of the profession to pursue. To become solicitors, they must take a one-year Legal Practice Course ("LPC"); if students wish to become barristers, they must take a one-year Bar Vocational Course ("BVC").[7] Thereafter, students on either the solicitor or the barrister track must complete an apprenticeship. For barristers, this is a one-year pupilage; for solicitors, it is a two-year training contract. Both apprenticeships incorporate compulsory courses. Solicitors receive their practicing certificates after successful completion of all these stages. The Bar calls barristers after they successfully complete their BVC. Barristers then acquire limited practicing certificates after the first six months of their pupilage.

5. The Circuits are: Northern, North Eastern, Wales and Chester, Midland, South Eastern, and Western. They offer training, social, and cultural activities.

6. The foundations are: (1) Public Law, including Constitutional Law, Administrative Law, and Human Rights; (2) Law of the European Union; (3) Criminal Law; (4) Obligations, including Contract, Restitution, and Tort; (5) Property Law; and (6) Equity and the Law of Trusts. In addition, the undergraduate program must train students in legal research and a number of general transferable skills. The Law Society and the Bar agree upon the requirements, which are common to both branches of the profession, although the Bar requires students to pass with at least a lower second class degree. *See* The General Council of the Bar, *Degree/Cpe-Downloads*, http://www.legaleducation.org.uk/Degrees/ddownloads.php (last visited Feb. 9, 2004).

7. Students may take all of these courses on a part-time basis, in which case the three-year degrees generally take five years and the one-year courses take two years.

The following diagram illustrates this process.



The process contains three stages: (1) the Academic Stage (undergraduate), (2) the Vocational Stage (LPC or BVC), and (3) the Apprenticeship Stage (training contract or pupilage). One exception to the separation of these three stages exists: the exempting degree at Northumbria University. This four-year course combines the content of the undergraduate LL.B. with the vocational courses, and both professions recognize it. The vast majority of lawyers continue to qualify through the three-stage process described above. Part III addresses each of the pre-qualifying stages.

Both branches of the profession also have requirements of continuing professional development for qualified lawyers. This is an important element of the qualification regime, but as it follows accreditation, these requirements fall outside the scope of this Article.

III. THE ACADEMIC STAGE

A. The Undergraduate LL.B. Degree

In the United Kingdom, the state funds undergraduate studies. The Higher Education Funding Council for England and Wales ("HEFCE"), a state body, bears the cost of providing courses.[8] Student fees, which were £1125 at the time of this publication, supplement these funds.[9] There is no state funding for the vocational stage, but many (particularly larger) solicitors' firms will pay for this stage for those students to whom they have offered training contracts. Very few chambers offer similar support to students planning to read for the Bar. The Inns provide a considerable amount of sponsorship to help students pay BVC fees.

From 2002 to 2003, there was an intake of approximately 15,000 undergraduate students.[10] Although 92% of students intended to practice law when they started their degree program, nearly two thirds of final year students had not applied for a training contract or a pupilage at the end of their final year.[11] Typically, less than 40% proceed into the legal profession.[12] Some students may defer their progress because of the high cost of the vocational stage. Many others, however, decide not to pursue the professional route because they have come to realize the intense competition for training contracts and for pupilage.

This creates a tension in the provision of undergraduate education between those who believe that degrees should actively constitute the first stage of professional training and those who believe that degrees should be a purely academic activity—a liberal education for its own

8. Similar bodies exist to support higher education in Scotland and in Northern Ireland, respectively.

9. Department for Education and Skills, *Facts on Fees*, http://www.dfes.gov.uk/hegateway/henews/factsonfees/index.cfm (last visited May 17, 2004).

10. Extrapolated from statistics held by the Higher Education Statistical Authority. *See* Higher Education Statistical Authority, *Table 2e—All HE Students by Subject of Study, Domicile and Gender 2001/02*, http://www.hesa.ac.uk/holisdocs/pubinfo/student/subject0102.htm.

11. M. Cuthbert, *Law Student 2000: Prelude to the Finale*, DIRECTIONS IN LEGAL EDUC. (UK Centre for Legal Education), Autumn 2003, http://www.ukcle.ac.uk/directions/issue7/cuthbert.html.

12. *Id.*

sake. There is continuing debate as to whether this tension is real or is largely perceived. The Lord Chancellor's Advisory Committee on Legal Education and Conduct attempted to bridge the gap in their First Report, addressing the training and accreditation of professional lawyers.[13] They presented their Report as the rebirth of the liberal law degree yet insisted that this training involve the development of certain skills:

> (i) the construction of logical argument;
> (ii) the capacity for abstract manipulation of complex ideas;
> the systematic management of complex factual information;
> intelligent, critical reading of texts;
> the use of the English language with scrupulous care and integrity at all times;
> the related ability to communicate orally and in writing in a clear, consistent, and compelling way; and
> competence in retrieving, assessing, and using legal texts and information, including information technology skills.[14]

To clarify what was meant by the aims of legal education, the Report refers to "*intellectual integrity and independence of mind*," and it quotes Dawn Oliver's statement:

"A liberal education will have as an aim that students should not merely *know or know how to* but *understand* why things are as they are and how they could be different and it is about a 'deep' approach to a subject, in which students try to relate ideas in one subject to those in others, to understand what they read, questioning material, making links, pursuing lines of inquiry out of interest."[15]

The Report suggests how this might be achieved: "The intellectual rigour which we advocate involves not just knowing and understanding but acquiring and using relevant skills that allow one to put theory into practice. Learners should be actively involved in

13. *See* THE LORD CHANCELLOR'S ADVISORY COMMITTEE ON LEGAL EDUCATION OF CONDUCT, FIRST REPORT ON LEGAL EDUCATION AND TRAINING (1996) [hereinafter ACLEC].

14. *See* Bob Hepple, *The Renewal of the Liberal Law Degree*, 55 CAMBRIDGE L.J. 470 (1996). *See* ACLEC, *supra* note 13, at Annexure to Ch. 4.

15. ACLEC, *supra* note 13, ¶ 4.4 (quoting Dawn Oliver, *Teaching and Learning Law: Pressures on the Liberal Law Degree*, *in* REVIEWING LEGAL EDUC. 78 (Birks ed., 1994)).

solving real problems that require the use of deeply understood knowledge."[16]

The extent to which universities have responded to these suggestions varies considerably. Those universities that have developed the curriculum to respond to these demands have introduced a variety of innovative methods. The curricula have largely involved the introduction of clinical methods familiar in the United States.[17] These approaches better prepare students for a wide range of careers and, more significantly, introduce them to a context for their study of the law, which can be hard to achieve in other ways. Students learn how the law impacts the lives of ordinary citizens; this perspective enriches both purely doctrinal study and theoretical contextual studies, such as socio-legal or economic analyses.

B. The Post-Graduate Diploma in Law

The PGDip Course lasts one year and attracts a significant minority of entrants to the vocational stage. It has many critics who either assume that no one-year course could provide enough legal instruction to prepare someone for vocational study or regard the exercise of covering the foundations of legal knowledge plus the requisite skills as demanding a narrow, "cramming" approach to study. Also, this course may be inaccessible to poorer students because it involves an extra year of study and lacks state funding. These are undoubtedly intensive and demanding courses. Thus, students graduating from them perform at least as well on the vocational courses as those with full law degrees, and they are regarded as attractive entrants by many solicitors' firms and barristers' chambers.

---

16. *Id.* at ¶ 4.20. *See* Nigel Duncan, *The Skill of Learning: Implications of the ACLEC First Report for Teaching Skills on Undergraduate Law Courses*, 5 WEB J. CURRENT LEGAL ISSUES (Nov. 26, 1997), *at* http://webjcli.ncl.ac.uk/1997/issue5/duncan5.html (discussing how to combine academic and skills objectives).

17. *See* HUGH BRAYNE ET AL., CLINICAL LEGAL EDUCATION: ACTIVE LEARNING IN YOUR LAW SCHOOL (Blackstone 1998) (describing the development of different approaches to clinical legal education in the United Kingdom).

A number of potential explanations for this exist. PGDip students acquire most of their study and research skills during their prior degree course, and they come to the PGDip educated as graduates. They are also a little older and more mature. Thus, they may have many of the characteristics of an American Juris Doctorate student. In addition, their knowledge of the basic principles of law is fresher when they start their vocational year than is the knowledge of LL.B. graduates.[18]

The PGDip route is apparently the most similar approach to the U.S. system because it involves a broad undergraduate education followed by focused legal education (although the division of that legal education into academic, vocational, and apprenticeship remains fundamentally different).

IV. THE VOCATIONAL STAGE

The two branches of the U.K. profession split at the vocational stage.

A. The Bar Vocational Course

The Bar introduced the BVC in 1989 and designed it to convert undergraduates into professionals by developing their practice skills and knowledge.[19] Thus, the new course devoted some 60% of its attention to a series of skills:[20]

18. *See* V. Bermingham & J. Hodgson, *Desiderata: What Lawyers Want from Their Recruits*, 35 LAW TCHR. 1 (2001).

19. J. ELIAS, *Foreword* to CASE PREPARATION (Duncan ed., Oxford University Press 2003).

20. J. Shapland et al., Studying for the Bar 3 (Institute for the Study of the Legal Profession, University of Sheffield 1993).

Foundation Skills	Case Analysis
	Legal Research
Interpersonal Skills	Advocacy
	Conference Skills
	Negotiation
Written Skills	Opinion Writing
	Drafting

The BVC teaches and assesses these skills largely through simulations, each of which constitutes a realistic brief from a solicitor. The focus differs from undergraduate studies by pursuing the best result for a client (rather than engaging in theoretical study of the substantive law) and by requiring considerable attention to remedies.

In addition, the BVC teaches three areas of adjectival law: Evidence, Criminal Procedure, and Civil Procedure. Multiple choice tests assess competency in these areas at the Inns of Court School of Law ("ICSL"). Instruction in professional conduct runs through all BVC teachings, with simulated activities designed to create ethical dilemmas. The ICSL assesses professional conduct by incorporating ethical problems into the skills assessments. Finally, students study two options designed to develop the skills learned earlier in the context of a new area of practice, addressing the procedural aspects and other peculiarities of that practice area.

The basic contents of the BVC have not changed since 1989. However, the Bar Council maintains a continuous review of the course, of its details, and of the assessment regime.

B. The Legal Practice Course

The Law Society introduced the LPC in 1993.[21] In some respects, they modeled it on the BVC, consciously addressing practice skills and using simulated activity to develop contextual learning. However, the proportion of time devoted to skills was always less because the solicitors' profession demanded more attention to substantive law and business law in particular.

The required elements include the following:

Core Areas	The Ethical; Skills; Taxation; European & Human Rights Contexts; and Probate & Administration of Estates
Compulsory Areas	Litigation & Advocacy; Business Law & Practice; and Conveyancing (all to combine substantive law, procedure, and practical skills work)
Elective Areas	Students choose three electives from two areas of "Private Client" and "Corporate Client" work
Pervasive Areas	Accounts; Professional Conduct & Client Care (including Financial Services); European Union Law; and Revenue Law
Skills Areas	Advocacy; Interviewing & Advising; Writing & Drafting; and Practical Legal Research

Thus, the LPC in effect mirrors the BVC to the extent that it combines direct attention to the development of lawyering skills, applied in as realistic a context as simulated activity can achieve,

21. P. Knott, *Training the Next Millenium's Lawyers*, 33 LAW TCHR. 50 (1999).

with the learning of those areas of law most important for the type of practice the student is likely to enter. The major content of adjectival law on the BVC reflects the forensic focus of much of the barristers' work. The major Business Law and Practice focus of the LPC reflects the commercial focus of many solicitors' practices; furthermore, the inclusion of other substantive subjects reflects the needs of private, as opposed to corporate, commercial clients. This indicates a tension within the LPC because few qualified solicitors practice in both fields. Recently, a group of the eight largest firms of solicitors organized with three university providers of the LPC to introduce the "City LPC," which concentrates as much as possible within the LPC framework on corporate commercial concerns.

V. THE APPRENTICESHIP STAGE

Both branches of the profession require a period of on-the-job training before admission. The organizational structure of each branch of the profession influences the nature of this apprenticeship stage.

Solicitors work in partnerships, which can be enormous. The larger firms recruit during the undergraduate stage, can afford to pay substantial salaries to attract the 'best' trainees, and often provide funding for university and LPC fees. They usually have Directors of Training to ensure that trainee solicitors receive the type of training the firm requires (while complying with Law Society requirements). Smaller firms with more limited resources are more likely to recruit during or after the LPC. All firms, however, operate in a competitive commercial world, which provides an incentive to ensure that trainees perform valuable work and receive a thorough training. This Article explores below the extent to which employers achieve these goals.

By contrast, the independent practicing Bar consists of individuals gathered into sets of chambers not formally constituted as partnerships. Chambers generally make a collective decision as to

how many (if any) pupils to take, but each pupil attaches to a particular barrister—his pupilage supervisor.[22] Chambers never reach the size of the larger solicitors' firms, and few produce the level of income of partners in the large global firms. While many chambers recruit during the undergraduate stage, more do so during the BVC year, and chambers pay fees for fewer aspirant barristers. The four Inns of Court, another aspect of the organization of the Bar, provide an alternative funding system. All the Inns offer scholarship awards, which may cover or assist with BVC fees. This helps the Bar compete with the better-funded solicitors' profession for the most able students. The total support from chambers and the four Inns for students going through academic and vocational education and pupilage is currently £11.7 million annually.[23]

A. Training Contract

The Training Contract is the two-year work-based apprenticeship for aspirant solicitors. The Law Society prescribes certain requirements of a training contract. Trainees should receive experience in at least three areas of substantive law chosen from a prescribed list. With respect to each, they should receive training in:

Advocacy and oral presentation skills;
Case and transactional management;
Client care and practice support skills;
Communication skills;
Dispute resolution;
Drafting;
Interviewing and advising;
Legal research; and
Negotiation.

22. This is the modern term to replace the former "pupil-master or -mistress."

23. *See* THE GENERAL COUNCIL OF THE BAR, TASKFORCE ON FUNDING ENTRY TO THE BAR: REPORT FOR CONSULTATION § 2.25 (2003), *available at* http://www.barcouncil.org.uk/documents/TaskForceFunding.doc [hereinafter TASKFORCE ON FUNDING ENTRY].

Trainees should experience (1) contentious and non-contentious work, (2) court and tribunal proceedings, and (3) alternative dispute resolution. They should receive both three appraisals during the two-year contract and "adequate arrangements for daily guidance."[24] Typically, a trainee will undertake four "seats" during the two years of the contract, either returning to an area in which they choose to practice or perhaps gaining experience in four substantive areas.

The Law Society recognizes a number of problems with this process. The larger corporate commercial firms dominate the training contract because they are the best-resourced sector of the profession. Qualified solicitors who decide not to stay in that sector and who move to "High Street" practice, working mainly with private clients and small local businesses, often find that their training contract ill-prepares them for the needs of this sector. Reasons for this are: (1) the shift from dealing with only small parts of a major transaction to taking full responsibility for many transactions; (2) working in different areas of substantive law; and (3) the much greater client contact in small practices. Recent research, however, suggests that problems were more likely to arise from poor quality traineeships.[25]

The best experiences seem to have arisen where trainers gave trainees real responsibility and where trainees were able to move into the area of law in which they had spent their best seat as trainee.

> I loved my training contract . . . . I think I certainly learned a lot. When I qualified as a Solicitor I didn't notice the change, and I didn't worry about "oh! Crikey I'm now responsible for signing letters, and if I give advice I could be sued on it" and things like that. You know that day just came and went for me because I was already doing it.[26]

---

24. *See* Law Society, *Authorisation Guide*, Version 8, at 4.5.4. (iii), http://www.lawsociety.org.uk/dcs/pdf/QAAS_authorisationguide2003.pdf.

25. *See* ANDREW BOON & AVIS WHYTE, UK CENTRE FOR LEGAL EDUCATION, LEGAL EDUCATION AS VOCATIONAL PREPARATION?: PERSPECTIVES OF NEWLY QUALIFIED SOLICITORS 42-43, *available at* http://www.ukcle.ac.uk/research/boon.pdf (last visited Apr. 1, 2004).

26. *Id.* at 42.

Very specialized training contracts could create problems. One solicitor who had trained with the Crown Prosecution Service described herself as "completely unprepared" when starting with "a busy High Street criminal firm": "I haven't experienced the defence side because it's such a different side of life because you're never near criminals when you're prosecuting. The nearest you get is with the police[, which is a] completely different perspective."[27]

The experience reported above was within the same substantive field as the training. Greater difficulties may arise when the first post-qualifying job requires practicing in a completely different field. Others reported that a shift from working with many small clients to a few larger ones was not a problem.[28]

Other problems arose in the larger commercial firms simply because of the pressure put on trainees. Although fee-earners suffer under similar expectations, those on a trainee's income often resented the expectation that they should work very long hours. This was particularly true when trainees felt that trainers were using them as cheap labor rather than giving them a rounded and diverse training experience. Camaraderie within the working group could overcome this problem.[29]

The most effective training experiences seemed to share certain characteristics:

> Being given early responsibility;
> Being kept occupied with a lot of work; and
> Being given support and help or constructive criticism when required.

A typical comment illustrates the core characteristics of an effective apprenticeship experience:

27. *Id.* at 43.
28. *See id.* at 42.
29. *See id.* at 45.

> I got a lot out of it, I'm not sure all of it was thought about at the top level and I think a lot of it I created myself. But I was allowed the ambit to do what I wanted; I was allowed to run cases, I was allowed to go and meet barristers . . . [and I was allowed to] see clients on first interviews and run them on my own unless I needed help on them. So it worked quite well and I suppose there had to be a lot of mutual trust there and confidence in each other.[30]

B. The Professional Skills Course

Trainees must take the seventy-two-hour Professional Skills Course during the training contract, either in-house or by study leave. Trainees must receive training in Information Technology, Business and Commercial Awareness, and three skills areas: Advocacy and Communication, Client Care and Professional Standards, and Financial and Business Skills. There are also electives, which expand on one or more of these areas. Few interviewees found the course of much significance to their development, and some resented its interference in their working pattern.[31] Others found elements of the course irrelevant (for example, advocacy to an office-based practitioner). Firms may also resent the cost and disruption, and their consequent lack of interest was demoralizing for trainees.[32] No specific proposals exist to abandon or to change this requirement. However, the thrust of the Training Framework Review (see Part V.C.) suggests greater diversity in training methods, which would presumably allow firms and educational organizations to propose alternatives.

C. The Training Framework Review

The Law Society reviews the LPC, and it is reviewing the entire legal education process at the time of this publication. An initial

30. *See* BOON & WHYTE, *supra* note 25, at 44.
31. *See id.* at 46.
32. *See id.* at 47.

consultation paper in 2001, followed by a conference, led to an analysis of the responses by Professors Andrew Boon and Julian Webb of Westminster University.[33] A more qualitative interview-based study supports these findings.[34] The Law Society is seeking further analysis, but a number of proposals are tentatively under review.[35]

The general approach suggested by Boon and Webb is to concentrate on establishing the learning outcomes, which aspirant practitioners must display to be suitable for admission, and devising methods of ensuring that aspirant practitioners have achieved these goals. This approach is in contradistinction to prescribing in detail the process through which students and trainees must go. This is likely to encourage innovation in education and training regimes. These types of innovations might include greater integration of the academic and vocational stages or of the vocational and work-based learning stages. It might even be possible to emulate current medical professional training where trainees experience patient contact in the earliest undergraduate years. These types of proposals would include clinical elements, which is an approach to legal study that U.S. jurisdictions have developed better than the United Kingdom has done.

Whatever proposals the Law Society may eventually accept, a requirement for a period of work-based learning roughly equivalent to the existing training contract is essential.[36]

Five broad headings encompass the proposed outcomes:

general intellectual skills;
core legal and technical knowledge;

33. *See* ANDREW BOON & JULIAN WEBB, THE LAW SOCIETY, REPORT TO THE LAW SOCIETY OF ENGLAND AND WALES ON THE CONSULTATION AND INTERIM REPORT ON THE TRAINING FRAMEWORK REVIEW (2002), *available at* http://www.lawsociety.org.uk/dcs/pdf/LSReportBoonWebb.pdf; THE LAW SOCIETY, TRAINING FRAMEWORK REVIEW CONSULTATION PAPER (2001); Conference, *Rising to the Challenge: Legal Education in the 21st Century* (Oct. 5, 2001).

34. *See* BOON & WHYTE, *supra* note 25.

35. *See* The Law Society, *Proposals for the First Stage of the Professional Education and Development of Solicitors—to the Day of Admission, available at* http://www.lawsociety.org.uk/ (last visited Apr. 1, 2004) [hereinafter *Proposals for the First Stage*].

36. *See id.* ¶ 42-47.

> ability to complete legal transactions and progress legal disputes towards resolution;
> the values, behaviors, attitudes, and ethical requirements of a solicitor; and
> professional, personal management, and client relationship skills.[37]

Any undergraduate degree should satisfy the first heading, and the various stages of training (or by integrated programs if developed as suggested above) are likely to fulfill the remainder. This should assist the process in becoming a genuine continuum regardless of whether it is structurally integrated.

Any provider would need to demonstrate how their proposed program would meet the necessary outcomes, and a final assessment immediately prior to accreditation might augment the existing assessments at each stage of an undergraduate and vocational course.[38] If the Law Society implemented this type of assessment, it would focus on the fourth and (possibly) the fifth headings above because other assessments would adequately test the first three headings before the training contract.

This model utilizes a learning log developed from similar activities on existing courses, which allows a reflective approach to what is learned during the training contract, to serve as a basis for the final gate-keeping assessment. The Consultation Paper makes a number of proposals for work-based learning.[39] These proposals include a requirement that trainees keep a record of their training, which would provide evidence of their progress towards and achievement of the

37. *See id.* ¶ 35-41 (detailing what is conceived under these headings).

38. This is a proposal for discussion and not for Law Society policy. Indeed, it is likely to be controversial in that it adds further assessment to what the profession already regards as an over-assessed process and in that it may be inherently difficult to design. The most recent Law Society document retreats from any firm proposal and seeks more information before developing a model. *See Proposals for the First Stage*, *supra* note 35, ¶ 90-95. However, if greater control over final outcomes will justify relaxation of process controls through, some form of final assessment seems hard to resist. The proposal is also of direct significance to anyone considering alternatives to State Bar Examinations as a basis for accreditation. *See id.* ¶ 59-66.

39. *See id.* ¶ 48-58.

overall outcomes.[40] The solicitor supervising the training would need to review that record and to certify its accuracy and validity. To ensure that this is done effectively, revised rules would require the training of supervising solicitors.[41] Moreover, the participation of an external assessor or the inclusion of a final assessment in some form may be necessary because past experience indicates that solicitors see this signing-off as a mere formality.

D. Pupilage

Pupilage is a one-year apprenticeship divided into two six-month periods, which the Bar Council regulates. During the second period, pupils hold a limited practicing certificate and may accept their own cases.

Criticism of the variability in the pupilage experience has led the Bar Council to introduce guidance and other requirements. The Education and Training Department produces a guide, *Good Practice in Pupillage*, which it grounds in research into the experience of pupils and the chambers in which they learn, and the guide contains practical advice and ideas for chambers and pupilage supervisors to encourage the best practice.[42] Guidance to pupils comes in the form of a Pupillage File, which is a ring binder of guidance and information plus pro-forma pages for the pupil to record the learning and experience that the pupil gains.[43]

Only experienced practitioners may become pupilage supervisors. To accept a pupil, the supervisor must practice from chambers or from an office in which another lawyer with three years rights of audience also practices. The practitioner may supervise only one pupil at any given time. Trainees may undertake pupilage in law offices as well as in independent chambers. Most of these are

40. *See id.* ¶ 83-86.

41. Respondents to the first consultation stage identified concerns that they were not competent to assess pre-qualification competencies. *See* Boon & Webb, *supra* note 33, ¶ 5.16.

42. *See* JOANNE SHAPLAND & ANGELA SORESBY, THE GENERAL COUNCIL OF THE BAR, GOOD PRACTICE IN PUPILLAGE (1998).

43. The Bar Council, under the sponsorship of Oxford University Press, produces a new version annually.

available from the Crown Prosecution Service or the Government Legal Service, but a few commercial organizations have successfully sought the right to offer pupilages from the Bar Council.[44]

During pupilage, the Bar Council requires pupils to undergo three training courses:

Advice to Counsel: This is a course offered in London by the Bar Council and outside London by the Circuits to introduce new pupils to the demands and the culture of practice. Pupils widely criticize this course as dry and largely offering guidance on matters already experienced directly.[45] It may be more useful if offered before pupilage starts.

Advocacy Training: The Inns and Circuits provide this course to build on the advocacy training provided by the BVC. Generally, most members of the Bar rate it favorably, although civil chambers criticize the fact that it focuses on criminal advocacy. As a result, some chambers have set up their own in-house advocacy training, which is highly praised.[46] New proposals will improve the funding and monitoring of this advocacy training, and the Bar Council will not allow pupils who fail to practice in their second period pupilage.[47]

Forensic Accountancy: Most pupils thought this demanding course was irrelevant and questioned the need to attend.[48]

The central purpose of pupilage is to provide experience to the pupil. The Bar Council requires supervisors to permit pupils to read papers, to allow pupils to draft pleadings and opinions, and to require pupils to accompany them to court to provide sufficient experience in the areas of practice undertaken by the supervisor. To ensure that

---

44. This follows a period of time when a shortage of pupilages (and a leakage of young barristers trained in chambers to employment, which some see as a subsidy for employers by the independent Bar) led the Bar Council to permit and encourage organizations employing barristers to offer pupilage.

45. *See* GENERAL COUNCIL OF THE BAR, ANNUAL REPORT OF THE MONITORING OF PUPILLAGE PANELS 9 (2003) [hereinafter ANNUAL REPORT].

46. *See id.*

47. *See* T. DUTTON QC, ADVOCACY TRAINING AT THE BAR OF ENGLAND AND WALES: ORGANISATION, DELIVERY AND OUTCOMES (2002).

48. *See* ANNUAL REPORT, *supra* note 45. Notably, the implementation of the Proceeds of Crime Act, 2002 (Eng.), requires lawyers to inform the National Criminal Intelligence Service should they suspect money-laundering or the use of other criminally-acquired money. Failure to disclose is an offense, and this may affect attitudes towards this area of learning.

pupils receive a sufficiently broad experience, the Bar Council requires them to keep a checklist containing a common core and other sections prepared by the various specialist Bar Associations. A third section provides for other experiences, omissions, and statements on how to remedy omissions. The pupilage supervisor must countersign this checklist before the pupil receives a certificate of satisfactory completion of pupilage.

Other mandatory obligations include checking that pupilage supervisors fairly distribute work during the second six-month period because complaints of unfair behavior by clerks (who are generally responsible for allocating work within chambers) have long been a characteristic of pupilage.[49] Other guidance includes implementing an appraisal process within the pupilage and an assessment of pupils after three months. Neither of these is a requirement.

E. Monitoring and Improving Pupilage

The Bar Council carries out regular monitoring of pupilage by questionnaire and through meetings with pupils. It is apparent from this monitoring that the quality of pupilage remains varied. The methodology of this monitoring values fact-finding over identifying where poor practice takes place; thus, the questionnaires are anonymous. This frustrates attempts to address specific instances of poor practice, although the return of pupilage checklists and other documents identifies some chambers with poor practice.[50]

Although the quality of the pupilage experience varies enormously between chambers, some inherent problems exist. Pupilage is not only a training process; it is an extended interview during which existing members of chambers will decide whether to offer a tenancy on completion of the pupilage. "Competitive pupillages" have been

49. The Bar's Equality Code prohibits discrimination on a variety of grounds, going beyond the strict requirements of the legislation in force at the time the Bar introduced the Code. *See* THE BAR COUNCIL, 5 EQUALITY CODE OF THE BAR 1-10, *available at* http://www.barcouncil.org.uk/document.asp?languageid=1&documentid=576 (last visited Feb. 9, 2004).

50. There are stories of pupils spending many hours photocopying for other barristers in chambers and moving cars where parking restrictions are tight.

commonplace where it is known throughout that there are fewer tenancies available in chambers for all the pupils in any one year.[51]

> You wander round trying to brown nose up to as many members of chambers, and important ones as possible, and I can't think that that is effective. I'm sure it interferes with your work to the extent that you are not interested in your work. You are only interested in the politics of gaining a tenancy.[52]

This may make pupils reluctant to admit a failure to understand something because they want to appear superior to others.

> If I was sure that I was staying on I would, on more occasions than I do, say "look I simply don't understand this, can you explain?" I do that sixty percent of the time now, because you want to learn anyway, but forty percent of the time I cover it up with carefully chosen language.[53]

A misperception by pupils may be the basis for these feelings because the research found tenants generally viewed asking questions as a sign of interest and intelligence. Shapland and Soresby suggested that tenants should make this clear to pupils.[54]

The introduction of funding for pupilage (see Part V.F.) may reduce the proportion of pupilages that are competitive in this way. However, times may arise when work is short, and junior tenants may regard pupils as unwelcome competition.

> Junior tenants do view you as a threat and if you show ability, solicitors may brief you, whereas higher up they're looking for new blood. They need a safe pair of hands and it takes a while to be aware of chambers politics. It's good to appear dippy to junior

51. Interview with pupilage counselor, Inns of Court School of Law (on file with Author).
52. *See* SHAPLAND & SORESBY, *supra* note 42, at 67.
53. *Id.*
54. *See id.*

> tenants and more sharp and switched on to senior tenants. You have to adjust how you appear.[55]

While this competitiveness is healthy up to a point, it is damaging if it obtrudes on the training function of pupilage. The current proposals by the New York and Arizona State bars may avoid these problems because, in those jurisdictions, there is not the same necessary link with anticipated employment.

Another factor in the value of individual pupilages is the effectiveness of the pupilage supervisor. Some propose training: "it would help pupils if only trained pupil masters were allowed . . . . The mere fact that you have managed to survive at the Bar for five years does not qualify you with the right to ruin someone else's life."[56] There is a concern that introducing a training requirement will seriously reduce the number of people willing to become pupilage supervisors.

F. Funding Pupilage

Recently, a major concern about the funding of education and training for the Bar has arisen, and the responses to this concern should address some of the problems with pupilage.

The Bar's limited ability to fund legal education and training led to concerns that it would lose the most able candidates to the solicitor's profession. The high cost of training may have also deterred able applicants from sectors of the community less represented in the profession.

To address this, the Bar has introduced a requirement to fund all pupilages. Since January 1, 2003, pupils must receive at least £5000 in their first six months, and if earnings in the second six-month period fall below that level, chambers must make up the difference.[57]

---

55. *Id.*
56. *Id.* at 79.
57. *See* TASK FORCE ON FUNDING ENTRY, *supra* note 23, at 10-23.

Furthermore, these funds cover the cost of compulsory courses and reasonable traveling expenses (for example, to attend court).[58]

The Education and Training Department of the Bar Council expects that this new funding of pupilages will make chambers take their responsibilities more seriously. They will recognize pupils as investments whom it is in their interest to train effectively. The Bar Council will continue to monitor pupilage to see whether this prediction comes true, but it recognizes the limits of the process.[59] The independence of the Bar, a considerable factor in its own right, and the looser business organization of chambers make control difficult. Finally, the practice of paying trainee solicitors during their training contracts (which has been in place for many years) has not dispelled problems as to the quality of those training contracts from the perspective of the Law Society.

G. Apprenticeship—An Overview

While the professions (and many of the trainees and pupils themselves) view the on-the-job training by both trainee solicitors and pupil barristers as the core of their training process, it is far from perfect. Moreover, systems in place to regulate and monitor it are expensive, and the practitioners often resent these costs.

Still, the best examples of both processes represent the height of young lawyers' learning experiences. The examples tended to arise when those providing work experience recognized the value of the investment they were making (an advantage unavailable where work experience will not be followed by a working relationship). By contrast, behaving tactically to compete for a position may have damaged the learning experience for some trainees. The Arizona and New York proposals avoid this problem. While these long apprenticeships are not viable (at least in the short term) in the United States, the characteristics of the best experiences may positively influence alternatives that some jurisdictions are now considering.

58. *See id.* (discussing the concerns that led to these developments).
59. Interview with Senior Education Officer, Bar Council (on file with Author).

VI. QUALITATIVE VARIABLES

Within the framework presented above, a number of developments by particular providers of education and training have occurred. While not formally required, both those engaged in them and the professions have widely welcomed the developments. The developments might therefore help to identify the desirable qualities in a process of training and accreditation. They generally involve providing students and trainees experience working with real clients. This Article will not explore in detail clinical programs, which are already employed in the United States.[60]

Successful student law clinics, work placement schemes, and Street Law programs operate in many of the United Kingdom's universities.[61] These programs all introduce students (many of whom come from privileged and sheltered backgrounds) to the realities of life for different sections of the community and, in particular, to the way the law affects the people in those sections of the community. Students also develop effective analytical and communication skills. The advice and representation work goes one stage further by giving students experience in doing what lawyers do. Thus, a properly designed clinical program (1) prompts reflection on what students have learned elsewhere; (2) facilitates a critical view of the legal system, the profession, and approaches to practice; and (3) helps to solidify the often highly abstract theoretical approaches of critical and contextual scholars.

At the vocational stage, clinical approaches are more deeply embedded. Simulated clinical activities play a significant part in both BVC and LPC courses, although they are more dominant in the BVC. Many vocational providers offer opportunities for students to do pro bono work alongside their studies.[62] The providers do not formally

60. *See* BRAYNE ET AL., *supra* note 17 (providing an overview of clinical legal education in the United Kingdom).

61. *See* R. Grimes, *Legal Literacy, Community Empowerment and Law Schools: Some Lessons from a Working Model in the UK*, 37 LAW TCHR. 237 (2003).

62. *See* City University of London, *The ICSL Pro Bono Unit, at* http://www.city.ac.uk/icsl/programmes/probono-.htm (last modified Aug. 2003) (providing an example of clinical opportunities for BVC and LPC students at ICSL).

assess these activities, but the activities present opportunities for students to improve their skills, experience, and understanding, thereby enhancing their core studies. To encourage this improvement, providers give students a Professional Development File in which they review and reflect upon their progress in the course. Personal tutors review this file at regular stages, and the file encourages integration of the voluntary and core learning activities.

ICSL has integrated work with real clients into the BVC. Students accept real cases in the employment tribunals. Vocational supervisors formally assess this work, and it forms a part of the students' credit towards qualifying as a barrister.[63] Subsequently, some other BVC providers have introduced similar schemes. Generally, members of the Bar hold these schemes in high regard, and the schemes provide students with an advanced start to their experience of pupilage.

These activities all replace the simulated with the real, which not only provides desirable experience but also the most effective motivation for high-quality work. They offer ways of gaining real experience, which appears to be missing from the current mandatory requirements for professional accreditation in the United States. Both the New York and Arizona proposals reflect these activities, although an important difference is that the United Kingdom either (1) integrates them into the academic or vocational course or (2) provides a controlled and monitored apprenticeship between the end of the course and the start of professional practice. Part VII considers whether these differences are material.

VII. PROFESSIONAL CONDUCT AND ETHICAL BEHAVIOR

The nature of legal work introduces potential for conflicts and abuse that the Bar must address before accreditation. The American profession has probably been one of the most alert to these concerns in recent decades because of the American legal education's focus on professional responsibility. However, there has been widespread

63. *See* Nigel Duncan, *On Your Feet in the Industrial Tribunal: A Live Clinical Course for a Referral Profession*, 14 J. PROF. LEGAL EDUC. 169, 175-76 (1996).

criticism of this focus: "[O]nly three out of forty respondents characterized their ethics course as valuable preparation for legal practice. The vast majority reported that their ethics course merely provided them with formalistic instruction about the rules of professional responsibility that were largely silent on the fundamental contradictions inherent in their practice."[64]

Exposing students to real clients in the disordered complexity of real cases is a better approach. This Part explores developments in this field in the United Kingdom together with research and analytical findings from other jurisdictions, and it makes two proposals about the timing and the nature of experiences designed to address professional conduct.

A. Timing

A widely expressed concern exists that the pressures of the marketplace for legal services are inimical to the highest standards of professional conduct. As Jerald S. Auerbach stated: "Litigation expresses a chilling, Hobbesian view of human nature. It accentuates hostility, not trust. Selfishness supplants generosity. Truth is shaded by dissembling. Once an adversarial framework is in place, it supports competitive aggression to the exclusion of reciprocity and empathy."[65]

American and Australian scholars have recognized related points: "[I]t is workplace experiences that have the greatest impact on shaping professional behavior. Ethical education may be eclipsed if law students encounter workplaces that are unsympathetic to ethical practice."[66] "[F]or those students whose first significant work place experience is a 'live client' clinical programme, better values, social

64. Robert Granfield, *The Politics of Decontextualised Knowledge: Bringing Context into Ethics Instruction in Law School*, *in* ETHICAL CHALLENGES TO LEGAL EDUCATION AND CONDUCT 299 (K. Economides ed., 1998).

65. JEROLD S. AUERBACH, JUSTICE WITHOUT LAW? vii (Oxford 1983).

66. Eleanor W. Myers, *"Simple Truths" About Moral Education*, 45 AM. U. L. REV. 823, 824 (1996).

awareness and motivations are inculcated because students are under the control of legal educators rather than 'the market.'"[67]

This all suggests that educators should introduce students to the underlying principles (and perhaps the details of the Codes themselves) before they enter practice or even before they enter a learning environment controlled by practitioners. Notably, Evans does not argue that the profession should protect students from these pressures. Instead, students should first experience them in an environment in which it is possible to explore the problems in principle.

B. Nature of the Experience

If one accepts that some form of clinical experience is valuable in addressing ethical issues, it needs to be integrated and progressive. Webb has proposed a three-stage approach to fit the structure of the U.K. undergraduate law degrees.[68] In the first year, a foundation course would explore, as part of its remit, the ethics of the English legal system.[69] This lends a values context to the subsequent skills-oriented work.[70] Undergraduate law school would introduce a simulated clinical element in the second year that would combine a discussion of professional ethics with a study of the major ethical traditions, supported by working through realistic and value-laden simulations.[71] The third stage would be a real client clinical course through which supervisors would facilitate students' application of their ideas and understanding of ethical issues to the discussions of how to conduct real cases.[72] Webb has further argued:

"Students need to be presented with learning situations which enable them to question their assumptions about their roles as a lawyer and to confront situations both where they must face potential

67. A. Evans, *The Values Priority in Quality Legal Education: Developing a Values/Skills Link Through Clinical Experience*, 32 LAW TCHR. 274, 284 (1997).

68. *See* Julian Webb, *Inventing the Good: A Prospectus for Clinical Education and the Teaching of Legal Ethics in England and Wales*, 30 LAW TCHR. 270 (1996).

69. *See id.*

70. *See id.*

71. *See id.*

72. *See id.*

(internal) conflicts between personal and professional ethics and (external) constraints on their capacity to act 'morally'. The use of experiential methods—hypothetical or live dilemmas, role plays and simulations—and of genuine Socratic dialogue in group work are each central to effective developmental learning."[73]

These arguments are readily applicable to the J.D. program and will enable students approaching accreditation to consider their professional and ethical responsibilities in a more critical and focused way.

Also, limited research evidence suggests that undertaking live clinical work may have a positive effect on students' values, at least on the specific question of access to legal services.[74] While this Article asserts no correlation between students committed to public interest work and students committed to high ethical standards, it is probably the case that those with a genuine concern for some of the profession's core values are likely to be willing to consider other core values seriously.

Considerable research exists on students' willingness to undertake public interest work. It consistently shows a decline over the three years of the J.D.[75] For example, Stover found that while 33% of first-year students rated public interest practice as their ideal first job, the proportion had fallen to 16% three years later.[76] These studies also

73. *See* Julian Webb, *Conduct, Ethics and Experience in Vocational Legal Education: Opportunities Missed, in* ETHICAL CHALLENGES TO LEGAL EDUCATION AND CONDUCT 286, 288 (Kim Economides ed., 1998).

74. *See* ACLEC, *supra* note 13, ¶ 2.4 (examining core values of both the U.K. and U.S. professions); ROBERT MACCRATE, AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM 1-4 (1992), *available at* http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html#Part%20II (selected excerpts from the MacCrate Report) (examining core value of both the U.K. and U.S. professions).

75. *See* R. STOVER & H. ERLANGER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL (University of Illinois Press 1989); Adrienne Stone, *Women, Law School and Student Commitment to the Public Interest, in* EDUCATING FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION 56 (Jeremy Cooper & Louise G. Trubeck eds., 1997); H. Erlanger et al., *Law Student Idealism and Job Choice: Some New Data on an Old Question*, 30 LAW & SOC'Y REV. 851 (1996); H. Erlanger & D. Klegon, *Socialisation Effects of Professional School: The Law School Experience and Students' Orientation to Public Interest*, 13 LAW & SOC'Y REV. 11 (1978); C. Kubey, *Three Years of Adjustment: Where Do Your Ideals Go?*, 6 JURIS DR. 11, 34 (1976).

76. *See* STOVER & ERLANGER, *supra* note 75.

show a decline in the importance law students placed in doing pro bono or social reform work.[77]

By contrast, Sally Maresh showed evidence that undertaking a clinical program with real clients reverses this trend.[78] Over six years, she found a consistent tendency for a higher proportion of students to express an interest in public interest work after taking their clinical course than they had before taking it.[79] It is possible that the students opting for clinical courses would most probably be those motivated towards public interest work. However, this does not explain the *increase* as a result of the experience in light of the fact that the percentage of students expressing interest before their clinical course was as low as 25% in one year.[80]

Although only limited evidence exists, the correlation suggests that a coherent program including work with real clients, such as Webb's proposal, may be more effective than didactic courses on the professional codes. At the very least, students dealing with real cases within their educational experience will necessarily have come into contact with the ethical dilemmas that are endemic in legal practice and will not have evaded them. They will have to have made decisions and to have taken actions, rather than merely talking about what they *would* do. They will have done so in an open environment without any inhibition about discussing the propriety of alternatives.

77. *See id.*

78. *See* Sally Maresh, *The Impact of Clinical Legal Education on the Decisions of Law Students to Practice Public Interest Law, in* EDUCATING FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION 154, 163 (Jeremy Cooper & Louise G. Trubeck eds., 1997).

79. *See id.* at 157, 163.

80. *See id.* at 154, 162-63.

VIII. VALIDITY AND RELIABILITY OF ASSESSMENTS

If the courts and bar associations of different states are to place confidence in alternatives to existing bar exams, proponents of alternatives must pay attention to both the validity and the reliability of assessments. The current bar exam features sound claims to reliability, but restricting students to paper and pen tests is a major limit on validity.

These tests are effective at assessing competence in (1) knowledge, (2) understanding (to a lesser extent), (3) legal reasoning, and (4) (where the Multistate performance test is used) drafting skills. However, lawyers need to be able to do far more than this. Human interaction in the contexts of client interviewing, negotiation, and trial advocacy is basic to the work of most lawyers. Assessments that fail to address these traits are inherently lacking in validity. On the other hand, training and assessing students in the activities lawyers actually do can improve validity.

Different ways of achieving this exist. Many U.S. law schools have incomparable experience developed from their clinical programs. Simulations enable a controlled task. In interviewing, for example, role-playing clients present students with specific interaction problems (for example, how to react to bad news presented with varying degrees of sensitivity) or ethical difficulties (for example, the client who discloses planned perjury). Live client work adds realism as a motivator and a valuable source of contextual richness, particularly for those law students who have never encountered the problems of poverty. It remains, however, inherently less controllable. Ideally, students would encounter both of these difficulties in their learning process and would thus be better prepared for the demands of practice. Could the U.S. jurisdictions require experience of this nature prior to accreditation?

Rather than focusing on that question, this Part deals more with assessment and with proposing ways of developing sufficient reliability in valid assessment methods to satisfy those concerned with the fairness of accreditation requirements. To achieve this objective, this Part uses the methods that the City University of

London Institute of Law uses in assessing students on the Bar Vocational Course in Conference Skills as an example.

To enhance validity, students work throughout the course on realistic briefs, which the program carefully writes to progressively address the demands of effective client interaction. The design approach reflects the learning spiral that Paul Maharg describes in his contribution to this Issue. Students undertake role playing; those playing clients receive further instructions to ensure that they address learning points. Furthermore, the program provides students with training in peer feedback and with pro forma questionnaires to structure and inform the feedback. Most see the client experience as a useful way to gain insight into the client on a conference.

Students use similar briefs in assessments, where an assessor evaluates a videotaped client conference. To ensure that students receive approximately the equivalent experience, the program employs actors and gives them detailed briefing on the facts of their case, their actual knowledge of events (which may differ from that appearing in the papers), and how they should respond to particular approaches by the student. This is City University's interpretation of the concept of standardized clients that Larry Grosberg addressed in his contribution to this Issue and of the standardized patients in medical training and assessment that David Stern explains in his contribution. One difference in the model City University uses is that the actors role-playing clients do not contribute to the assessment. They would need higher levels of training to do that, and advocates of the program place confidence in the reliability of staff assessors. However, the client might undoubtedly be a better judge of some aspects of the client experience, and there is scope for introducing an element of lay assessment into these procedures.

The use of a small team of experienced assessors is one element of the program's attempts to achieve reliability. The devising of carefully constructed assessment criteria with established weighting between the criteria supports this element. This assists the program's attempts to achieve objectivity in the assessment and prevents assessors from relying on gut reaction or general impression.

Assessors receive the videotaped performances and the students' written plans for the conference. The Conference Skills coordinator then chooses a small number of performances and all assessors (without discussion) allocate grades to each criterion. Inevitably, differences emerge, and the assessors then discuss their justifications for particular grades to establish why they differ. They agree on which faults are serious and which are minor, and they come to an agreement as to how they will approach the remainder of their assessment task.

A typical assessment involves between 500 and 600 candidates, and individual assessors may assess 60 or more candidates. This provides a sufficiently high number of candidates per assessor to validate a statistical moderation of the results, revealing assessors whose grades are surprisingly high or low, thus providing a further reliability mechanism. Any students that fail will have their work graded again. Finally, an external examiner, independent of the assessing institution, checks for standards and consistency in a sample of student work covering different assessors at different grading.

While these methods will not produce the level of reliability of a multiple choice test, they do produce reliability sufficient to satisfy the demands of the U.K. professions, which has developed the most controlled accreditation process in the world. Moreover, it is important to remember that these processes assess practical skills. Multiple choice tests assess the knowledge and understanding elements of the BVC (evidence and the rules of procedure), thus gaining the advantage of high levels of reliability in these areas equal to levels that the bar exam achieves. Should a U.S. jurisdiction seriously attempt to develop assessments which are valid as well as reliable, a combination of assessment methods provides an effective way forward.

CONCLUSION

The heavily regulated approach to training and accrediting lawyers in England and Wales is clearly inappropriate for direct translation

into the United States. However, the close planning and monitoring provides rich data to aid American developments in this area. The U.K. professions view work experience as essential. A course that addresses not only substantive and adjectival law but requires clinical experience should precede the work experience component, both to introduce students to the values of legal practice before they enter the work environment and to provide the groundwork in the development of the skills they will deploy in practice. The New York and Arizona proposals contain the seeds of implementing such a program. These proposals would provide services of public value in the process. However, to prepare students in the most effective way for the demands of an assessment that is both reliable and valid, a closer look at the required content and assessment of the J.D. is desirable as well.

APPENDIX A: CONFERENCE SKILLS ASSESSMENT CRITERIA

In order to be graded Competent or above you must show your ability to:

A. PREPARATION, QUESTIONING AND ADVISING (60%)

Preparation (20%)
Identify the objectives of the conference
Identify the facts, procedure, law and evidence relevant to the case.

Questioning (20%)
Deal with all the relevant issues
Use an appropriate questioning technique
(iii)Clarify gaps and ambiguities
(iv)Elicit necessary information to be able to advise
Show a clear understanding of the client's version of events
Obtain full instructions.

Advising (20%)
Explain the issues to the client clearly and unambiguously
Ensure that the client understands what has been discussed
Explain procedural, legal and evidential issues to the client
Advise on the strengths and weaknesses of the case
Explain (in the light of the above) what further action should be taken.

B. STRUCTURE AND TIME MANAGEMENT (20%)

(4) (i) Follow an agenda as far as practicable
Be time-efficient
Cover all relevant issues within the time limits
Control the conference effectively
Achieve the stated objectives.

C. COMMUNICATION (20%)

(5) (i) Put the client at ease, using appropriate language
Ensure the client understands the objectives of the conference
Listen to the client
Allow the client to raise concerns
Reassure and sympathise with the client in a non-judgmental manner
Deal with non-legal concerns.

Remember that observance of the rules of Professional Conduct may be assessed in any assessment.

The assessor will have regard to your notes and plan in determining the extent to which you have fulfilled the above criteria. The notes do not carry any marks in themselves.

Notably, Fact Management Skills and Legal Research Skills, as well as Conference Skills, are required in order to satisfy these criteria.