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PROFESSIONAL LEGAL EDUCATION IN SCOTLAND

Paul Maharg*

INTRODUCTION

Scotland is a small jurisdiction. With a legal profession of approximately 9000 solicitors and over 450 practicing advocates serving a population of around 5 million, our legal bar is smaller in size than the legal bar of many states in the United States.¹

Our solutions to problems of professional education are appropriate to our jurisdictional size, our character, and our history. However, one theme of this Article is that common educational issues exist among jurisdictions despite differences in size or in legal structure. Another theme deals with a matter of particular concern in Scotland, namely the problem of educating for practice, and in particular creating the most effective forms of program and curriculum design for training and education at the professional stage.

Part I of this Article summarizes the current Scottish professional legal education program, set in the context of the legal education and the legal profession generally. Part II illustrates some aspects of the professional education program with reference to a case study, the Diploma in Legal Practice at the Glasgow Graduate School of Law. Finally, this Article outlines some of the issues or themes from the Scottish experience that might be applicable to alternatives to the United States' Bar Exam.

* Professor Paul Maharg, Co-director, Legal Practice Courses, Glasgow Graduate School of Law

1. For updated details on the size of the two halves of the profession, see Law Society of Scotland, <http://www.lawscot.org.uk/> (last visited May 16, 2004), for solicitors (under 'Solicitor details') and Faculty of Advocates, *Membership*, <http://www.advocates.org.uk/web/members1.htm> (last visited May 16, 2004), for advocates.

I. CURRENT PROFESSIONAL LEGAL EDUCATION IN SCOTLAND

Unlike the legal profession in the United States, Scotland has a divided profession. As members of the Bar, advocates may plead in (1) any court in Scotland, (2) the House of Lords, (3) the Judicial Committee of the Privy Council, and (4) many other courts and tribunals, including the courts martial.² Until recently, advocates had exclusive rights of pleading to many of these courts.³ Advocates are entirely independent; the motto of the Faculty of Advocates is *suum cuique*—each to his own. Advocates normally take instructions from solicitors in criminal and civil matters, and they act according to the so-called “cab-rank rule.”⁴ This requires an advocate to accept business from a solicitor unless personal interests bar this acceptance or unless the case in question is insatiable in law.⁵ Once they accept instructions and are in court, advocates enjoy the widest remit in their conduct of an action. While they are grouped as a Faculty under the oversight of the Dean of Faculty, advocates are organized in “stables,” and a clerk organizes administrative matters.⁶

By contrast, solicitors had, until recently, pleading rights only in the inferior courts of Scotland.⁷ Solicitors accept instructions from members of the public, institutions, companies, and partnerships, for example.⁸ Solicitors may instruct advocates if they wish.⁹ Their work is highly diverse and becoming increasingly specialized.¹⁰ They may work as employees of (1) the Crown as prosecutors (known in Scotland as Procurators Fiscal), (2) institutions such as local

2. See ALISON PLATTS, THE SCOTTISH EXECUTIVE CENTRAL RESEARCH UNIT, SOLICITOR ADVOCATES IN SCOTLAND: A RESEARCH OVERVIEW ¶ 1.1 (2000), available at <http://www.scotland.gov.uk/cru/kd01/green/research-01.pdf> (last visited Feb. 9, 2004).

3. *Id.* The provisions of the Law Reform (Miscellaneous Provisions) (Scotland) Act, 1992, allow solicitors rights of audience to enable them to plead before the Supreme Courts in Scotland. *Id.*

4. FACULTY OF ADVOCATES, GUIDE TO THE PROFESSIONAL CONDUCT OF ADVOCATES ¶¶ 4.2, 4.3.1 (1998), available at <http://www.jonathanmitchell.info/uploads/Conduct1988.pdf> (last visited Feb. 9, 2004).

5. See *id.* ¶¶ 4.3.5–9.

6. See *id.* ¶ 6.

7. See PLATTS, *supra* note 1, ¶ 1.2.

8. See *id.*

9. *Id.* ¶ 5.44.

10. See *id.* ¶ 1.2.

authorities or the Scottish Executive, or (3) large corporate bodies such as banks or insurance companies.¹¹ The large majority, however, work in private law firms ranging in size from solo practices to firms with several hundred fee-earners. The Law Society of Scotland (“LSS”) is the organizational body of solicitors.¹² The LSS has the duty of upholding the interests of the solicitor branch of the profession and the interests of the public.¹³

The training of both advocates and solicitors takes the same route at the initial stages.¹⁴ All lawyers in Scotland must qualify with a Bachelor of Laws degree (“LLB”) from an institution recognized by the LSS, or they must pass LSS examinations.¹⁵ Potential lawyers may study the LLB in a variety of curricula. Students taking the LLB as their first degree after leaving secondary school may take an Ordinary degree—a three-year degree in which they take a minimum of optional subjects in addition to core subjects the LSS deems necessary.¹⁶ These students may also extend this Ordinary degree to an Honours degree lasting four years.¹⁷ Students who already hold a degree in another discipline may condense the three-year Ordinary degree into two years.¹⁸

Students spend the first two or three years of the undergraduate degree predominantly in the study of the subjects that the LSS deems necessary to the core of knowledge demanded of a lawyer.¹⁹ These “qualifying subjects” define the core of knowledge required of law graduates, and universities offering qualifying law degrees deal with

11. *See id.* ¶ 3.1.

12. The Solicitors (Scotland) Act, 1980, c. 46, as amended by the Solicitors (Scotland) Act, 1988, c. 42, and the Law Reform (Miscellaneous Provisions) (Scotland) Act, 1990, c. 40, sched. 8, § 74 (29), govern the LSS and the activities of solicitors.

13. Solicitors (Scotland) Act, 1980, c. 46, § 1, as amended by the Solicitors (Scotland) Act, 1988, c. 42.

14. *See Education and Training*, The Law Society of Scotland, http://www.lawscot.org.uk/educ_train/NEW_howtobecome.html (last visited Feb. 9, 2004) [hereinafter *Education and Training*].

15. *See id.*

16. *See id.*

17. *See id.*

18. *See id.*

19. *See THE LAW SOCIETY OF SCOTLAND, THE LAW SOCIETY OF SCOTLAND EXAMINATION SYLLABUS AND READING LIST, available at* http://www.lawscot.org.uk/educ_train/download_docs/2003LawSocExamsyllabus.pdf (March 2003).

them under different categories and to different depths. As categorized by the LSS, the qualifying subjects include:

- Public Law and the Legal System
- Scots Private Law
- Scots Criminal Law
- Scots Commercial Law
- Conveyancing
- Evidence
- Taxation
- European Community Law²⁰

Additionally, all university students (except those taking the two-year graduate course) must take non-law options in other social science or arts disciplines. The undergraduate degree in Scotland is, therefore, considerably varied. There is a general emphasis on skills, but these are the skills of academic performance in areas such as case analysis, legal writing, essays, dissertations, and oral argument.

After qualifying with the LLB degree, students who wish to enter the legal profession begin the three-year course of professional training and education. This begins with a course called the Diploma in Legal Practice (“Diploma”).²¹ Equivalent in many ways to the Legal Practice Course (“LPC”) in England and Wales, the Diploma sets out to train law students in practice skills and knowledge and to equip them for the two-year traineeship that follows the Diploma. The LSS sets out the Diploma curriculum, which is 27 weeks in length and consists of the following subjects:

- Civil Court Practice
- Criminal Court Practice
- Private Client
- Conveyancing

20. *See id.*

21. *Education and Training, supra note 14.*

Practice Management
Financial Services & Accounting
Professional Ethics
and either Company and Commercial or Public Administration²²

The LSS specifies learning outcomes for each of the above subjects but gives local centers flexibility to design the syllabi and the assessments. Tutor-practitioners teach their legal specialties in courses designed and administered by the local centers. The LSS updates and annually distributes student and tutor handbooks for each of the above subjects. The LSS, for the most part, draws authors from the profession, and the authors produce resources for seminar discussion and workshops. The texts are a mixture of styles and precedents with some explanatory and didactic text.

Currently, there are four Diploma providers, each attached to university law departments or schools: Aberdeen; Dundee; Edinburgh; and the Glasgow Graduate School of Law (“GGSL”), a joint initiative between the Universities of Glasgow and Strathclyde.²³ Course fees stand at around £3750, with course materials costs adding approximately £200.²⁴ Students bear these fees in addition to subsistence costs. Uniquely, within the United Kingdom, approximately 60% of Scottish students obtain some form of fee grant (£2750) and subsistence allowance based on the academic results students obtain in the qualifying subjects studied during the early years of their LLB degrees.²⁵ The cost of the Diploma compares favorably with the cost of initial professional training courses elsewhere in the United Kingdom.²⁶ Nevertheless, recent research indicates that the cost of the professional training

22. *See id.*

23. *Education and Training, supra* note 14.

24. Glasgow Graduate School of Law, Diploma Handbook (on file with Author).

25. *Id.*

26. Comparable fees stand at around £4000 in Northern Ireland and at up to almost £8000 for the LPC. However, a number of the larger and City firms in England pay LPC fee costs.

program and the increasing levels of undergraduate student debt deter a significant number of students from entering the program.²⁷

Another route into the profession exists. Candidates can sit for examinations that the LSS sets and administers while completing a non-Diploma, three-year traineeship.²⁸

[T]o be eligible to sit [for] the Law Society of Scotland's professional examinations, candidates must be in or must find employment as a pre-Diploma trainee with a qualified solicitor [practicing] in Scotland. The pre-Diploma training contract lasts for three years during which time the trainee must receive training in the three prescribed areas of conveyancing, court work, and either trusts and executries or the work of a local authority.²⁹

Very few lawyers now enter the profession this way; the great majority enters through completion of the LLB degree.³⁰

Either before or during their Diploma course, students must obtain a traineeship with a practicing solicitor or a legal service employer in Scotland. Upon successful completion of the Diploma, they enter into a two-year contract of training with this employer. The LSS monitors the traineeship by requiring trainees to submit logs of work undertaken in the office and by requiring trainees to complete review sheets every quarter.³¹ These form part of the ongoing assessment of the training program known as the Assessment of Professional Competence ("APC"), which was until recently the Test of Professional Competence ("TPC").³²

27. See SIMON ANDERSON ET AL., SCOTTISH EXECUTIVE SOCIAL RESEARCH, MINORITY AND SOCIAL DIVERSITY IN LEGAL EDUCATION 4 (2003), available at <http://www.scotland.gov.uk/library5/justice/masd.pdf>.

28. See *Education and Training*, supra note 14.

29. *Id.*

30. See *id.*

31. See *Test of Professional Competence Comprising Logbooks & Quarterly Trainee Performance Reviews*, The Law Society of Scotland, http://www.lawscot.org.uk/educ_train/NEW_Guidelines.html (last visited Feb. 9, 2004) [hereinafter *Test of Professional Competence*].

32. See *Guide to the Post-Diploma Traineeship Training Programme*, The Law Society of Scotland, http://lawscot.org.uk/educ_train/NEW_flowchart.html (last visited Feb. 9, 2004). It was originally

Six to eighteen months into their traineeships, participants must take another course, the Professional Competence Course (“PCC”).³³ The LSS designed this course to build upon the knowledge and skills developed in the Diploma, and it relies upon the office experience that trainees gain in their traineeship. Like the Diploma, the course is compulsory and taught by tutor-practitioners. Unlike the Diploma, it is not assessed, but trainees are provided formative feedback on their performance in seminars and workshops. The course is around two weeks in length and consists of a core of 36 hours and an elective syllabi of 18 hours.³⁴ This structure is quite different from the Diploma, which includes a large and compulsory core with only one optional subject: Company & Commercial or Public Administration.³⁵

Three other significant differences exist between the structure of the PCC and that of the Diploma. First, while university law schools offer the Diploma, any person or institution can apply to host a PCC following accreditation by the LSS PCC Accreditation Panel.³⁶ As a result, a number of larger firms have designed an in-house model of the PCC for their trainees, and trainees in smaller firms attend an external-provider model of the PCC at accredited institutions like GGSL.³⁷ Second, because of more highly structured accreditation procedures, the PCC is a more regulated course. Third, with very few exceptions, training firms pay the PCC fees as a form of continuing professional development.

At the beginning of their second year of training, participants obtain a restricted practicing certificate that enables them to practice

envisaged that the TPC would contain an element of open-book examination, but following a series of closely documented trial assessments, the LSS rejected this form of assessment.

33. *Professional Competence Course*, The Law Society of Scotland, http://www.lawscot.org.uk/educ_train/NEW_Prof_Comp_Course.htm (last visited Jan. 8, 2004) [hereinafter *Professional Competence Course*].

34. For a list of the nine core modules, see *Professional Competence Course*, *supra* note 31. For examples of elective choice, see *Professional Competence Course Elective Modules*, Glasgow Graduate School of Law, http://www.ggsl.strath.ac.uk/courses/elec_modules.html (last visited Feb. 9, 2004).

35. See *supra* note 18 and accompanying text. One could argue that this option is not as relevant as it once was, given the developments in public-private partnership and the current role of private finance in the public sector.

36. See *Professional Competence Course*, *supra* note 31.

37. See *id.*

in the courts under certain conditions. They may spend six months of their training in another European Union country with their employer's permission. At the end of the second year, if trainees fulfill all of the conditions of the LSS and obtain a discharge of their training contract with a signing-off statement from their employer, they may apply for a full practicing certificate and entry to the profession.

The procedure for those students who wish to enter the Faculty of Advocates is rather different. In addition to an undergraduate law degree, entrants to the Faculty must pass or gain exemption from the Faculty's examinations in law and obtain or gain exemption from the Diploma in Legal Practice. They then serve a period, normally 21 months, in a solicitor's office as trainees and a further period of 9 months as pupils to members of the Bar approved by the Dean of Faculty (termed "devilling"). After (1) passing the Faculty examination in Evidence, Practice, and Procedure; (2) the submission of references; and (3) the presentation of a petition to Court, the Faculty may admit candidates as Advocates.

While they are still "devils," trainee-advocates undertake a period of training, called the Foundation Course, which lasts for seven weeks. The course consists of workshops and instruction in specialist advocacy—examination of witnesses, jury speeches, submissions to the Bench, pleadings-drafting, and client consultations. The Supplementary Course consists of more specialist work, including expert evidence, criminal and civil appeals, civil jury trials, and negotiation.

This summary of the legal educational structures in Scotland provides only a snapshot of the program as it existed at the time of this publication. Much of the structure has undergone considerable change in the past three years, and changes will continue in the upcoming three years. For instance, the LSS is currently undertaking a review of the Diploma that will inevitably involve a re-appraisal of the form and nature, not only of the structure and content of the Diploma, but of elements of the traineeship, the APC, and the PCC. Before addressing some of the issues arising from this, however, looking with more detail at the work of Diploma providers is helpful.

Examples of practice and ideas may be found in the details of provision that can be useful to, in the words of Henry James, the American scene.

II. CASE STUDY: THE DIPLOMA AT THE GLASGOW GRADUATE SCHOOL OF LAW

In 1999, the graduate law schools of Glasgow and Strathclyde Universities merged to form the GGSL.³⁸ Synergy, a funding initiative of the Scottish Higher Education Funding Council that encourages partnership and collaboration between higher education institutions in Scotland, funded a portion of GGSL's creation.³⁹ The GGSL currently offers both the Diploma and the newly-formed PCC.⁴⁰

One of the key motivating factors for the joint graduate school was the results of the LSS review of the Diploma carried out in 1994.⁴¹ The review began with a survey of opinions within the profession that revealed, as most stakeholders in the educational process then suspected, considerable dissatisfaction with many aspects of the course.⁴² The survey indicated a concern on the part of solicitors that the PCC was yet another academic course and that better ways to prepare students for practical life in the office existed.⁴³ As a result of this and other data, it became clear that the Diploma required review.⁴⁴ However, the LSS felt that the training program required a

38. See *GGSL About Us*, Glasgow Graduate School of Law, http://www.ggsl.strath.ac.uk/about_us.html (last visited Feb. 9, 2004) [hereinafter *GGSL About Us*].

39. *Glasgow – Strathclyde Universities Strategic Alliance*, Synergy, <http://www.strath.gla.ac.uk/synergy/law.html> (last visited Feb. 9, 2004).

40. See *GGSL Courses Offered*, Glasgow Graduate School of Law, <http://www.ggsl.strath.ac.uk/courses/index.html> (last visited Feb. 9, 2004).

41. See *The Training of Solicitors: Review of Employers* (July 1994) (unpublished manuscript, on file with The Law Society of Scotland).

42. See *id.*

43. See *id.*

44. The review was in line with a similar review of the newly-established Legal Practice Course in England and Wales. See, e.g., *An LPC Brief* (April 1996) (unpublished manuscript, on file with The Training Panel of the Recruitment and Training Sub-Committee of the City of London Law Society); Scott Slorach, *The Legal Practice Course: Benefits in Practice* (1996) (unpublished manuscript, on file with the Nottingham Law School).

more systematic approach than a simple review of the starter course—the Diploma. Consequently, the LSS introduced the new elements of the professional program described above (namely, the PCC and the TPC) and grounded the program itself in a competence view of legal training.⁴⁵

After considerable debate about the shape and content of the reviewed Diploma, the curriculum retained much of its pre-1994 shape.⁴⁶ The new curriculum added a course in Practice Management, clarified learning outcomes, and contained a reviewed and altered structure of some subjects, notably Financial Services and Accounting.⁴⁷ Perhaps most importantly, the LSS signaled where, within the syllabus of learning outcomes for each of the subjects, students could learn skills.⁴⁸ Also, for the first time since the Diploma's inception in 1980, the LSS identified a body of professional skills that ought to be the focus of a considerable portion of the course—advocacy, negotiation, client interviewing, precognition-taking, legal writing, drafting, and legal research.⁴⁹

During this review, Glasgow and Strathclyde University Law School realized that proper resourcing of skills-based legal education as required by the LSS would demand a joint effort. This resulted in new teaching accommodations with networked audio-visual and information technology equipment.⁵⁰ The LSS policy of permitting flexible design gave the GGSL the scope to determine its own curriculum to a significant degree. With this in mind, we at the GGSL⁵¹ spent the next few years creating a program of skills and information and communications technology (“ICT”) development. While not exhaustive, the initiatives below will give a sense of the general direction of our thinking and our implementations. However,

45. Part III examines these new elements in more detail.

46. See Learning Outcomes for the Diploma in Legal Practice (1999) (unpublished manuscript, on file with the Law Society of Scotland).

47. See *id.*

48. See *id.*

49. See *id.*

50. See *GGSL About Us*, *supra* note 36.

51. The Author was responsible for the design of the joint Diploma of the Glasgow and Strathclyde University Law Schools and is now a co-director of the Diploma.

while project initiatives were crucial, we needed to implement them within an over-arching theory framework, and it is to this issue that we shall turn first.

A. Cycles and Spirals: Applied Educational Theory

The LSS curriculum guidelines allowed a Diploma provider to offer a Foundation Course in skills. We constructed the Foundation Course in Professional Legal Skills to deal with all the areas of skills mentioned above and held it during the first two weeks of the Diploma.⁵² After an initial induction day, we moved through each of the skills in cycles on a highly cognitive *tell-show-do-review* model of syllabus design.⁵³ The first year, 1999 to 2000, each skill cycle began with a lecture and demonstration of the skill—the *tell-show* portion. A workshop followed where students practiced the skill in simulation or role play using prepared scenarios—the *do* portion. The feedback was very positive, but students consistently observed that they would have preferred to have had more of the *show* element of the cycle, particularly in areas where they had no experience at all, such as advocacy.

The following year, we authored a multimedia compact disc that students could use to access examples of practice that included comments by the expert practitioners who helped author the units.⁵⁴ The students praised the resources and were appreciative of the models of good and poor practice upon which to base their own study.⁵⁵ As a result of having these models available to play and re-play at will, the students improved faster and became more confident

52. See *supra* note 47 and accompanying text.

53. For a description of the tell-show-do model, see, e.g., P. Carson & R. Freeman, *Tell-Show-Do: Reducing Anticipatory Anxiety in Emergency Paediatric Dental Patients*, 36 INT'L J. HEALTH PROMOTION & EDUC. 87 (1998).

54. For a description, see Paul Maharg, *Legal Skills and Multimedia: Enhancing Student Learning*, Third Annual Conference of the Learning in Law Initiative (2001), available at <http://www.ukcle.ac.uk/lili/2001/maharg.html> (last visited Feb. 9, 2004).

55. GGSL also made the multimedia resources available online.

in their ability to practice the role play scenarios given to them at the *do* stage of the cycle.⁵⁶

This is an example of simple, applied cognitive theory that can work powerfully when educators use it to introduce a complex area of skills. The original concept of *tell-show-do-review* belongs to the domain of cognitive psychology, and dental and pediatric educators use it extensively.⁵⁷ Fields such as court management for tribal court judges have applied the technique in a legal context.⁵⁸

There are, however, two disadvantages to using this strategy. First, from the second cycle onwards, use of the same class format can become tedious. For this reason, among others, we created slightly different cycles for each skill. We designed the multimedia resources with a similar strategy in mind. Each unit ended with a task for the students to perform; and tasks varied according to (1) the type of skill, (2) the length of the workshop, and (3) the type of feedback the tutors would give. The use of multimedia allowed us to create explicit “scripts” or action plans for the students that could facilitate the students’ own practice and the interaction between tutors and students in the workshops.⁵⁹ This was particularly noticeable in the students’ use of the advocacy unit. They studied the script closely for its rhetorical structure (evident in the video clips that were accompanied by on-screen text) and its courtroom register; and they tried to base their first workshop motions upon this model. Many tutors noted that the students tended to base the motions presented in the second workshop less on the multimedia model as they began to develop their own skills. This is exactly what the Dreyfus model of skills development predicts, and we were happy that at this early

56. Informal feedback from students to tutors during and after the Foundation Course provided this information, and course questionnaires each year confirmed these trends.

57. See Carson & Freeman, *supra* note 50, at 87-102; see also Greg Brigman & Bogusia Molina, *Developing Social Interest and Enhancing School Success Skills: A Service Learning Approach*, 55 J. INDIVIDUAL PSYCHOL. 342, 346 (1999).

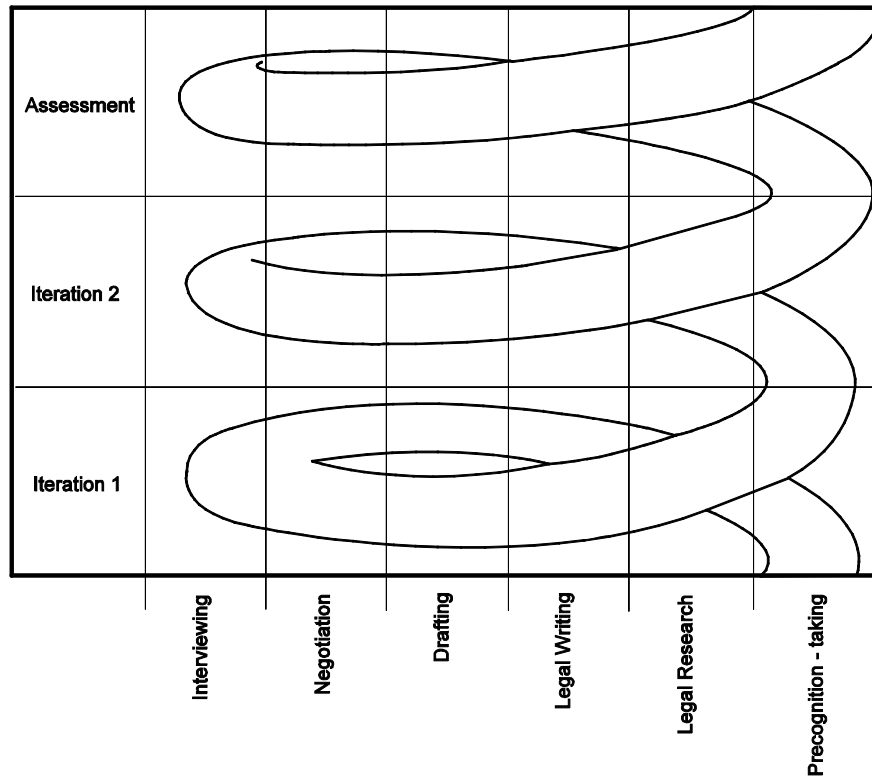
58. *Court Management for Tribal Court Judges*, National Judicial College, http://www.judges.org/courses/course_dates/2003/Course.2003-05-05.1221 (last visited Feb. 9, 2004).

59. The word “scripts” is used in its cognitive sense here. See ROGER C. SCHANK & ROBERT P. ABELSON, *SCRIPTS, PLANS, GOALS AND UNDERSTANDING: AN INQUIRY INTO HUMAN KNOWLEDGE STRUCTURES* 37-42 (1977).

stage students were confidently beginning to achieve beyond the novice level.⁶⁰

Second, the Foundation Course cycle is flat—the same cycle repeats over a number of skills areas. Further development of the cycle later in the course was needed, and for this reason, we developed our version of a helix or spiral curriculum model of skills development throughout the Diploma (Figure 1).⁶¹

Figure 1: Spiral Skills Curriculum



60. For the Dreyfus model of skills development, see generally HUBERT L. DREYFUS & STUART E. DREYFUS, *MIND OVER MACHINE: THE POWER OF HUMAN INTUITION AND EXPERTISE IN THE ERA OF THE COMPUTER* 15-31 (1986).

61. See generally JEROME S. BRUNER, *ON KNOWING: ESSAYS FOR THE LEFT HAND* (Athenaeum, 1976); JEROME BRUNER, *THE CULTURE OF EDUCATION* (1996). The spiral curriculum is close in concept to Reigeluth's "elaboration theory." See Robert E. English & Charles M. Reigeluth, *Formative Research on Sequencing Instruction with the Elaboration Theory*, 44 *EDUC. TECH. RES. & DEV.*, 23, 24-5 (1996); Suzanne Hoffman, *Elaboration Theory and Hypermedia: Is There a Link?*, 37 *EDUC. TECH.* 57, 57-60 (1997).

The spiral metaphor is a useful way of envisaging the curriculum because it allows for any number of passes through the material at more sophisticated levels of understanding. This is crucial for the development of skills. A practical example of this is the development of interviewing skills on the GGSL Diploma. After the initial lecture, the multimedia unit and two workshops related to this skill in the Foundation Course, students practice on new scenarios throughout the Diploma. A tutor provides feedback on their videotaped performances. At the end of the second semester, students go through the same cycle of *tell-show-do* and the same skills set at a higher level of sophistication. The second interview in this second spiral is actually a follow-up interview with the same client instead of another initial interview. At the end of the week, students are assessed in a videotaped simulated-client scenario and are marked according to assessment criteria that they have been working on since the Foundation Course.

The spiral curriculum is also amenable to integrative teaching and assessment. It is flexible enough to accommodate other forms of teaching, learning, and assessment. For example, problem-based learning medical programs use the “triple-jump” assessment.⁶² There, a student receives a patient’s case history and presents an analysis of it in stage one.⁶³ Stage two consists of diagnosing a patient (ideally, a “standardized patient”) who has a complaint.⁶⁴ The student demonstrates analytical, clinical, patient care, and management skills. Stage three consists of prognosis—the likely projectory of the complaint given the patient’s case-history and the supporting evidence.⁶⁵ Transferring this model to the legal domain, we could storyboard a business client coming to the firm with a problem. Stage

62. Also known as the “objective structured clinical examination.” See JO-ANN RETEGUIZ & BEVERLY CORNEL-AVENDANO, *MASTERING THE OBJECTIVE STRUCTURED CLINICAL EXAMINATION AND CLINICAL SKILLS ASSESSMENT 3* (2001).

63. *See id.* at 10.

64. *See id.*

65. *See id.* at 11.

one would involve an interview, for which students would carry out preparatory reading and research based on the client's case file. Stage two, post-interview, would involve problem-solving analysis and legal research. Stage three may involve negotiation, advocacy, or both, and any stage could integrate writing or drafting. Educators could use the case study for teaching purposes only or for teaching purposes and assessment.

The spiral curriculum is a significant departure from many current professional legal curricula, based on academic structures, towards that of problem-based learning ("PBL"). In this respect, it is quite different from an undergraduate education curriculum. It is dangerous to generalize about matters as complex as curriculum design, but in many respects, the undergraduate legal curriculum is literally what the word 'curriculum' means—a running race. In its early years, for example, the LLB traditionally teaches each subject in a series of what are effectively watertight containers, and there tends to be little cross-curricular integration between subjects or cross-curricular skills assessment such as those that distinguish a PBL curriculum.⁶⁶ Having said that, the undergraduate system in Scotland has its own form of cumulative complexity. Undergraduate teaching generally builds upon the basic work of the early years of the LLB degree and leads students to a more sophisticated academic understanding in Honours courses. Law schools pace the degree so that it climaxes with the relative sophistication of Honours intellectual content. It is a complex curriculum design that is generally more open, individualized, and flexible than earlier years. The law's boundaries, to quote Boaventura de Sousa Santos, become more "porous" for students because of the more open curriculum at the Honours stage.⁶⁷

The LSS did not design the one-year Diploma as a PBL curriculum, of course; and the Diploma is currently being reviewed. Nevertheless, if it ultimately consists of a series of

66. See Paul Maharg, *The Scottish Teaching, Learning and Assessment Survey*, DIRECTIONS IN LEGAL EDUCATION (UK Centre for Legal Education, Coventry, UK), Spring 2001, available at <http://www.ukcle.ac.uk/directions/issue2/survey.html>.

67. See generally BOAVENTURA DE SOUSA SANTOS, TOWARD A NEW COMMON SENSE: LAW, SCIENCE AND POLITICS IN THE PARADIGMATIC TRANSITION (1995).

watertight modules, the Diploma will become yet another academic program—a return to the position of the first years in the undergraduate degree. Its curriculum design requires equally, if not more, complex, consideration as that given to the undergraduate curriculum as well as a significantly different design. The Diploma ought to build upon the sophisticated academic understandings that students achieve in the Honours curriculum by presenting a variegated, multi-layered, and complex description and analysis of the reality of legal practice students will encounter in their traineeship. Because the Diploma is a preparation for practice, students need the opportunity to practice skills and knowledge in safe settings and to move beyond the novice stage of legal practice. An integrated spiral curriculum can help to provide the structure to meet these needs. The next three sections of this Article describe how the structure of the Diploma can enable students to make the change from acting as students to acting as lawyers.

B. Skills-Based Curriculum Planning

The skill of negotiation illustrates how a one-year program can implement a spiral curriculum. In the Foundation Course, legal negotiation was the focus of an initial lecture. The multimedia unit; three workshops; and face-to-face, large-group feedback sessions followed the lecture over the course of two days. The scenarios for the workshops were progressively more difficult to negotiate. However we felt that students also needed to practice negotiation skills in an environment closer to that of actual legal practice. We achieved this by building simulations in the medium of ICT.

For some years now, we have been building a virtual community on the Web—a fictional town called Ardcalloch on the south bank of the river Clyde, which contains Web sites for businesses, institutions, people, and, of course, law firms.⁶⁸ Fictional firms, each consisting of four students, have a password-protected Web site that functions as

68. See Paul Maharg, *Negotiating the Web: Legal Skills Learning in a Virtual Community*, 15 INT'L REV. L. COMPUTERS & TECH. 345, 351-53 (2001).

their law offices.⁶⁹ The site has an intranet and collaborative tools—a firm diary, a task list, discussion forums, case files, a text editor, and much more.⁷⁰ From their intranets, students act as trainees and communicate with others in Ardcalloch while working on transactions.⁷¹

There are currently three main projects embedded in the virtual community, one of which is a personal injury negotiation project.⁷² In this project, the firms represent either the injured claimant or the insurer. Firms must (1) investigate the claim; (2) carry out legal research on issues such as liability, contributory negligence, and quantum; (3) form a negotiation strategy; and (4) perform this strategy during the project's nine-week span.⁷³ This simulation requires negotiation skills that are significantly more sophisticated than those required in the tightly bounded workshop activities.⁷⁴ These projects take place over the span of the Diploma, which ends with The Skills Week, a return to the skills focus of the Foundation Course at a more advanced level. Here, a two-day workshop on mediation as an alternative to litigation takes negotiation skills in a different direction.⁷⁵

Skills development curriculum planning, of course, cannot take place in a vacuum. Many contextual factors affect the implementation's success, such as the appropriateness of the area of law, the prior experience of the tutors, and the context of skills workshops within a subject syllabus. An example of this is the first attempt to embed interviewing skills into the Criminal Advocacy and Pleadings course. We tried to do this for two years by altering our pre-existing tutorial structures to accommodate the new skill

69. *See id.* at 350-51.

70. *See id.*

71. *See id.* at 352; Paul Maharg & Abdul Paliwala, *Negotiating the Learning Process with Electronic Resources*, in *EFFECTIVE LEARNING AND TEACHING IN LAW* 81, 91-96 (Roger Burridge et al. eds., 2002); Paul Maharg & Antoinette J. Muntjewerff, *Through a Screen, Darkly: Electronic Legal Education in Europe*, 36 *LAW TCHR: LEGAL EDUC. EUR.* 307, 320-21 (2002).

72. *See Maharg & Paliwala, supra* note 68, at 91-96.

73. *Id.*

74. *Id.*

75. We are currently creating multimedia units for this workshop.

workshops. Our practitioner-tutors, trained in advocacy tutoring, were required to adjust to the skill of teaching interviewing.

The results were not a success. Student feedback showed the levels of tutoring quality were highly variable, and tutors viewed the embedding of the interviewing tutorial as an intrusion into their pre-existing tutorial structure that had focused largely on criminal pleadings. In addition, we did not link the interviewing workshops to the remainder of the Criminal Advocacy and Pleadings syllabus, and therefore, the remainder of the syllabus did not support the workshops. It became clear to us that if the skill of interviewing were to be successfully embedded in this syllabus, we required more tutor training, more subject-specific resources, and more transfer between points in the curriculum where interviewing was taught and learned. In the end, we abandoned this attempt at integration, having learned much in the process about the requirements for success in this type of implementation.

It is axiomatic that curriculum planning for professional skills learning needs to be student-centered. However, it became clear to us after the first year of the course that we needed information on how students actually spent their time within the program's timetable, and that we needed information on which activities they found difficult. In 2001, we employed a student to undertake research with other students and, on the basis of their experiences, to construct a simple time tabling-tool in Excel ("Timetabler") that would produce a graphical representation of time spent by students on all aspects of the course. This included all course-related activities carried out by students—face-to-face teaching, preparation for tutorials, lecture-notes review, exam review, projects, and coursework.

The results were quite remarkable. Overall, the course consumed many more hours for students than we had predicted. In addition, some activities that we thought would take students little time to complete were time consuming and problematic. They were either more difficult than we anticipated, or we had not properly structured the information or teaching around the activities. In fact, it became clear that our course timetable was actually structured around our needs and not those of the students. Moreover, the Timetabler,

although originally designed as a timetable-planning tool, provided better information about student performance and preference than even extensive questionnaire feedback. Finally, the information verified a key issue in the literature on curriculum planning: a significant shift in the forms of teaching, learning, and assessment requires not only a redesign of teaching events (“constructive alignment”)⁷⁶ but also considerable redesign of the student timetable.⁷⁶ This result fits with other research investigating the effect of collaborative use of “authentic task” materials.⁷⁷ In an experiment on use of these types of materials, for example, Yvonne J. Vermetten found that students’ performance improved only where the authentic approach was a prominent element of the curriculum.⁷⁸

As a result of using the Timetabler, our curriculum planning, which had previously focused largely on avoiding class and assessment clashes, became more truly student-centered. We consolidated classes to ensure that the timetable was more streamlined for students, and we created blocks of time for self-study, collaborative group activity, or part-time work. In subsequent years, we were able to plan classes and course-related time more accurately. However, as the course evolved over the next few years, the Timetabler became progressively less useful; it became clear that the Timetabler would need regular updates to be useful for a fast-changing course.

C. *Transactional Learning*

Our use of generic skills taxonomies and practical tools such as the Timetabler had illuminated the need to define the basis of our developing practice. What did we want our students to be able to do

76. See JOHN BIGGS, *TEACHING FOR QUALITY LEARNING AT UNIVERSITY: WHAT THE STUDENT DOES* 25-30 (1999). See generally ARTHUR W. CHICKERING, *EDUCATION AND IDENTITY* 196-219 (1969); MICHAEL PROSSER & KEITH TRIGWELL, *UNDERSTANDING LEARNING AND TEACHING: THE EXPERIENCE IN HIGHER EDUCATION* 10-11 (1999).

77. See Yvonne J. Vermetten et al., *Powerful Learning Environments? How University Students Differ in Their Response to Instructional Measures*, 12 *LEARNING & INSTRUCTION* 263, 273 (2002); Jan D. Vermunt & Nico Verloop, *Congruence and Friction Between Learning and Teaching*, 9 *LEARNING & INSTRUCTION* 257, 257-58 (1999).

78. See Vermetten et al., *supra* note 74.

at the end of the course? Quite apart from the integration of knowledge and skill, we wanted them to be able to perform a specific number of transactions to demonstrate knowledge and skill. In a series of internal working papers, we developed “transactional learning” guidelines that acted as a template for the direction of the course. We focused on five points, summarized below:

[1.] *Transactional learning is active learning.* Transactional learning should be active learning, not passive. In that sense, we want students to be involved in activities within legal actions, rather than standing back from the actions and merely learning about them. There is, of course, a place for learning about legal actions. Indeed, transactional learning is rarely possible unless students first have a conceptual understanding of what the process actually entails. However, transactional learning goes beyond learning *about* legal actions to learning *from* legal actions. We would claim that there are some forms of learning that can only take place if students go through the process of active learning[;] the learning of procedural or adjectival law provides many examples of this. . . .

[2.] *Transactional learning is based on doing legal transactions.* As befits the type of learning that students do in a professional legal course, we aim to give them experience of legal transactions. In addition to learning about how property might be conveyed, students also take part in the transaction. They thus learn considerably about the practical realities of legal actions, all the more so because our teaching supports, and all their learning is focused on, the transaction

[3.] *Transactional learning involves reflection on learning.* Transactional learning involves thinking about transactions—indeed, (to go back to the root of the word), thinking *across* transactions. It includes the ability to rise above detail[] and ‘helicopter’ above a transaction[] or the development of the ability to disengage themselves from potentially damaging views

of the group process within the firm[] and re-construct the view. This includes documenting firm transactions[] in the same way that the word is used, [for example,] in *Transactions of the Royal Society*. . . . But it is done using documents that are focused, private to the firm and its Practice Management tutor/consultant. Reflection, even in a group, is an intensely private event, and the products require careful handling if the process is not to be fatally inhibited.

[4.] *Transactional learning is based on collaborative learning.* Transaction as collaboration, indicating the root of the word: literally, ‘acting across[.]’ Students are valuable resources for each other, particularly if they have opportunities to engage in both [“]cumulative talk[”] ([“]the accumulation and integration of ideas[”]) and [“]exploratory talk[”] (constructive sharing of ideas around a task . . .).[⁷⁹] In the GGSL, . . . [c]ollaborative learning [balances] individual or cellular learning. There is of course a place for individual learning, silent study, literature review[,] and so on[,] however, and we [emphasize] this as a preparation for collaborative work. But students can help each other enormously to understand legal concepts and procedures by discussing issues, reviewing actions in a group, giving peer feedback on work undertaken in a group, and so on. And perhaps what is even more important is that they begin to trust each other to carry out work that is important (there is assessment value to the projects, and many students have clauses in their traineeship contracts that insist they pass their assessments at first diet). In other words, students begin to learn how to leverage knowledge amongst themselves[] and to trust each other’s developing professionalism. Often, we have found, if there are firms that are not producing good work or keeping to deadlines, it is because they do not know how to work together effectively[,] and this often arises from a lack of trust.

79. See Carla van Boxtel et al., *Collaborative Learning Tasks and the Elaboration of Conceptual Knowledge*, 10 LEARNING & INSTRUCTION 311, 313 (2000).

[5.] *Transactional learning requires holistic or process learning.* In seminars and lectures and in their reading of texts, students engage with ideas[] and form understandings of legal concepts. They link up emerging understandings with their prior knowledge[] and with their anticipation of future knowledge, and the more they become familiar with the discipline[] in general the easier and more efficient this learning process becomes.

While the process of chunking and linking chunks is often sufficient for undergraduate study of law, in the early years at least, it is not sufficient for professional students. In their traineeships, the students will be asked to undertake tasks that demand a more holistic understanding of legal process and legal procedure. In this sense, students need to arrive in their traineeship not only with a sufficient knowledge of the parts of a transaction—which letter is sent to whom, what it should contain, for instance—but also a holistic knowledge of the whole transaction. When they are given a file-in-progress in the office, for instance, they need to be able to move from part to whole, and vice versa, in order to identify what has been done and what needs [to be] done. This process is difficult for trainees precisely because they are unsure of the whole transaction. It therefore makes sense to give them as much practice in carrying out whole-to-part and part-to-whole thinking.⁸⁰ This thinking is the basis of practical legal reasoning and a form of Aristotelian *phronesis*.⁸¹

III. FUTURE DIRECTIONS AND ISSUES

The LSS review of the professional educational program is ongoing, but distinctive features are already mapped out in its lineaments that will play important roles in future reviews. Some of these might be helpful for an exploration of the alternatives to the

80. See Paul Maharg, *Transactional Learning: Draft Internal Working Paper No. 17* (Jun. 20, 2004) (unpublished manuscript, on file with the Learning Technologies Development Unit, Glasgow Graduate School of Law).

81. ARISTOTLE, *NICOMACHEAN ETHICS*, BOOK VI, chs. 7 & 12, (Sarah Broadie & Christopher Rowe trans., Oxford Univ. Press 2002).

U.S. Bar Exam. For the purposes of this Article and particularly in the context of the New York and Arizona proposals, I will summarize those elements that may be relevant to pre-existing alternatives to the U.S. Bar Examination or to future proposals.⁸²

A. *Competence-Based Learning*

The LSS has set out a competence framework for the two new elements of the training program, the PCC and APC. The set of competences is the result of research work undertaken by the PCC and TPC committees of the LSS and by myself in a PCC research report.⁸³

“Competence” can refer to a variety of different approaches to professional education. Generally speaking, there are two approaches—one narrowly focused on workplace performance and the other a broad-based definition of the term. The International Labour Organisation, which uses the narrower approach, defines a competence as focusing upon (1) the “labor achievements a worker is capable of,” (2) the “performance criteria” (definitions of quality), (3) the field of application, and (4) the required knowledge.⁸⁴ In the United Kingdom, one can find this definition in the work of the National Council for Vocational Qualifications (“NCVQ”).⁸⁵ Typically, each National Vocational Qualification is a “statement of

82. For a description of the New York project, see Kristin Booth Glen, *When and Where We Enter: Rethinking Admission to the Legal Profession*, 102 COLUM. L. REV. 1696 (2002), and Kristin Booth Glen, *Thinking Out of the Bar Exam Box: A Challenge and Proposal for Change* (forthcoming). For more information on Arizona’s Community Legal Access Bar Alternative, see Sally Simpson & Toni Massaro, *Students with CLAS: An Alternative to Traditional Bar Examinations*, 20 GA. ST. U. L. REV. 813 (2004), and The Community Legal Access BarAlt Proposal, at www.law.arizona.edu/depts/claba/ (last visited Apr. 18, 2004).

83. For competence elements, see *Test of Professional Competence*, supra note 29. See also Paul Maharg, Report: The Professional Competence Course (2001) (unpublished manuscript, on file with Author).

84. *Labour Competence, International Labour Organization*, <http://www.cinterfor.org.uy/public/english/region/ampro/cinterfor/temas/complab/xxxx/index.htm> (last visited Mar. 29, 2004) (providing other useful definitions and information about competence approaches).

85. The National Council for Vocational Qualifications merged with the School Curriculum and Assessment Authority to form the Qualifications and Curriculum Authority. See *About Us, Qualifications and Curriculum Authority*, <http://www.qca.org.uk/about/index.html> (last visited Feb. 9, 2004).

competence,” and it comprises a group of “units of competences” that are further defined in terms of “performance criteria.”⁸⁶ Once defined, these criteria become the terrain from which one can create a map of competences, or a “functional map.” This map guides all teaching, learning, and assessment.

Aside from the epistemological and theoretical problems of this approach, the cost and complexity of this system is considerable. There are two other reasons, though, why a strict competence-based system may not be appropriate for professional legal training. First, if some of the aims of a professional education process are to foster continuous professional development, problem-based learning, and professional responsibility, then setting and monitoring highly detailed outcomes for trainees may possibly inhibit them. Second, with its division and subdivision of trainee experience into levels of competence, the competence-based approach tends to atomize, rather than integrate, bodies of knowledge and skills.⁸⁷ For these reasons, the LSS does not have a strict competence-based regime.

In its place, the LSS retains a much narrower focus through its hybrid system, which it bases as closely as possible on what lawyers actually do in practice. The Diploma has tutor-practitioners teach the course (they have, after all, a profound if often unstated “functional map” of competence that they bring to the classes). Within the traineeship the logs and quarterly review sheets that trainees use to record their work-based learning are based on actual legal transactions.⁸⁸ This approach sits squarely with those educationalists

86. See *The Story of NVQs*, Qualifications and Curriculum Authority, http://www.qca.org.uk/qualifications/types/610_1807.html (last visited Feb. 9, 2004).

87. For a trenchant critique of the system, particularly as it applies to higher education and the professions, see T. Hyland, *Teaching, Learning and NVQs: Challenging Behaviorism and Competence in Adult Education Theory and Practice*, in REFLECTING ON CHANGING PRACTICES, CONTEXTS AND IDENTITIES: PAPERS FROM THE 24TH ANNUAL CONFERENCE OF SCUTREA (P. Armstrong et al. eds., 1994). See also T. HYLAND, *COMPETENCE, EDUCATION AND NVQs: DISSIDENTING PERSPECTIVES* (1994). For a more measured response, see R. BARNETT, *THE LIMITS OF COMPETENCE: KNOWLEDGE, HIGHER EDUCATION AND SOCIETY* (1994).

88. In addition, we require longitudinal research on current trainees and newly-qualified solicitors to determine the nature and function of their work. For a study taking newly-qualified solicitors as its subject, see Andrew Boon et al., *Career Paths and Choices in a Highly Differentiated Profession: The Position of Newly Qualified Solicitors*, 64 MOD. L. REV. 563, 565 (2001).

who advocate a general approach to competence in the professions.⁸⁹ In doing so, the LSS provides indicators regarding appropriate directions in a hybrid approach to competence-based education.⁹⁰

B. *Experiential Learning*

Professional training can successfully use discrete elements of problem-based learning, but awareness of the over-arching imperative of experiential learning is crucial. Hubert and Stuart Dreyfus characterized professional learning as the ability to make decisions and to perceive patterns within routinized tasks.⁹¹ This accounts for the disparate ways that professionals solve problems.⁹² Drawing analogies from psychological literature on the practices of novices and experts, they argued that there are times when professional work consists of recognizable routine and requires little expert attention.⁹³ However, if events occur that do not fit the normal gestalt, the result is extraordinary attention on the part of the practitioner.⁹⁴ The ability to discern situations that requires an ordinary response from those that require an extraordinary response is the hallmark of an expert: “An expert generally knows what to do

89. See, for example, Eraut's perceptive comment that educators “should treat the compendia of standards resulting from functional analysis as foundations for course design rather than substitutes for it.” MICHAEL ERAUT, DEVELOPING PROFESSIONAL KNOWLEDGE AND COMPETENCE 213 (1994). For examples of descriptions of occupational or functional analysis, see generally GILBERT JESSUP, OUTCOMES: NVQS AND THE EMERGING MODEL OF EDUCATION AND TRAINING 27-28 (1991), and Chris Boys, *National Vocational Qualifications: The Outcomes-plus Model of Assessment*, in ASSESSING COMPETENCE IN HIGHER EDUCATION 25 (Anne Edwards & Peter Knight eds., 1995). See also P. A. Jones, *Theory and Practice in Professional Legal Education*, 7 INT'L J. LEGAL PROF. 239, 241-45 (2000); Avrom Sherr, *Professional Work, Professional Careers and Legal Education: Educating the Lawyer for 2010*, 7 INT'L J. LEGAL PROF. 325, 325-42 (2000). For a similar example of “hybridisation” in the field of medical education in the United Kingdom, see *The New Doctor: Recommendations on General Clinical Training*, General Medical Council Education Committee, http://www.gmc-uk.org/med_ed/newdoc.htm (last visited Feb. 9, 2004) (discussing specifically in sections on *Practical Skills Frequently Required by House Officers* and *General Clinical Training in General Practice*).

90. See, e.g., *Test of Professional Competence*, *supra* note 29. For a similar hybrid approach in the competence-based learning literature, see Jorgen Sandberg, *Understanding Human Competence at Work: An Interpretative Approach*, 43 ACAD. MGMT. J. 9, 9-12 (2000); Jorgen Sandberg, *Understanding the Basis for Competence Development*, in INTERNATIONAL PERSPECTIVES ON COMPETENCE IN THE WORKPLACE 9-24 (Christine Velde ed., 2001).

91. See DREYFUS & DREYFUS, *supra* note 57, at 27-37.

92. See *id.*

93. See *id.*

94. See *id.*

based on mature and practiced understanding. . . . [T]he expert business manager, surgeon, nurse, lawyer, or teacher is totally engaged in [skillful] performance. *When things are proceeding normally, experts don't solve problems and don't make decisions; they do what normally works.*"⁹⁵ Other educationalists such as David Kolb and Donald Schön, along with legal educationalists such as Julian Webb, focused on different aspects of experiential learning. Their work on reflective education in particular is influencing the Scottish approach to professional legal learning.⁹⁶

C. Participatory or Collaborative Learning

Collaborative learning is a powerful form of learning precisely because it leverages knowledge by creating relationships between students. As is the case in professional situations, knowledge and personal relationships thus become part of the learning landscape for students. I have described above some of the forms of collaborative learning that take place in the GGSL. These can extend into the traineeship as well. At present, around half of the total number of training firms in Scotland employ only one trainee. It is our belief that trainees have a great deal to learn from one another's experience. One of the great advantages of the PCC is that it allows trainees (1) to open dialogue with trainees from other firms, (2) to share experiences, and (3) to listen to different approaches to professional matters. Many trainees acknowledge this in the feedback as one of the most useful aspects of the PCC because it comes at a time when their evolving identities as novice professionals are under pressure in

95. *See id.* at 30-31; *see also* STUART DREYFUS, INTERNATIONAL INSTITUTE FOR APPLIED SYSTEMS ANALYSIS, FORMAL MODELS VS HUMAN SITUATIONAL UNDERSTANDING (1981). For an analysis of different stages of expertise, see Hubert L. Dreyfus & Stuart E. Dreyfus, *From Socrates to Expert Systems: The Limits of Calculative Rationality*, in 90 PHILOSOPHY AND TECHNOLOGY II: INFORMATION TECHNOLOGY AND COMPUTERS IN THEORY AND PRACTICE 111, 119 (Carl Mitcham & Alois Huning eds., 1986), available at http://socrates.berkeley.edu/~hdreyfus/html/paper_socrates.html (last visited Feb. 9, 2004) (title altered in electronic copy).

96. *See generally* DAVID A. KOLB, EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT (1984). Following the much earlier work of John Dewey, Kolb's models of experiential learning describe the way that professionals develop knowledge through iterative processes and loops. *See id.* at 4-8. *See also* DONALD A. SCHÖN, THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION (1983).

the real world of practice. Assessment of professional competence should allow these “clearings” to take place as part of professional learning.

D. Simulation Learning

Much of the literature on professional learning emphasizes the importance of simulation methods, particularly concerning skill and culture learning.⁹⁷ The simulations often become events where students and trainees can perform and receive an accurate, specific assessment of their skills and their ability to synthesize large bodies of complex knowledge. Michael Eraut articulately commented that:

The process of becoming a professional involves learning to handle cases quickly and efficiently, and this may be accomplished by reducing the range of possible ways of thinking about them to manageable proportions. This leads to intuitive reliance on certain communal practitioners’ concepts, while apparently more valid theoretical ideas get consigned to “storage” and never get retrieved.⁹⁸

Eraut thus identified a key issue in the way in which students become practitioners. Any assessment of developing professional competence should take Eraut’s idea of “intuitive reliance” into account in its criteria for assessment.⁹⁹ Students and trainees are not practitioners, but using complex simulation activities, educators can begin to build intuitive reliance effectively and to coach students and trainees in the development of intuitive reliance at any stage in the professional educational program. Moreover, *assessment* of the process of developing practical knowledge—*phronesis*—that Eraut refers to here could well be carried out by using standardized client

97. See generally, *TEACHING LAWYERS’ SKILLS* (Julian Webb & Caroline Maughan eds., 1996); Peter Kilpin, *Skills Teaching on the Legal Practice Course*, in *TEACHING LAWYERS’ SKILLS* 241 (Julian Webb & Caroline Maughan eds., 1996).

98. See ERAUT, *supra* note 86, at 43 (citing M. Buchmann, *Practitioners’ Concepts: An Inquiry Into the Wisdom of Practice: Occasional Paper 29*, MICH. ST. U.: INST. FOR RES. ON TEACHING (1980)).

99. *Id.*

assessments along the lines that Larry Grosberg described in this Issue.¹⁰⁰

E. Portfolio Learning and Assessment

Portfolio learning and assessment can, as Webb points out, “provide evidence of a wider range of personal and intellectual abilities and skills than most conventional forms of assessment.”¹⁰¹ It is especially useful in professional legal learning because it can provide a focus for the personal learning and transitions in identity and knowledge that students and trainees experience at this time. Professions generally are using portfolios to encourage students to become reflective practitioners.¹⁰² A number are experimenting with electronic versions.¹⁰³

In the professional legal education program in Scotland, the LSS has introduced a form of log by which instructors assess trainees according to workplace tasks that they undertake. At present, it is one element of the APC, and it might be a move towards a portfolio-based assessment of professional competence. The GGSL is beginning to create similar learning opportunities and assessments based upon portfolios. At present, part of the assessment of the Practice Management subject involves students in filling out confidential logs on their performance in the virtual firms. Students send the logs to their Practice Management tutors, who are also supervisors for the firms, and a tutor may discuss the contents of the log with a student individually, if problems arise within a firm.

100. Lawrence M. Grosberg, *Standardized Clients: A Possible Improvement for the Bar Exam*, 20 GA. ST. U. L. REV. 841 (2004).

101. Julian Webb, *Portfolio-based Learning and Assessment in Law*, The UK Centre for Legal Education, <http://www.ukcle.ac.uk/resources/portfolios.html> (last visited Mar. 29, 2004).

102. See, e.g., PAMELA J. T. WINSOR, A GUIDE TO THE DEVELOPMENT OF PROFESSIONAL PORTFOLIOS IN THE FACULTY OF EDUCATION (1998), <http://www.edu.uleth.ca/fe/ppd/contents.html> (education); *Professional Portfolios*, New Zealand Nurses Organisation, http://www.nzno.org.nz/SITE_default/SITE_Members/Portfolios_Order/Default.asp (last visited Mar. 29, 2004) (nursing); *Staying Abreast of Professional Developments: The A&E Profession in Transition*, American Society for Engineering Education, <http://www.asee.org/conferences/search/00526.pdf> (engineering).

103. See, e.g., Helen Barrett, *Electronic Portfolio Development Process Overview*, Apple Learning Interchange, http://www.ali.apple.com/ali_sites/ali/exhibits/1000156/The_Process.html (last visited Mar. 29, 2004).

Portfolios are not necessarily typed files. E-portfolios can accommodate video, sound, animation, text, graphics, diagrams, photography, and links to Web-based resources.¹⁰⁴ The GGSL, for example, is currently exploring how it can adapt digitized video files to form part of an online portfolio of work that a student can export to compact disc and use with other learning materials during traineeship.¹⁰⁵

Portfolio learning, then, is highly adaptable to professional learning, and some form of it could be useful for the range of assessments that might form part of an alternative to the Bar Exam in the United States. It would certainly provide a useful learning and assessment environment for assessments involving standardized clients.

F. Holistic Program Learning

The LSS recognizes that, from a student's point of view, the structure of professional training should be coherent; from the first day to the last; and that the elements of it should lock together to build knowledge, skill, and confidence. In that sense, the program should not only be internally coherent but should also dovetail into prior learning from the LLB and into future learning in continuing professional development programs.

CONCLUSION

If there is a common denominator to the above six points, it is the need for deep or 'meta'-curricular planning. Isolated initiatives in integration of skills, knowledge and ethics can be useful; but if they are to be effective, they need to be embedded within a coherent

104. See, e.g., *Using Your Personal Web Space Account to Plan, Reflect Upon, and Publish What You've Learned at Penn State*, The Pennsylvania State University, <http://portfolio.psu.edu/index.shtml> (last visited Mar. 29, 2004). For a collection of e-portfolio applications, see *Electronic Professional Portfolio for Teachers*, Webster University School of Education, <http://owl.webster.edu/eportfolio/resources.html> (last visited Mar. 29 2004).

105. See Paul Maharg, Internal Working Paper 14: Use of AV on the DLP and PCC, Aug. 4, .2003 (unpublished manuscript, on file with Author).

curricular plan at program level (for example, the spiral curriculum described above) and supported by a framework of curricular guidelines or regulations that permits flexibility while assuring quality. In many of its recent reforms, the LSS is attempting to build just such a framework. In light of the importance of this holism and of the many other important aspects of Scottish legal training set forth above, the Scottish experience may have something to contribute to the ongoing debate regarding the U.S. Bar Exam and alternatives to it.¹⁰⁶

106. Other calls for integration, holism, and the importance of research and theory include Andrew Boon, *History Is Past Politics: A Critique of the Legal Skills Movement in England and Wales*, 25 J.L. & SOC'Y 151 (1998); Stephen Nathanson, *The Real Problem with the Legal Practice Course*, 2002 NEW L.J. 785, 786; Austin Sarat & Thomas R. Kearns, *Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life*, in *LAW IN EVERYDAY LIFE* 21, 21-61 (Austin Sarat & Thomas R. Kearns eds., 1993).