American Bar Association  
Standing Committee on Specialization  

2006 National Roundtable  
on Lawyer Specialty Certification  
Thursday, March 23 - Saturday March 25, 2006  
Hyatt Regency Hotel, San Antonio, Texas

Professionalism and the Accredited Specialist

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Edinburgh, Scotland

Materials for Presentation on Friday, March 24

1. Background information  
   a. Robert Pirrie Biography  
   b. WS Society Web Site  
   c. Clark D. Cunningham Home Page  
   d. Burge Endowment for Law & Ethics: Professionalism Page  
   e. Cunningham Web Page on Specialty Certification

2. Adrian Evans & Clark D. Cunningham, Specialty Certification as an Incentive for Increased Professionalism: Lessons from Other Disciplines and Countries,  
   54 S. Carolina L. Rev. 987 (2003) (excerpts)  
   (Full text available at http://law.gsu.edu/ccunningham/Professionalism/Index.htm)

   (Full text available at http://law.gsu.edu/ccunningham/Cunningham-Publications.htm)

4. Jennifer Veitch, Signet Honour Does Still Have a Nice Ring to It, The Scotsman (7 February 2006)

5. The Signet Accreditation (powerpoint slides)
Robert Pirrie

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Robert Pirrie
Chief Executive, The WS Society

The WS Society is one of the oldest professional societies in the world. Today the Society is an independent, regulatory membership body whose members are Scottish solicitors. Associate membership is available to lawyers qualified in other jurisdictions.

Scotland has a separate and distinctive legal system. The existence of Scotland's law and legal system were specifically preserved under the 1707 Act of Union, the constitutional foundation of the United Kingdom. Since its inception in 1594, the WS Society has occupied a central place in Scotland's legal system.

Career History

An experienced corporate and commercial lawyer qualified in Scotland, UK.

2005
Chief Executive

2002 - 2005
Consultancy work, including tutoring and coaching in legal practice.

1997 - 2002
Partner, Dundas & Wilson (formerly part of Andersen Legal), Edinburgh, Glasgow and London. Head of Private and Equity; Head of Corporate and Commercial.

1985 - 1997
Partner, Maclay Murray & Spens, Edinburgh

1985
Admitted as Writer to the Signet

1984 - 1985
Solicitor, Maclay Murray & Spens, Glasgow

1981 - 1984
Solicitor, Moncrieff Warren Paterson, Glasgow

1981
Admitted as a Solicitor in Scotland

1980
Studied at Law School, University of British Columbia, Vancouver

1978 - 1980
Apprentice Solicitor, Mitchells Johnston Hill & Hoggan, Glasgow

1974 - 1978
LL.B (Hons - First Class), University of Glasgow

WS Society Web Site: http://www.wssociety.co.uk/
The WS Society is a national body whose membership consists of solicitors qualified in Scotland. The Society occupies a unique place in the Scottish legal system.

As one of the country's oldest institutions, The WS Society is part of Scotland’s College of Justice, established in 1532.

Members of the WS Society are automatically members of the College of Justice, whose Senators comprise Scotland's senior judiciary, and whose other members include members of the Faculty of Advocates - the Scottish bar, Clerks of Session and certain other persons.

Solicitors in Scotland were formally known as "writers". The WS Society comprised writers with special privileges in relation to certain types of documentation requiring the Signet - the royal seal of the Scottish kings.

Following the creation of the Law Society of Scotland by statute in 1949, all solicitors in Scotland require to be members of the Law Society of Scotland as the regulatory body. The WS Society is an independent, non-governmental, non-regulatory body of solicitors and membership is voluntary. There is no formal relationship between the WS Society and the Law Society of Scotland, although many members of the WS Society are active participants in the affairs and committees of the Law Society of Scotland.

Other associations of solicitors include the Society of Solicitors to the Supreme Courts (Edinburgh), the Royal Faculty of Procurators in Glasgow and the Society of Advocates in Aberdeen. There are also local faculties of solicitors around
Scotland.

The WS Society's historic place in Scotland's legal system is shown on the attached illustration.
On June 1, 2002 Professor Cunningham became the first incumbent of the W. Lee Burge Chair in Law & Ethics. He is a member of the Chief Justice of Georgia's Commission on Professionalism and the Fulton County Criminal Justice Blue Ribbon Commission. He is the director of the National Institute for Teaching Ethics & Professionalism (NIFTEP) and chairs the Selection Committee for the National Award for Innovation and Excellence in Teaching Professionalism, which is co-sponsored by the ABA Standing Committee on Professionalism and the Conference of Chief Justices. In 2004 he served as Co-Reporter to Georgia's Commission on Indigent Defense. From 1987-89 Professor Cunningham was a Clinical Assistant Professor of Law at the University of Michigan Law School. From 1989-1993 he was an Associate Professor at the Washington University School of Law in St. Louis; he was promoted to full Professor with tenure in 1993 and continued to teach at Washington University through May 2002.

Professor Cunningham is a widely cited expert on the lawyer-client relationship. He currently directs the Effective Lawyer-Client Communication Project, an international collaboration of law teachers, lawyers and social scientists. He also publishes on a variety of other topics with an emphasis on interdisciplinary and comparative scholarship. His article in the Iowa Law Review, applying semantics to analyze the ways the meaning of "search" has evolved in U.S. constitutional law, won the national Scholarly Papers Competition sponsored by the Association of American Law Schools. His Yale Law Journal article, "Plain Meaning and Hard Cases," co-authored with three linguists, has been cited by the U.S. Supreme Court in three different
cases. His article, "Passing Strict Scrutiny: Using Social Science to Design Affirmative Action Programs," *Georgetown Law Journal* (2002), was co-authored with two social scientists and was based on a friend of the court brief he filed in *Adarand Constructors v Mineta*, argued in the U.S. Supreme Court on October 31, 2001.

He is a leading American scholar on the legal system of India and has consulted around the world on reform in legal education. He has been a visiting scholar at the Indian Law Institute, Sichuan University (China), the University of Sydney (Australia), University of Palermo (Argentina), and the National Law School of India. He directed a three year Ford Foundation project to support the development of human rights clinics in Indian law schools and was one of two Americans to serve on the first steering committee of the Global Alliance for Justice Education. In 1997 he organized and chaired an international conference, Rethinking Equality in the Global Society, that brought together leading legal scholars, social scientists and policy makers from India, South Africa and the United States to examine affirmative action policies from a cross-national and interdisciplinary perspective.

He has been an active public interest lawyer, as a legal aid lawyer and civil rights litigator prior to his academic career, as a clinical professor at the University of Michigan, as director of the Washington University Urban Law Clinic (1989-94) and as director of the Washington University Criminal Justice Clinic (1995-98). He has litigated a number of federal class action law suits, argued before the Missouri Supreme Court and the U. S. Court of Appeals for the Sixth Circuit, and authored friend-of-the court briefs filed in the Michigan Supreme Court and the U.S. Supreme Court.
PROFESSIONALISM ISSUES AND ACTIVITIES

The National Institute for Teaching Ethics and Professionalism (NIFTEP)
A consortium of five nationally-recognized university centers on ethics and professionalism, sponsored by the American Bar Association Standing Committee on Professionalism and the Georgia Chief Justice's Commission on Professionalism. The Fall 2005 Teaching Workshop took place in Atlanta September 23 - 25, 2005. Clark D. Cunningham, the W. Lee Burge Professor of Law & Ethics at the Georgia State University College of Law, is the director of NIFTEP.

The National Award for Innovation and Excellence in Teaching Professionalism
(co-sponsored by the American Bar Association Standing Committee on Professionalism and the Conference of Chief Justices and supported by the Burge Endowment for Law & Ethics)
The 2006 awards will be given on March 3, 2006 by American Bar Association President Michael Greco in conjunction with a conference on "The New Public Interest in American Law: The Emerging Public-Private Partnership" to be held at the University of Miami School of Law. Applications are due by Tuesday, January 17, 2006. Applications must be submitted on-line through this web site. For more information, click here.

The Effective Lawyer-Client Communication Project

Clark D. Cunningham, How to Explain Confidentiality?, 9 Clinical Law Review 579 (Spring 2003) Click here to (1) read an on-line version with direct links for viewing videotaped simulations and other materials discussed in the article, (2) go directly to on-line viewing of the videotapes, or (3) download a pdf version of the article.

Adrian Evans & Clark D. Cunningham, Speciality Certification as an Incentive for Increased Professionalism: Lessons from Other Disciplines and Countries, 54 South Carolina Law Review 987 (Spring 2003) (contains pdf text of article and links to web site information on specialization).

The Heroes & Villains Professional Responsibility Course
-- Origin and Design of the Course (pdf excerpt from How to Explain Confidentiality?)
-- Use of Multimedia to teach Legal Ethics (2001 Video-Washington University)

Rethinking the Licensing of New Attorneys—An Exploration of Alternatives to the Bar
Exam, 2004 Georgia State University Law Review Symposium


Professionalism and the Certified Specialist (materials prepared for the 2004 ABA National Roundtable on Lawyer Specialty Certification)

- PowerPoint Presentation
- More information on specialty certification

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SPECIALITY CERTIFICATION AS AN INCENTIVE FOR INCREASED PROFESSIONALISM: LESSONS FROM OTHER DISCIPLINES AND COUNTRIES

Adrian Evans & Clark D. Cunningham
54 South Carolina Law Review 987 (Spring 2003)

Download PDF version of article.

Links to materials cited in the article:

AUSTRALIA

General Information:

State of New South Wales
--Home Page for Specialist Certification (Law Society of New South Wales)
--Criteria for Specific Specializations (download in Microsoft Word):
----Children's Law
----Criminal
----Family
----Personal Injury
----Trial Practice
----Wills & Estates

State of Victoria
--Home Page for Specialist Certification (Law Institute of Victoria)
--Specialist Accreditation Scheme
--Specialization-Summary
--Rules for Admission to Practice
LESSONS FROM THE MEDICAL PROFESSION

National Board of Medical Examiners (U.S.)
- [Home Page](#)
- [Article on Standardized Patient Exam](#)
- [Video Explaining Use of Standardized Patients](#)


*The Use of Standardized Patients in the Teaching of and Evaluation of Clinical Skills*, 6 *Teaching & Learning in Medicine* No. 1 (1994) ([Table of Contents to Special Issue](#))

ALTERNATIVES TO THE BAR EXAM (UNITED STATES)

New York Proposal
- [Summary of Proposal](#)
- [Download Full Report in PDF](#)

Arizona Proposal
- [Summary of Proposal](#)
- [Web Site of the Community Legal Access Society](#)

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See also:
- [Professionalism and the Certified Specialist](#) (materials prepared for the 2004 ABA National Roundtable on Lawyer Specialty Certification)
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I. INTRODUCTION

It is now a reasonably common practice in a number of
jurisdictions for lawyers with acknowledged experience in a particular
area of law to seek peer recognition of that expertise. In general terms,
applications for specialist accreditation are made by lawyers after
several years in practice and concentrated experience in the area of
proposed accreditation. Variously described as “specialized...
accreditation” or just “specialist recognition,” these programs seek to maximize lawyers’ self-esteem, referrals, and income while providing useful information to the community as to specialist ability.

This Essay suggests that specialist certification offers a model and perhaps a path for a new approach to professionalism in law that could come to resemble accepted approaches in medicine and other professions. Specialization certification in medicine, in which doctors become recognized as “board certified,” although voluntary, is now a standard part of professional development for over ninety percent of all doctors in the United States.¹

When we speak of professionalism, we are not referring to a kind of requiem for a lost civility among our peers—a lament for something past—but rather a vision of the achievable: the best of what lawyers can offer to clients and society, a path that leads to both an apex of altruism and a renewed self-esteem. Professionalism for us is a fusion of technical expertise with demonstrated excellence in client service, public service, and ethical practice. We suggest a harnessing of what has been proven to work elsewhere—public and peer recognition of expertise through specialist accreditation, with some additional measures of achievement in service to clients and the public as well as ethical integrity. In the interests of all stakeholders in access to justice, it is our view that the traditional assessment of competence must now be joined to the new assessment of professionalism.

In the United States, suggestions to improve lawyer professionalism face an apparent paradox. Rigorous training and assessment only take place in America up to the point of bar admission, in law school, and during the short period between graduation and licensure upon passage of the bar exam. After bar admission, further professional development is entirely voluntary (unless employer imposed) except for mandatory attendance at continuing legal education (CLE) programs, which typically require nothing more than mere presence in the audience. The paradox of using preadmission education to achieve professionalism is that professionalism is generally understood to refer to a combination of knowledge, skill, and values that exceeds the bare minimum necessary for bar admission.² On the other hand, professionalism also means more than mere accumulated experience. The current repertoire of

¹. See Judith Kilpatrick, Specialist Certification for Lawyers: What Is Going On?, 51 U. MIAMI L. REV. 273, 306 (1997) (stating that in 1978, ninety-one percent of doctors surveyed ten years after graduation “were either certified or on their way to becoming so”).

². Indeed, professionalism can be thought of as a process in which knowledge develops into wisdom, skill becomes art, and values rise to the level of virtue.
post-admission professionalism programs—passive listening to CLE lectures, discussion groups, and voluntary lawyer organizations that encourage and reward professional excellence—provide neither concrete incentives nor reliable measures for the maintenance, much less improvement, of professional knowledge, skill, or values for the post admission lawyer.

Progressive accreditation of specialist attorneys offers a way to continue some of the rigor of the preadmission process into the post admission life of lawyers. Such programs do not seek to challenge an individual’s right to basic admission or practice, but do encourage advancement to an institutionally recognized higher, specialized level of practice. After a specified period of practice, lawyers can enter a process of specialist accreditation anytime they wish and, if they do not qualify the first time, can try again when they are better qualified. No rights to basic practice are under threat in this proposal, though we are hopeful that over time and by the process of osmosis—just as has been the case in medical practice—increasing numbers of lawyers will seek of their own free will to become accredited specialists. The public and the legal profession would both gain from higher standards of professionalism as, over time, more attorneys seek this recognition and become prepared to meet its professionalism requirements.

Unfortunately, current specialization assessment in the jurisdictions we describe below tends to be dominated by the measurement of competence, the scrutiny of technique, and the celebration of the intellect, above all else. We suggest that it is time to widen these criteria and adopt, for each jurisdiction, locally representative measures of professionalism that add at least two further indicia of true professionalism: service to clients that goes beyond mere delivery of outcomes and high ethical standards put into practice.

In both the United States and Australia, specialty certification usually includes the following “bare minimum” assurances of professional performance in practice:

- a ‘NIL’ disciplinary record in respect of proven intentional code offenses
- satisfactory results in continuing legal education
- a positive rating by colleagues and peers as to whether the lawyer is in "good standing.”

We believe, though, that much more can be expected and accomplished. First, a brief comparison of specialty certification programs in the United States and Australia will be helpful.

II. SPECIALTY CERTIFICATION FOR LAWYERS IN THE UNITED STATES

In 1921, the prestigious Carnegie Foundation for the Advancement of Teaching published the results of an eight-year study of the legal profession in which one recommendation was that the profession recognize the reality of specialization by providing differentiated law school training. The recommendation did not find a welcome reception, and a series of American Bar Association (ABA) committees appointed to promote specialization between 1952 and 1967 fared no better. The ABA Model Code of Professional Responsibility, adopted in 1969, prohibited a lawyer from “holding himself out publicly as a specialist” unless certified by a state-authorized entity. In 1970, California became the first state to establish a certification program; over the next twenty years, less than one-third of the other states set up programs to permit specialist certification.

In 1989, the Supreme Court of Illinois, which had not approved a certification program, disciplined an attorney for mentioning on his letterhead that he had obtained a Certificate in Civil Trial Advocacy from a private organization, the National Board of Trial Advocacy (NBTA). The U.S. Supreme Court reversed that decision: “A State may not . . . completely ban statements that are not actually or inherently misleading, such as certification as a specialist by bona fide organizations such as NBTA.” The Court did indicate that a state can require a lawyer who advertises specialist certification to demonstrate

4. Kilpatrick, supra note 1, at 275. This section on the American approach to specialization draws heavily from Professor Kilpatrick’s comprehensive article, which is based on her doctoral dissertation in law at Columbia University. Id. at 273 n*. Professor Kilpatrick is also a member of the American Bar Association’s Standing Committee on Specialization.
5. Id. at 277-80.
8. See In re Peel, 534 N.E.2d 980, 986 (Ill. 1989).
that such certification meets "standards relevant to practice in a particular area of the law."\textsuperscript{10}

The Supreme Court’s 1990 decision in \textit{Peel} resulted in some expansion of state certification programs as well as promulgation by many states of permissive rules that allowed lawyers to advertise specialist certification if certified by "a recognized and bona fide professional entity."\textsuperscript{11} The ABA Rules of Professional Conduct (which have replaced the 1969 ABA Model Code of Professional Responsibility) are more restrictive, still prohibiting a specialization claim unless certified by an organization approved by the relevant state or by the ABA itself.\textsuperscript{12} As recently reported in one state bar journal, "Certification in [l]egal [s]pecialties [h]as [b]een [s]lower to [c]atch on than [e]xpected," noting that there are still very few private organizations that certify lawyers as specialists.\textsuperscript{13} The ABA has only accredited five organizations, including the NBTA.\textsuperscript{14}

\section*{III. Specialty Certification for Lawyers in Australia}

Australia has a nine jurisdiction federal system similar to the United States.\textsuperscript{15} There are six states, two self-governing territories, and one federal jurisdiction.\textsuperscript{16} The eight states and territories have their own separate legal education and bar admission systems and, under the auspices of the national Standing Committee of Attorneys General (SCAG) in conjunction with the Law Council of Australia, are steadily moving towards a nationally “uniform” approach to these issues and all aspects of legal regulation as well. With the exception of the systems for lawyers’ discipline, these issues are not regarded as contentious, and legislation to achieve uniformity in all jurisdictions is expected in the next two to three years.\textsuperscript{17}

Legal education is controlled by the university-based law schools. While the system is in some flux, a typical law degree leading to conditional admission is a three to five year undergraduate course with

\begin{itemize}
  \item \textsuperscript{10} Id. at 109.
  \item \textsuperscript{11} See, e.g., GA. RULES OF PROF’L CONDUCT R. 7.4 (2000) (stating that a "lawyer who is . . . certified by a recognized and bona fide professional entity, may communicate such specialty . . .").
  \item \textsuperscript{12} MODEL RULES OF PROF’L CONDUCT R. 7.4(c) (2002).
  \item \textsuperscript{13} Lisa L. Granite, \textit{In No Hurry to Specialize}, THE PENN. LAWYER, May-June 2001, at 24, 24.
  \item \textsuperscript{14} Id.
  \item \textsuperscript{15} CATRIONA COOK ET AL., LAYING DOWN THE LAW 43-44 (2001).
  \item \textsuperscript{16} Id.
  \item \textsuperscript{17} Chris Merritt, \textit{National Legal Market Closer}, THE AUSTRALIAN FIN. REV., July 26, 2002, at 13.
\end{itemize}
many entrants commencing at age seventeen to eighteen.\textsuperscript{19} In the more traditional universities, law is often taken with other basic degrees in arts, science, commerce, and, more recently, engineering and information technology.\textsuperscript{19} There are eleven prescribed areas of study in the basic Bachelor of Laws (“LLB”), including “Professional Conduct.”\textsuperscript{20} The content of these areas is controlled by the Law Admissions Consultative Committee (“the Priestly Committee”), formerly known as the “Consultative Committee of State and Territorial Law Admitting Authorities.” The Priestly Committee reports to the national Council of Chief Justices.\textsuperscript{21}

Law graduates most often seek admission by one of two processes: a one year apprenticeship inside a firm (Articles of Clerkship) which is available in some jurisdictions,\textsuperscript{22} or attendance at any one of a number of practical legal training (PLT) courses, which take five to six months and are offered by a number of providers, including law schools.\textsuperscript{23} PLT courses must cover twelve key areas of practice, including professional conduct.\textsuperscript{24} “Articled Clerks” are not required to undergo specific training in issues associated with professionalism (apart from trust accounting), but are generally admitted unconditionally after completion of the one-year period.\textsuperscript{25} Depending on the jurisdiction, PLT graduates are usually admitted conditionally for six months before being eligible for full admission.\textsuperscript{26} The usual conditions require supervision of the admittee during that period and prevent the holding of trust money.\textsuperscript{27}

The Articles of Clerkship system is under considerable pressure from critics who allege that the quality of supervision available to...
“clerks” is too variable to ensure uniformly competent outcomes.\textsuperscript{28} Despite these criticisms, the Articles system is likely to continue as a route to admission, in tandem with PLT courses, in the interests of a consensus between the states and territories.\textsuperscript{29}

In 1989, the state of Victoria, where Australia’s second largest city, Melbourne, is located, introduced Australia’s first program for accrediting experienced lawyers as subject-matter specialists.\textsuperscript{30} Victoria has since been followed by New South Wales\textsuperscript{31} (where Sydney is located), Western Australia,\textsuperscript{32} and Queensland.\textsuperscript{33} All of these jurisdictions have modeled their programs on Victoria’s approach, although with some modifications.\textsuperscript{34} Victoria now offers certification in twelve areas of legal practice. There are over 800 accredited specialists in Victoria,\textsuperscript{35} drawn from a total of nearly 12,000 lawyers.\textsuperscript{36} The four Australian state specialization schemes are seeking to develop in a coordinated manner and to encourage similar processes in other jurisdictions.\textsuperscript{37}

Victoria’s requirements for all specialization accreditation include the following: (1) the equivalent of five years, full-time practice as a lawyer; (2) “substantial involvement” (defined as at least twenty-five percent of total workload) in the chosen specialty for at least the immediately preceding three years; (3) a passing score on a written
examination; and (4) three positive references from persons who have known the applicant for at least three years, at least one of whom must be a legal practitioner with at least five years of practice experience and significant involvement in the specialty.  

These requirements are generally similar to those found in U.S. specialization programs with one significant difference: most U.S. programs define “substantial involvement” very specifically by requiring a minimum number of completed activities such as twenty-five trials for the criminal law certification in Florida, of which fifteen must be felony jury trials. The Australian programs have no such specific requirements and for most accreditations, the applicant need merely provide a statement of the percentage of time spent in the specialized area for each of the prior three years.  

The high “substantial involvement” requirements of American programs would seem to make it very difficult for a lawyer to use certification to develop a specialization. For example, since most criminal cases are resolved by plea bargain in the United States—just as most civil cases are settled—jury trials are relatively rare events unless one is either a senior lawyer in a large practice setting (like an urban public defender or prosecutor’s office), where cases likely to be tried are reserved or routed to you, or one is such a well-known trial lawyer that other firms provide a steady supply of trials by referral. The young lawyer trying to develop her own practice or work her way up inside her organization is blocked by such practice requirements from developing the very credentials that should precede such extensive trial practice. Thus, U.S. certification programs are built on a dangerous paradox. The American system can only function if a large number of clients are represented by uncertified lawyers who are on the long road to certification and are therefore engaged in precisely the kind of specialized work that clients should demand be done only

39. Kilpatrick, supra note 1, at 326 chart 1; see also Rules Regulating the Florida Bar § 6-8.3(2) (requiring a minimum of 25 cases). Other states require a greater variety of completed activities. For example, criminal certification in California requires ten jury trials, forty criminal or juvenile “matters,” and any two of the following three options: five post-conviction hearings, three appeals, or ten additional jury trials. Kilpatrick, supra note 1, at 326-27 chart 1. For bankruptcy certification, California requires completion of thirty activities, at least twenty-five of which must take place in bankruptcy court in no fewer than fifteen different cases. Id. at 351-55 chart 2. Kilpatrick’s information is current as of 1997.  
40. Roper, supra note 3, § 3.4.
by certified specialists. This paradox arises out of the origin of American specialty certification as an issue of truth-in-advertising rather than as a method of professional development.

In contrast, while the Australian programs also focus on certifying rather than developing competency, they clearly contemplate that applicants will build specialized competency, not just through on-the-job experience, but also by preparing for the certification process itself. For example, both the Victoria and New South Wales web sites offer ways for applicants to join study groups, which seem to be widely used. The Australian specialist preparation period is likely to be different from any individualized study by an American would-be specialist because of another even more important difference between the two countries. All the Australian certification programs require one or more skill demonstrations in addition to a written examination about substantive law. This combination of assessment methods is intended to be, and is, quite rigorous, as evidenced by a 1994 law review article that reported practitioner complaints about the high failure rate. For example, in New South Wales, the criminal and children’s law specialties applicants must conduct a simulated court hearing, and would-be personal injury specialists must undergo a “peer interview”

41. The problem of the “guinea pig” clients would be less worrisome if American certification programs, like medical boards, were built on a well-established system of mentoring so that the completed jury trials represented an ever-increasing amount of responsibility under the guiding hand of an experienced lead attorney. However, legal publications are full of articles decrying the demise of mentoring in the U.S. See, e.g., Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34, 67-74 (1992) (discussing a middle-ground between education and practice); Sally Evans Winkler et al., Learning to be a Lawyer: Transition into Practice Pilot Project, 6 Ga. B.A.J., Feb. 2001, at 8, 9 (addressing the need to revive mentoring). For example, for most would-be criminal specialists, the only way to get twenty-five criminal trials in the first five years of practice is to go to work for a drastically under-resourced public defender or prosecutor’s office where learning consists largely of unsupervised on-the-job training of the “sink or swim” variety. There might be better mentoring and supervision in some private firms, but there is usually not enough real case responsibility; associates rarely get much criminal or civil trial experience, particularly not jury trial experience.

42. See What’s New? Specialisation News & Events: Study Groups, Law Inst. of Victoria website, supra note 30; ELCC website, supra note 30. However, the Australian approach to specialist certification for lawyers, in contrast to medical specialization, is still more oriented toward recognizing existing specialization than in creating specialized expertise. Roper, supra note 3, § 2.3.


by two examiners during which applicants are questioned as to how they would deal with a variety of professional situations.\textsuperscript{45} However, for our purposes, the most important method of assessment is the simulated client interview, which is required for a number of specialties.\textsuperscript{46} For example, under the Family Law Accreditation, where uniform standards have been developed for all four certifying jurisdictions in Australia,\textsuperscript{47} each applicant must conduct a simulated first-client interview; the exercise takes about sixty minutes and is videotaped. The videotape is assessed by examiners for competence in learning facts, taking the client’s instructions, giving advice, discussing options, and developing an initial plan.\textsuperscript{48}

The Australian requirement of a simulated interview assessment is a very useful first step toward a developmental approach to specialist accreditation – one that will allow lawyers to improve progressively in demonstrated skills, ethics, and client and public service until they attain a more comprehensive specialist status than is now possible in either the United States or Australia.

IV. EXCELLENCE IN SERVICE TO CLIENTS

The simulated client interview requirement, not found in any certification program in the United States, may have its origin in an important study conducted early in Australia’s development of specialist accreditation programs.

In 1995, the Law Society of New South Wales commissioned an evaluation of the Specialist Accreditation Program (then three years old in that jurisdiction) to be conducted jointly by the Centre for Legal Education and Livingston Armytage, a distinguished lawyer who had become a consultant in law practice management and development.\textsuperscript{49} One component of the evaluation was a survey of specialists’ clients.

\begin{itemize}
\item \textsuperscript{46} Roper, \textit{supra} note 3, § 3.4.
\item \textsuperscript{47} Family Law was the first specialty to be certified in Australia (in Victoria in 1989). It has the largest number of certified specialists in Victoria (223) and the second largest number in New South Wales (283). Roper, \textit{supra} note 3, § 3.4.
\item \textsuperscript{48} The family law applicant must also prepare a mock file, including client correspondence and court documents, based on a set of documents prepared by the examiners. This is a “take home” project to be completed over a period of two weeks. See Family Law Accreditation Assessment Guidelines 31, at Law Soc’y of New South Wales website, \textit{supra} note 34, and ELCC website, \textit{supra} note 30.
\end{itemize}
At that time there were 763 specialists in New South Wales who had been accredited in the areas of business, criminal, family, personal injury, and property law.\textsuperscript{50} The evaluators wrote to all these specialists asking each to identify four clients: two preaccreditation and two who had retained the lawyer after accreditation. This process yielded 424 clients. The evaluators then conducted discussions with two focus groups drawn from this list. A nine question survey developed with input from these focus groups was then mailed to all 424 clients, of whom 55.2\% responded.\textsuperscript{51} The survey form included a free response section that asked clients to describe in a few lines “what I liked” and “what I disliked” about “how the job was done.”

Although the results of this process indicated widespread client satisfaction with the specialists’ legal knowledge and skills, the evaluators also found “consistent evidence of client dissatisfaction with the provision of services, and the quality of the service-delivery process.”\textsuperscript{52} Their findings “illustrate[d] that practitioners and their clients are selecting divergent indicators of performance with which to assess satisfaction with service.”\textsuperscript{53}

Practitioners are concentrating on developing their knowledge and skills to deliver better outcomes; but their clients, expecting both technical competence and results, are being disappointed by the process of getting there. Clients complained about the quality of their lawyers’ services in terms of inaccessibility, lack of communication, lack of empathy and understanding, and lack of respect . . . .\textsuperscript{54}

The evaluators concluded that

consideration should be given by the profession to introducing additional training to redress identified performance deficits in the related areas of inter-personal skills and client management techniques.

\textsuperscript{50} Id. at 367 n.2; The Centre for Legal Education & Livingston Armtage, A Review of Aspects of the Specialist Accreditation Program of the Law Society of New South Wales 7 (1996) [hereinafter Armtage II].

\textsuperscript{51} Armtage II, supra note 50, at 7.

\textsuperscript{52} Armtage I, supra note 49, at 357.

\textsuperscript{53} Id. at 365.

\textsuperscript{54} Id. An interesting indication of the relative unimportance of outcome to client satisfaction is the fact that in the “what I liked” section of the survey there was “little mention of outcomes” and that only one client referred to outcome in the “what I disliked” section. Armtage II, supra note 50, at 118, 122.
This training should be client focused, rather than transaction focused; it should train practitioners to recognise that client needs are not confined to attaining objective outcomes; and it should help lawyers to listen to clients more attentively, diagnose their various levels of needs and demonstrate empathy.55

Given the findings of this thoughtful study, it is disappointing that none of the Australian programs require any kind of assessment of client service which utilizes input from clients. The need for client participation in the assessment of professional excellence is particularly important if, as Armytage and his colleagues found, lawyers are likely to have different or at least more narrow criteria for excellent service than the very people they exist to serve.

Recent research by Professor Avrom Sherr in England indicates that mere experience in practice is no guarantee of professional development in client service.56 In his study, 143 first interviews with new clients were videotaped and analyzed. Almost 24% of the lawyers were law graduates in training (“articled clerks”) and 75.5% were experienced lawyers.57 Over 70% of the experienced lawyers had been in practice at least six years and 23.3% had more than eleven years of experience.58 Sherr’s overall finding was that practice experience did not result in a significant improvement in interviewing ability. When the videotapes were evaluated by expert assessors, a high percentage of all interviews scored “fairly bad” or worse on all items.59 In particular, 51% of all lawyers did not get “the client’s agreement to the advice or plan of action offered,” 76.6% failed to get “the client’s agreement to the lawyer’s understanding of the facts,” and 85.4% “did not inquire whether there was anything else the client wished to discuss before ending the interview.”60

Although experienced lawyers used less legalese and were better at clarifying gaps, for all other items assessed “there were no significant differences” between the new and experienced lawyer

55. Armytage 1, supra note 49, at 366. When quoting from Australian and English materials, we have retained the original spelling (e.g. “recognise” instead of “recognize.”)
57. Id. at 118-19.
58. Id.
59. Id. at 104.
60. Id. at 105.
Both clients and lawyers were asked to evaluate the interviews immediately after completion. The experienced lawyers “rated their own interview performance significantly higher” than did the new lawyers, but clients did “not differentiate between the groups.”

An Australian initiative that bears some resemblance to specialty certification acknowledges the importance of client input concerning service quality. In 2001, the Best Practice Board of the New South Wales Law Society merged with Quality in Law Incorporated to form a national Australian organization named simply QL Inc., which has the goal of encouraging and recognizing “sustainable best practices” in law firm management. Unlike the Specialist Accreditation Program, QL certification recognizes increasing levels of professional excellence from Level I to Level IV, and its criteria specifically mentions “monitoring client satisfaction.” However, QL certification does not indicate that any particular level of client satisfaction has been achieved by a firm, only that a system of monitoring client satisfaction is used.

V. ETHICAL EXCELLENCE

Although many, including Deborah Rhode, continue to repeat that integrity and accountability are key ingredients of professionalism, legal specialists are not, so far as we are aware, specifically encouraged to develop nor assessed for this quality in any country. There should be a test to assess honesty and integrity as qualities at
least as important as career advancement. Professor Adrian Evans is currently developing one empirical method for the measurement of final-year law students’ values which will soon be tested on practitioners as one component of a still-to-be-developed composite measure of ethical values. The first stage of this study has already disclosed both considerable variation in ethical priorities and in motivating values.
and observed behaviour to assess excellence in service and ethical practice.

VI. LESSONS FROM THE MEDICAL PROFESSION

A. Assessing the Quality of Service

The apparent unimportance of measuring client satisfaction in the legal profession makes a striking contrast to the medical profession. According to a 1995 survey, virtually all hospitals in the United States have some kind of patient satisfaction measurement system in place. In 1994, the United States Joint Commission on Accreditation of Healthcare Organizations included in its standards a requirement to ensure that an organization “gathers, assesses, and takes appropriate action on information that relates to the patient’s satisfaction with the services provided.” A substantial private industry has developed to conduct patient satisfaction surveys for health care providers; some firms have more than 5000 health care providers as clients. It is increasingly common for doctors to be evaluated by their supervisors based on the results of patient satisfaction surveys.

Doctor-patient communication is treated as an important subject for both pedagogy and empirical research in medical education. One recent review of the literature on doctor-patient communication cited 112 publications. Starting in 2004, a test of communication skills using lay persons, called “standardized patients,” trained to simulate

76. Id. at 23.
78. See Jeanne McGee et al., Collecting Information from Health Care Consumers: A Resource Manual of Tested Questionnaires and Practical Advice 11:29-11:45 (1997) (describing the Park Nicollet Clinic in Minneapolis, which measures patient satisfaction on an annual basis for all of its first-year physicians). Individual physicians receive the survey results in a report that compares them with other physicians in the same department. The clinic’s medical director and each department chair also receive the report which they review with each new first-year physician as part of a comprehensive assessment process. Id.
realistic clinical presentations, will be a licensing requirement for all new doctors in the United States.\textsuperscript{80}

\textbf{B. Predicting Professional Behavior}

Insufficient research has been done to accurately predict actual behavior of lawyers from perceived values, but based on observations in other professions, it is highly probable that the two are connected in some way. As Dr. David Stern described elsewhere in this issue, a system for assessing professionalism is required of all accredited medical residency programs in the United States\textsuperscript{81} The United States Medical Licensing Examination, used nationwide as the standard licensure examination, tests ethics by multiple choice questions,\textsuperscript{82} and a growing number of specialty boards are including ethics questions in their examinations.\textsuperscript{83} Like the questions posed in the Australian research described above, the multiple choice ethics questions used in medical examinations often force a choice between competing values rather than just testing knowledge of a rule.\textsuperscript{84} A recurrent issue seems to be the duty to report unprofessional behaviors of others, an ethical obligation which is rarely tested in bar examinations and even more rarely honored by lawyers.\textsuperscript{85}

The medical profession is undertaking serious empirical research to test the reliability of such multiple choice questions as predictors of

\begin{itemize}
\item \textsuperscript{80} Clinical Skills Assessment in the USMLE [U.S. Medical Licensing Examination], NBME EXAMINER, Fall/Winter 2002, at 1-3 available at http://www.nbme.org/examiner/FallWinter2002/news.htm. The assessment is also available on the ELCC website, supra note 30, at Specialization/Medicine.
\item \textsuperscript{81} David Stern, Remarks at the Professionalism Conference in Charleston, South Carolina (Sept. 28, 2002), in Transcript, 54 S.C. L. REV. 897, 945 (2003).
\item \textsuperscript{82} Susan Case, Remarks at the Professionalism Conference in Charleston, South Carolina (Sept. 28, 2002), in Transcript, 54 S.C. L. REV. 897, 939 (2003). Reflecting the progressive nature of professionalism, the exam is given in three parts: (1) after the second year of medical school; (2) during the final, fourth year of medical school; and (3) during the post-graduate residency. Id.
\item \textsuperscript{83} Id.
\item \textsuperscript{84} Stern, supra note 81, at 946-47 (discussing the importance of testing how people will resolve conflicting values); see also Case, supra note 82, at 943-45 (presenting sample questions).
\item \textsuperscript{85} The Georgia Rules of Professional Conduct have an unusual feature of specifying at the end of each rule the maximum potential punishment for violation of each rule. At the end of the Georgia Rule on “Reporting Professional Misconduct,” this sentence appears: “There is no disciplinary penalty for a violation of this Rule.” GA. RULES OF PROF’L CONDUCT R. 8.3 (2000), available at http://www2.state.ga.us/courts/bar/strbarru991.htm. The Georgia rules probably make explicit the actual practice throughout the United States that lawyers are rarely, if ever, disciplined for failure to report the misconduct of other lawyers.
\end{itemize}
unethical behavior. Evidence already exists for the reliability of two other assessment methods. One part of the standardized patient test has been shown to have predictive value as to ethical behavior. Standardized patients typically fill out a standard patient satisfaction form as if they had been a real patient for the testing encounter. The examining physician also fills out an assessment form which mirrors the patient’s form, in effect asking the examiner to predict how the patient will evaluate the experience. Dr. Stern discovered that medical students who gave themselves higher assessments than did their standardized patients were more likely to appear before an academic review board for professional behavior problems. Thus, even though the standardized patient test was primarily designed to test communicative and diagnostic skills, it also has the potential to identify attitudes and values that may undermine professionalism. For law, this is a particularly relevant finding because simulated client exercises are already well developed in clinical education and, at least in Australia, have already been applied to specialty certification. The addition of the parallel client and interviewer assessment forms would be a simple improvement.

A second assessment method shown to be a reliable measure of professional behavior is based on extensive faculty supervision of actual clinical practice, during and after medical school. (Unfortunately, in the legal profession such close supervision is found only in preadmission legal education and even there, for most law

86. Case, supra note 82, at 939; Stern, supra note 81, at 946.
87. See supra note 75 and accompanying text.
88. Stern, supra note 81, at 947.
89. Id. at 953. Stern reports that almost no other factor in his wide-ranging data set was able to predict unprofessional behavior. Id. The relationship observed by Stern between over-assessing one’s own performance in comparison to the patient’s assessment and unprofessional conduct by doctors makes Avrom Sherr’s findings about English lawyers even more troubling, since in his study it was the experienced lawyers who were more likely to over-assess the quality of their client interviewing. Sherr, supra note 56, at 107.
90. See Lawrence M. Grosberg, Medical Education Again Provides a Model for Law Schools: The Standardized Patient Becomes the Standardized Client, 51 J. LEGAL EDUC. 212 (2001).
91. See supra notes 47-48 and accompanying text.
92. The Effective Lawyer-Client Communication Project is in the process of developing model survey forms to be filled out by clients and lawyers at the initial interview that are based, in part, on the procedures developed by the medical profession. See ELCC website, supra note 30. Professor Cunningham is the director of this project and Professor Evans is a member of the ELCC Advisory Board. The model survey forms are currently being tested in legal services clinics operated by Georgia State University, where Cunningham teaches, and at Monash University, where Evans teaches.
schools, only as an elective for limited credit and short duration.)
Specialty board certification necessarily includes such assessment
because built into medical residency programs is faculty observation
of actual practice. Dr. Stern offers the University of Michigan as an
example. Faculty at this institution not only complete summative,
longitudinal assessments, but also are encouraged to fill out brief
“critical incident reports” on the same day that either exemplary or
questionable performance is observed. These reports are particularly
valuable because they have the potential of aggregating observations
from a number of different faculty members. Dr. Stern reports that his
research has shown that when at least eight different supervisors
provide evaluations, assessment of professionalism becomes very
reliable.

The example of medicine strongly suggests that some kind of
supervised practice component, not only as a component of prelicense
education but also post-license certification, would be an invaluable
way of preventing unprofessional behavior and promoting professional
excellence. Perhaps a specialization applicant could substitute such a
supervised practice component for some of the mandatory
specialization activities required by U.S. programs or to shorten the
number of years in specialized practice.

93. *Id.*

94. Stern, *supra* note 81, at 950. These reports are “little cards . . . the flip side
is a concern [or] commendation . . . . Faculty can hand as many in as they’d like.” *Id.*

95. *Id.* at 950.

96. In June 2002, a joint report prepared by the committees on Legal Education
and Admission to the Bar of the New York State Bar Association and the Association
of the Bar of the City of New York was issued recommending a pilot project of up to
two years to assess the effects of substituting public service work for the bar exam.
Participants in the proposed project would perform supervised work in the court system
and then be admitted without taking the bar exam if they passed the Multi State
Professional Responsibility Examination, a written performance test designed to assess
their ability to apply the law in the context of a lawyer’s problem and an evaluation of
various skills demonstrated during the course of their service. See N.Y. State Bar
Assoc., *Summary of the Report on the Public Service Alternativa Bar Examination,
proposal for Arizona is being developed by the Community Legal Access Society. This
proposal is on file with authors. Both the New York and Arizona reports are also
available on the ELCC website, *supra* note 30, at Specialization/BarExam Alternatives.
bar exam as the principal test of admission to the legal profession).
VII. CONCLUSION

In this Essay we have tried to illustrate ways that the term “specialist” could come to signify a more profound kind of professional development than is now formally recognized in either the American or Australian legal profession. The medical profession has shown how a voluntary but rigorous process of post-admission professional development can, over time, produce truly significant specialist proficiency. And such proficiency need not be narrowly defined as technical knowledge and skill. Especially if cross-national and cross-disciplinary approaches are used, ample expertise can be marshaled to design appropriate tests of true professionalism that go beyond the traditional but narrow issues of substantive competence.

One potential benefit of the current approach to specialization by the legal profession in the United States is flexibility. Unlike Australia, where a single state entity controls the criteria and procedures for certification, some American states allow certification by any “recognized and bona fide professional entity.” Thus, a state could recognize an organization with a particular interest in or commitment to promoting excellence in client service or ethical practice as qualified to offer an enhanced form of specialization certification without imposing its more demanding criteria and assessment procedures on all specialist applicants in the jurisdiction.

Our reputation as a profession is rarely at risk from challenges to our technical competence, but our doubtful commitment to access to justice and our perceived lack of integrity are very much in the public eye. Other ratings of our professionalism are now required from clients, from the community for our pro bono commitment, and from our peers for our integrity.

We think that professionalism will be advanced immeasurably if bar associations have the political will to use modified specialty certification processes—schemes that do not disbar lawyers but, as in Australia, do reward excellence already achieved—in order to provide the right balance of protection for the community and adequate

97. GA. RULES OF PROF’L CONDUCT, supra note 11, at R.7.4.
98. Law schools, especially those with strong clinical education programs, could offer enhanced specialist certification. Another possible entity would be the American Inns of Court, whose mission is “to foster excellence in professionalism, ethics, civility, and legal skills,” primarily through collegial discussions and mentoring of law students and new lawyers by experienced lawyers and judges. See http://www.innsofcourt.org/contentviewer.asp?breadcrumb=6,9. However, the American Inns of Court do not currently offer a certification program or registry of qualified lawyers. See http://www.innsofcourt.org/contentviewer.asp?breadcrumb=6,9,343.
personal incentives for lawyers. Such initiatives are in the interests of reputable lawyering, now and well into the future.
LEGAL EDUCATION AFTER LAW SCHOOL:
LESSONS FROM SCOTLAND AND ENGLAND

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Introduction

The symposium entitled “Professional Challenges in Large Firm Practices” held at Fordham University School of Law on April 15, 2005 opened up a much-needed dialogue between law schools and law firms about legal education after law school. Keynote speaker Michael Greco, President of the American Bar Association, opened the conference by noting that: “[L]awyers are always going to be students, because the learning doesn’t stop in law school. The irony is that when we become lawyers, we not only continue to be students, we simultaneously are teachers.” Greco’s keynote was followed by a panel on “The Role of Law Firms in the Educational Continuum,” which brought together three lawyers from large private firms, a lawyer from a large government law department, and two law professors. As one of the two academics on the panel, I learned a great deal about the extent and sophistication of the legal education that takes place within law firms and legal departments.

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1. Michael S. Greco, President, Am. Bar Ass’n, Keynote Address at the Fordham University School of Law Symposium: Challenges in Large Firm Practices (Apr. 15, 2005). At the time of the symposium, Greco was president-elect of the American Bar Association; he became president in August 2005, at the Association’s Annual Meeting.

2. The panel members were: Donald E. Bradley, General Counsel, Wilson Sonsini Goodrich & Rosati; Drake Colley, Senior Counsel, New York City Law Department; Clark D. Cunningham, W. Lee Burge Professor of Law and Ethics, Georgia State University College of Law; Vilia Hayes, Partner, Hughes Hubbard & Reed LLP; and Margaret Raymond, Professor of Law, University of Iowa College of Law. A panel transcript is available at http://law.gsu.edu/ccunningham/Professionalism/FordhamPanel-I.pdf.

3. Much of my learning came from a series of conference calls with the panelists before the conference and from reviewing materials generously provided by Paul Saunders,
panel’s discussions have inspired me now to propose that pilot projects be 
launched to increase collaboration between legal academics and law firms 
in the provision of legal education after law school. I suggest that such 
programs emulate the much closer partnerships that exist between the 
academy and the legal profession in England and Scotland. Promising 
areas for such collaboration in the United States include teaching and 
assessing competency in effective lawyer-client communication and 
professionalism in identifying and resolving ethical dilemmas.

During the panel, Donald Bradley, general counsel of a large California 
law firm, explained why the training of lawyers in law firms is now “dramatically different” than when he entered the profession over thirty-
five years ago. He described himself as “a product of on-the-job training . . . sitting with a senior partner and a mid-level partner for about 
five years, [who were] trying to teach me what it meant to be a lawyer and 
the values I should possess and the skills I should develop.” Bradley 
attributed the demise of this kind of training to “time compression” in 
the practice of law caused by a variety of factors, including:

• client expectations that legal work be turned around in a very 
  short period of time;
• technology that makes quick turn-around and responses possible;
• pressure on general counsels at corporations to control their 
  budgets by using law firms in highly cost-effective ways; and
• intense competition among law firms to acquire and keep 
  clients.

According to Bradley, the above factors collectively result in “tremendous pressure on law firms with respect to their budgets, their

4. Donald E. Bradley, Gen. Counsel, Wilson Sonsini Goodrich & Rosati, Remarks at 
the Fordham University School of Law Symposium: Professional Challenges in Large Firm 

5. Id. at 20. Another member of the panel, Vilia Hayes, provided a similar account, 
noting that in the past lawyers learned how to do corporate deals by “drafting [a document], 
by having somebody mark it up, by sitting there and talking to [the associate]. . . . I 
remember that in excruciating detail, when somebody would sit with you for two hours and 
go over the brief. I don’t think you have as much time to do that [now].” Vilia Hayes, 
Partner, Hughes Hubbard & Reed LLP, Remarks at the Fordham University School of Law 

discounts, lean staffing, capitalizing on expertise, knowledge management—anything to make the process more efficient and take less time.” Bradley then explained that, “[t]he overall result of these factors . . . is clearly less time and more compression for mentoring, for on-the-job training. I think large law firms have recognized that, and that they have said, ‘We have to compensate for insufficient mentoring by really ramping up our training programs.’” In recent years, large firms have devoted considerable resources to in-house training programs. For example, in 2004-05 the Tax Department at Cravath, Swaine & Moore LLP provided a formal fifty-six hour training program covering areas of tax law “that are more easily learned in a classroom setting than by working on a deal,” as well as “issues of practice and ‘lore’ that are often as important as knowledge of the technical provisions of the Internal Revenue Code.” In addition, Cravath’s Tax Department encourages its associates to attend the forty-session training program offered by the Corporate Department. Attendance at the classes in this program is not mandatory for Cravath associates, but participation in a two-day New Associates Weekend, which includes “interactive training” such as a negotiations workshop and a session on Transaction Management, is required. Other large firms seem to follow a similar pattern of mandatory retreats and interactional workshops for first year associates, combined with a series of optional

7. *Id.* Bradley attributed the decline of individualized mentoring to these factors rather than to the “the demand for the billable hour, to the quest for ever-increasing profits per partner.” *Id.* at 8. Other conference speakers placed greater emphasis on the increasing expectation of billable hours for both associates and partners. See, e.g., Susan Saab Fortney, *The Billable Hours Derby: Empirical Data on the Problems and Pressure Points*, 33 FORIDHAM URB. L.J. ____ (2005); Bruce Green, Louis Stein Professor of Law, Fordham University School of Law, Fordham University School of Law Symposium: Professional Challenges in Large Firm Practices (Apr. 15, 2005).


10. *Id.* The training program provided in 2004-05 by the Corporate Department at Cravath, Swaine & Moore LLP consisted of forty different sessions over eight months. Cravath, Swaine & Moore LLP, Corporate Training, [http://www.cravath.com/Students/Cravath_System/corporate_training.htm](http://www.cravath.com/Students/Cravath_System/corporate_training.htm) (last visited Oct. 17, 2005). Some classes covered basic subjects for new lawyers, while others provided detailed instruction intended for lawyers at all levels. *Id.*

11. E-mail from Paul Saunders, Partner, Cravath, Swaine & Moore LLP, to Clark Cunningham, W. Lee Burge Professor of Law & Ethics, Ga. State Univ. Coll. of Law (Feb. 8, 2005, 06:27:35 EST) (on file with author).

classes for lawyers of all levels. The next part of this essay compares these American law firm training programs with two examples of post-law school legal education in the United Kingdom: (i) a three-year basic competency program in Scotland that law school graduates must complete to be licensed as lawyers and (ii) an accreditation scheme in England that assures proficiency in criminal defense representation.

BASIC COMPETENCY TRAINING IN SCOTLAND

Scotland offers a particularly good example of a system of post-law school legal education that is jointly designed and implemented by law schools and the legal profession to achieve basic competence to practice law. The legal profession in Scotland is divided between a specialized trial bar called “advocates” (comparable to barristers in England), and a much larger group of practitioners called “solicitors” who handle transactional work, litigate in lower tribunals, and function as intermediaries between clients and advocates in major litigation.

After graduating with a university degree in law, students who wish to enter the Scottish legal profession must complete a three-year course of professional training and education. This begins with a course called the Diploma in Legal Practice (“Diploma”). The Diploma is a twenty-seven-week program that provides law students with practical skills and knowledge, and equips them for the two-year traineeship that follows the Diploma.

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13. See Bradley, supra note 4, at 9 (noting that Wilson Sonsini Goodrich & Rosati requires new associates and laterals to attend a weeklong off-site “boot camp” to “learn about the firm, its culture, its style of practice”); see also Hayes, supra note 5, at 19 (describing the legal training provided to associates at Hughes Hubbard & Reed LLP). Hughes Hubbard & Reed LLP provides workshops for first and second year associates on trial advocacy, negotiation, summary judgment motion practice, and deposition skills; the first year workshops are mandatory. Telephone Interview with Vilia Hayes, Partner, Hughes Hubbard & Reed LLP (Feb. 28, 2005).
15. See id.
16. Id. at 950. Students who plan to become advocates complete essentially the same three year program as would-be solicitors, and then take additional training provided by the professional body that regulates the advocates’ bar. See, e.g., id. at 954.
17. See id. at 950.
predominantly by practitioners. The largest Diploma program in Scotland is offered by the Glasgow Graduate School of Law (“GGSL”), a joint endeavor of Glasgow and Strathclyde Universities.\(^{18}\) GGSL emphasizes “transactional learning,” in which law graduates practice legal transactions in a learning environment that simulates the real world and are assessed on their work in that setting.\(^{19}\) For example, there are no lectures or examinations in estate planning; instead, students focus on two transactions: winding up the estate of a decedent and drafting a will.\(^{20}\) GGSL, an internationally recognized leader in the educational use of information technology, has also created a virtual town on an internal website, complete with history, maps, businesses, a host of citizens, and sixty-four different law firms.\(^{21}\) Each firm consists of four students who use the website to conduct firm transactions, send and receive correspondence, maintain the firm’s case management system, and keep a personal log that is reviewed by assigned faculty.\(^{22}\)

Either before the Diploma or during it, students are required to obtain a traineeship with a practicing solicitor or a legal service employer in Scotland.\(^{23}\) After completing the Diploma, students enter into a two-year training contract with this employer.\(^{24}\) The Law Society of Scotland monitors the traineeship: trainees must submit written reports of their work and quarterly review forms.\(^{25}\) Together, these materials form part of the “ongoing assessment of the training program, known as the Assessment of Professional Competence.”\(^{26}\)

Six to eighteen months into their traineeships, trainees are required to take the Professional Competence Course (“PCC”).\(^{27}\) The Law Society of Scotland designed the PCC “to build upon the knowledge and skills

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18. See id. at 951. For more information about GGSL’s Diploma program, see Glasgow Graduate School of Law, Diploma in Legal Practice, http://www.ggsl.strath.ac.uk/courses/diploma.html# (last visited Oct. 12, 2005).
20. Id. at 12. Students are assessed at four points during the estate planning transactions: the draft will, court filings, letters, and tax forms. Id. at 13.
21. See, e.g., id. at 10-11; Maharg, Professional Legal Education, supra note 14, at 962-63.
22. See Maharg, Transactional Learning, supra note 19, at 10-11; Maharg, Professional Legal Education, supra note 14, at 962-63.
23. See Maharg, Professional Legal Education, supra note 14, at 952.
24. Id.
25. Id.
26. See id.
27. See id. at 953.
developed in the Diploma, and it relies upon the office experience that trainees gain in their traineeship.\(^{28}\) Most trainees will then return to one of the universities for the PCC, although some large law firms provide in-house courses for their own trainees.\(^{29}\) At the start of the second year of training, trainees obtain “a restricted practicing certificate” that authorizes them to litigate under certain conditions.\(^{30}\) After the trainees complete the two-year training contract, they can apply for “a full practicing certificate and entry to the profession.”\(^{31}\)

**PROFICIENCY ACCREDITATION IN ENGLAND**

The English legal system provides an example of an unusually ambitious and successful program that increases the proficiency of practicing lawyers: the Criminal Litigation Accreditation Scheme administered by the Law Society of England and Wales (“Law Society”).\(^{32}\) One commentator described the Criminal Litigation Accreditation Scheme as “likely the most detailed accreditation scheme anywhere run by a representative body of the legal profession regulating the quality of its own members’ criminal work.”\(^{33}\) It was developed in response to an influential study of the legal services that defendants received after arrest.\(^{34}\) The law professors who conducted the study published their findings in 1994 in a book entitled *Standing Accused: The Organisation and Practices of Criminal Defense Lawyers in Britain*.\(^{35}\) The study was highly critical of the standard of practice among criminal defense lawyers.\(^{36}\) In response, in 1995 the Law Society created a multi-step program (called the “Police

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28. *Id.*
29. *See id.*
30. *Id.* at 954.
31. *Id.*
34. *See, e.g., id.* at 43.
35. *See generally* MICHAEL MCCONVILLE ET AL., *STANDING ACCUSED: THE ORGANISATION AND PRACTICES OF CRIMINAL DEFENSE LAWYERS IN BRITAIN* (1994). The authors conducted their research over a three-year period during which they observed the practices of forty-eight firms of solicitors in England. *Id.* at 15.
36. *See id.* at viii (describing “the failures of defence solicitors and their staff adequately to advise and protect suspects under interrogation at police stations”); *see also* Smith, *supra* note 33, at 43 (“The study was particularly critical of the conduct of solicitors and their representatives in police stations, where it suggested, effectively, that lawyers were doing very little for their clients.”).
Station Qualification”) that defense lawyers must complete to be accredited to advise arrestees at police stations. First, the candidate must observe a qualified lawyer giving advice in two cases at a police station and document their observations in a portfolio. Second, the candidate must provide advice in two other cases under the supervision of qualified lawyer and record those cases in the portfolio. Third, after the portfolio has been reviewed and approved, the candidate enters a twelve-month probationary period in which he or she must complete five cases of police station advice without supervision. The Law Society audits these case files using a very detailed list of “transaction criteria,” which are “a series of points and questions that a trained observer checking the file . . . would use to evaluate what was done and the standard to which it was done.” Finally, the candidate must pass a “critical incidents test,” where he or she views a tape of an interrogation and indicates how and why he or she would intervene.

The Law Society has since added a second accreditation scheme for practice in the lower criminal courts: the “Magistrates Court Qualification.” It includes a portfolio of “short notes on 20 cases and more detailed notes on five,” followed by an interview and an assessment based on a courtroom advocacy simulation. The police station advice and courtroom advocacy programs together form the comprehensive “Criminal Litigation Accreditation Scheme.”

The Law Society has also commissioned two books setting out best practices for lawyers handling criminal cases. These books are valuable

38. Id. at 33.
39. Id.
40. See id. at 34.
41. Smith, supra note 33, at 46 (quoting LEGAL AID BD., ANNUAL REPORT 24 (1992)). The Legal Services Commission (formerly known as the Legal Aid Board) created the transaction criteria so that auditors would have a way to inspect solicitors’ files and determine how well the work had been done. Id. at 46. For example, the transaction criteria list over twenty items of information that should be obtained from the police when representing an arrested person. See LEGAL SERVS. COMM’N, TRANSACTION CRITERIA: CRIME §§ 7.1- 8.2 (May 2002), available at http://www.legalservices.gov.uk/docs/civil_contracting/crime.pdf.
42. Smith, supra note 33, at 44.
43. Id.
44. Id. at 45.
45. Id. at 44.
46. Id. The books, both of which are now in their second editions, are entitled ACTIVE DEFENCE and CRIMINAL DEFENCE: A GOOD PRACTICE GUIDE IN THE CRIMINAL COURTS. Id.
resources for lawyers seeking these accreditations.

POSSIBLE LESSONS FROM SCOTLAND AND ENGLAND

Although the basic competency program in Scotland and the proficiency accreditation scheme in England differ in both methodology and objectives, they share certain features. Both programs have very specific criteria defining the competency that candidates must develop. This in turn enables the programs to use objective pass/fail assessment methods. Additionally, both assess competency not just through tests of the candidates’ substantive knowledge, but also through simulation exercises and reviews of real casework.

There are significant bar-academy partnerships in teaching and assessing basic competency in Scotland and England. In contrast, if the programs described at the aforementioned Fordham symposium are typical, it appears that for most law firm training programs in the United States:

- Lawyers are not required to demonstrate that they have acquired specific knowledge or competency upon completion of a training program (and thus are not required to pass any particular training program as a condition of continued employment or promotion);
- Participation in most of the training programs is voluntary;
- Standards, goals, and procedures are specific to each law firm; and
- Each firm primarily uses its own curriculum, materials, and teachers.

The closest American analogy to the bar-academy partnership seen in the United Kingdom is the teaching of trial skills by the National Institute for Trial Advocacy (“NITA”). NITA is a not-for-profit, continuing legal education institution with a professional staff of approximately sixty individuals.47 NITA is very much a product of the legal profession. The American Bar Association Section of Judicial Administration, the American College of Trial Lawyers, and the Association of Trial Lawyers of America together created NITA in 1971, and NITA’s Board of Trustees is comprised primarily of leading lawyers and judges.48 The collaboration of judges, lawyers, and academics produces a “learning-by-doing”

48. Id.
methodology in which participants conduct realistic courtroom trials and
other litigation events such as depositions. These simulations are
videotaped and then comprehensively critiqued, first by one faculty
member who views the live performance and then by the participant and
another faculty member who view the videotape.

Lawyers can receive NITA training by attending regional or national
workshops. NITA also provides training at specific law firms through in-
house programs. Although NITA was founded to meet post-graduate
training needs in trial practice, it has also had a major impact on law
schools. The NITA teaching methodology is now the standard for teaching
trial practice in law schools, and NITA teaching materials are widely used
in law school courses.

Are there areas of legal practice—perhaps more universal than trial
practice—where the success of NITA might be emulated? I suggest two,
which the following discussion will show may be closely related: (i)
effective lawyer-client communication and (ii) identifying and resolving
ethical dilemmas.

In 1999, I interviewed Robert Cremer, Vice-President of the Attorneys’
Liability Assurance Society, Ltd. (“ALAS”). A consortium of law firms
founded ALAS in 1979 to provide malpractice insurance as an alternative
to the commercial insurance market. I asked Cremer about the attorney
behaviors that cause the most serious liability exposure for ALAS. He said
the three biggest factors were: (i) lawyer implication in client misconduct,

49. Id.
50. Id.
51. See National Institute for Trial Advocacy, Program Search by State,
http://www.nita.org/programorder.asp (last visited Oct. 17, 2005) (providing a list of
workshops by geographic location).
52. See National Institute for Trial Advocacy, NITA’s In-House Training,
http://www.nita.org/inhouse.htm (last visited Oct. 17, 2005). Large law firms that have used
NITA’s in-house training programs include Baker & McKenzie, Foley & Lardner LLP,
Jones Day, and Paul, Hastings, Janofsky & Walker LLP. See National Institute for Trial
Advocacy, Here’s What Law Firms Say About NITA In-House Programs,
53. See National Institute for Trial Advocacy, NITA Law School Services,
have been adopted by over 300 law schools nationwide). My own law school trial practice
course in 1980 used NITA case problems and was taught by a full-time faculty member who
had experience as a NITA instructor.
54. Interview with Robert A. Cremer, Vice-President, Attorneys’ Liab. Assurance
Soc’y, Inc., in Chi., Ill. (Apr. 2, 1999) (notes on file with author) [hereinafter Cremer
Interview]. For more information on ALAS, see Attorneys’ Liability Assurance Society,
(ii) conflicts of interest, and (iii) “problem partners.” He explained that “problem partners” were liability risks not because they lacked diligence, thoroughness, or competence in terms of substantive legal knowledge, but because they had poor judgment, especially in the area of client relations.

We then discussed how the typical path from associate to partner at large firms is not designed either to teach good client relations or to identify lawyers who were at risk of being “problem partners.” Associates rarely have the opportunity to exercise significant ethical responsibility for client matters under close supervision. Instead, partners give associates pieces of a matter to work on—where hard work and technical competence are evaluated—while the client relationship is the province of the partner. Indeed, a personality type that might thrive as an associate—ambitious and hard-working in the extreme—might be at particular risk of becoming a problem partner.

Law Cover, Australia’s largest indemnity insurer for lawyers, has reached conclusions similar to those expressed by Creamer. In 1992, Law Cover commissioned the Risk Management Project to study a representative sample of over two thousand professional liability claims. The researchers interviewed each lawyer in the sample against whom a claim had been filed. These interviews were extensive and confidential. Each interview examined “the nature of the matter and how the solicitor usually approaches such work, the nature and evolution of the client/solicitor relationship, the legal issues involved, the solicitor’s

55. Creamer Interview, supra note 54.
56. Id.
57. Id.
58. Id. At the aforementioned Fordham symposium, Vilia Hayes explained the need for simulation-based training and pro bono work to provide adequate experiences for associates:

[If] I have a major litigation in the firm that we have fifty or a hundred lawyers working on, and a hundred paralegals, you are not going to get that depth of practice . . . . If you have another case where you are on the privileged team and you are reviewing privileged documents for a year, the firm has had to come up with a different way to make sure you are not going to have just that one limited experience . . . .

Hayes, supra note 5, at 18.
59. See RONWYN NORTH & PETER NORTH, MANAGING CLIENT EXPECTATIONS AND PROFESSIONAL RISK: A UNIQUE INSIGHT INTO PROFESSIONAL NEGLIGENCE EXPOSURE IN THE AUSTRALIAN LEGAL PROFESSION ix (1994). Law Cover is a mutual indemnity insurance fund operated by the Law Society of New South Wales. Id. It provides professional negligence insurance for all solicitors in New South Wales, the Australian Capital Territory, Western Australia, and Tasmania. Id.
60. Id. at ix, xi.
61. See id. at xi.
62. Id.
relevant skills and experience, and the specific events before and after the allegation was made.\textsuperscript{63} The researchers in most cases also interviewed the lawyer retained by LawCover to defend the claim.\textsuperscript{64}

The results of this unusually in-depth study were “clearly disturbing.”\textsuperscript{65} They demonstrate “how easy it is for the average solicitor—even the solicitor other solicitors would choose and trust—to become entangled in the events that often lead inexorably to a claim.”\textsuperscript{66} The lawyers did not seem to understand the dynamics of the claims.\textsuperscript{67} The researchers concluded that most lawyers need help to see the patterns that lead to client dissatisfaction and to understand how they should act differently to reduce their inherent exposure to malpractice claims.\textsuperscript{68} By far the most significant cause of professional negligence claims was \textit{not} dissatisfaction with outcome, but instead was related to the handling of the client relationship.\textsuperscript{69} The most frequent problems were failure to listen to the client, to ask appropriate questions, and to explain relevant aspects of the matter.\textsuperscript{70}

A different empirical study in Australia, an evaluation of specialist accreditation that included client focus groups and surveys, found that practitioners and their clients selected “divergent indicators of performance with which to assess satisfaction with service.”\textsuperscript{71} Although clients were satisfied with the specialists’ legal knowledge and skills, the evaluators found “consistent evidence of client dissatisfaction with the provision of services, and the quality of the service-delivery process.”\textsuperscript{72} According to this study:

Practitioners are concentrating on developing their knowledge and skills to deliver better outcomes; but their clients, expecting both technical competence and results, are being disappointed by the process of getting there. Clients complained about the quality of their lawyers’ services in terms of inaccessibility, lack of communication, lack of empathy and

\textsuperscript{63}. Id.
\textsuperscript{64}. See id.
\textsuperscript{65}. Id. at xii.
\textsuperscript{66}. Id.
\textsuperscript{67}. See id.
\textsuperscript{68}. Id.
\textsuperscript{69}. See id. at 21.
\textsuperscript{70}. Id. at 11, 21-26. LawCover was so impressed by these findings that it began to offer premium reductions to lawyers who participate in a series of workshops on lawyer-client communication. See Robin Handley & Damien Considine, \textit{Introducing a Client-Centred Focus into the Law School Curriculum}, 7 LEGAL EDUC. REV. 193, 197-98 (1996).
\textsuperscript{72}. Id. at 357.
understanding, and lack of respect . . . .  

The evaluators concluded that:

consideration should be given by the profession to introducing additional training to redress identified performance deficits in the related areas of inter-personal skills and client management techniques. This training should be client focused, rather than transaction focused; it should train practitioners to recognise that client needs are not confined to attaining objective outcomes; and it should help lawyers to listen to clients more attentively, diagnose their various levels of needs and demonstrate empathy.  

These recommendations are remarkably consistent with the landmark 1992 report of the American Bar Association Task Force on Law Schools and the Profession (generally known as the “MacCrate Report” after Task Force Chair Robert MacCrate).  

The MacCrate Report concluded that the process of licensing lawyers in the United States “has not played a significant role in either encouraging or measuring the acquisition of” critical professional values.  

More recently, the Conference of Chief Justices expressed similar concerns:

Most lawyers get their first introduction to the basic concepts of legal ethics and professionalism during law school, but few students fully appreciate their importance or receive a sufficient grounding in practical legal skills for competent legal practice before being admitted to profession . . . .

State bar examinations traditionally test bar applicants’ knowledge of substantive legal principles, but rarely require more than a superficial demonstration of the applicants’ understanding of legal ethics, professionalism, or basic practical skills. Thus, they fail to provide an effective measure of basic competence of new lawyers.

The MacCrate Report concluded that “it is unrealistic to expect even the most committed law schools, without help from the Bar, to produce

73. Id. at 365.
74. Id. at 366.
76. Id. at 283.
graduates who are fully prepared to represent clients without supervision.” Therefore, the Report urged the creation of an “American Institute for the Practice of Law” that would work with licensing authorities, law schools, and the organized bar “to share information and to coordinate their efforts to improve the transition education for lawyers as they enter the profession.” Effective transition education must include skills and values instruction, not just instruction in substantive law. Moreover, such instruction “should include participatory exercises, trained instructors and concurrent feedback and evaluation.”

Since the issuance of the MacCrate Report, more than a dozen years ago, no significant steps have been taken to establish the proposed American Institute for the Practice of Law. Moreover, state-sponsored transition-to-practice programs have not expanded as the Report encouraged. Yet the same period has seen impressive resources and imagination go into the development of in-house training programs. Therefore, perhaps less ambitious goals may be achievable by focusing on discrete elements of competency, such as lawyer-client communication and ethical judgment, and addressing them in the context of law firm training.

THE EFFECTIVE LAWYER-CLIENT COMMUNICATION PROJECT

The Effective Lawyer-Client Communication (“ELCC”) Project, based at the Georgia State University College of Law, aims “to determine whether international and interdisciplinary collaboration on the issue of lawyer-client communication can actually change basic institutional practices and beliefs in the legal profession.” It was initiated in 1998 by Washington University and the Centre for Legal Education in Australia and has at various times included participants from Australia, England, India,

78. MacCrate Report, supra note 75, at 285.
79. Id. at 337-38.
80. Id. at 285.
81. Id.
82. Id. at 335. The MacCrate Report specifically encouraged sponsors of American transition education to study programs in Commonwealth countries. Id. It noted that “[t]he inadequacy of the existing programs of transition education in this country becomes apparent when they are compared with comparable programs in Commonwealth jurisdictions.” Id. at 295.
Israel, Scotland, South Africa, and the United States, and from a wide variety of disciplines.\(^{84}\) The ELCC Project is significantly influenced by the example of the medical profession, “where a greatly increased emphasis on patient satisfaction is both a cause and an effect of extensive social science research on doctor-patient communication.”\(^{85}\) The analogous experience in the health care field indicates that the critical first step is to develop “a practical and cost-effective method to assess the effectiveness of lawyer-client communication that correlates that assessment with the degree of client satisfaction.”\(^{86}\)

Over the past thirty years, medical education has increasingly emphasized the use of standardized patients for both teaching and licensure.\(^{87}\) This methodology was developed in response to two concerns about its predecessor, the “oral examination.”\(^{88}\) In the oral examination, a medical student interviews and examines a real patient in front of a faculty physician.\(^{89}\) Afterwards, the faculty physician asks the student why he or she asked the patient certain questions and then asks the student to provide a diagnosis.\(^{90}\) This testing method has two major shortcomings: “variability in both the patient case and in the faculty examination.”\(^{91}\) The use of standardized patients, individuals trained to perform a scripted role in an initial clinical examination, overcomes these shortcomings.\(^{92}\) Standardized patients describe the same physical complaints, provide identical responses to similar questions, and exhibit the same body

\(^{84}\) See Cunningham, The Client’s Perspective, supra note 83, at 3. When the author was appointed to an endowed professorship at Georgia State University School of Law (“GSU”), GSU took the place of Washington University as the primary sponsor of the Effective Lawyer-Client Communication Project. The Centre for Legal Education in Australia has changed location and leadership and is no longer actively involved in the project. See, e.g., The University of Newcastle, Centre for Legal Education, http://www.newcastle.edu.au/research/centres/cle.html (last visited Oct. 14, 2005) (noting that the Centre for Legal Education was founded by the Law Foundation of New South Wales in 1992 and then was transferred to the University of Newcastle in 2000).

\(^{85}\) See Cunningham, The Client’s Perspective, supra note 83, at 3; see also Effective Lawyer-Client Communication, supra note 83 (noting that the ELCC’s “forms and procedures are modeled on the standard procedure used by health care providers”).

\(^{86}\) See Cunningham, The Client’s Perspective, supra note 83, at 3.

\(^{87}\) See David Stern, Outside the Classroom: Teaching and Evaluating Future Physicians, 20 GA. ST. U. L. REV. 877, 893 (2004) (noting that “[p]ractice sessions for ‘real-world’ experiences that use ‘standardized patients’ are becoming increasingly more common”). Most medical schools now have standardized patient teaching programs for students. Id. at 894.

\(^{88}\) Id. at 893-94.

\(^{89}\) Id. at 893.

\(^{90}\) Id. at 893-94.

\(^{91}\) Id. at 894.

\(^{92}\) Id.
language in every interview. They are also trained to complete a written evaluation after the simulated examination. The GGSL has agreed to collaborate with the ELCC Project to run a pilot program in Scotland. The pilot program will use standardized clients to assess solicitor candidates. The College of Law of England and Wales, the largest provider of post-graduate legal training in Europe, is also supporting this project. Moreover, the United Kingdom Centre for Legal Education likely will be an additional partner, as will a major commercial law firm in Glasgow that is interested in the potential use of this methodology for its in-house training programs.

The ELCC project has already conducted small-scale pilot projects in the United States, using law school clinics as research sites. The expansion of the project to post-graduate training in Scotland lays the groundwork for similar applications to legal education after law school in the United States.

THE NATIONAL INSTITUTE FOR TEACHING ETHICS AND PROFESSIONALISM

The National Institute for Teaching Ethics and Professionalism (“NIFTEP”) is a recently formed consortium of five nationally recognized university-based centers on ethics and professionalism sponsored by the American Bar Association Standing Committee on Professionalism.

93. Id.
94. See, e.g., Lawrence M. Grosberg, Standardized Clients: A Possible Improvement for the Bar Exam, 20 Ga. St. U. L. Rev. 841, 842 (2004) (noting that standardized patients “provide written evaluations of the students’ interaction with the patient”). The medical profession has concluded that this methodology has made the assessment of clinical skills much more reliable. See Stern, supra note 87, at 894. Moreover, it provides “an excellent opportunity for students to practice communication and examination skills in a controlled setting prior to examining real patients with real conditions.” Id. As of 2004, all medical students must pass a multiple-station examination in which they interview and examine a series of standardized patients. Id. at 888.
95. See Karen Barton et al., Do We Value What Clients Think About Their Lawyers? If So, Why Don’t We Measure It? 8 (October 2005), http://law.gsu.edu/Communication/WhatClientsThink-UCLA2005(Final-Bold).pdf. An important component of the Diploma Course at the GGSL is client interviewing. Id. at 10-11.
96. Id.
98. See, e.g., Cunningham, The Client’s Perspective, supra note 83, at 3-4.
99. See The National Institute for Teaching Ethics and Professionalism, http://law.gsu.edu/ccunningham/Professionalism/NIFTEP (last visited Oct. 17, 2005). The five centers are The Louis Stein Center for Law & Ethics at Fordham University; The Mercer University School of Law Center for Legal Ethics & Professionalism; The Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South
More than twenty-five practicing attorneys applied to NIFTEP’s first annual workshop (held in September 2005). This indicates that practitioners have a strong interest in learning more about the challenge of teaching ethics and professionalism effectively. As the MacCrate Report noted, however, the teaching of professional values should include the opportunity “to perform lawyering tasks with appropriate feedback and self-evaluation; [and] reflective evaluation of the students’ performance by a qualified assessor.” Standardized clients can be trained to present situations that require both effective communication skills and nuanced ethical judgment. Such exercises can teach professionalism in identifying and resolving ethical dilemmas in a safe and controlled environment. They can also be used to assess whether trainees are prepared to handle real client situations.

Scotland may soon use standardized clients to assess the skills of experienced attorneys. The Society of Writers to Her Majesty’s Signet (“WS Society”) is an independent association of lawyers based in Edinburgh, Scotland. The WS Society dates back to 1594, making it one of the oldest surviving legal institutions in the world. It is currently evaluating a proposal for the accreditation of Scottish solicitors in specialist areas of legal practice. Unlike specialist accreditation programs in the United States, the WS Society program now under consideration “is conceived as a qualification milestone in the career of younger lawyers and a benchmark of expertise for clients as well as other lawyers.” It would emphasize the development not only of substantive legal knowledge and advocacy skills, but also of client-focused skills like communication.

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100. Id. For the program agenda and list of participants, see Inaugural Workshop of the National Institute for Teaching Ethics and Professionalism, http://law.gsu.edu/ccunningham/Professionalism/NIFTEP/Workshop-Fall05.htm (last visited Oct. 17, 2005).

101. MACCRATE REPORT, supra note 75, at 331.


103. Id.

104. Id.


106. Letter from Pirrie, supra note 102.
According to the Chief Executive of the WS Society, Robert Pirrie, “[a]ccreditation under the scheme is intended to represent, therefore, not just mastery of substantive law and practice, but also the ability to deliver advice clearly, proportionately, efficiently and cost-effectively.”

To assess qualified solicitors who desire specialist accreditation, the WS Society may adopt the standardized client model being tested through the GGSL’s ELCC Project. This potential partnership between a leading law school and a venerable bar organization in Scotland is a promising model for similar bar-academy collaboration in the United States.

107. Id.

Signet honour does still have a nice ring to it

New WS Society chief Robert Pirrie has ambitious plans for the historic organisation, writes JENNIFER VEITCH

MORE than 400 years ago, becoming one of the select few who could supervise the use of legal armament, must have afforded additional career advantages. Fast-forward four centuries, however, and the benefits of a Scottish solicitor joining the Society of Writers to Her Majesty’s Signet might seem a little less obvious than when its constitution was first drafted in 1588.

And in fusing a corporate partnership in one of Scotland’s leading law firms to become chief executive of the WS Society, mightn’t his colleagues wonder what Robert Pirrie was thinking? “I definitely don’t have this role in mind,” says Sir William. “This role isn’t one that I would have considered.”

Pirrie was an economics graduate of St Andrew’s University before he joined the law, then went on to become a partner in Dundas & Wilson and Maclay Murray & Spens, specialising in corporate and commercial law.

When he joined the WS Society in 1993, he was the first new chief executive in the organisation’s history. He decided to take up the role after becoming increasingly involved in its educational programmes, which include providing the Professional Competence Course (PCC) in association with Glasgow Graduates School of Law, “I enjoyed the role,” says Pirrie, “but a point in my career where I wanted a broader range of challenges.”

Pirrie was certainly giving me that. My role is to develop a strategy that takes into account both the needs of the society and the needs of the profession. We need to be as effective as possible in our activities, but we also need to be as efficient as possible.

The society has been evolving over the years, and I think it is important that we continue to evolve. We need to ensure that we are meeting the needs of our members and the profession as a whole.

Pirrie has spent more than 20 years as a partner at Dundas & Wilson and Maclay Murray & Spens, in the Signet Library.

The Signet Accreditation, which is set to launch later this year, is a new scheme designed to provide a rigorous assessment process, including not only technical knowledge but also “specialist advocacy skills and ethical responsibility”.

The scheme is based on the principle of maintaining and examining peer recognition, Pirrie says. “We are constantly improving our schemes, and we are constantly working on them. We are always looking for ways to improve.”

The scheme will provide a written examination, an assignment, and a performance task, such as a simulated client interview.

While the principal aim of the scheme is to encourage and develop new lawyers, Pirrie recognises that some lawyers may not want to be part of the scheme. “We are not trying to force lawyers to participate,” he says. “We are trying to encourage lawyers to participate.”

The scheme is designed to help lawyers progress through their careers, and Pirrie hopes that it will be successful. “We are looking forward to the future,” he says. “We are excited about the future.”

Robert Pirrie, who spent more than 20 years as a partner at Dundas & Wilson and Maclay Murray & Spens, in the Signet Library, above and below

Pictures: David Moir/Anne Robertson

“The idea is that the scheme will have an afterlife,” he says. “The scheme will become an excellent forum for discussion and debate. It will be a forum for discussion and debate that is open to all lawyers.”

Pirrie also sees the scheme as an opportunity to encourage and develop new lawyers, and he hopes that it will be successful. “We are looking forward to the future,” he says. “We are excited about the future.”

Funds raised from the accreditation scheme are estimated to cost each individual around £500 for the assessment, with a £250 annual renewal fee. – ASKING TO BE INVESTED IN THE SCHEME?

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If the scheme is successful, lawyers may put the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have the letters SA — standing for “Signet Accreditation” — on their nameplates, but they won’t be able to join the WS Society, though they will be able to have
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MORE than 400 years ago, becoming one of the select few who could supervise the use of legal fees, must have afforded added prestige. In the four centuries since, however, and the benefits of a Scots legal degree, the society is still the envy of its peers.

And as long as one of the key partnerships in its history, Donald & Wilson, remains an integral part of the WS Society, its members will always count themselves as part of the elite.

And as the Law Society continues its efforts to modernise the organisation, and to make it more relevant to the needs of its members, the WS Society is also looking to the future.

"We have to recognise that the age profile of our membership is changing, and we have to adapt to meet the needs of our members," Pirrie says.

"In the past, membership was a matter of convenience, and the WS Society played a key role in the legal profession. Now, the WS Society has to be about more than just the practice of law. It has to be about the development of the profession as a whole."

"The key to success is to make the WS Society relevant to our members, and to make it as attractive to younger lawyers as it is to its older members."
Background

- An initiative of The WS Society
- A new national scheme for Scotland
- Accreditation in specialist areas of legal practice
- Law Society of Scotland scheme
- Australian model
Objectives

• To create an incentive and opportunity for lawyers and law firms to become better at what they do
• To promote an improvement in service delivery to clients
• To assist consumers in recognising lawyers and law firms with specialist advisory skills

Principles

• Defined level of expertise
• Defined elements of expertise
  – Technical knowledge and skill
  – Client-focused, administrative and business skills
  – Ethical integrity
• Experience and assessment
• Life-long learning
• Client satisfaction
Eligibility

• Career milestone

• Minimum 3 years post qualification
  – No upper limit
  – Target market 3 – 6 years

• Minimum 35% time in practice area

• Two references/reports

Assessment

• Typically three elements
  – Written examination
  – Assignment
    • "Take home" assignment (e.g., mock file)
    • Portfolio example
  – Performance (e.g., simulated client interview)

• Assessment criteria
  – Generic for scheme
  – Specific for each practice area
  – Integrate elements of expertise
    • Technical
    • Client-focused and business
    • Ethical
Renewal and benefits

- Annual after initial assessment year
- Minimum CPD requirements
- 3 year re-accreditation
- Scheme benefits
  - Specialist forums and publications
  - Other CPD activities
  - Peer learning
  - Collegiality
  - Client and interest group participation
  - Marketing and business development

Relationship with CPD

- Scheme is assessment only
- Definitions of expertise and assessment criteria provide learning outcomes for CPD activity
- Incentive and focus for CPD (including in-house) – e.g., materials
- Law firms and other providers
- The WS Society’s CPD programme
Practice areas

• First year
  – Business/Corporate (sub-divided)
  – Commercial Property
  – Commercial Litigation
  – Family Law

• Second year onwards
  – Build to 14/16
  – Employment, Intellectual Property, etc.

Target timescales

• Application guidelines released: October 2006
• Application deadline: December 2006
• Examination: March 2007
• Accreditation effective: June 2007
Cost

- Self-financing and non-profit
- Surplus applied for benefit of scheme
- Fees
  - Application and assessment: £500
  - Renewal: £250
  - Volume discount
- Ring-fenced from other WS activities

Structure

- Accreditation Board
  - Primarily practising lawyers
  - Academic
  - HR
  - Consumer/Client
  - Other
- Practice Area Committees
- Leaders and exemplars
- Separate branding