tribunal, is an invaluable addition to the input of academic staff who spend more time in the classroom than in the tribunal. A real partnership has evolved in helping the development of these students.

The need to ensure that legal education includes active learning methods which will encourage students to take responsibility for their learning and to become life-long learners has been recognised by the ACLEC. It is now well established that reflection on what has been experienced plays an essential part in that process. The experience of the FRU option could contribute towards this. However, there has been increasing concern that the structure of the course does not positively encourage reflection, as do some of the examples of clinical work cited elsewhere. It has been proposed that students in the FRU option keep a reflective journal. However, this raises further questions. We are all familiar with the problem that it is hard to get students to undertake work seriously unless it is to be assessed and it would not currently be appropriate to assess students' reflective journal on the FRU option. It has been recommended, rather than required, that a reflective journal be prepared. As a longer-term goal the possibility of developing the assessment approach in this option to address the desirability of reflection will be pursued.

CONTINUING EDUCATION

REVIEW ARTICLE

Continuing professional development for solicitors and barristers: a second report on legal education and training
The Lord Chancellor's Advisory Committee on Legal Education and Conduct
July, 1997
105pp.

It will be recalled that the Lord Chancellor's Advisory Committee published its long-anticipated first report[1] in April, 1997. This dealt with both the academic and vocational aspects of the initial legal education of barristers and solicitors and therefore effectively covered all stages leading up to the point of admission. Over the intervening 15 months it has concentrated its efforts on the production of this second report demanded by its statutory remit, containing its recommendations with respect to the continuing professional development of barristers and solicitors in the UK. Although this is designed to be the final report, the Committee acknowledges that it also has a duty to examine specialist accreditation schemes, which it appears to identify as a separate issue and outside the scope of a general report on CPD, despite the general acceptance that they are interlinked.

Once again, the report, which is remarkably succinct, has been written after extensive further consultation, building upon the investigative work done in support of the first report. Hence the Committee has profited from a series of study visits to universities and colleges, firms and chambers within the UK, as well as from a range of responses to a widely distributed consultative paper. It has also drawn on overseas experiences, notably the United States and Australia, which are reflected in the final shape of its recommendations.

In some respects, this report is an anticlimax. It fails to break any new ground in the analysis it proffers of the need for CPD, the case for which is probably unassailable anyway in the late 1990s, nor of the arguments for and against making CPD participation compulsory. Indeed, the main body of the report excluding the appendices consists of less than half its length of 105 pages, which militates against both tough intellectual dissection of the issues and close examination of the empirical evidence.

On the one hand, it endeavours 'to encourage the legal profession to accept planned and structured CPD as a natural and positive element throughout the professional life of every practising barrister and solicitor', while on the other, seeing 'no objection in principle to CPD being made compulsory throughout the practitioner's career.' And yet, the Committee just cannot bring itself to throw its weight behind the introduction of formal mandatory CPD schemes for both branches of the profession to be administered respectively by the Law Society and the Bar Council. Therefore, despite the wealth of precedent with respect both to the lawyers overseas and to other professions within the UK, it shies away from facing up to the most critical decision about CPD to which it could have made its most powerful contribution.

Chapter one reviews the history of proposals for systematic CPD provision, trawling through the relevant pronouncements in the Ormrod, Benson and Marre Reports. It also provides an encompassing definition

[1] Reviewed by the Editor in 4 *Legal Education Digest* 4, April 1996, pp 8–11.

of CPD to mean 'regular, structured educational activity designed to supplement the practitioner's experience by enhancing any aspect of his *(sic)* professional competence at all the different stages of his career.' To its credit, the Committee goes on to extend this understandably trite definition by stressing the reflective nature of professional practice as fostered by CPD, which 'should add, by means of suitably structured activity, an element of reflection designed to clarify and enhance the effect of practical experience.' Not surprisingly, consistent with the conceptual framework assembled in the first report, CPD's proper business as part of the continuum of legal education is envisaged to be the sort of knowledge and skills enhancement, which when combined with experience, characterise the competent practitioner.

Chapter two contains the Committee's thoughts about how, given its desirability, a formal CPD scheme should be structured and administered. It should not be left to market forces alone. Adequate participation across the entire profession cannot be brought off without the determined and sustained intervention of the Law Society and the Bar Council. Indeed these bodies are exhorted to accept responsibility for setting proper and credible standards for the scheme rather than running the risk of having them externally imposed. The Committee's ideas about the characteristics of a formal CPD scheme, whether it be voluntary or compulsory, are set out, including the need to define the nature of acceptable activities and of the form which compliance monitoring should take. The greatest benefit attaching to a formal scheme is seen as creating 'a framework within which the professional body can most effectively deploy its unique power and discharge its unique responsibility to encourage and motivate practitioners, firms and chambers to seek the benefits of CPD.'

On the thorny question of mandating participation, the Committee rejects the argument that CPD compulsion is objectionable in principle. Although competence cannot be compelled, 'what can reasonably be compelled in the public interest is a minimum of activity designed to supplement practical experience in maintaining competence as well as enhancing it.' Moreover, given the structure of the profession and the contrasting attitudes to CPD found among its members, the Committee's firm view is that a compulsory scheme can be justified on the argument that it will achieve more than a voluntary one, until such time as a more widespread acceptance of the need to devote sufficient time to CPD kicks in.

The practical disadvantages of a compulsory scheme are acknowledged, including resentment, the last-minute scramble to fulfill requirements, the minimum requirement becoming the norm, the creation of a compliance culture and problems establishing and enforcing sanctions for non-compliance. The Committee is undeterred by these considerations and pins its hopes on the professional bodies being willing to take vigorous steps toward maximising the availability of relevant, affordable and high quality CPD programs. The end result, somewhat idealistically, is that compulsion will serve to create 'a virtuous circle, in which the practitioner becomes motivated, through compliance with the compulsory minimum, to seek the greater amount of relevant CPD which can serve his actual needs.'

Apart from accrediting providers, the professional bodies are encouraged to define the scope of the schemes sufficiently so that the practitioner will know which activities count towards compliance, while assuring the public that the activity constitutes genuine CPD. Furthermore, they should prescribe CPD in professional ethics as a specific requirement during the first three years of practice.

Commentators frequently lament that those who devise formal schemes fail to lay emphasis on the necessity for individual practitioners to take steps to assess the gaps in their knowledge and skills in order to identify their own CPD needs. One of the strengths of this report is that the Committee has recognised this failing by highlighting the need for lawyers to plan their CPD participation in relevant activities ahead, perhaps with the assistance of a colleague and possibly also with the benefit of monitoring by their firms and chambers. Another desirable feature of the report is its strong advice to the professional bodies to promulgate a clear statement of the expected outcomes of CPD participation at different career stages, which can be applied by firms and chambers to identify needs, plan appropriate activities and assess the outcomes for each individual.

Amongst the further developments proposed in chapter three are exploring common CPD activities designed for both branches of the legal profession, akin to the concept of common education and training in the initial and vocational stages espoused by the first report. Both bodies should also join together to establish a new 'Institute of Professional Legal Studies', charged with research and development on all aspects of CPD with the results to be fed back to the profession.

In the final chapter the Committee dissects the current positions of the Law Society and the Bar Council

with respect to their existing and proposed CPD provision. All the plaudits are reserved for the Society, which is congratulated on having demonstrated its commitment to a comprehensive mandatory scheme. Originally applying only to solicitors in their first three years, the Society currently mandates CPD participation for all its members admitted since 1982, with the intention of extending this obligation to all categories of solicitors in 1998. By contrast, the Bar Council is viewed as the more recalcitrant with respect to CPD, despite its introduction of a compulsory training scheme for new barristers. The Committee sets out in the report to debunk the Bar Council's arguments against widening this scheme to established practitioners on the bases of the Bar's referral nature, the high levels of competency residing in its ranks, its different working practices and its existing educational resources. These arguments do not wash with the Committee, which recommends a staged extension of the scheme to cover all the Bar's members.

Although this second report of the Advisory Committee, because of its impeccable pedigree, must bear close study, in many respects it is a disappointing and unremarkable document. By repeating the commonly offered arguments without any real attempt at analysis, it fails to make any significant impact on the intellectual debate about CPD and the merits of mandating participation. Hence, with the benefit of hindsight, in all likelihood it will be judged to have made a less significant contribution to the future shape of the post-admission training and education of legal practitioners in the UK than the mark its first report is likely to leave upon their initial academic and vocational preparation for practice.

Editor

LEGAL EDUCATION GENERALLY

Contemporary legal education: a critique and proposal for reform
W P Kralovec
32 *Willamette L Rev* 3, Summer 1996, pp 577–592

There are many reasons why the graduate study of law should be an exciting and deeply rewarding intellectual experience. Unfortunately, contemporary legal education fails to achieve this magnificent potential. For many students, law school is not only rigorous and demanding (as it should be), but also personally demeaning and emotionally traumatic. Those who manage to survive it frequently look back on their coursework as a tedious enterprise that was largely irrelevant to their work as practitioners. In addition, rather than broadening a student's mind and heart, legal training tends to narrow the mind and deaden the emotions.

Perhaps the most striking negative feature of contemporary legal education, from a student's standpoint, is the needless infliction of psychological harm. The primary vehicles through which this harm is inflicted are the irrational first-year pedagogy and the relentless institutional focus on competitive standing. The pedagogy is irrational because virtually no account is taken of the fact that most students begin law school without prior legal training and no real effort is made to fill this educational gap. Instead, the traditional approach is to tell students they must learn to 'think like lawyers', while classes are conducted as if students already possess this ability. The competitive nature of law school defeats what should be one of the primary purposes of legal training: to imbue students with a deep and abiding commitment to providing the highest quality of service to their clients. A further serious defect with conventional legal education is its tendency to undermine moral integrity. This harm occurs because contemporary legal training systematically separates the mastery of technique from moral and political concerns.

From a scholarly standpoint, the most striking feature of legal training is its intellectual poverty. This poverty involves far more than the absence of curricular diversity. Rather, it flows from the basic structure of conventional legal education itself. Contemporary legal education focuses almost exclusively on the single skill of 'legal reasoning', yet this skill is quickly acquired. The balance of the training consists primarily of memorisation of doctrine. This doctrinal accumulation is never fashioned into a conceptual whole. Instead, it remains a mere congress of contemporary rules and arcane common law that is largely forgotten soon after the exam. Legal educators have fashioned a program of instruction that has less technical depth than law practice and less conceptual depth than other areas of graduate study.

It is also important to consider the frequently advanced thesis that graduate legal study is necessarily difficult and stressful because of the demanding nature of the profession and because students must compete for a limited number of desirable legal jobs. Litigating for a large firm is an extraordinarily demanding job. However, this is only one type of law practice in one area of the legal community. There is, therefore, no reason to structure the entire process of legal education as a training ground for corporate litigators. With respect to the competitive nature of the job market, that undeniable fact does not jus-