

Provocations and Perspectives

by

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1. Introduction

- 1.1 I was asked by the UK CLE Research Consortium, to which I am a consultant, to prepare a working paper that would inform their work for the Legal Education and Training Review (hereafter, the Review). Although the scope of my contribution has shifted somewhat during the course of the Review, its principal purpose has remained constant – to present bodies and individuals who are formally involved in the Review process with a series of fundamental challenges and probing questions in relation both to the substance of the Review and to the way in which it is being conducted. These provocations are derived from my interaction with a wide variety of people and institutions across the justice system. I have sought to capture and replay a range of perspectives.
- 1.2 The sources and basis of this paper are many and various. They include my own ongoing research and writings (some of which are published, some of which, in their detail, remain confidential to my clients); insight gained through my daily work of advising law firms and in-house legal departments; feedback over the last nine months at relevant conferences; interviews (some formal and structured, others less so) with senior individuals within and beyond the legal profession; and a variety of key publications and online resources. (For further details on sources, see the Appendix to this report.)
- 1.3 The paper that follows is not held out as a rigorous piece of social science. Rather, it is an informal synthesis of a wide range of thoughts, observations, experiences, and arguments that together are intended to widen the horizons of those who are involved in the conduct of the Review. Generally, the report looks forward rather than backwards. There is, of course, no methodology for analysing or predicting the future (techniques such as

scenario planning, by definition, do not contemplate a single future). But, in the spirit of much of my own work for over three decades, I have sought here to project some hypotheses about the future and raise some questions that flow from these. More than this, I encourage readers, many of whom will be figures of great influence, to follow the guidance of Alan Kay, who once suggested that, ‘the best way to predict the future is to invent it’. The great opportunity of the Review is to invent the future of legal education and training.

2. How to think about the future

- 2.1 Although there cannot be any methodology for predicting the future with any degree of precision, it is useful when involved with projects that have significant long-term implications, such as the Review, to adopt at least three mindsets, as introduced below.
- 2.2 First of all, it is instructive to bear in mind the words of Wayne Gretzky, arguably the world's finest ever ice hockey player. When once asked to what he attributed his excellence, he said that he skates 'where the puck's going, not where it's been'. There is a lesson here for the world of law. Too often, when lawyers and legal policymakers are planning ahead, they focus on improving the law and legal processes in the context of the current state of affairs. Instead, Gretzky draws our attention to a broader challenge - to anticipate how the world might be and to recommend reforms that will fit well into that new world rather than into the realm of yesterday. It follows for the Review, therefore, that the task is to recommend a regime for education and training that will dovetail not with the legal marketplace of today but with that of the future, taking account of factors such as probable changes in the economy, emerging information technologies, the way in which legal service is likely to be delivered, the new providers of legal services who will be competing with law firms, and so forth.
- 2.3 Second, in relation to mindset, everyone working on the Review would benefit from reflecting on a well-known anecdote about one of the world's leading manufacturers of power tools. Apparently, in its induction course for new executives, this manufacturer confronts the new recruits with a slide of a gleaming power drill. And the presenters ask the recruits if this is what the company sells. The recruits agree that it is indeed what they sell,

whereupon they are shown another slide – of a photograph of a hole neatly drilled in a wall. The recruits are then told that this is actually what the company sells, because this is in fact what their customers want. And that it is their job as new executives to find new and improved ways of giving their customers what they want. A fundamental question flows from this anecdote for those involved with the Review – what is the hole in the wall, as it were, in the world of legal education and training? The power drill might be said to be all the conventional methods and techniques that have in the past been used to educate and train lawyers (law degrees, lectures, tutorials, apprenticeships, and so forth). But it may be appropriate to take a step back and ask what the fundamental underlying purpose of legal training and education might be. I offer no answers here but simply encourage others to think more broadly about the very purpose and value of legal education and training.

- 2.4 Thirdly, in thinking about the future, discussion will at some stage gravitate towards information technology. IT will have a bearing on what is taught and how we teach. It is helpful in relation to IT to draw a firm distinction between automation and innovation. Automating involves the application of information technology to streamline and improve some pre-existing (and often inefficient) manual process. Innovating is in play, on my terms at least, where information technology allows us to do things that previously were not possible.
- 2.5 IT usage is of relevance to the Review for two reasons. First, technology is likely to change fundamentally the ways in which some legal services are delivered and this will involve not merely automating the ways of the past but introducing new methods of working. And lawyers will surely need to learn about such changes. Second, information technology, in the shape of

‘e-learning’, will bring significant changes to the way in which training and education services are themselves delivered. Sometimes e-learning will be a form of automation (for example, when a lecture is delivered online rather than live) but, on other occasions, e-learning will enable the training of lawyers in ways that simply were not possible in the past (for instance, through simulated legal practice – see Section 7.4).

3. What are we training young lawyers to become?

- 3.1 Historically, much of the focus on legal education and training in England and Wales was on preparing individuals to be competent and responsible legal practitioners. The nature and scope of our conception of ‘legal practitioner’ has stayed fairly constant for many decades – the trusted, consultative adviser who meets face-to-face with his or her clients and dispenses much of his or her guidance and output in the form of print on paper. It has, for long, been reasonable to assume that we have been educating law students and various forms of trainees, to become traditional lawyers in this mould. The problem here, however, is that there are strong indications that the role of the traditional lawyer is likely to change radically within the career span of today’s law students and, even more threateningly, there is a view that is gaining some traction, which holds that the demand for and significance of traditional practitioners will gradually diminish. This does not mean that there will be no jobs left for lawyers in the future, but it does suggest that ‘lawyers’, construed in a broader sense, will be engaged in a much wider range of legal jobs and activities than they are at present.
- 3.2 The central question for the Review in this context is whether the recommendations or changes in education and training should assume that the main focus is on the edification of traditional lawyers or on preparing a new generation of legal professionals whose responsibilities are broader and different. It is hard to address this question without having some firmer view of the likely way in which legal services will be delivered in the long term. Here is an illustration of the Wayne Gretzky point. The challenge is to establish where the puck is likely to end up. And if that is not faced squarely, the profound danger is that the Review advocates a streamlined regime of legal education and training which might be fit for purpose in

2012 but out of date within a few years. In absence of a coherent view of the ways in which the legal market is likely to evolve, the Review might end up being directed at where the puck once was.

- 3.3 What can we say with confidence about the future of the law and lawyers? Much is now being written about the future of legal services and, to a greater or lesser extent, these prognostications and predictions (including my own) are speculative and tentative. However, it does seem that there are some seemingly undeniable trends. First, there is what I call the ‘more-for-less’ dilemma – that clients (whether huge companies or individual citizens) are increasingly asking for more legal service at lower cost. There is no reason to think that this extreme cost pressure is a temporary phenomenon. Second, there is an exponential rise in the power and impact of information technology. We cannot know precisely how the legal world will be affected, for example, by social networking, mobile technologies, cloud computing, and even artificial intelligence. But most credible research points in the same direction – towards transformations in societal and economic structures because of information technology. The law is unlikely to be unaffected. A third major trend is liberalization. It seems unarguable that the Legal Aid Services Act 2007 is giving rise to an upsurge of entrepreneurial interest and activity in the legal market and that new legal service providers and new ways of delivering legal service will emerge. In isolation and combination, these new factors are likely to lead to radical change – in the way that lawyers work with clients, in the way that non-lawyers gain access to legal guidance, and in the way that disputes are resolved.
- 3.4 One dominant and seemingly inevitable long-term trend that follows (especially from the ‘more-for-less’ dilemma) is towards the alternative

sourcing of legal work. The idea here, very broadly, is that legal work will be decomposed (disaggregated, as economists would say) into component parts and each part will be sourced in the most efficient way that the market can provide. The emerging consensus is that traditional lawyers will still be needed for complex legal work in tomorrow's legal world but that routine, repetitive, process-based, and administrative work will be conducted through a variety of alternative sources – for example, by legal process outsourcing, near-shoring, off-shoring, sub-contracting to lower cost law firms, and so forth. When work is packaged and tackled in this way, new roles for legal professionals people will emerge – the legal knowledge engineer, the legal process analyst, the legal project manager, and the legal risk manager, for instance. The details of their job specifications are not important for current purposes. Suffice it to say that, in England and Wales and beyond, market leaders and thought leaders are recognizing these to be crucial new roles.

- 3.5 This leads to a key question – what are we training young lawyers to become? Those who are conducting the Review should recognize, first, that tomorrow's legal world is unlikely to be similar to that of the past and, second, that law students, not unreasonably, expect that they are being trained, prepared, and primed to become competent legal professionals in the marketplace of the future and not of yesteryear. Are we, therefore, training our young lawyers to become traditional one-to-one, bespoke, face-to-face consultative advisers specializing in individual jurisdictions and charging by the hour? Or are we nurturing a new generation of more flexible, team-based hybrid professionals able to transcend legal boundaries and motivated to draw on modern management techniques and the power of information technology? I present these two options as polar opposites but it seems fairly clear that our current educational system continues to

prepare young lawyers for the law as it was practised in the past rather than it is likely to be administered in the future.

4. The remit of law schools – one issue

- 4.1 In many law schools, the law is taught as it was in the 1970s, with little regard, for instance, for globalization, commoditization, information technology, marketing and business management, decomposing, and alternative sourcing. And yet these phenomena are those that are pre-occupying major clients and law firm leaders in their own strategic planning today. Many law graduates in England and Wales are said by these senior individuals to be ill-prepared for undertaking legal work as currently required. Still less are they being tutored for tomorrow's market. Should we therefore extend the remit of law schools and colleges to include other disciplines such as risk management, project management, legal knowledge management, and legal technologies? Is there a place, in other words, for the future in busy law curricula? In answering that question, the Review should have regard to what might be the reasonable expectations of students who, in good faith, are paying for legal education and training.
- 4.2 There are, of course, powerful arguments for not widening the current curriculum, which many traditional law teachers will say is already too busy. One possibility here is to offer not compulsory but optional courses for law students (in all stages of their education). Feedback from students suggests that two optional courses would be welcomed at law school (and indeed across the life cycle of their formal education): one offering the chance to study current and future trends in legal services; and the other providing the chance for students to learn new legal skills (such as risk management and project management) that will support likely future jobs.
- 4.3 If such optional courses were provided, it would be helpful if law teachers took a greater interest than most do today in the future of legal services and

if they joined legal practitioners in investigating likely developments in the legal market. Experienced academic legal researchers could make an invaluable contribution by undertaking, for example, sustained and rigorous social scientific research into trends in the profession.

5. The preoccupations of clients

- 5.1 Reports on and investigations into the future of legal services often pay insufficient attention to the views of clients. The Review should not fall into this trap. Instead, the recipients of legal service should be uppermost in mind; because it is in their interests primarily that the education and training of lawyers should be improved. In that spirit, I turn now to the in-house legal community, which is an increasingly powerful branch of the legal profession.
- 5.2 The collective purchasing power of general counsel and their departments (in the private and public sectors) is colossal and these buyers of legal service are beginning to flex their muscles. They are under mounting pressure to reduce their headcount, to cut the amount they spend on external law firms, and yet they say they have more legal work than ever before. This gives rise to what I call the ‘more-for-less’ dilemma (see Section 3.3). In-house counsel are striving to find ways of delivering more legal service at less cost. Indeed, this is the prime preoccupation of most general counsel. Many are being asked by their Chief Finance Officers and by their Boards, for example, to reduce their legal expenditure by 30-50% over the next few years. (My focus here is on large clients but there are of course similar if not greater demands for lower cost legal service to be made available to consumers and small businesses.)
- 5.3 There is growing acceptance that the reductions in expenditure required will not be secured solely by alternative fee arrangements (for example, by moving from hourly billing to charging on a fixed fee basis). Instead, as discussed throughout this report, there is a growing move towards the sourcing of legal work in new and innovative ways. More particularly, most

general counsel will say that they do not mind paying high rates for genuinely expert and experienced lawyers. But they object to paying fairly high rates to relatively junior lawyers to undertake fairly routine and repetitive work. Many general counsel suggest that law firms have a clear choice here – either they radically reduce the cost of this kind of work or they must be prepared that their clients will instruct alternative providers (such as legal process outsourcers or legal temp agencies) to undertake the routine component parts of deals and disputes (see Sections 6.1 and 6.2).

- 5.4 Crucial for current purposes is a related narrative, aired by many of the general counsel with whom I work and speak. They suggest, on reflection, that *clients have been paying for the training of junior lawyers for many years*. In boom times, when it was a sellers' market and legal work was not especially price sensitive, clients in major organizations say to me that they tolerated relatively high hourly rates for junior lawyers, especially when the legal fees were modest in comparison with the overall value of the deals and disputes in question.
- 5.5 But, in retrospect, many now realize that the payment to law firms of these relatively high rates for relatively junior lawyers in respect of routine work was, in effect, subsidising the training of these junior lawyers. This kind of work had a double benefit for law firms – it brought in healthy fee income and it provided a useful training ground for junior lawyers. However, the very clear message here for law firms and for the Review is that this practice will not continue. So, there is a clear trend away from what has, effectively, been the partial-payment of legal training by major clients. Law firms must now or soon expect to bear all the cost of their young lawyers' learning on the job. This therefore will bring a double burden – a loss of fee income and the need to invest more in in-house training.

6. On what will aspiring lawyers cut their teeth?

- 6.1 Over the last few years, one new and important class of alternative provider has emerged – the legal process outsourcer (LPO). This new type of legal business provides a vital case study for the Review. LPOs are organizations that undertake routine, administrative, process-based legal work at far lower cost than conventional law firms. Typically, their services include document review in litigation, due diligence work, and rudimentary contract drafting. Some of these businesses have grown steadily from start-ups (for example, Integreon); others have similar origins but have been bought by larger organizations (for instance, Pangea 3 is now owned by Thomson Reuters); while still others (such as CPA) are longer established organizations (although they were bought recently by a private equity firm). The e-discovery and litigation support services currently offered by the major accounting firms can also be classified as examples of legal process outsourcers. Valuations of the LPO market vary considerably. From the evidence I have seen, I estimate the value to be around \$2 billion. As a fraction of the global legal marketplace (\$500 billion) this remains a very small proportion, but it is growing rapidly and major clients are expressing great interest in their offerings.
- 6.2 The likely growth and impact of LPOs raises a profound issue for legal education and training – if routine and repetitive work that used to be undertaken by junior lawyers steadily becomes the province of legal process outsourcers, then will law firms not lose the work that used to be the training ground for their up-and-coming practitioners? On what kind of work will aspiring lawyers cut their teeth if law firms no longer undertake the more basic tasks? Note that these questions apply equally to many forms of alternative sourcing. For example, if routine work is undertaken by

paralegals or by English qualified lawyers in lower cost jurisdictions, or by supermarkets or banks, or even if the work (for example, contract drafting) is systematized, then it is clear in these instances too that young lawyers in firms will no longer be exposed to this work.

- 6.3 Many lawyers who are not sympathetic towards the notion of alternative sourcing seem to hope that because it threatens to remove the training ground for young lawyers, then somehow the demand for working in different ways will recede. Clients think otherwise. The commercially minded Chief Executive will continue to want a lower cost service, even if this does create a training problem for the profession. And so too will individual consumers when it becomes known that legal work can be undertaken at lower cost by new-look providers.
- 6.4 I have spoken with young lawyers about this problem and one common response is memorable. They point out that, while they are often asked to spend many weeks reviewing documents in preparation for litigation or in a due diligence exercise, the training benefits these bring are modest. The sharper students say that they get the hang of document review in a couple of days and do not need a couple of months. The stark truth here is that many of the more routine jobs that are handed to trainees and young lawyers in the name of training and learning are motivated as much or more by attaining greater leverage or gearing (increasing the number of junior lawyers per equity partner and so the profit) rather than the education or edification of their younger colleagues.
- 6.5 This, then, is a substantial problem for the Review to address. Given the near certainty of basic legal work (from major to small matters) being resourced beyond law firms, the legal profession must respond with

sophisticated learning facilities that enable young lawyers to learn their trade without necessarily being steeped as deeply as their ancestors have been in the experience of routine work. It may be that some firms elect to keep some routine work within their firms and undertake a kind of parallel working which would serve both as a more constrained training ground as well as a technique by which the work of the external provider can be quality controlled. But, in truth, some new thinking is needed. My view is that the most promising source of inspiration here is the development of e-learning tools for the legal world.

7. e-Learning in the law

- 7.1 Information technology can be used in many ways to support and deliver training and education services. In very broad terms, this is the domain of ‘e-learning’. As in other application areas of technology, e-learning systems can be divided into two categories – those that automate and those that innovate (see Section 2.4). When e-learning is used to automate, this involves refining, streamlining, and optimizing current ways in which education and training operates. In contrast, when e-learning is innovative, this means that the technology is being used to implement processes and deliver outcomes that could not have been achieved in the past without the use of technology. E-learning that automates is often about computerizing inefficient, pre-existing manual processes, while innovate e-learning involves the creation of new and often transformative ways of educating and training.
- 7.2 For senior lawyers, who grew up on the lecture and tutorial system, the use of any type of e-learning often appears rather outlandish. Teaching and learning, it might be thought by this school, are inherently social experiences and should involve inter-personal contact and interaction, with little obvious scope for the mediation of technology. Proponents of e-learning often concede that first rate one-to-one tutorials are superior, for example, to webcasts and online tutorials. However, these advocates will tend to go on to say that e-learning is a great facility for those who otherwise have no access to training facilities or cannot afford conventional learning; and, moreover, that, in any event, we must be honest and note that, far from all conventional lectures and tutorials are first rate. It may also be said that innovative uses of e-learning are not in competition with yesterday’s techniques of educating and leaning. Instead, they are bringing new

techniques and new benefits, none of which could have been realized in the past.

- 7.3 Simple examples of automation are law lectures and tutorials that can be viewed online (at times that suit the user), or real-time webinars. These are not fundamentally novel ways of teaching but they do bring new convenience, without changing some basic methods of teaching and training – in this case, ‘speaking at’ the students). Beyond law, two good examples of this category are the website, TED (www.ted.com - offering a wide range of fascinating lectures), and the Kahn Academy (www.khanacademy.org an online set of lectures/tutorials on mathematics). These services show just how effective and impressive online lectures can be.
- 7.4 Perhaps the best illustration of innovative e-learning are the systems developed by Professor Paul Maharg, most notably his simulated legal practice initiatives and work on transactional learning. For the Diploma in Legal Practice at the University of Strathclyde, Professor Maharg created a fictional online town called Ardcalloch, in which students, on a virtual basis, practise law for their year of study. This does not streamline some pre-existing method of teaching law; rather, the technology allows education and training to be executed in a radically new and transformative way which, I believe, engages and involves law students far more intensely and memorably than conventional teaching methods.
- 7.5 Around the world, in all leading professions, IT is coming to play a central role. The emphasis, in most professions until recently, has been on automating and streamlining the old ways of working. Increasingly though, market leaders and thought leaders are advocating greater take-up of innovative technologies. In the jargon, these are often disruptive

technologies, which means that they fundamentally change and challenge conventional ways of working and call for comprehensive and often structural alteration of working practices in areas in which they apply. Most leading commentators on future technology in the professions and elsewhere, anticipate that, in the terms discussed, the dominant technologies of the future will be both innovative and disruptive – enabling ways of working that were not possible in the past *and* requiring fundamental change for their implementation.

- 7.6 The anticipated benefits are, so we expect, radically improved performance and quality, considerably lower costs, much greater convenience, and crucially, much greater access to the services in question. So too in legal education and training – I strongly advocate that the Review considers and embraces innovative and yet often disruptive uses of e-learning. It is not my purpose here to describe – or advocate – a particular suite of these new technologies for legal education and training. Instead, my intent is to widen the horizons of policymakers and decision makers, to urge that they have open minds towards e-learning, and to encourage a willingness to embrace innovative and disruptive technologies in charting the way forward. For the reactionaries and conservatives, I stress again: it is almost impossible to conceive of a future – of law, or indeed society – that is not radically changed through technology. Traditionally, the legal profession has been slow to embrace new systems. But, in training and learning, there is clear opportunity for applications that allow us to scale heights that were beyond us in the past, even if these new attainments will require major structural upheaval. A legal education and training regime that will be fit for tomorrow's purpose should surely be driven and enabled through technology. IT, on this view, is not an interesting add-on; rather it will

provide the very foundations of the next generation of techniques for teaching and learning.

8. New skills for law teachers

- 8.1 In light of my call for the widespread deployment of legal e-learning, the authors of the Review might profitably give some thought to the presentation and communication skills that should be possessed by those who will deliver legal education and training in the future.
- 8.2 I have a concern here that is related to one that has been voiced for decades – that many law lecturers have not been formally trained to lecture and many tutors (especially those who are legal practitioners) have had little or no training in how to conduct a productive tutorial. Lecturers and presenters can benefit enormously from formal training in the effective delivery of lectures and presentations; it is interesting in the major accounting firms how much emphasis is placed on training the trainers. Some basic pointers relating to group discussion, for example, can add enormous value to a tutorial, especially in ensuring that more reserved students are encouraged to contribute and that higher volume participants are kept at bay.
- 8.3 The need for training our educators extends equally into the world of e-learning. Many of the online law tutorials that I have been asked to evaluate suffer not from poor content or inarticulate presenters but from inexperience in speaking naturally to the camera. Once again, this can be an acquired skill. At the same time, the conduct of webinars can be improved through facilitation by tutors who have been taught how to make the most of this crucial medium. It is not enough for bright law teachers to turn up and have a go. Well-intentioned intelligence is no substitute for task-based training. If e-learning is to work in law, we must coach our law teachers in the art of online presentation and facilitation.

9. Training in technology

- 9.1 It is often assumed that law students, hailing as most of them do from the Internet generation, do not require any training in the use of information technology. It is true that the great majority of today's law students have their own laptops or tablets and that they are entirely comfortable with basic applications such as word processing, e-mail, and web browsing.
- 9.2 Many legal educators follow the school of thought that holds that information technology should not be taught as a distinct discipline but should be used actively by teachers and students in teaching and learning. IT, on this view, is learned on the job; learned, that is, in the process of being educated in other subjects.
- 9.3 To what extent, though, are young lawyers who join law firms fully equipped to use the systems that are in daily use by practitioners? I am not referring here to time-recording, accounting, marketing, and HR systems which can vary enormously and are often best taught as part of induction courses in individual practices. Rather, I have in mind everyday applications such as PowerPoint and Excel. The former has become the standard tool for communicating at Board level in the business world, while the latter is the default system for capturing and presenting routine financial information. It might be useful if young lawyers were fully familiar with these applications on arrival at their firms. Today they are not – these do not belong to the WP/e-mail/browser trilogy; nor are they generally learned on any jobs in law schools (especially Excel).
- 9.4 Looking beyond back office systems, there are other applications of technology in the law office such as litigation support systems, document

comparison systems, online deal rooms, case management systems, and e-discovery tools, that are also part of the daily practice of law and yet wholly alien to many who have completed their formal legal education.

- 9.5 More ambitiously, law students could usefully be involved in the development of some systems, such as automatic document assembly systems. I am not suggesting that aspiring lawyers need to know how to write software, but the experience of structuring and organizing legal materials and articulating a decision tree which would lie at the heart of such a system, can be hugely beneficial – not only does it require great discipline and precision of legal thought but it can be tremendous fun too. This activity is one branch of ‘legal knowledge engineering’, a discipline which, I believe, will be a job in its own right in years to come.
- 9.6 There are a few imaginative and forward-looking law schools that now require their students to develop fairly advanced legal applications, such as legal diagnostic systems or document assembly systems (for example, Georgetown University Law School). The feedback from staff and students is very positive and the law teachers seem encouraged at the level of engagement.

10. Just-in-case vs just-in-time knowledge

- 10.1 Most large firms in England and Wales employ professional support lawyers and even knowledge managers. One of their responsibilities is to capture, nurture, and encourage the re-use of their firms' collective knowledge and experience. They build know-how databases, banks of precedents, guides to best practice, checklists, and the like. In some firms, this knowledge function has come to be merged with the training capability – knowledge, information, research, and training services are organised and delivered by the one team.
- 10.2 There is good sense in this rationalisation - most major law firms and certainly the large accounting firms, recognize the importance of a distinction that I have drawn for some years now – between 'just-in-case' knowledge and 'just-in-time' knowledge. The former is typified in law firms by the occasional training course, whose attendees are briefed on legal subjects, 'just in case' they might be of relevance to some client circumstance in the future. The trouble with much 'just-in-case' training is that, when the knowledge that has been conveyed is indeed required in practice, the lawyers have only scant recollection that they attended the course; still less do they have memory of its precise content. For this reason, there has been a growing emphasis, supported by information technology, on 'just-in-time' learning – this involves making available online facilities which can offer briefings, updates, introductions, and guidance on particular topics, as they arise, rather than searching for old notes or conference folders. On this model, training is not about attending a course. It is, for instance, about putting useful multi-media presentations, perhaps delivered by leading experts, at the fingertips of young lawyers.

10.3 Historically, most legal education and training has fallen into my category of ‘just-in-case’ training. Looking forward, the Review should address the ways in which ‘just-in-time’ techniques and technologies can most fruitfully be exploited. One possibility here, for example, is that lectures and presentations delivered in a ‘just-in-case’ setting are recorded, along with any slides, for later use on a ‘just-in-time’ basis.

11. A plea for theory

- 11.1 In recent discussions with various lawyers, I often hear hard-nosed, pragmatic practitioners eschewing theoretical matters and calling for much more practical education of aspiring lawyers at undergraduate level. On this view, the undergraduate law degree is a form of vocational training. The fiercely action-oriented lawyer may go further and say that the university law degree serves no purpose and the best way for lawyers to learn their trade is by working in an office, in the manner of legal apprentices of the past.
- 11.2 As a former tutor in jurisprudence, I know that I am biased, but I prefer a broader conception of a university education in law. In the first place, I believe that universities and their law faculties are places of learning that should stretch the mind, provoke imaginative thinking, encourage independent research, sharpen skills of argument, and build confidence and powers of expression in undergraduates; and this whatever degree course is chosen. Further, I believe that we can justify much that goes on within the academy on the grounds that it is intellectually stimulating for its own sake, even if it is of no practical value. I see great benefit in students delving into metaphysics or the philosophy of mind, for example, not because it will enhance their career prospects or equip them for later life, but because these subjects are fascinating in and of themselves. It follows, for me, that we should not therefore shy away from including subjects such as jurisprudence, legal history, or Roman law within our legal curricula, just because they seem, on the face of it, to have little relevance for the daily practice of law.
- 11.3 That said, in relation to jurisprudence, in particular, while much of it may seem purely philosophical, there are many branches of this discipline that do

in fact bear directly on legal practice - for example, work on statutory interpretation, judicial precedent, legal reasoning, and legal problem-solving. The study of legal theory encourages students to think beyond the law as a body of rules or a list of cases, and to understand the principles, the purpose, and the policy underpinning substantive law. As in so many other disciplines, it is often helpful to have a sound theoretical understanding of the field of study – this is the foundation upon which practical work sits. Accordingly, in my view, a law conversion course that crams endless lists of legal provisions temporarily into the heads of students so that they can pass exams, runs the risk of producing accredited students with but a brittle and transient understanding of their discipline. I say that we should want aspiring lawyers to be engaged by the theoretical underpinnings of the law, by its history and origins, its structure and nature, and its impact on society more generally.

12. Relationships between practitioners and academics

- 12.1 Over the years, while working with one foot in law faculties and the other in law firms, I have noted that, in general, legal academics and legal practitioners in England and Wales rarely collaborate effectively with one another. Worse, I am afraid that there is little mutual respect. There is no question of outright animosity or unpleasantness but it is clear that academics and practitioners generally perceive the law and legal institutions in quite different ways. Moreover, they betray very little understanding of one another's enterprises.
- 12.2 I am conscious I am speaking in generalizations here but I have found the phenomenon to be so pervasive that I thought it worth exploring. I do not believe this is a mere inconvenience or lack of civility. Rather, it is a very major opportunity missed.
- 12.3 Lawyers in firms tend to regard the work of law professors and law faculties as detached from everyday practice and from the challenges of managing a legal business. They will draw a distinction between what goes on in law books and what actually happens in law offices. They will often say that the practice of law has little to do with the details of legislation and case law and that much that is taught in law school will never be used with clients. They say, further, that those who teach and research in law have little understanding of the growing commercial pressures on firms and little insight into the trends that are reshaping the legal market. Law professors may be admired for their brains and industry but are thought to be theorists rather than people whose work is of practical import.

- 12.4 As for academics' perception of practitioners, there is a commonly held view amongst scholars that many practising lawyers are more interested in turnover and profit than access to justice. The practice of law has become the business of law, it is said with regret, and much of the spirit of the legal profession has been diluted by market forces. It is regarded as unfortunate that daily practice seems to draw infrequently on legal scholarship and that legal service is not intellectually rigorous. Large law firms, in particular, are regarded as having lost the ethos of partnership, and as being dominated by hourly billing rather than a commitment to the administration of justice.
- 12.5 There are, of course, innumerable exceptions to the stereotypes laid out above. But, in the course of my research and visits to law firms and law faculties, these are views that I commonly encounter.
- 12.6 The opportunities missed here are for these equally worthy branches of the legal profession to collaborate and to learn from one another. Law firms can and should help support law faculties, not just financially but also through the provision of appropriate tutors who can offer insight on legal practice to law students. If practitioners are unhappy about the preparedness of law graduates, then they should roll up their sleeves and become more involved in actually teaching students and advising on curricula. Practising lawyers can bring the law to life in law faculties, not by rejection of scholarship but by showing how it can dovetail with what goes on in practice. Law firms should also open their doors more regularly to staff and students from law schools and provide input into the scope and impact of research activities as well as the substance of curricula.
- 12.7 And academics could contribute much more to legal practice. Some scholars already act as consultants to law firms but this remains relatively

rare. Commercially, the contribution of academics to live legal matters can be cost effective for firms and remunerative for professors. This is one example of what I call ‘solo-sourcing’. Academics can also usefully provide ongoing technical legal training and regular legal updates.

- 12.8 In a sense, the details of the collaboration are less significant than the likely positive impact of greater interaction and cooperation. In continental Europe, law professors are often partners in law firms. In the United States, it is more common for law professors to be high profile public intellectuals who write scholarship but also in daily newspapers and blogs.
- 12.9 As noted in Section 14, in the large teaching hospitals in London, professors divide their time between teaching medical students, undertaking clinical work, and conducting research. Theory and practice are not segregated. The theory is about practice. So too in law – the new regime that is proposed in the Review surely will sit on a very much sounder foundation and will have better prospects of success if legal practitioners and legal academics regard this as a common platform to which they can contribute, and from which they might draw in equal measure and with genuine admiration for the contributions of each.

13. Consulting young lawyers

- 13.1 Thinking, research, and debate about reform to the law and legal institutions have traditionally been undertaken by eminent, senior lawyers, usually with decades of experience and considerable expertise in the area in question. It has been assumed, with much justification, that grey-haired elder legal statesmen and acknowledged thought leaders were the people for the job. In Sections 14 and 15 of this paper, I challenge this approach by suggesting that lawyers have much to learn from other professions. My focus in this section is on the desirability of the Review engaging and consulting with much younger members of the legal profession.
- 13.2 It is commonly observed that younger lawyers have a different attitude to work as compared with their elder peers. Fewer younger solicitors in law firms regard their ultimate goal as attaining partnership; there are many more young fathers and mothers in the law who wish to spend more time with their children than was possible for their own parents, a different view on work/life balance is held by many young practitioners, and there are a growing number who challenge the culture of law firms that focuses on generating, say, between 2,000 and 2,500 chargeable hours per year. Many, but clearly not all, young lawyers look upon the workplace in ways that are alien to their senior colleagues.
- 13.3 At the same time, younger lawyers and aspiring lawyers (from late teens through to their late 20s) belong to the Internet generation – these are individuals who cannot remember a pre-Internet world. Their social habits, communication habits, and buying habits are quite unlike those of lawyers aged 40 and above. They conduct their lives in quite different ways. Various forms of social media dominate the social lives of the Internet

generation. Their conception of friends, relationships, contacts, and networks is often quite at odds with those who can recall a world without the Internet.

- 13.4 The key point here is that the Review runs the risk of being conducted by impressively credentialed individuals who have little (other than personal or anecdotal) genuine insight into the generation of lawyers in whose interests the work is being conducted. It is not, in my view, sufficient to suggest that some of those who are undertaking the Review are liberal in relation to the workplace, sympathetic to young lawyers' views, and not entirely unfamiliar with social media.

- 13.5 A braver approach would be directly to involve a high-powered team of aspiring young lawyers, both as a sounding board for proposals that are being made and as a source of ideas (in light of their rather different perspectives). Older lawyers may know more about substantive law and legal practice but younger lawyers have a new and vital narrative to convey. It is indeed from younger lawyers that those conducting the Review might secure the most penetrating insights into the future legal marketplace. Engaging the Internet generation would not only be useful for the insights that would be forthcoming. More than this, the involvement of tomorrow's lawyers in the preparation of the Review is likely to increase the chances of securing buy-in from the next generation of legal practitioners.

14. Lessons from medicine

- 14.1 Lawyers often seem reluctant, when contemplating their future, to look beyond the legal sector and observe how other professions are evolving and responding to current challenges. In contrast, I have found it invaluable over the years to look at other professions – principally, medicine, audit, tax, and consulting – most of whom, in terms of their systems, processes and management techniques, are years ahead of lawyers and law firms.
- 14.2 I submit that we can learn much from medicine and, in particular, from the large teaching hospitals in London, where teaching, research, and clinical work is fully integrated and undertaken under the one roof. Indeed, in these hospitals, one of the major challenges for senior doctors and surgeons is for them to strike the best balance of time spent amongst students, patients, and research colleagues. The great majority of these medical practitioners are involved with teaching (unlike in district general hospitals) and central to this teaching is offering students direct access to patients. The contrast with the legal profession is profound (see Section 12). An interesting exercise for the Review team is to test the extent to which their recommendations encourage greater synergy (by analogy with teaching hospitals) between client service delivery, education and training, and academic research.
- 14.3 In the final three years of medical students' 5-year courses, 40% of their time is devoted to formal teaching while around 60% involves direct contact with patients (in an apprenticeship mode of a sort). Relatively speaking, medical students care for patients long before law students advise clients. The Review team might give thought to whether a new balance between theory and practice for law students might be struck; and whether earlier exposure to client work might be encouraged.

- 14.4 Interestingly, in major faculties of medicine, only around 50% of staff are clinically qualified (geneticists and biochemists are amongst other specialists who work there). Following the arguments of Section 3.4, there is good reason, in the same way, for law faculties to be engaging legal risk managers, legal knowledge engineers, and other specialists who are emerging in the new legal economy.
- 14.5 In medical research, the main current focus is on what is known as ‘translational research’ – where the main intention is to be able to translate basic science fairly swiftly into clinical benefit. To secure funds, many medical researchers have to show, as it were, ‘why their work will save babies’ lives’. As compared with the past, there is currently much less emphasis in medical research in the UK on blue sky work (although there is more of this in the United States). Very early translation into clinical benefit is what is wanted here. This may be short-sighted, but it represents and reflects attempts increasingly to tie research and practice together. Once again, there is a contrast here with the practising and research branches of the legal profession which interact with each other far less frequently (see Section 12).
- 14.6 I am not suggesting that all is ideal in the world of medical education. Consider, for example, what the editor of the *Lancet* wrote about higher education in medicine in 2010: ‘Their questionable admission practices, ossified curricula, out-of-date learning models, invalid assessments, lack of incentives to match health professional to public need, deficits in disease prevention, and the largely absent leadership to put social responsibility at the heart of their educational mission, all point to a bankruptcy of vision by our overpaid academic leaders’.

- 14.7 This quotation was cited by Eric Topol, in his book, *The Creative Destruction of Medicine* (p.180). Topol himself goes on to say (at page 181), ‘The old model of the professor giving a one-way lecture in the auditorium to a large group of medical students is clearly passé, but you wouldn’t know it if you were a medical student in most schools today. On the other hand, you would find that attendance in these antiquated classes is pathetic, and most students simply work on their own. Pedagogy is out; collaborative learning is in. When there are simulators available in medical schools to virtually teach how to do procedures, there is outstanding participation – because the students are actually engaged’. This analysis (from the US) accords with much of my own in Section 7.
- 14.8 From my discussions and research into the medical field, I draw several conclusions. First, clinicians and researchers seem to have greater regard for one another, as compared with practitioners and academics in the legal world. Second, in the major teaching hospitals of London, the professors who teach, research, and undertake clinical work - under the one roof and often on the same day - are amongst the most prestigious in the medical world, and have no direct analogies in the legal fraternity. Third, undergraduate study in medicine is much more demanding, in general, than in law.
- 14.9 Further to this third point, it is noteworthy that most professions that lawyers respect – such as medicine, accountancy, architecture, and veterinary science – require longer periods of study than the legal profession. Many lawyers, both in firms and chambers, will say in response that young lawyers start to learn their trade when they join their offices. This is a considerable indictment of much classroom training in law.

15. Training in large accounting firms

- 15.1 For the last 12 years, my largest client has been Deloitte. Especially from their tax practice, I have learned a great deal about different ways in which professionals can work. The emphasis on structured, formal, ongoing learning and training (both technical and skills-based) in major accounting firms is palpable. Indeed, when I worked full-time for three years in the late 1980s with Ernst & Young, I saw this emphasis even then (at that time, the firm spent over 10% of its fee income on training its people). Major law firms are catching up rapidly but for many lawyers in smaller firms and working in-house, the view is taken that learning takes place on the job.
- 15.2 To get a flavour of the scale and extent of commitment to learning in Deloitte, consider the establishment of Deloitte University. Based in Texas, this campus extends to 107 acres, with 800 guest rooms. The firm invested over £300 million dollars in its establishment and it pulsates with the latest technology, including a media wall, 850 square feet in size. While the firm invests heavily also in e-learning, its leaders considered that the establishment of a physical centre of learning, where people would congregate and network, dovetailed better with the culture of the firm. Although Deloitte respects the training and education provided by first rate academic institutions (I believe the firm recruits more graduates from Oxford University than any other employer), it is clearly committed to supplementing this training; by developing their own people through their immense commitment to internal training and learning.
- 15.3 Legal sceptics may think that this is only of incidental interest to the legal profession. However, my research and experience suggests that much that happens in the major accounting firms later comes to pass in law firms. For

this reason alone, it is worth taking note of what is happening in that world. It is likely, as mergers proceed amongst large international law firms, then similar such facilities are likely to be offered, if not perhaps on the same scale, by legal practices. Already, a few large firms have their own 'academies'.

- 15.4 It should also be noted that the major accounting firms are widely expected to increase their own investment in the delivery of legal services. There may well be opportunities here for the legal profession – law schools could collaborate with Deloitte University, for example, in the delivery of legal education and training.
- 15.5 Another interesting lesson from accounting firms arises from the configuration of their offices. Most of the major accounting firms have embraced open-plan layouts, a strong side benefit of which, it transpires, is that junior people sit amongst more senior colleagues and are able to observe and absorb the working habits of their leaders. This, apparently, is a powerful and pervasive way for young professionals to learn by example. Whereas the old apprenticeship model often involved an aspirant sitting in the room with one senior individual, on the open plan model the trainee is exposed to far more experience and variety. In contrast, very few law firms operate on an open-plan basis.
- 15.6 I conclude that there are three main differences between accounting firms and law firms in relation to education and training. First, the former generally are more committed and involved themselves in the provision of education and training of their professionals. Second, the accounting firms use more advanced users of technology than law firms in the delivery of

training. Third, the open-plan offices of accountants may provide a better learning environment than the conventional cellular set-ups in law offices.

16. Ongoing Review

- 16.1 It is often pointed out that the current Legal Education and Training Review is the first major investigation of its sort for over 30 years. On one view, this is deeply disturbing. Our world has changed so much in the last three decades that it is worrying to think that no thoroughgoing, systematic, and rigorous consideration has been given to the impact of this change on the way in which legal education has been provided.
- 16.2 Looking forward, in the light of globalization, information technology, economic decline, and demographics, the next 30 years seem destined to be a period of immeasurably greater upheaval. Accordingly, I submit, we should emphatically not wait until the 2040s for our next rethink about the way in which lawyers are trained. Rather, I suggest that a formal review structure is put in place as part of the current Review. I suggest that there is some kind of systematic appraisal every three to five years. In part this should focus on the outcome and effects of whatever changes have been put in place as a result of the Review and, in part, this should concentrate on recent and impending changes in the marketplace and the extent to which they call for adjustments in the way we train and educate. I am not suggesting a regular review on the scale of the current Review. But it would be reassuring, as part of this Review, to set up a framework for these future appraisals, laying out a set of criteria against which past performance can be measured and future changes should be evaluated.
- 16.3 We live in times of unprecedented economic and technological upheaval. My own research and writings suggest that the next two decades will see more change than the past two centuries in the way in which lawyers and the courts function. In this context, the notion of a single, one-off Review

is, in summary, misconceived. We require ongoing appraisal and assessment, with an ability to nudge the tiller lightly or change direction completely, as circumstances require.

Appendix – Sources

The arguments, claims, evidence, and predictions in this working paper were derived from a variety of sources.

I thank, in particular, Professor Anthony Warrens, Dean for Education at Barts and The London School of Medicine and Dentistry, for his detailed insights into the operations and challenges facing major London teaching hospitals; and Conrad Young, Partner in charge of Deloitte’s global tax management consulting practice, for his thinking on training in major accountancy firms. I have also benefited from discussions with my son, Daniel Susskind, who has recently completed a series of 50 interviews in the US with senior representatives from many professional services, including medicine, law, and education.

I derive much of my insight from those law firms that I advise as an external consultant. I am especially grateful to Allen & Overy, Berwin Leighton Paisner, and Pinsent Masons, with each of whom I have collaborated for many years. Additionally, I have worked closely with three large in-house legal departments in the past two years, and have seen much more clearly what the world looks like from the clients’ point of view.

A little mysteriously, I thank a handful of practitioners and academics, who have asked not to be identified. In preparing for this report, I conducted frank and open conversations with them about the future of education and training, the problems with current arrangements, the relationships between law firms and law faculties, and so forth. I think I have fairly represented their views.

In the end, though, none of these individuals or organisations is responsible for the contents of this report. I alone am fully accountable.

Conferences

During the period of preparation of this report, I attended and gave lectures at three events, at which I had the opportunity to test various of my ideas about the future of legal education and learning. The feedback influenced my thinking here. The talks and events were as follows:

- ‘The future of legal service’, Association of Young Dutch Lawyers, Eindhoven, 3rd November 2011.
- ‘Access to justice, legal education, and 21st century legal service’, the Bracton Lecture, Exeter University, 30th November 2011.
- ‘Some thoughts on the future’, 42nd Annual Law Deans’ Workshop, San Diego, 18th February 2012.

My thanks to the hosts of each.

Publications

Various books and papers have informed or expand upon the substance of this report. In particular, I would encourage Review team members to read the following:

Christensen, C., Horn, M., Johnson, C., *Disrupting Class* (New York: McGraw Hill, 2008).

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