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# Legal Education in the United States and England: A Comparative Analysis

## I. INTRODUCTION

Although the legal systems of the United States and England<sup>1</sup> have much in common, the steps required to become members of their respective legal professions differ greatly.<sup>2</sup> These differences are surprising because the United States' legal system is based upon English common law.<sup>3</sup> A common-law legal system is structured upon a body of law that is continuously evolving and changing.<sup>4</sup> Courts in these systems analyze previous decisions involving similar facts and issues to determine the applicable law and to guide them in deciding current cases.<sup>5</sup> In a common-law system, lawyers play an integral role in the development of the law.<sup>6</sup> As advocates for their clients, they argue whether or not courts should follow previous decisions, known as precedents,<sup>7</sup> in particular cases. Because lawyers in both the United States and England act as advocates for their clients, they employ similar skills. These skills include a general knowledge of "black letter" law,<sup>8</sup> an ability to distinguish relevant facts from irrelevant facts,<sup>9</sup> and the talent to apply the law to the particular facts of

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1. This Comment discusses and analyzes legal education in England only, as opposed to the entire United Kingdom. "[L]egal education in Scotland, in particular, is, for both historical and contemporary reasons, significantly different" than in England. Jackson, *British Legal Education*, 81 LAW LIBR. J. 667, 668 (1989). Additionally, although legal education in Wales is similar to legal education in England, "Northern Ireland diverges somewhat, for modern constitutional reasons." *Id.* at 669.

2. Cole, *A Comparison of Legal Education in the U.S. and in England: An American Perspective*, 16 BRACON L. J. 25 (1983).

3. M. COHEN, R. BERRING & K. OLSEN, HOW TO FIND THE LAW 515 (9th ed. 1989). The United States adopted the common law system. *See generally id.*, at 2. The state of Louisiana is the only state in the United States that has a civil law system. *See generally* BLACK'S LAW DICTIONARY 223 (5th ed. 1979); *see also infra* note 5 and accompanying text regarding civil law.

4. *See generally* M. COHEN, *supra* note 3, at 2; J. DERNBACH & R. SINGLETON, A PRACTICAL GUIDE TO LEGAL WRITING AND LEGAL METHOD 6 (1981).

5. M. COHEN, *supra* note 3, at 2. The other major type of legal system in the world is civil law, which places primary emphasis on legislation and deemphasizes case law. *Id.* at 562.

6. *See generally id.* at 2-5.

7. J. DERNBACH & R. SINGLETON, *supra* note 4, at 21.

8. "An informal term indicating the basic principles of law generally accepted by the courts and/or embodied in the statutes of a particular jurisdiction." BLACK'S LAW DICTIONARY 154 (5th ed. 1979).

9. *See infra* text accompanying note 164.

each case.<sup>10</sup>

Lawyers in England and the United States share a common heritage and possess similar functions. However, incredible differences still remain in their respective legal systems, including entrance requirements, traditional courses of study, teaching methods, and examination procedures. This Comment examines legal education in the United States and England and the relative strengths and weaknesses of each system. It concludes that both countries can improve their systems of legal education by adopting some of the favorable attributes of the other.

## II. ADMISSION TO LAW SCHOOL

### A. *The United States*

Legal education in the United States begins at the graduate level.<sup>11</sup> Students wishing to pursue a law degree must earn a four year undergraduate degree from a nationally-accredited<sup>12</sup> college or university.<sup>13</sup> In addition, prospective students must take the standardized Law School Admissions Test ("LSAT")<sup>14</sup> or an equivalent

10. See *infra* text accompanying note 170.

11. Berger, *A Comparative Study of British Barristers and American Legal Practice and Education*, 5 NW. J. INT'L L. & BUS. 540, 574 (1983).

12. A college or university that "has sufficient academic standards to qualify graduates for higher education or for professional practice." BLACK'S LAW DICTIONARY 19 (5th ed. 1979).

13. AMERICAN BAR ASSOCIATION STANDARDS FOR APPROVAL OF LAW SCHOOLS standard 502 (1987) [hereinafter ABA STANDARDS].

(a) The educational requirement for admission as a degree candidate is either a bachelor's degree from a qualified institution, or successful completion of three-fourths of the work acceptable for a bachelor's degree at a qualified institution. In the latter case, not more than ten percent of the credits necessary for admission may be in courses without substantial intellectual content, and the pre-legal average on all subjects undertaken and, in addition, on all courses with substantial intellectual content . . . must at least equal that required for graduation from the institution attended.

(c) In exceptional cases, applicants not possessing the educational requirements of subsection (a) may be admitted as degree candidates upon a clear showing of ability and aptitude for law study.

*Id.* Although the ABA standards do allow admittance of a student without an undergraduate degree, an informal telephone survey by the author revealed that this occurs only in very unique situations. Law schools at Harvard, Boston College, Stanford, U.C.L.A., U.S.C., and Loyola of Los Angeles do not admit students without four-year undergraduate degrees.

14. "The L.S.A.T., [a nationally administered examination] is designed to measure skills that are considered essential for success in law school: the ability to read and comprehend complex texts, the ability to manage and organize information, and the ability to process this information to reach conclusions." LAW SCHOOL ADMISSIONS COUNCIL/LAW SCHOOL ADMISSION SERVICES, LAW SERVICES INFORMATION BOOK 2 (1990-91). The LSAT includes

exam.<sup>15</sup> The LSAT is used solely for entrance to law schools and does not apply toward admission to any other graduate program.<sup>16</sup>

Due to the tremendous number of applications received each year, United States law schools rarely grant personal interviews to assess the qualifications of applicants.<sup>17</sup> Instead, law schools consider students' undergraduate grade point average ("GPA"),<sup>18</sup> their LSAT score,<sup>19</sup> personal recommendations,<sup>20</sup> and essays or personal statements.<sup>21</sup> United States law schools also weigh the applicant's "motivation, leadership ability, work or extra curricular experience, family, cultural and community background . . . in making admissions decisions."<sup>22</sup> In the United States, unlike England,<sup>23</sup> successful completion of another graduate course of study alone does not assure admittance to law school. A graduate degree or even a doctorate in

three types of questions: reading comprehension, analytical reasoning, and logical reasoning. See generally *id.* at 33-54.

15. ABA STANDARDS, *supra* note 13, standard 503. "All applicants . . . should be required to take an acceptable test for the purpose of determining apparent aptitude for law study. A law school that is not using the [LSAT] . . . should establish that it is using an acceptable test." *Id.*

16. Use of the LSAT solely for admission to law school is not unusual. For example, the Graduate Management Aptitude Test is required for admittance to a Master of Business Administration program, and the Medical College Admissions Test is a prerequisite for admission to medical school.

17. LOYOLA LAW SCHOOL BULLETIN 61 (1990-91) [hereinafter LOYOLA]. An informal telephone survey by the author revealed law schools at Harvard, Boston College, Stanford, U.C.L.A., and U.S.C. do not grant personal interviews.

18. A student's grade point average is "figured by dividing the grade points earned by the number of credits attempted." AMERICAN HERITAGE DICTIONARY 570 (2d College ed. 1985). The scale is generally four grade points for outstanding work to one for poor work.

19. See *supra* notes 14-16 and accompanying text.

20. Recommendations are normally written by employers, or professors who are in the position to assess a student's abilities and character. E. EPSTEIN, J. SHOSTAK & L. TROY, BARRON'S GUIDE TO LAW SCHOOLS 12 (8th ed. 1988) [hereinafter BARRON'S]. "Recommendations should come from those who have had an opportunity to evaluate [a candidate] carefully and individually over a sufficient period of time to make a reasonable evaluation." HARVARD LAW SCHOOL APPLICATION 11 (1991) [hereinafter HARVARD].

21. The personal statement "may discuss the applicant's interests, family or cultural background, education, work experience, non-academic activities, etc., and any other qualifications deemed pertinent." LOYOLA, *supra* note 17, at 62. The statement is used to "select a diversified class and to further assess each applicant's written English skills." *Id.* Law schools want personal statements to reflect what the student finds interesting; what is important to the student; what the student is good at; the student's ideas, hopes, and dreams. HARVARD, *supra* note 20, at 9.

22. LOYOLA, *supra* note 17, at 60; see also THE LAW CENTER BULLETIN, UNIVERSITY OF SOUTHERN CALIFORNIA 59 (1991) [hereinafter U.S.C.] which looks for "outstanding academic and professional promise and . . . qualities which will enhance the diversity of the student body and enrich the . . . educational environment."

23. See *infra* text accompanying note 35.

another field is merely one more factor that the school will consider when deciding whether to admit an applicant.<sup>24</sup>

### B. England

In contrast, legal education in England begins at the undergraduate level.<sup>25</sup> Students normally start law school at eighteen or nineteen years of age, entering directly from secondary school.<sup>26</sup> A student who wishes to pursue a legal education must take the Advanced Level examination ("A-level"),<sup>27</sup> which is a nationally administered and graded examination.<sup>28</sup> Unlike the LSAT, the A-level allows a student to pursue any type of education at the university level,<sup>29</sup> not just law.<sup>30</sup>

In marked contrast to law school admissions in the United States,<sup>31</sup> many law schools in England require an interview prior to admittance.<sup>32</sup> Thus, prospective English law students have the opportunity to reveal to an admissions council unique qualifications they possess, which are not quantified in their grades or A-level scores.<sup>33</sup> Therefore, prospective students in England whose grades are not outstanding have a better chance for admittance than their counterparts in the United States.<sup>34</sup> Additionally, in England, prospective students who have earned a university degree may be accepted upon the strength of that degree alone.<sup>35</sup>

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24. A graduate degree is considered by the admissions committee along with other factors when reviewing an application. See LOYOLA, *supra* note 17, at 60.

25. James, *English Legal Education and Practice*, 27 N.Y.L. SCH. L. REV. 881 (1982).

26. *Id.* Secondary school is the English equivalent of high school in the United States.

27. "After the second year of secondary school, about one-fifth of the students are channelled into a college preparatory program known as Advanced Level (A-level) . . . [which is] similar to a rigorous American high school honors program." Teeven, *An American Lawyer's View of English Legal Education*, 11 N. KY. L. REV. 355, 362 n.39 (1984). A-level examination scores are scrutinized by universities when they consider a candidate for admission. James, *supra* note 25, at 882.

28. James, *supra* note 25, at 882.

29. See *id.* The A-level is analogous to the Scholastic Aptitude Test which is taken by high school students in the United States for admission to undergraduate colleges and universities.

30. See *supra* text accompanying note 16.

31. See *supra* text accompanying notes 17-24 for the law school admissions policies in the United States.

32. James, *supra* note 25, at 882. Personal interviews may persuade admissions directors to admit students whose test scores are not outstanding. See *id.* at 882 n.8.

33. *Id.* at 882.

34. See generally *id.*

35. *Id.* at 883.

The different entrance requirements in England and the United States result in law students and law school graduates who possess discernible characteristics. Because law students in the United States must have an undergraduate degree,<sup>36</sup> they generally have a more diverse and balanced education than their English counterparts. Additionally, United States law school graduates are, on the average, four years older than English graduates.<sup>37</sup> Thus, novice lawyers in the United States have an added degree of maturity. This maturity benefits practicing lawyers who must not only know the law, but also how to interact with clients and peers, and how to interpret and simplify the law into comprehensible, practical terms.

However, England's more flexible system of evaluating prospective students looks beyond mere grades and examination scores and considers a broad range of individual qualities.<sup>38</sup> This gives English law schools a larger pool of applicants and an opportunity to base their admittance decisions on intangible human characteristics rather than on mathematical formulations of past performance. The English system may provide a better method of assessing an individual's ability to successfully meet the rigors of law school and legal practice. It also offers English law students the opportunity to display their potential, despite mediocre performance during adolescence.

### III. COURSE OF STUDY

#### A. *The United States*

In the United States, the first-year law school curriculum is sacrosanct; required subjects have barely changed in over one hundred years.<sup>39</sup> Traditional first-year courses include: Contracts, Criminal Law, Property, and Torts,<sup>40</sup> with very few variations or exceptions. The cases and rules of law that are taught during the first year of law school are so standardized that visitors can sit blindfolded in any first-year class across the nation and not be able to tell whether they are at

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36. See *supra* text accompanying notes 11-13.

37. Because law students in the United States are generally required to have a four-year undergraduate degree, they will typically be four years older than their English counterparts. However, a student in either country may have taken time off to work, travel, or pursue other interests prior to admission to law school.

38. See *supra* text accompanying notes 31-34.

39. Rowles, *Toward Balancing the Goals of Legal Education*, 31 J. LEGAL EDUC. 375, 378 (1981).

40. Byse, *Fifty Years of Legal Education*, 71 IOWA L. REV. 1063, 1063-64 (1986). Each school can of course make changes to this basic model. For example, at Loyola, Civil Procedure is a required course during the first year of study. LOYOLA, *supra* note 17, at 23.

Harvard, Yale, or Columbia.<sup>41</sup> Additionally, first year law students in the United States are constantly told to think logically and analytically, "like lawyers."<sup>42</sup> However, students are never given an adequate definition of what thinking like a lawyer actually means.<sup>43</sup>

After the first year, law students in the United States theoretically have tremendous flexibility in choosing the remaining courses necessary to fulfill the requirements for a Juris Doctor degree ("J.D.").<sup>44</sup> However, most students choose to take "bar courses"<sup>45</sup> since passing a post-graduate state bar examination<sup>46</sup> is a prerequisite to practicing law. These courses cover topics tested as part of the rigorous bar examinations.<sup>47</sup> Therefore, most students have very little opportunity or motivation to broaden their legal education with elective courses.<sup>48</sup>

After three years of law school in the United States, students typically graduate with a generalized understanding of the basic legal subjects.<sup>49</sup> Because most schools do not provide for specialization or

41. H. PACKER & T. EHRLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* 29 (1972).

42. Gorman, *Assessing and Reforming the Current Law School Curriculum*, 30 N.Y.L. SCH. L. REV. 609, 610 (1985). "[T]he critical assessment of generalities and their application to varying fact situations." *Id.* "[A]nalyzing, weighing, and relating the law to various fact situations. A minor twist in the facts could change the outcome." Uhlig, *The Making of a Lawyer*, 38 J. LEGAL EDUC. 611, 612 (1988).

43. See generally Uhlig, *supra* note 42, at 612. For a critical assessment of legal education and learning to think "like lawyers," see generally D. KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY* (1983).

44. The Juris Doctor is the basic law degree granted in the United States. BLACK'S LAW DICTIONARY 749 (5th ed. 1979).

45. *E.g.*, Administration of Criminal Justice; Civil Procedure; Commercial Law; Conflicts of Law; Constitutional Law; Contracts; Corporations; Criminal Procedure; Ethics, Counseling and Negotiation; Evidence; Family Law/Marital Property; First Amendment Survey; Introduction to Appellate Advocacy; Land Use Controls; Property; Property II; Estates and Future Interests; Remedies; Torts; and Trust and Wills. LOYOLA, *supra* note 17, at 38.

46. A bar examination is an examination that may be one of the prerequisites for practicing before the courts of a particular state or jurisdiction. BLACK'S LAW DICTIONARY 135 (5th ed. 1979). "[T]he whole body of attorneys and counsellors, or the members of the legal profession, collectively, who are figuratively called the 'bar'." *Id.* Although the entrance requirements necessary to practice vary, the American Bar Association ("ABA") recommends that every candidate for admission to the bar should graduate from an ABA approved law school. Additionally, the student should take an examination by public authority to determine that the student is fit for admission to the bar. See ABA STANDARDS, *supra* note 13, standard 102. In California, the state bar examination is a three-day, comprehensive examination that is offered bi-annually.

47. Rowles, *supra* note 39, at 378.

48. See generally LOYOLA, *supra* note 17, at 38. For example, students at Loyola who take all of the required bar courses will fulfill 74 out of 87 units required to earn a J.D. *Id.*

49. See generally H. PACKER & T. EHRLICH, *supra* note 41, at 32.

in-depth study in a particular subject or area of practice,<sup>50</sup> law school graduates in the United States generally do not have an area of expertise when they begin practicing law. Specialization in a particular area of the law can be obtained through graduate law degree programs<sup>51</sup> or continuing education of local bar associations.<sup>52</sup> Unfortunately, further education may not be desirable or feasible because of the high cost of legal education<sup>53</sup> and the fact that most law school graduates have already spent seven years obtaining their undergraduate and J.D. degrees. Consequently, the vast majority of law school graduates develop an area of specialization by trial and error during their first few years of practice.<sup>54</sup>

Although most United States law school graduates have a basic knowledge of the law, they know very little about the practical aspects of daily legal practice.<sup>55</sup> Thus, new lawyers in the United States often lack basic lawyering skills, which they must learn during their first years of practice, often without adequate supervision.<sup>56</sup>

### B. England

In contrast, law students in England must choose their practice area while they are still in school, during the vocational phase of their legal education.<sup>57</sup> English law students may choose to become solici-

50. *Id.*

51. See generally Gabriel, *Graduate Legal Education: An Appraisal*, 30 S. TEX. L. REV. 129 (1988).

52. See generally Sacks, *Advanced Legal Education Academic and Continuing: A Comparative Approach*, in LEGAL EDUCATION IN THE UNITED KINGDOM AND THE UNITED STATES: AN OVERVIEW 120 (1985). A bar association is "[a]n association of members of the legal profession." BLACK'S LAW DICTIONARY 135 (5th ed. 1979).

53. "The cost of attending a private law school can easily exceed \$15,000 per year . . . [T]he vast majority of law students . . . now rely increasingly on various forms of government and private financial aid." BARRON'S *supra* note 20, at 23. The student may also have considerable undergraduate loans outstanding.

54. See *infra* text accompanying notes 324-37 regarding trial and error learning. Once students begin to practice they will choose not only an area of expertise, but also whether to pursue litigation or transactional work.

55. Cramton, *Preparation of Lawyers in England and the United States: A Comparative Glimpse*, 10 NOVA L.J. 445, 446 (1986).

56. Mudd, *Beyond Rationalism: Performance-Referenced Legal Education*, 36 J. LEGAL EDUC. 189, 192 (1986). "Those law students who, upon graduation, obtain jobs where they can learn from other lawyers are probably decently served by legal education. Those who do not apparently muddle through—somehow." *Id.* at 197 (quoting AMERICAN BAR ASSOCIATION, THE SPECIAL COMMITTEE FOR A STUDY OF LEGAL EDUCATION, LAW SCHOOLS AND PROFESSIONAL EDUCATION: REPORT AND RECOMMENDATIONS 93 (1980)).

57. See *infra* text accompanying notes 82-95 regarding the vocational phase of legal education in England.



tors<sup>58</sup> or barristers.<sup>59</sup> Solicitors are comparable to transactional attorneys in the United States. They draft wills and conveyances, form corporations and partnerships, and offer legal advice to clients.<sup>60</sup> Barristers, on the other hand, are comparable to litigators in the United States. Barristers are responsible for trying cases and making court appearances.<sup>61</sup> Clients cannot deal directly with a barrister. They must first consult a solicitor who will then inform a barrister of the important issues if litigation is necessary.<sup>62</sup> Regardless of which practice area the English law student wishes to pursue, all students must complete an academic<sup>63</sup> and a vocational<sup>64</sup> phase of legal education, along with an in-training apprenticeship.<sup>65</sup>

### 1. Academic Phase

During the normal course of legal academic study in England, students obtain a three-year law degree from an undergraduate university.<sup>66</sup> However, an undergraduate law degree is not an absolute prerequisite for admittance to the legal professions.<sup>67</sup> University graduates with nonlegal degrees,<sup>68</sup> mature students without a de-

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58. James, *supra* note 25, at 892. "The solicitor has two principal functions: [1] to advise and assist his client in legal affairs, and [2] to act for him in litigation." *Id.* Generally, the solicitor is concerned with facts rather than the law. A client may request advice, and the solicitor may suggest consulting with a barrister to settle the matter. This situation is analogous to a general medical practitioner consulting with a specialist. *Id.*

59. *Id.* at 892. A barrister is supposed to be "learned in the law." *Id.*

60. See generally Ablard, *Observations on the English System of Legal Education: Does it Point the Way to Changes in the United States?*, 29 J. LEGAL EDUC. 148, 156 (1978); James, *supra* note 25, at 892.

61. James, *supra* note 25, at 892.

62. *Id.*

63. See *infra* text accompanying notes 66-81.

64. See *infra* text accompanying notes 82-95 for a general discussion of the vocational phase of legal education in England. See *infra* text accompanying notes 96-101 and 116-30 for a more specific discussion of solicitors' and barristers' respective vocational training.

65. Teeven, *supra* note 27, at 357. In-training apprenticeships are the period of time that the new solicitor works under the supervision of a practicing solicitor and the new barrister works under the supervision of a practicing barrister. *Id.* at 367-71. See *infra* text accompanying notes 102-15 for a discussion of solicitors' in-training apprenticeships; see also *infra* text accompanying notes 131-51 for a discussion of barristers' in-training apprenticeships.

66. This is analogous to law school in the United States. Teeven, *supra* note 27, at 357.

67. *Id.* at 362. Barristers and solicitors are collectively called "the professions" in England. See generally *id.* The Council of Legal Education governs the vocational phase of legal education for barristers, and the Law Society governs the vocational phase of legal education for solicitors. Blake, *Legal Education in Crisis: A Strategy for Legal Education Into the 1990s*, 21 LAW TCHR. 3 (1987).

68. Teeven, *supra* note 27, at 362.

gree,<sup>69</sup> and a small number of bright students who have just completed secondary school ("school leavers")<sup>70</sup> are eligible to join the profession without a law degree.<sup>71</sup> These individuals may become barristers or solicitors by taking six "core"<sup>72</sup> courses which include: "Constitutional and Administrative Law, Criminal Law, Contract[s], Torts, Land Law and Equity, and Trusts"<sup>73</sup> during one academic year.<sup>74</sup> They must also successfully pass the Common Professional Examination ("C.P.E.").<sup>75</sup>

English law schools place tremendous emphasis upon learning "black letter"<sup>76</sup> law. This is in marked contrast with law schools in the United States, which stress case analysis and learning to think logically and critically "like a lawyer."<sup>77</sup> As in the United States, English law students have very little opportunity to take electives once they have fulfilled their required courses.<sup>78</sup> In England, the academic phase of legal education is not intended to teach aspiring lawyers all of the skills that are necessary to practice law.<sup>79</sup> The goal of

69. *Id.* at 362-63. "A mature student must be over 25 years old and have had life experiences deemed valuable preparation for a practitioner, such as, military experience, business experience . . ." *Id.* at 363 n.40.

70. *Id.* A "school leaver" is a student who is allowed to take the six "core" courses without first entering an undergraduate university. *Id.* See *infra* text accompanying notes 72-73 regarding the "core" courses. The Bar no longer allows entry by young "school leavers," but the Law Society does allow entry due to tremendous pressure from roughly half of the solicitors who themselves are not university graduates. *Id.* at 363 n.41.

71. *Id.* at 362-63. Additionally, a Fellow of the Institute of Legal Executives who is similar to a very well prepared and respected United States paralegal may also be eligible to join the professions without a law degree. *Id.* at 363.

72. See generally James, *supra* note 25, at 885.

73. *Id.* at 885 n.21. The student also must have a basic knowledge of the English legal system. *Id.*

74. Teeven, *supra* note 27, at 362-63.

75. *Id.* at 362. C.P.E.s are the preliminary examinations that are necessary for admittance to the vocational phase of legal education. Waghorn, *The Law School Experience*, 21 BRACKTON L.J. 78 (1989). Each branch of the legal profession, *i.e.*, solicitors and barristers, establishes its own C.P.E. requirements. Teeven, *supra* note 27, at 363. A law student who is enrolled at an undergraduate university may also be exempt from the C.P.E. by taking the "core" subjects that the professional bodies require. *Id.* at 361-62. See generally Mordsley, *Legal Education in England*, 9 CORNELL LAW F. 50, 52 (1982).

76. Mordsley, *supra* note 75, at 51.

77. United States law schools have students "dissect and discover the meaning of appellate court opinions through Socratic dialogue with their instructors." Blum & Lobaco, *The Case against the Case System*, 4 CAL. LAW. 31 (1984).

78. James, *supra* note 25, at 885-86. "A law degree usually includes 12-15 law subjects taken over three years." Teeven, *supra* note 27, at 361 n.34; see also LOYOLA, *supra* note 17, at 38 (suggesting that a student take 74 units out of 87 that are required to earn a J.D. to fulfill "California Bar course" requirements).

79. Diamond, *Lawyer Competency and Bar Admissions, The Role of the Law School and*

the academic stage is to provide students with

three of the essential requirements of a practitioner: "a basic knowledge of the law and where to find it; an understanding of the relationship of law to the social and economic environment in which it operates; and the ability to handle facts and to apply abstract concepts to those facts."<sup>80</sup>

These objectives are strikingly similar to the goals of legal education in the United States.<sup>81</sup> However, in England, the academic stage is merely the initial phase of legal education, whereas in the United States, the academic stage is legal education in its entirety.

## 2. Vocational Phase

Once an English law student obtains a university degree or alternatively, completes the "core" courses and the C.P.E.,<sup>82</sup> the student enters the vocational phase of education and must choose between a career as a solicitor or a barrister.<sup>83</sup> Solicitors perform two functions in the English legal system: advising and assisting clients in their legal affairs,<sup>84</sup> and representing clients in litigation.<sup>85</sup> Solicitors may represent clients in the lower courts.<sup>86</sup> However, if the litigation occurs in the higher or superior courts,<sup>87</sup> the solicitor must transfer the case to a barrister who has the exclusive right of audience in the higher courts.<sup>88</sup> Barristers act as litigation specialists working in conjunction with solicitors.<sup>89</sup> Thus, it is the solicitors' function to handle all contact with clients and act as their client's legal advisors, whereas it is

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*the Role of the Profession*, in LEGAL EDUCATION IN THE UNITED KINGDOM AND THE UNITED STATES: AN OVERVIEW 2 (1985).

80. *Id.* at 3 (quoting Committee on Legal Education, Cmnd. 4595, para. 101-02 (1971)).

81. *See generally Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools*, 1979 ABA SEC. LEGAL EDUC. & ADMISSIONS TO BAR [hereinafter ABA REPORT].

82. *See supra* text accompanying notes 66-81 regarding successful completion of the academic phase of legal education.

83. *See generally Teeven, supra* note 27.

84. James, *supra* note 25, at 892.

85. *Id.*

86. *Id.* The Magistrates' Court and County Courts are two examples of such lower courts. *Id.* at 892 n.45.

87. "[C]ivil actions are tried either in one of the three divisions of the High Court (Queen's Bench, Chancery, or Family) or in lower courts of limited jurisdiction (such as County Courts), with review by the Court of Appeal and from there by the House of Lords." COHEN, *supra* note 3, at 516. "Criminal trials are conducted in a Crown Court, with the same two-tier appeal system." *Id.*

88. James, *supra* note 25, at 892.

89. *See generally id.* at 892.

the barristers' function to litigate and represent clients in higher courts.<sup>90</sup>

Each branch of the profession establishes and oversees its own requirements for the vocational phase.<sup>91</sup> This stage of legal education is further separated into a vocational training course, and an in-training<sup>92</sup> apprenticeship.<sup>93</sup> In England, additional education is considered necessary to teach students "those skills without which it would be dangerous to let loose the would-be practitioner on society."<sup>94</sup> The English model of legal education, as contrasted with the model in the United States, stresses apprenticeship and practical experience<sup>95</sup> and places much less emphasis on pure academic preparation.

### a. Solicitors

#### i. Vocational Phase

The Law Society's College of Law<sup>96</sup> and seven polytechnics<sup>97</sup> throughout England offer the solicitor's nine-month vocational phase of legal education.<sup>98</sup> During this vocational stage, solicitors study: Accounts, Business (which covers Companies, Partnership, and Insolvency), Consumer and Employment Protection, Conveyancing, Wills, Probate and Administration, Family Law, and Litigation (which includes Civil Procedure, Criminal Procedure, and Evidence).<sup>99</sup> Stu-

90. *Id.*

91. Teeven, *supra* note 27, at 365-71.

92. See *infra* text accompanying notes 102-15 and 131-57 regarding in-training apprenticeships for solicitors and barristers respectively.

93. See generally Teeven, *supra* note 27.

94. *Id.* at 365 (quoting *Training for the Law*, DITCHLEY FOUNDATION, PAPER NO. 11 43 (1967)).

95. Cramton, *supra* note 55, at 448.

96. The Law Society's College of Law is the teaching organ of the Law Society. James, *supra* note 25, at 891. The Law Society is the professional body of the solicitor's branch of the profession. It is responsible for the education, discipline, and general coordination of solicitors. *Id.* at 891 n.43.

97. Mordsley, *supra* note 75, at 50. Polytechnics were expected to adopt a practical method of teaching, thought to be particularly applicable in the study of law. *Id.* Polytechnics were created in 1970 to help meet the great demand for higher education in England. *Id.* Use of polytechnic instructors to provide practical training has been criticized because polytechnic teachers are full-time instructors and not practitioners. Teeven, *supra* note 27, at 367. Therefore, they may not possess sufficient practical experience for the solicitor's vocational training. *Id.*

98. Teeven, *supra* note 27, at 367 n.74 (citing The Royal Commission on Legal Services, (Chairman: Sir Henry Benson) HMSO Cmnd. 7648, 637 (1979)). "The polytechnics involved are Birmingham, Bristol, City of London, Leeds, Manchester, Newcastle, and Trent." *Id.*

99. Waghorn, *supra* note 75, at 80.

dents are also taught professional responsibility and etiquette.<sup>100</sup> However, it is ironic that solicitors, who are responsible for advising and assisting clients, receive no training in communication skills or client counselling.<sup>101</sup>

## ii. In-Training Apprenticeship

After completing their vocational training and passing a final examination,<sup>102</sup> students must "serve articles"<sup>103</sup> with a practicing solicitor. During this time, the student works directly under the supervision of a solicitor who has been practicing for at least five years.<sup>104</sup> There are no standard tasks performed by a student who is serving articles; the apprenticeship is shaped solely through the work delegated by the supervisor.<sup>105</sup> The student's prior course of study determines the length of time the student spends serving articles.<sup>106</sup> University graduates must serve articles for only two years, while nongraduates must serve for four.<sup>107</sup>

After serving articles, students must search for jobs as assistant solicitors.<sup>108</sup> Novice solicitors are not permitted to establish their own practices or to enter into partnerships without permission from the Law Society for three years after serving articles.<sup>109</sup> These restrictions are intended to provide additional training and to avoid the risks to society that "might arise if a newly qualified solicitor was permitted to set up in practice prematurely."<sup>110</sup>

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100. Mordsley, *supra* note 75, at 53.

101. Waghorn, *supra* note 75, at 83.

102. Diamond, *supra* note 79, at 3.

103. James, *supra* note 25, at 891. Serving articles is an apprenticeship under a practicing solicitor. *Id.*

104. Ablard, *supra* note 60, at 158. The Law Society requires the student to serve articles with a solicitor who has been practicing for at least five years to ensure that the student obtains practical knowledge from an experienced solicitor. *See generally id.*

105. *See infra* text accompanying notes 111-13 regarding the variations in the learning experience during articles.

106. Ablard, *supra* note 60, at 158.

107. Green, *Legal Education in England*, 28 J. LEGAL EDUC. 137, 139 (1976).

108. *See generally* James, *supra* note 25, at 891.

109. Diamond, *supra* note 79, at 4.

110. *Id.* (quoting the Royal Commission on Legal Services, HMSO Cmnd. 7648, para. 38.33 (1979)). "[T]o practice as a solicitor on one's own account or as a partner it is necessary to take out an annual practising certificate." There are two requirements for an annual certificate: (1) the solicitor must obtain an accountant's certificate which states that the solicitor's accounts are in order, and specifically that client's money has been kept separate from the solicitor's own money at all times, and (2) the solicitor must obtain compulsory insurance. *Id.* at 5.

The process of serving articles is frequently criticized for providing students with a questionable learning experience.<sup>111</sup> There is no professional control over this in-training apprenticeship. Thus, the quality of the student's learning experience is solely dependent upon the amount of time, energy, and effort the supervising solicitor is willing to expend.<sup>112</sup> If a supervisor encourages, motivates, and trains the student, serving articles can be an extremely educational and rewarding experience. However, if the supervisor merely views the novice solicitor as a means to take on additional work and increase business, the student may learn very little.<sup>113</sup> Nonetheless, students serving articles are at least paid a nominal salary,<sup>114</sup> whereas novice barristers receive no salary at all during their in-training apprenticeship.<sup>115</sup>

### b. Barristers

#### i. Vocational Phase

English students who aspire to become barristers must join an Inn of Court<sup>116</sup> to begin their vocational phase of training. Inns of Court are private, unincorporated associations that exclusively confer the rank or degree of a barrister.<sup>117</sup> Once prospective barristers join an Inn, they must take an intensive one-year vocational course at the Inns of Court Law School<sup>118</sup> which concentrates on litigation. Students focus on learning the rules of evidence, drafting pleadings, and perfecting their oral advocacy skills.<sup>119</sup> The Bar does not allow universities to teach this phase of a barrister's education<sup>120</sup> because ide-

111. Teeven, *supra* note 27, at 370-71.

112. Green, *supra* note 107, at 144. "The English legal journals for a century and a half have been replete with the complaints of articulated clerks as to their exploitation, and their use as mere scribes." *Id.*

113. See generally Teeven, *supra* note 27, at 370-71.

114. There is no standardized salary for a solicitor who is serving articles. Typical starting salaries range from \$9,000 per year to \$17,500 per year. See generally 3 *LAWYER*, 12-13 (1989). Originally articulated clerks paid their principals large sums or premiums to be accepted as clerks. Although premiums are still paid today, they are becoming rare, and articulated clerks typically receive a moderate sum from their principle. Green, *supra* note 107, at 144.

115. Teeven, *supra* note 27, at 371.

116. James, *supra* note 25, at 893. The four Inns in London are the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn. *Id.* at 893 n.46.

117. *BLACK'S LAW DICTIONARY* 709 (5th ed. 1979).

118. Barristers are trained in one of the four Inns of Court law schools. W. BURDICK, *BENCH AND BAR OF OTHER LANDS*, 75 (1939). See *supra* note 116 and accompanying text and *supra* text accompanying notes 116-17 regarding the Inns of Court.

119. Mordsley, *supra* note 75, at 52.

120. Teeven, *supra* note 27, at 366.

ally, this phase should be taught by seasoned barristers who can provide students with an abundance of insight, knowledge, and experience.<sup>121</sup> However, this is usually not the case.<sup>122</sup> The vast majority of barristers who teach at the Inns of Court law schools are the newer, less experienced members of the Bar who are in need of the supplemental income that they obtain from teaching.<sup>123</sup> Therefore, the objective of this vocational phase of a barrister's training, to obtain practical experience and insights from accomplished barristers, is not realized.<sup>124</sup>

When students at the Inns complete all of their academic requirements, they are "called"<sup>125</sup> to the Bar.<sup>126</sup> In contrast to the United States, where a court admits members to the bar,<sup>127</sup> English law students are called to the bar by the governing body of their Inn.<sup>128</sup> Because barristers are officers of their individual Inns,<sup>129</sup> they do not take an oath before a court, as do lawyers in the United States.<sup>130</sup>

## ii. In-Training Apprenticeship

When prospective barristers complete their vocational training at the Inns of Court, they must successfully pass the Bar exam<sup>131</sup> and begin pupillage,<sup>132</sup> the apprenticeship phase of legal education for barristers. Students must find practicing barristers who are willing to

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. James, *supra* note 25, at 893. "Call" now takes place on "call nights" at the Inns. *Id.* at 893 n.47. The senior member of the Bench addresses the new recruits and one of them makes a reply. The "Bench" consists of the judges who happen to be members of the Inn, senior barristers, and certain honorary "benchers." *Id.*

126. The "bar" refers to the body that governs barristers. See generally Diamond, *supra* note 79, at 8 n.2; James, *supra* note 25, at 893-94; Teeven, *supra* note 27, at 357. "Barristers derive their name from the fact that they have been called to the bar, and thus have the right to speak and to be heard ('right of audience') in court in connection with matters entrusted to them in their professional capacity." W. BURDICK, *supra* note 118, at 75.

127. See generally W. BURDICK, *supra* note 118, at 75.

128. *Id.*

129. *Id.*

130. *Id.*

131. James, *supra* note 25, at 893.

132. *Id.* at 893-94. Pupillage is the term used for the barrister's apprenticeship training. See *id.*

accept them as pupils to "read in chambers."<sup>133</sup> Pupillage lasts for one year, during which time the novice barrister serves as an apprentice to a pupil master who has at least five years of experience.<sup>134</sup>

During pupillage, the students attend all conferences and cases in which their pupil master is involved.<sup>135</sup> After six-months' pupillage, students are allowed to take cases on their own.<sup>136</sup> Like serving articles for the novice solicitor, there are no standard tasks or duties performed by the pupil.<sup>137</sup> The students learn the practice of law solely through the work delegated by the pupil master.<sup>138</sup>

During pupillage, students must "keep terms,"<sup>139</sup> which involves eating and socializing at the Inn's dining hall for a specified period of time.<sup>140</sup> The rationale behind "keeping terms" is for students to build an *esprit de corps* with their Inn, to facilitate mixing with established barristers of their Inn, and to provide an opportunity for involvement in the Inns' ancient tradition of conducting mock trials<sup>141</sup> after dinner.<sup>142</sup>

The Inns began sometime in the 1300s as collegiate centers for the legal profession.<sup>143</sup> The tradition of dining at the Inn is sometimes satirized as "eating your way to the bar"<sup>144</sup> since the present function of the Inns is largely vestigial.<sup>145</sup> Although the Inns still have some

133. *Id.* at 893. During pupillage, the novice barrister "reads in chambers" by serving as an apprentice to a practicing barrister. See generally *id.* at 893-94.

134. Green, *supra* note 107, at 145. The Bar requires pupil masters to have five years of experience to ensure the pupil obtains practical knowledge from an experienced barrister. *Id.* See *supra* text accompanying note 104 for similar requirements for solicitors.

135. Mordsley, *supra* note 75, at 52.

136. *Id.*; see also James, *supra* note 25, at 893-94.

137. See generally Teeven, *supra* note 27, at 369.

138. See generally *id.*; see also Mordsley, *supra* note 75, at 52.

139. "Keeping terms" means that prospective barristers must eat a certain number of meals in the Inn's dining hall. Teeven, *supra* note 27, at 369 (citing Report of the Committee on Legal Education, (Chairman: Mr. Justice Ormrod), HMSO Cmnd. 4595. at para. 166). "[T]his is a remnant of the apprenticeship system of being called to [the] bar, when apprenticeship was the sole method of being called to the bar." Green, *supra* note 107, at 140.

140. James, *supra* note 25, at 893. As a general rule, a student must eat twenty-four dinners before being called to the bar. Berger, *supra* note 11, at 564.

141. The practice of having mock trials after the evening meal is called "mooting" and is meant to be both informative and educational. See generally Gay, *Courtesy and Custom in the English Legal Tradition—On Dining at Gray's Inn*, 28 J. LEGAL EDUC. 181 (1976).

142. Teeven, *supra* note 27, at 369 (citing The Royal Commission on Legal Services, (Chairman: Sir Henry Benson) HMSO Cmnd. 7648, 641-42 (1979)).

143. James, *supra* note 25, at 893.

144. Ablard, *supra* note 60, at 161.

145. James, *supra* note 25, at 893.



attenuated disciplinary powers over their members,<sup>146</sup> they now resemble exclusive dining clubs more than educational institutions.<sup>147</sup> Upon completion of pupillage, a student must look for a seat in chambers to begin practicing law.<sup>148</sup>

There are no guarantees that pupillage will provide a worthwhile learning experience for the student. Since barristers tend to be specialists, the student's experience may not be sufficiently diverse to obtain a broad overview of the barrister's profession.<sup>149</sup> Moreover, like the Law Society's control over serving articles for novice solicitors,<sup>150</sup> the Bar does not have direct control over pupillage.<sup>151</sup> Thus, a student's learning experience can vary tremendously depending upon the amount of time and energy expended by the student's pupil master.<sup>152</sup>

The apprenticeship requirements for solicitors and barristers represent the single most significant distinction between legal education in England and the United States.<sup>153</sup> Law school graduates in the United States are not required to have any practical experience in order to obtain a J.D. degree.<sup>154</sup> The American Bar Association ("ABA")<sup>155</sup> does not require law schools in the United States to offer practical courses.<sup>156</sup> Thus, young lawyers in the United States may learn the intricacies of their profession at the expense of their first clients.<sup>157</sup>

#### IV. TEACHING METHODS

##### A. *The United States*

Legal education in the United States is based primarily on the case method.<sup>158</sup> This method presumes that the common law is con-

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146. *Id.*

147. *Id.*

148. *Id.* at 894. The chambers is similar to a rambling apartment house which contains groups of barristers. *Id.*

149. Teeven, *supra* note 27, at 369.

150. See *supra* text accompanying notes 111-15.

151. See generally Green, *supra* note 107, at 145.

152. *Id.*

153. See *supra* text accompanying notes 102-15, 131-51 for the apprenticeship requirements for barristers and solicitors in England.

154. See generally ABA STANDARDS, *supra* note 13.

155. The ABA is a "[n]ational association of lawyers, a primary purpose of which is the improvement of lawyers and the administration of justice." BLACK'S LAW DICTIONARY 75 (5th ed. 1979).

156. See generally ABA STANDARDS, *supra* note 13.

157. See *infra* text accompanying notes 324-37.

158. Austin, *Is the Casebook Method Obsolete?* 6 WM. & MARY L. REV. 157, 164 (1965)

tained in basic principles<sup>159</sup> set forth in the decisions and opinions<sup>160</sup> of appellate court cases.<sup>161</sup> The case method requires students to read and analyze cases and then discuss them in class using the Socratic method.<sup>162</sup>

The Socratic method of instruction engages the entire class in continual conversation.<sup>163</sup> Through class discussion, students distill the applicable rule of law from superfluous facts of the case.<sup>164</sup> The Socratic method is based upon the premise that students are motivated by the professor's questions to spontaneously reason rather than to merely recite.<sup>165</sup> During the class some students talk, others listen, but theoretically, students are vicariously participating in the discussion.<sup>166</sup> In this way, the students develop "a more lucid understanding of the relation between juridical theories and concrete legal problems."<sup>167</sup>

The law professor's role is vital to the Socratic method.<sup>168</sup> The dialogue between students and the professor theoretically encourages

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("[a] scientific procedure in problem solving"); Redmount, *The Future of Legal Education: Prospective and Prescription*, 30 N.Y.L. SCH. L. REV. 561, 562 (1985) ("[a] dialectical process by which the law contained in cases could be noted, compared, and ordered"); Shreve, *Two Cheers for the Case Method*, 30 N.Y.L. SCH. L. REV. 601 (1985) ("the approach that depends largely on appellate cases for teaching material").

159. Austin, *supra* note 158, at 160-61.

160. "The statement by a judge or court of the decision reached in regard to a cause tried or argued before them, expounding the law as applied to the case, and detailing the reasons upon which the judgement is based." BLACK'S LAW DICTIONARY 985 (5th ed. 1979).

161. Austin, *supra* note 158, at 160-61. An appellate court is "[a] reviewing court, and, except in special cases . . . not a 'trial court' or court of first instance." BLACK'S LAW DICTIONARY 90 (5th ed. 1979). In addition to the common-law case method, United States law schools also offer statutory courses that teach the black letter law of administrative agency regulations and statutes. See generally LOYOLA, *supra* note 17; U.S.C., *supra* note 22; and BOSTON COLLEGE LAW SCHOOL BULLETIN (1990-1991). Nevertheless, the case analysis method is often used to show how appellate courts have interpreted the statutory body of law.

162. Shreve, *supra* note 158, at 601-02; Childress, *The Baby and the Bathwater: Developing A Positive Socratic Method*, 18 LAW TCHR. 95 (1984) (rigorous question-and-answer dialogue between student and teacher); see also Cicero, *Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education*, 15 WM. MITCHELL L. REV. 1011, 1013 (1989) ("[a] critical tactic in the Socratic strategy is to seek continual clarification of a proposition"); Gorman, *supra* note 42, at 610.

163. Shreve, *supra* note 158, at 601-02.

164. Austin, *supra* note 158, at 161.

165. Cicero, *supra* note 162, at 1012.

166. Shreve, *supra* note 158, at 601-02.

167. Austin, *supra* note 158, at 157. Professor Christopher Columbus Langdell of the Harvard Law School created the Socratic method in the 1870s. Horwitz, *Are Law Schools Fifty Years Out of Date?*, 54 UMKC L. REV. 385 (1986).

168. Austin, *supra* note 158, at 161-62.

intelligent analysis and enables students to determine the overriding legal doctrine.<sup>169</sup> Students learn small portions of the law in each class, and then must be able to piece the whole body of law together during the final examination.<sup>170</sup>

The Socratic and case method are the primary methods of teaching the basic law school courses in the United States.<sup>171</sup> Other methods of instruction are rarely used in United States law schools except in upper division elective courses, which may utilize a more traditional lecture format.<sup>172</sup>

### B. England

English law students encounter a vastly different educational experience than law students in the United States: In England, lectures and tutorials<sup>173</sup> are the primary methods of teaching; the case method is rarely used.<sup>174</sup> Lecturers typically outline the subject matter in an orderly manner, explain its intricacies, and attempt to relate it to real-life situations.<sup>175</sup> Thus, English students obtain a broad legal education. This is in marked contrast to law students in the United States, who by use of the case method obtain brief glimpses of narrow rules of law.<sup>176</sup> The atmosphere in the English classroom is more relaxed than in the United States.<sup>177</sup> English students are more passive, and are not called upon to participate in Socratic dialogue.<sup>178</sup>

The biggest difference between the legal teaching methods in the United States and England is the English tutorial, which is sometimes referred to as the "hub" of English legal education.<sup>179</sup> Tutorials are used by English law schools to complement the basic lecture series.<sup>180</sup>

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169. *Id.* at 162.

170. *See generally id.* at 161.

171. *See generally id.* at 157; Shreve, *supra* note 158, at 603.

172. Austin, *supra* note 158, at 157; Shreve, *supra* note 158, at 603; *but see* Byse, *supra* note 40, at 1064 (regarding the "virtual death" of the Socratic method after the first year of law school).

173. *See James, supra* note 25, at 887.

174. Cole, *supra* note 2, at 28; James, *supra* note 25, at 887.

175. *See James, supra* note 25, at 887.

176. *See infra* text accompanying notes 287-98 for a discussion of the limitations of the case method.

177. Teeven, *supra* note 27, at 358.

178. *Id.*; *see supra* text accompanying notes 163-72 regarding the Socratic method of instruction.

179. James, *supra* note 25, at 887.

180. *Id.* at 888.

An ideal English tutorial group consists of three students,<sup>181</sup> who study under strict faculty supervision.<sup>182</sup> The tutorials are taught by faculty supervisors<sup>183</sup> who ensure that students comprehend the lectures, and are up-to-date with their reading and studying.<sup>184</sup> During tutorials, students are frequently required to answer numerous practice examination questions<sup>185</sup> to help them prepare for their final examinations.<sup>186</sup>

Tutorials are conducted both orally and in writing.<sup>187</sup> It is the duty of the tutor to ensure that the students keep abreast of their studies.<sup>188</sup> Tutorials have no standard curriculum or procedures.<sup>189</sup> The nature of each session depends more upon the personal preferences and teaching style of the individual tutor than the subject matter that is being taught.<sup>190</sup>

The English tutorial may appear similar to the traditional United States study group, which consists of students working among themselves to decipher class notes and test their knowledge and understanding of the subject matter through hypothetical problems. However, this is not true. Study groups in the United States generally are organized by students and have no faculty supervision.<sup>191</sup> In addition to the close faculty contact the tutorial provides, English law schools have a very low faculty-student ratio.<sup>192</sup> English lectures typically have one-third as many students as law school classes in the

181. However, due to economic factors, the size may be increased to six. *Id.* at 887.

182. *Id.* at 887-88. "All members of staff act as tutors—even occasionally the busy Chairman." *Id.* at 888 n.31.

183. The tutorials are not necessarily taught by the professor giving the lectures. Downes, *Two Views of British and American Law Schools*, 14 SYLLABUS 3 (1983).

184. James, *supra* note 25, at 888.

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.* at 887-88.

189. *See id.* at 888.

190. *See id.*

Many tutors regard it as their duty to see that the student masters a standard textbook as well as subsidiary material. Others, more commonly, however, tend to burden the student with massive xeroxed materials, often containing questions of the examination type, to which they require written answers. Others follow the ancient tradition and demand weekly essays. Still others seek to delve into esoteric points, while the more earthwise regard it as their duty to ensure, by test papers, that their flock is prepared for its examinations.

*Id.*

191. Although professors are available to consult and advise students, there is no direct faculty supervision during studying in the United States.

192. Teeven, *supra* note 27, at 358 n.19.

United States.<sup>193</sup> Therefore, English law students have more access to their professors and experience more concentrated, supervised training than their counterparts in the United States.<sup>194</sup>

Teaching methods in England are strictly governed by the professions.<sup>195</sup> Both the Bar<sup>196</sup> and the Law Society<sup>197</sup> evaluate the curriculum and the effectiveness of teaching methods for all English law schools.<sup>198</sup> This type of close oversight is virtually nonexistent in the United States.<sup>199</sup> Although the ABA does establish minimum requirements for class size, curriculum content, number of faculty members, and hours spent in class,<sup>200</sup> the ABA has no direct powers to dictate and oversee the daily education of United States law students.<sup>201</sup>

## V. EXAMINATIONS AND GRADING

### A. *The United States*

Most United States law school examinations require students to write essays,<sup>202</sup> although recently there has been a slight increase in the use of multiple-choice exams.<sup>203</sup> Tests are usually problem oriented and present hypothetical fact patterns requiring students to spot

193. Stevens, *American Legal Education: Reflections in the Light of Ormrod*, 35 MOD. L. REV. 242, 256 (1972). The Association of American Law Schools only requires law schools in the United States to have a 75 to 1 student-faculty ratio for accreditation. *Id.*

194. Downes, *supra* note 183, at 3; *see supra* text accompanying notes 163-72 regarding the Socratic method.

195. *See supra* note 67 and accompanying text for a definition of the professions.

196. *See supra* note 126 and accompanying text for a definition of the Bar.

197. *See supra* note 67 and accompanying text for a definition of the Law Society.

198. Teeven, *supra* note 27, at 361.

199. *Id.*

200. *See generally* ABA STANDARDS, *supra* note 13.

201. *See generally* Teeven, *supra* note 27, at 361. The ABA provides general guidelines for law schools. *See generally* ABA STANDARDS, *supra* note 13, standard 302, which states:

(a) The law school shall:

(i) offer to all students instruction in those subjects generally regarded as the core of the law school curriculum;

(ii) offer to all students at least one rigorous writing experience;

....

(iv) require of all candidates . . . instruction in the duties and responsibilities of the legal profession. Such required instruction need not be limited to any pedagogical method as long as the history, goals, structure and responsibilities of the legal profession and its members . . . are all covered . . . .

*Id.*

202. *See generally* Kissam, *ESSAY: Law School Examinations*, 42 VAND. L. REV. 433 (1989).

203. *See generally id.*

the relevant issues and analyze the facts in minute detail.<sup>204</sup> Professors typically expect students "to employ legal doctrine taught throughout the course to resolve or argue about 'borderline' cases that tend to sit . . . 'in nervous juxtaposition between the situations in cases discussed in class.'"<sup>205</sup>

United States law school examinations are often administered under severe time constraints.<sup>206</sup> The time limitations help to generate a normalized<sup>207</sup> distribution of grades among the students.<sup>208</sup> Examinations are graded anonymously, and grading is generally based upon a curve with a forced mean<sup>209</sup> and a predetermined standard deviation.<sup>210</sup> The forced curve allows law schools to rank their students so that employers can distinguish between the academic abilities of potential employees.<sup>211</sup>

United States law students' first-year grades are considered the most important of their academic careers.<sup>212</sup> These grades determine "status and rewards, including law review, summer employment, and

204. A typical criminal law hypothetical may contain a fact pattern that is over one page long, and students would be expected to discuss all of the possible crimes that each party may be liable for, and any possible defenses. Most law school examinations focus exclusively on the application of judicial doctrine to resolve hypothetical legal disputes. Kissam, *supra* note 202, at 439.

205. *Id.* (quoting Chambers, *The First-Year Courses: What's There and What's Not*, in LOOKING AT LAW SCHOOL: A STUDENT GUIDE FROM THE SOCIETY OF AMERICAN LAW TEACHERS 39, 41 (S. Gillers ed. 1977)).

206. Kissam, *supra* note 202, at 438. "Be certain that a four-hour examination cannot humanly be completed in less than six. Good lawyers must be able to work under pressure." *Id.* at 438 n.9 (quoting Duke, *Rules for Success in Teaching and Examining*, 11 J. LEGAL EDUC. 386 (1959)).

207. *See generally id.*

208. *Id.* Law school grading establishes a highly disaggregated class ranking system. "This system is an efficient device, or at least a rational one, for sorting students in ways that serve the hiring purposes of many law firms. This system screens prospective employees for those employers who place a substantial premium on an individual's promise of productivity and self-learning." *Id.* at 436.

209. A mean is commonly the average which is computed by adding all of the grades and dividing that number by the number of students in the class. *See generally Mean, Standard Deviation, S-Multipliers*, in LOYOLA LAW SCHOOL, INSTRUCTIONS FOR USING THE FACULTY GRADING COMPUTER PROGRAMS, App.-3, B-11, (1990) [hereinafter LOYOLA GRADING].

210. Standard deviation is "[a] statistic used as a measure of dispersion in a distribution. . . ." AMERICAN HERITAGE DICTIONARY 1188 (2d ed. 1985). "Often, but not always, about 34% of the grades are between the mean and both plus and minus one standard deviation from the mean." LOYOLA GRADING, *supra* note 209, at B-11.

211. *See generally* Kissam, *supra* note 202. Whether students' grades equate to the ability to be successful at practicing law has been the source of a great deal of disagreement and debate. *See generally* D. KENNEDY, *supra* note 43, at 26-27.

212. Boyer & Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 263 (1974).

research assistant positions," which typically begin during the second year of law school.<sup>213</sup> Although students can improve their grades during their remaining years in law school, students' first-year grades significantly influence their ability to secure a summer clerkship with a law firm or judge between their second and third years.<sup>214</sup> If students fail to secure a good clerkship during this time, they find themselves at a marked disadvantage when looking for permanent placement upon graduation.<sup>215</sup> The distribution of first-year GPAs is closely related to the new lawyer's first-year salary, prestige, complexity of practice, and general upward mobility.<sup>216</sup> Thus, first-year grades tend to dictate the number of opportunities available to law students not only during the remainder of school, but also during their first years of practice.<sup>217</sup>

Because law school examinations are considered the initial key to a student's entire career, students in the United States are under a tremendous amount of stress and pressure to perform well on their examinations.<sup>218</sup> Students who fail to number among the top in their class know that they will likely be forced to "accept a lower rank in the world, and in their own esteem, than they had hoped or expected to have."<sup>219</sup>

### B. England

The majority of English law school examinations require students to write essays, as in the United States.<sup>220</sup> However, the types of questions used and the methods for creating and evaluating the examinations are quite different.<sup>221</sup> English law school examinations normally last approximately three hours.<sup>222</sup> Students often have the option of answering five out of ten questions<sup>223</sup> which usually require

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213. *Id.*

214. *Id.*

215. *Id.*

216. See generally D. KENNEDY, *supra* note 43.

217. Boyer & Cramton, *supra* note 212, at 263.

218. *Id.*

219. White, *Doctrine in a Vacuum: Reflections on What A Law School Ought (And Ought Not) To Be*, 36 J. LEGAL EDUC. 155, 157-58 (1986).

220. James, *supra* note 25, at 888. There are two exceptions to written exams. First, some universities have adopted a method of "continuous assessment," where evaluation occurs on an ongoing basis. Second, some universities permit students to submit an "extended essay" on a chosen and approved subject. *Id.* at 888-89.

221. See *supra* text accompanying notes 202-17.

222. James, *supra* note 25, at 889.

223. *Id.*

straight recitation of law and facts.<sup>224</sup> This is in marked contrast to the issue spotting and fact analysis that is typical of examinations in the United States.<sup>225</sup>

English legal education places greater emphasis on uniformity and consistency in examinations than does legal education in the United States. In England, the lecturing professor usually writes the examination.<sup>226</sup> Although this is the final step in the process of creating a law school examination in the United States,<sup>227</sup> it is only the beginning in England.<sup>228</sup> The lecturing professor must then submit a draft of the examination to the Faculty Board of the university<sup>229</sup> for approval.<sup>230</sup> The Board individually scrutinizes, criticizes, and revises each examination<sup>231</sup> to ensure that questions are fair.<sup>232</sup> Board members give their opinions on the merits of each examination question.<sup>233</sup> However, comments regarding examinations that are outside of a professor's area of expertise are normally limited to procedural rather than substantive issues.<sup>234</sup>

Because this type of in-depth review is extremely time consuming, many boards delegate authority to committees of specialists for particular subjects.<sup>235</sup> After approval, the Board sends the examinations to one or more outside examiners known as "externals."<sup>236</sup> The externals' task is to ensure consistent examination standards throughout all law schools in England.<sup>237</sup> Additionally, externals act as a board of appeals to resolve disputes between professors and members of the Faculty Board.<sup>238</sup>

Depending upon the size of the first-year class, English law

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224. Teeven, *supra* note 27, at 360.

225. *Id.*

226. James, *supra* note 25, at 889.

227. *See generally* Kissam, *supra* note 202.

228. *See* James, *supra* note 25, at 889.

229. The board consists of the entire staff of the school and is chaired by the head of the department. *Id.* at 884-85.

230. *Id.* at 889.

231. Teeven, *supra* note 27, at 359-60.

232. *Id.* at 360.

233. *Id.*

234. *Id.*

235. James, *supra* note 25, at 889.

236. *Id.* Most universities employ "externals" who are usually faculty members of other law schools. *Id.*

237. *Id.*

238. *Id.*



schools may divide the students into sections.<sup>239</sup> If more than one section of a course is taught, a common examination is given for all of the sections.<sup>240</sup> This ensures that the entire student body is objectively taught and tested on the same subject matter, under the same conditions, and according to the same criteria.<sup>241</sup> However, this requires English professors to disregard their personal interests in order to teach the standardized course materials that will be tested on the uniform examinations.<sup>242</sup> In marked contrast, United States law professors enjoy complete freedom to teach courses and create examinations according to their own perspective and interests, regardless of the number of sections that are taught.<sup>243</sup> Thus, English law professors have much less flexibility and creativity within the structures of the curriculum than their counterparts in the United States.

Although English law students take examinations at the end of each academic year, their first-year grades are usually not cumulated into the final grade they receive upon graduation.<sup>244</sup> Therefore, first-year law school grades in England have very little impact on students' status and future employment.<sup>245</sup> This is in stark contrast with the United States, where first-year grades can have a significant impact on a student's entire professional career.<sup>246</sup> The examinations at the end of an English law student's second and third years determine the student's final GPA. Stronger weight is normally given to the grades obtained in the final year since "law is a subject with which one develops facility over a period of time."<sup>247</sup>

English law schools, like law schools in the United States, administer examinations anonymously to avoid any appearance of favoritism.<sup>248</sup> However, in England, the law professor's grade on an examination is only the first step in the grading process.<sup>249</sup> Once the

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239. For example, if there are three hundred first-year students, the school may separate them into three sections each containing one hundred students.

240. Teeven, *supra* note 27, at 361.

241. This may work to the disadvantage of students who have a section with a novice or inexperienced lecturer, as opposed to those who are fortunate enough to have an experienced professor.

242. Teeven, *supra* note 27, at 361.

243. See generally Kissam, *supra* note 202.

244. Mordsley, *supra* note 75, at 51.

245. See generally *id.*

246. See *supra* text accompanying notes 212-19 regarding the importance of first-year grades to United States law students.

247. Mordsley, *supra* note 75, at 51.

248. See James, *supra* note 25, at 889.

249. *Id.*

professor grades the examinations, a Faculty Board convenes to evaluate the papers.<sup>250</sup> Thereafter, the Board sends the examination papers to "externals"<sup>251</sup> for additional scrutiny.<sup>252</sup> Some law schools send all examination papers to externals,<sup>253</sup> while others send only those that are difficult to classify, or those upon which the Board could not agree.<sup>254</sup> When the examinations are returned to the law school, the Faculty Board, the externals, and a member of the university Registry<sup>255</sup> hold the "Final Examiners Meeting" to assign the students' final grades.<sup>256</sup>

At the Final Examiners Meeting, the grading procedure takes the equities of each student into account.<sup>257</sup> Student advisors<sup>258</sup> are allowed to speak as advocates for their advisees, to explain either economic or personal problems that may have affected the student's performance.<sup>259</sup> Of course, this policy could lead to bias which law schools in the United States strive to avoid.<sup>260</sup> Law schools in the United States do not consider students' personal, financial, or other problems in determining their grades.<sup>261</sup>

## VII. CRITICISMS AND RECOMMENDATIONS

### A. United States

United States law school admission requirements assess students' potential based on objective statistics, rather than their potential as competent lawyers.<sup>262</sup> Law schools in the United States mainly evaluate their applicants on "academic achievement, cognitive and analyti-

250. *Id.*

251. See *supra* note 236 and accompanying text for a definition of externals.

252. James, *supra* note 25, at 889-90.

253. *Id.* at 889.

254. *Id.*

255. The English Registry is similar to the Registrar in the United States who is responsible for recording and distributing students' grades. Letter from Audrey Thorp (Secretary to Professor D. Lasok QC LLD) to Sandra R. Klein (Nov. 19, 1990) (discussing various aspects of English legal education).

256. James, *supra* note 25, at 890.

257. *Id.* "The Registrar will usually have received a number of medical certificates from students ailing during examinations." *Id.* at 890 n.37.

258. *Id.* at 890. A personal advisor who takes a special interest in the student, and whom the student can turn to when problems arise. *Id.* at 888 n.31.

259. *Id.* at 890.

260. See generally Kissam, *supra* note 202.

261. See generally *id.*

262. See *supra* text accompanying notes 11-24; see generally ABA REPORT, *supra* note 81, at 19.

cal skills, and speed in reading and understanding questions."<sup>263</sup> However, this system fails to account for individual experiences, motivation, attitude, work habits, and ability to work harmoniously with others—elements which are difficult to quantify, and generally difficult to shape once a person is of law school age.<sup>264</sup>

As a result, United States law schools miss out on a large pool of applicants whose raw scores may not be sufficient to meet stringent entrance requirements, but who nevertheless possess other qualities that are strongly indicative of future success as a lawyer.<sup>265</sup> The impersonal manner of assessing and admitting law students in the United States tends to create a profession of highly intelligent and knowledgeable lawyers, who may not possess the personality, social skills, and common sense required to succeed in, and improve upon the quality of the legal profession.<sup>266</sup>

United States law schools should broaden their admissions criteria to take into account the motivation, character, and integrity of individual applicants. English law schools personally interview students in order to identify and weigh applicants' characteristics which are not measured in standardized examinations.<sup>267</sup> United States law schools should adopt a similar approach. Thus, prospective students will be given an opportunity to persuade an admissions council that their potential is not quantified in their examination scores. This change will make the law school applicant pool more diverse and will potentially improve the public's perception of the legal profession.

Attending law school in the United States provides a truly unique experience.<sup>268</sup> No parallels can be drawn to other graduate programs in the United States.<sup>269</sup> Typically, students become completely immersed in the rigors of law school during their first year.<sup>270</sup> The student is led to believe that everything which occurred prior to entering law school is meaningless and that the sole measure of an

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263. ABA REPORT, *supra* note 81, at 19.

264. *Id.* at 19-20.

265. *See generally id.*

266. *See generally* H. PACKER & T. EHRLICH, *supra* note 41, at 42; Cramton, *supra* note 55, at 447; Baird, *A Survey of the Relevance of Legal Training to Law School Graduates*, 29 J. LEGAL EDUC. 264 (1978).

267. *See supra* text accompanying notes 31-34; *see generally* James, *supra* note 25, at 882.

268. *See generally* Cole, *The Socratic Method in Legal Education: Moral Discourse and Accommodation*, 35 MERCER L. REV. 867, 872 (1984).

269. *See generally id.*

270. Rowles, *supra* note 39, at 379.

individual is based upon professional success.<sup>271</sup> Students begin to think that their previous knowledge has very little significance in the law school environment.<sup>272</sup> First-year students become convinced "that [their] status, professional options, and even worth depend[s] on [their] success relative to [their] peers."<sup>273</sup>

The extreme emphasis that United States law schools and firms place on grades creates an atmosphere of tremendous stress, anxiety, and competition among students.<sup>274</sup> Law firms, which hire students for positions as law clerks during the summer between their second and third years, assess potential employees based upon their first-year grades. Thus, most United States law students experience severe stress during their first year.<sup>275</sup> However, in England, students' first-year grades are generally not cumulated in their overall GPA; rather, grades are assessed upon their entire law school career.<sup>276</sup> Therefore, English law students experience less stress during their first-year of legal education than their United States counterparts.

Because examinations are considered the key to a student's entire career, students are under a great deal of pressure during the examination period.<sup>277</sup> This pressure is intensified by the fact that an entire semester of study culminates in a single time restricted examination.<sup>278</sup> The stress placed on young law students can be destructive to their physical and mental health, as well as their relationships with family and friends.<sup>279</sup>

Moreover, because of the importance placed upon first year grades, as compared to grades received in the subsequent years,<sup>280</sup> United States law students who are not at the top of their class, or members of a law journal<sup>281</sup> or moot court,<sup>282</sup> tend to lose interest and

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271. *Id.*

272. *Id.*

273. *Id.*

274. See generally Boyer & Cramton, *supra* note 212, at 263; S. TUROW, ONE L (1978).

275. Boyer & Cramton, *supra* note 212, at 263.

276. See *supra* text accompanying notes 244-47.

277. Boyer & Cramton, *supra* note 212, at 263.

278. *Id.*; see also Kissam, *supra* note 202.

279. See generally S. TUROW, *supra* note 274.

280. See *supra* text accompanying notes 212-19 regarding the importance of first-year grades.

281. "A publication of most law schools containing lead articles on topical subjects by law professors, judges or attorneys, and case summaries by law review member-students. Normally, only honor or top law students are members of the law review staff." BLACK'S LAW DICTIONARY 798 (5th ed. 1979).

flounder.<sup>283</sup> The majority of second and third year law students can often barely generate enough enthusiasm to attend class.<sup>284</sup> Thus, "the only skill gained after the first year is the skill of feigning preparedness for class."<sup>285</sup>

During the first year of law school, less emphasis should be placed on grades and examinations with more emphasis placed on learning. Students should have the opportunity to learn and develop without the pressure of their entire legal future being determined by their first-year grades. This will place less stress and strain on students while they become familiar with a new and difficult body of knowledge. United States law schools should develop a weighted system for determining students' GPAs, similar to England's, in which the first-year grades are not cumulated into the final grade received upon graduation.<sup>286</sup>

Furthermore, the case method<sup>287</sup> tends to ignore and exclude other means of conveying the essence of the law to students.<sup>288</sup> Because the case method dominates legal education in the United States,<sup>289</sup> it is doubtful whether students develop an overall awareness of contemporary legal principles.<sup>290</sup> Studying a body of law case by case is analogous to studying an entire forest by looking at one tree at a time. It is difficult for students to see the interrelationship between issues and truly understand the entire area of the law until the end of the semester.<sup>291</sup> Even after students have completed courses and taken their final examinations, they may still fail to grasp a body of law taught by the case method.<sup>292</sup>

Moreover, practicalities of the legal world and important social,

282. "A court held (normally in law schools) for the arguing of moot or hypothetical cases." *Id.* at 909.

283. Rowles, *supra* note 39, at 375.

284. *Id.*; see also White, *supra* note 219, at 156.

285. Bergin, *The Law Teacher: A Man Divided Against Himself*, 54 VA. L. REV. 637, 648 (1968).

286. Mordsley, *supra* note 75, at 51.

287. See *supra* text accompanying notes 158-72 for a discussion of the case method.

288. Austin, *supra* note 158, at 164.

289. *Id.* at 157.

290. *Id.* at 164. Some professors do help students understand the relevance of cases to their modern practical application. However, students' ability to fully comprehend the application of cases is a product of the skills of the professor and not the case method itself. See generally *id.*

291. See generally *id.*

292. See generally *id.*; see also Stevens, *supra* note 194, at 254. The case method tends "to make lawyers look at law as 'a wilderness of single instances,' rather than as a coherent whole." *Id.*

economic, and political issues are virtually ignored by the case method.<sup>293</sup> Students read and analyze appellate opinions<sup>294</sup> which are sanitized of extraneous facts which may have seriously affected the lives of the litigants.<sup>295</sup> "Real-life cases are rife with confusion and human complexities, while appellate reports represent the reduction of these situations to legally palatable form."<sup>296</sup> There is a great danger that students will confuse real life with appellate reports.<sup>297</sup> The common perception that all lawyers approach legal issues as if they are void of the human consequences makes this danger all too real.<sup>298</sup>

Law school curriculum in the United States should be broadened to teach the inherent interrelationships between the subject areas of the law. This will better prepare graduates for the complexity of real-life legal problems.<sup>299</sup> Students will discover that the law is not a series of disjointed elements.<sup>300</sup> Rather, they will find that the law is a seamless web, woven of various subjects which define the relationships between individuals in our society.<sup>301</sup> Thus, students will discover how the different areas of the law coalesce and will be better prepared to meet the real-life needs of their clients.<sup>302</sup>

In addition, United States law schools should allow students to choose an area of expertise on which to focus during their final year. This will help students maintain their level of interest and involvement which tends to flounder during the final two years of law school.<sup>303</sup> Graduating students will be able to begin practicing in a field with the benefit of specialized training. Additionally, many students will have the opportunity to obtain an in-depth understanding of an area of law before they actually begin to practice.

The Socratic method,<sup>304</sup> the traditional approach to legal education in the United States, is a relatively ineffective manner of teaching

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293. Austin, *supra* note 158, at 164.

294. See *supra* note 160 and accompanying text for a definition of appellate opinions.

295. See generally MacCrate, *MacCrate Views the Future Path of Legal Education*, Chi. Daily L. Bull., Nov. 13, 1987, at 2, col. 1.

296. *Id.*

297. *Id.*

298. See generally *id.*

299. Horwitz, *supra* note 167, at 389.

300. See generally *id.*

301. *Id.*

302. See generally *id.*

303. See *supra* text accompanying notes 280-85 for a discussion of the loss of interest by second and third year law students in the United States.

304. See *supra* text accompanying notes 163-72.

the law.<sup>305</sup> First-year classes at most United States law schools are large, with over one-hundred students.<sup>306</sup> Because the Socratic method requires considerable interchange among the participants, it is virtually impossible to have a successful class discussion in a first-year class.<sup>307</sup> Due to the lack of individual participation in large classes, professors have a difficult time maintaining the students' interest.<sup>308</sup> While students' minds wander, they are not able to develop a complete understanding of the course material.<sup>309</sup>

Moreover, the Socratic method creates "a majestic aura around the [elusive] ability 'to think like a lawyer,'<sup>310</sup> [and] unnecessarily complicates the learning process; by assuming a problem exists; paradoxically, a problem is created."<sup>311</sup> Additionally, the Socratic method focuses on teaching rather than learning, since the method of instruction centers on the professor who is asking the questions, rather than the student.<sup>312</sup> "The law professor . . . does not teach at all; but only provides the framework through which the students will, on their own, learn the legal principles involved."<sup>313</sup> Students are

invitee[s] upon the case-system premise, who, like the invitee[s] in the reported cases, soon find [themselves] fallen into a pit. [They are] given no map carefully charting and laying out all the byways and corners of the legal field, but [are] left, to a certain extent, to find [their] way by [themselves].<sup>314</sup>

Traditionally, the rationalization for using the Socratic method is that it "acclimate[s] the student to 'legal reasoning' or 'thinking like a lawyer.'"<sup>315</sup> However, in reality the Socratic method can create anxi-

305. See generally Cicero, *supra* note 162, at 1016.

306. *Id.*

307. *Id.*

308. Shreve, *supra* note 158, at 602.

309. *Id.*

310. Kober, *The Socratic Method on Trial: Are Law Schools a Failure?*, 85 CASE & COM. 26, 27 (1980).

311. *Id.* The Socratic method in a first-year class may create a tremendous amount of confusion. When a professor calls on a student who is unprepared, the rest of the class may become disoriented and confused while the professor attempts to steer the unprepared student back to the relevant principles of law.

312. Feldman & Feinman, Book Review, 82 MICH. L. REV. 914, 929-30 (1984) (reviewing R. STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983)).

313. Kober, *supra* note 310, at 26.

314. R. STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 54 (1983) (citing HARVARD LAW SCHOOL ASSOCIATION, *CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL, 1817-1917* (1917)).

315. H. PACKER & T. EHRLICH, *supra* note 41, at 30.

ety, fear, and apprehension.<sup>316</sup> Students who were at the top of their class at the undergraduate level, where the "primary emphasis [was] on discovery of the truth and discussion . . . of the majority world view"<sup>317</sup> are dismayed to learn that the Socratic discussion in class provides no single correct answer.<sup>318</sup> The popular illusion held by society that law is certain, predictable, and orderly is dismantled by rigorous case analysis and the Socratic method.<sup>319</sup> The continued use of the Socratic method, the large size of most classes, and the relatively minor interaction between professors, and students, all tend to extinguish, rather than encourage, the student's desire to learn.<sup>320</sup>

Tutorials, similar to those given in England, should be employed in the United States to supplement the Socratic method of teaching cases. United States law students could spend approximately one to two hours per week with a small group of their peers under the supervision of a faculty advisor.<sup>321</sup> Students would have the opportunity to discuss areas of confusion, without the intimidation of the Socratic method and the large class atmosphere.<sup>322</sup> In addition, tutorials could provide the student with access to otherwise unavailable information on the practical aspects of lawyering.<sup>323</sup>

Although United States law graduates are intelligent and have acquired some basic knowledge of legal doctrine and legal reasoning, they know very little about the day-to-day practice of law.<sup>324</sup> Unlike their English counterparts, new lawyers in the United States learn the vocational aspects of lawyering on the job after admission to the bar.<sup>325</sup> Most large law firms operate their own apprenticeship and internship programs that are similar to the vocational phase of the English solicitor's or barrister's education.<sup>326</sup> United States law firms

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316. See generally S. TUROW, *supra* note 274.

317. Cole, *supra* note 268, at 872.

318. *Id.*

319. Boyer & Cramton, *supra* note 212, at 260. To discover that there is a valid argument for both sides can induce "nausea, weight loss, sleeplessness, and a kind of constant seasickness as the familiar boundaries of the safe world drop away." Cole, *supra* note 268, at 872.

320. Childress, *supra* note 162, at 98.

321. *Curriculum Report Prepared by School of Law University of South Carolina*, 23 J. LEGAL EDUC. 528, 536 (1971).

322. *Id.* Most professors in the United States maintain office hours during which time students can speak with the professor individually to clarify any questions or areas of confusion.

323. *Id.*

324. Cramton, *supra* note 55, at 446.

325. *Id.* at 447.

326. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of*



conduct these programs primarily because they are reticent to expose their clients to the unpolished skills of a new lawyer.<sup>327</sup> However, smaller firms often cannot afford this luxury, and thus, must demand law school graduates to perform competently from their first day of employment.<sup>328</sup>

Good lawyers are made "by study, by observation of experts and by training with experts."<sup>329</sup> However, legal education in the United States narrowly emphasizes reading cases, analyzing rules of law and applying rules to hypothetical situations.<sup>330</sup> Therefore, law school graduates have virtually no training in the practical aspects of lawyering, such as the ability to counsel clients, negotiate with adversaries, investigate facts, and organize work flow.<sup>331</sup> Graduation from an ABA<sup>332</sup> approved institution only "provides a student with an education that complies with a minimum set of standards promulgated and enforced by the legal profession."<sup>333</sup> This merely indicates that the student is able to meet the legal education requirements necessary for admission to the bar.<sup>334</sup> Unfortunately, it does not mean that the student has the knowledge, understanding, or ability to be a successful attorney.<sup>335</sup>

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*Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 231 (1973); see also Blum & Lobaco, *supra* note 77, at 33.

327. Burger, *supra* note 326, at 231.

328. Blum & Lobaco, *supra* note 77, at 33.

329. Burger, *supra* note 326, at 231.

330. See *supra* text accompanying notes 202-05 for a discussion of the essential skills required on United States law school examinations.

331. H. PACKER & T. EHRLICH, *supra* note 41, at 42. Recent law graduates rate their legal education extremely high in developing the ability to analyze and synthesize law and facts. However, they rate it extremely low in relation to skills that are necessary to be a successful attorney: the ability to counsel clients, interview witnesses and clients, negotiate, investigate facts and organize work flow. See Baird, *supra* note 266, at 265. Law schools in the United States have attempted to fill this void with courses that teach basic interpersonal, interviewing and negotiation skills. For example, Loyola Law School offers Ethics, Counseling, and Negotiation, which focuses on

the development of select interpersonal and practical skills of effective lawyering (i.e., counseling and negotiation), the ability to perceive and consider non-legal aspects of a problem, to make sound judgments, and to clearly communicate to lawyers and non-lawyers—all in the context of the rules and principles of professional and personal ethics.

LOYOLA, *supra* note 17, at 32.

332. "The American Bar Association since its inception in 1878 has been concerned with improving the quality of legal education throughout the country." *The American Bar Association's Role in the Law School Accreditation Process*, 32 J. LEGAL EDUC. 195 (1982).

333. *Id.*

334. *Id.*

335. See *supra* text accompanying notes 324-34.

"The American rule . . . is: 'Client, beware! Your new lawyer is smart, facile, inexperienced, ambitious, and eager for the higher standard of living that has been postponed during the long period of academic preparation. Engage him or her at your own risk.'"<sup>336</sup> In fact, "[t]he United States may be the only country claiming to be governed by law that turns an unskilled law graduate loose on some unsuspecting client whose life, liberty or property may be at risk."<sup>337</sup>

Clinical education<sup>338</sup> should be a requirement for graduation from ABA approved United States law schools. The opportunity to work with clients and their problems should not be a mere alternative, but part of the required curriculum. Legal education should mirror the broad issues and concerns in society, and law schools should realize "that the practice of law is as much client-related as book-related."<sup>339</sup> Students should be required to participate in public interest law<sup>340</sup> such as legal work for prisons, hospitals, or legal aid foundations.<sup>341</sup> The students will gain a tremendous amount of practical experience that cannot be acquired in the classroom<sup>342</sup> while simultaneously helping society.

Courts could be used in a manner similar to the way medical schools utilize hospitals<sup>343</sup>—to provide an internship program which meets the minimum training requirements for lawyers.<sup>344</sup> The courts could also provide for more advanced and sophisticated training for certification in specialized areas, like hospitals provide to the medical profession.<sup>345</sup> "[T]he profession can no longer afford the curriculum of law schools [to be] isolated in a world of its own."<sup>346</sup>

Traditionally, law schools in the United States have one goal—to graduate students who know the law, rather than know how to apply

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336. Cramton, *supra* note 55, at 447.

337. Kramer, *Scholarship and Skills*, 11 NAT'L L. J. 15 (1989).

338. "Clinical education refers to learning by doing: teaching a law student by having him actually perform the tasks of a lawyer." H. PACKER & T. EHRLICH, *supra* note 41, at 38.

339. Redmount, *supra* note 158, at 563.

340. H. PACKER & T. EHRLICH, *supra* note 41, at 38.

341. *Id.*

342. *Id.* at 38-39.

343. Kramer, *supra* note 337, at 16.

344. *Id.* Currently, the courts do employ law school graduates as clerks for judges. However, these clerkships are traditionally reserved for the top students. See generally *The Clerkship Rap*, CAREER INSIGHTS 5 (1990-91). The author recommends that all students be given the opportunity to work for the judicial system as a prerequisite for graduation.

345. Kramer, *supra* note 337, at 16.

346. *Id.* (quoting Judge Harry T. Edwards, United States Circuit Court of Appeals for the District of Columbia).

the law as practicing lawyers.<sup>347</sup> English law schools, on the other hand, emphasize additional training after the student completes formal academic training. This ensures that English students have acquired the practical skills necessary to function as competent professionals.<sup>348</sup> Law students in the United States should receive this type of vocational training during law school so that upon graduation they will be competent and prepared to practice from their first day on the job.<sup>349</sup>

Furthermore, students involved in clinical education must receive adequate supervision. Law schools in the United States should learn from the failure of the English vocational phase of legal education where the lack of supervision has created unequal and sometimes unrewarding apprenticeship programs.<sup>350</sup> Students should not be "sent off downtown to do unsupervised work that satisfies some bureaucratic requirement . . ." <sup>351</sup> Instead, students should be given the opportunity to practice in a clinical setting and then return to the classroom to reflect on that practice.<sup>352</sup> Under the supervision of a clinical professor, students can study and analyze cases as they develop in real life.<sup>353</sup> Students should understand why a meeting with a client was not successful or why they missed a threshold issue in a case.<sup>354</sup> These are invaluable learning experiences which cannot be duplicated in the classroom.<sup>355</sup>

In summary, nineteenth century law school policies and procedures dominate twentieth century legal education in the United States.<sup>356</sup> The admissions criteria,<sup>357</sup> curriculum,<sup>358</sup> method of instruction,<sup>359</sup> system of grading,<sup>360</sup> lack of practical instruction,<sup>361</sup> and

347. Neal, *The Functions of a Law School*, 15 U. CHI. L. SCH. REC. 6 (1967).

348. Teeven, *supra* note 27, at 365.

349. ABA REPORT, *supra* note 81, at 11.

350. See *infra* text accompanying notes 388-94 for the problems due to lack of supervision faced by solicitors serving articles and barristers during pupillage.

351. Horwitz, *supra* note 167, at 391.

352. *Id.*

353. *Id.*

354. *Id.*

355. *Id.* at 391-92.

356. *Id.* at 389.

357. See *supra* text accompanying notes 11-24 regarding the admissions criteria in United States law schools.

358. See *supra* text accompanying notes 39-56 regarding the curriculum in United States law schools.

359. See *supra* text accompanying notes 158-72 regarding the typical methods of instruction in United States law schools.

the mystical aura surrounding the law school experience<sup>362</sup> are outdated and do not meet the present needs of the legal profession.<sup>363</sup>

### B. England

English law students normally begin law school at eighteen or nineteen years of age, entering directly from secondary school.<sup>364</sup> Specialization in the law at such a young age deprives English students of a tremendous amount of intellectual and practical skills that are required in the daily practice of law.<sup>365</sup> Because legal education in the United States occurs at the graduate level, students have already had the opportunity to acquire a broad liberal education and a greater level of maturity.<sup>366</sup> Therefore, young lawyers in the United States may be better prepared to handle a wider variety of problems encountered in daily practice, because they have had more pre-law school academic and personal experience than their English counterparts.<sup>367</sup>

Accordingly, the English law school curriculum should include courses in areas other than the law so that students can obtain a broader, more well-rounded education. This will develop the skills and maturity necessary for solicitors and barristers to be successful in their day-to-day practice.

In addition, the "open door policy"<sup>368</sup> of the professions in England, which allows students who have degrees in other areas or who have no degree at all,<sup>369</sup> to spend only one year studying law has been criticized.<sup>370</sup> The theory behind this policy is that diversity of experience is as valuable as basic legal knowledge.<sup>371</sup> However, this appears to contradict the policy of allowing students to begin legal education at the undergraduate level, before acquiring a comprehensive liberal

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360. See *supra* text accompanying notes 206-19 regarding grading in United States law schools.

361. See *supra* text accompanying notes 324-37 regarding the lack of practical instruction in the United States law school curriculum.

362. See generally S. TUROW, *supra* note 274; see also *supra* text accompanying notes 310-20.

363. Horwitz, *supra* note 167, at 389.

364. James, *supra* note 25, at 881.

365. Cole, *supra* note 2, at 30.

366. *Id.*

367. *Id.*

368. Dann, *Learned Friends?*, 137 NEW L.J. 85, 87 (1987).

369. See *supra* text accompanying notes 67-75 regarding the fact that a law degree is not an absolute prerequisite for entrance to the professions.

370. Dann, *supra* note 368, at 87.

371. *Id.*

education. Perhaps this is a compromise by the professions to encourage a broad spectrum of individuals to practice law. Although diversity of knowledge is valuable, only one year of legal study is insufficient to develop "a sound knowledge of the law and a fair degree of mental agility."<sup>372</sup>

English law schools focus on teaching "black letter"<sup>373</sup> law rather than utilizing the case method of analysis used in the United States.<sup>374</sup> While this undoubtedly allows English law students to grasp the breadth of the law, it may limit the development of their analytical skills.<sup>375</sup> English students learn a great deal about rules and statutes; however, they do not develop the ability to apply the legal principles to new fact patterns as well as their counterparts in the United States.<sup>376</sup>

English law schools should use the case method of instruction to some degree, as opposed to solely utilizing the strict memorization of facts and "black letter" law. Students should be taught how to analyze, discuss, and apply the law to new hypothetical fact patterns, as students in the United States.<sup>377</sup> English law professors could use the Socratic method to supplement their lectures and tutorials.<sup>378</sup> Because English law schools have a higher professor-student ratio than United States law schools,<sup>379</sup> more interaction is possible between students and professors. By using a combination of the Socratic method, lectures, and tutorials, English law students will develop a more thorough understanding of legal principles and a broader theoretical grasp of the law.<sup>380</sup>

The English system of vocational training is designed to provide thorough familiarity with the practical aspects of the legal profession. However, this goal has not been realized by either the Bar<sup>381</sup> or the Law Society.<sup>382</sup> Using full-time polytechnic instructors to provide

372. *Id.*

373. Mordsley, *supra* note 75, at 51; see also *supra* note 8 and accompanying text for a definition of black letter law.

374. See *supra* text accompanying notes 158-72 for a definition and discussion of the case method.

375. Teeven, *supra* note 27, at 358.

376. Mordsley, *supra* note 75, at 50; see also Teeven, *supra* note 27, at 358.

377. See *supra* text accompanying notes 158-67.

378. See *supra* text accompanying notes 173-90 for a discussion of the usual course of study in English law schools which generally employs lectures and tutorials.

379. See *supra* text accompanying notes 192-93.

380. See generally Teeven, *supra* note 27, at 358.

381. See *supra* note 126 and accompanying text for a definition of the Bar.

382. See *supra* note 67 and accompanying text for a definition of the Law Society.

practical training for novice solicitors is often criticized as ineffectual.<sup>383</sup> These instructors have purely theoretical knowledge and do not possess sufficient practical experience for the solicitor's vocational phase of training.<sup>384</sup> Additionally, the majority of barristers who teach at the Inns of Court schools are the newer, less experienced members of the Bar.<sup>385</sup> Therefore, the purpose of this vocational phase of legal education—to obtain insight and practical experience from accomplished professionals—is usually not met.<sup>386</sup>

The Bar and the Law Society should ensure that students receive their vocational training from seasoned professionals in their fields. The Law Society should require polytechnic instructors to have some practical experience before they are qualified to teach the vocational phase of solicitors' training. Thus, novice solicitors learn and understand the practical aspects of their chosen profession from experienced professionals, rather than simply acquiring abstract, theoretical knowledge. Solicitors should also receive training in communications and client-counseling skills, which are essential to their professional success.<sup>387</sup> In addition, barristers who teach at the Inns of Court law schools should be required to practice for a specified number of years before teaching. This will ensure that novice barristers actually receive a practical vocational education.

The English professions have tight control over the academic and vocational phases of legal education. However, they do not supervise the student's progress during pupillage and serving articles.<sup>388</sup> Because these apprenticeships have no clear standards, they vary tremendously in quality and learning experience.<sup>389</sup> Some supervisors use these apprenticeships as an opportunity to expand their practices by accepting more work than they were previously able to handle.<sup>390</sup> These supervisors may place heavy work burdens upon the student and virtually ignore instruction.<sup>391</sup> Moreover, students may perform a great deal of work during their apprenticeships, but not receive any

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383. Teeven, *supra* note 27, at 367; Mordsley, *supra* note 75, at 50.

384. Teeven, *supra* note 27, at 367.

385. *Id.* at 366.

386. *Id.*

387. See *supra* text accompanying note 101 regarding the lack of training for solicitors in these areas.

388. Berger, *supra* note 11, at 578; see generally Green, *supra* note 107, at 144.

389. Berger, *supra* note 11, at 578.

390. *Id.*

391. *Id.*

feedback on its merits.<sup>392</sup> However, some supervisors assign work to provide the student with an opportunity for practice and instruction.<sup>393</sup> Thus, the amount that students learn during their apprenticeships is directly related to the amount of time, energy, and effort that their supervisor is willing to expend.<sup>394</sup>

English law schools should implement a uniform method of supervision for serving articles and pupillage. The apprenticeship phase of legal education is one of the most powerful tools the English profession has to offer. By creating a unified standard of training in both professions, students will receive the proper training necessary to be prepared for their chosen career.

Novice barristers face the significant problem of obtaining a good apprenticeship with a successful, accomplished pupil master.<sup>395</sup> Unfortunately, family connections are an important factor in landing a good pupillage.<sup>396</sup> Each Inn of Court has instituted a clearinghouse to help match experienced barristers with students.<sup>397</sup> However, students who do not have family connections still have a very difficult time obtaining a pupillage.<sup>398</sup> Similarly, novice solicitors also face problems in obtaining clerkships to serve articles.<sup>399</sup> Both professions should develop a more equalized method of helping students obtain apprenticeships. Students who do not have family connections should be afforded the same opportunity to learn their chosen profession as their wealthier, better-connected colleagues. This will enhance the quality and integrity of the legal profession as a whole because students from all backgrounds will have the opportunity to learn their profession from the finest practitioners.

Although novice solicitors are paid a nominal salary, it is usually inadequate.<sup>400</sup> Both solicitors and barristers usually lack the financial ability to support themselves immediately upon graduation.<sup>401</sup> Therefore, novice barristers and solicitors should be paid a sufficient salary so they can independently survive during the first few years after completing their legal education. This will help attract students to the law

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392. *Id.*

393. *Id.*

394. *Id.*

395. *See generally* Teeven, *supra* note 27, at 368.

396. *Id.* at 368 (citing THE BAR ON TRIAL 83-86 (R. Hazell ed. 1978)).

397. *Id.* at 368.

398. *See generally id.* at 368-69.

399. *Id.* at 370-71.

400. *Id.* at 371.

401. *See generally id.*

who might otherwise be reluctant to pursue a legal career because of low or nonexistent wages during the first few years of legal practice.

Professors in England have a much different role in legal education than their counterparts in the United States.<sup>402</sup> Because English students learn through both lectures and tutorials, the lecturing professor is not the only person responsible for teaching a law course.<sup>403</sup> Additionally, if there is more than one section of a course taught in a given year, a standard examination is given for all of the sections.<sup>404</sup> Professors are required to teach what will be tested on a particular examination, rather than what they feel is important.<sup>405</sup> Therefore, English professors are limited in the structure and content of their courses<sup>406</sup> and cannot base their courses on their current research interests as professors often do in the United States.<sup>407</sup> Giving the same examination to all sections of the same course not only stifles the professor's creative input, but also penalizes sections whose professor is a poor instructor.<sup>408</sup> Although students in all sections take the same examination, they may not have received the same level and quality of instruction.<sup>409</sup>

English law professors should be given the discretion to teach courses and write examinations in a manner that is consistent with their own personal preferences and interests. This will give English professors more flexibility to concentrate on matters which they feel are important, or matters they are currently researching and in which they have a personal interest. The result will be a more exciting and diverse curriculum taught by professors who will deliver more interesting and captivating lectures.<sup>410</sup> Furthermore, students will have a greater opportunity to learn about relevant subjects which may only be peripherally related to the law.<sup>411</sup> As a result, English students will receive a broader, more well-rounded education.

Perhaps the most surprising difference between the two systems of legal education is that the English grading procedure takes the eq-

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402. See generally Mordsley, *supra* note 75, at 51.

403. *Id.*

404. Teeven, *supra* note 27, at 361.

405. *Id.*

406. See generally *id.*

407. Mordsley, *supra* note 75, at 51.

408. See generally Teeven, *supra* note 27, at 361.

409. See generally *id.*

410. See generally Mordsley, *supra* note 75, at 51.

411. See generally *id.*



uities of each student into account.<sup>412</sup> Student advisors are allowed to speak as advocates for their advisees, to explain either economic or personal problems that may have affected the student's performance.<sup>413</sup> While there may be advantages to such a system, the potential for bias is obvious. Students whose advisors are strong advocates may be able to obtain a better grade based upon the advocacy skills of their advisor, rather than upon their own performance. The inherent subjectivity of this policy is a serious problem that United States law schools strictly avoid.<sup>414</sup> In the United States, a student's personal, financial, or other concerns may not be considered when grades are determined.<sup>415</sup> Therefore, to ensure that students are graded solely upon their individual performance, English law schools, like law schools in the United States, should not consider personal or economic problems during grading.

In England, there is a tremendous lack of coordination between the professions.<sup>416</sup> Each profession sets its own "core" educational requirements.<sup>417</sup> Thus, it is virtually impossible for a solicitor or barrister to change careers without additional training.<sup>418</sup> The problems created by this rigid system are further exacerbated by the fact that law students must choose between a career as a solicitor or a barrister at a very young age, before they are able to fully understand their own personal preferences.<sup>419</sup>

English law schools should develop a core curriculum that meets the needs of both solicitors and barristers.<sup>420</sup> This will enable students to acquire a basic understanding of both branches of the legal profession. Thus, young students who are unsure of which profession to choose will have the opportunity to learn about both professions and make an informed choice about their future. In addition, a core curriculum that is sanctioned by both professions will allow barristers

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412. James, *supra* note 25, at 890.

413. *Id.*

414. See generally Kissam, *supra* note 202.

415. See generally *id.*

416. Blake, *supra* note 67, at 4.

417. *Id.* "Transfer from one branch of the profession to the other is not automatic, and, indeed, requires, . . . the total cessation of practice for an extended period of time." Green, *supra* note 107, at 137.

418. Barrett, *What Should We Be Learning About Legal Education?*, 24 L. TCHR. 3, 10 (1990).

419. See *supra* text accompanying notes 25-26 regarding the fact that law students in England generally enter law school at the age of eighteen or nineteen.

420. Barrett, *supra* note 418, at 10.

and solicitors to make mid-career changes with only minimal re-education.<sup>421</sup>

### IX. CONCLUSION

Although the legal systems of both England and the United States have their strengths and weaknesses, neither is superior to the other.<sup>422</sup> Each country can learn from the other to make their respective methods of legal education stronger, thereby ensuring that law students in both countries are able to effectively meet the needs of tomorrow's legal profession.

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421. See *supra* text accompanying notes 416-19.

422. Cole, *supra* note 2, at 30.

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