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2004 National Roundtable on Lawyer Specialty Certification

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Professionalism and the Certified Specialist

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W. Lee Burge Professor of Law & Ethics	Resume
The Burge Chair was established by an endowment from the U.S. District Court for the Middle District of Georgia, using funds collected for alleged lawyer misconduct to promote ethics, professionalism and access to justice.	Affirmative Action Web Site Professionalism Web Site "GSU Law Prof Sparks Traffic Court Reform, Frees Inmates" (Fulton County Daily Report 10/10/03) Recent and Upcoming Activities **Last updated January 24, 2004**

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Teaches: Judicial Power Professional Responsibility: Heroes & Villains

On June 1, 2002 Professor Cunningham became the first incumbent of the W. Lee Burge Chair in Law & Ethics. He is a member of the Chief Justice of Georgia's Commission on Professionalism and has consulted with Georgia's Commission on Indigent Defense. From 1987-89 Professor Cunningham was a Clinical Assistant Professor of Law at the University of Michigan Law School. From 1989-1993 he was an Associate Professor at the Washington University School of Law in St. Louis; he was promoted to full Professor with tenure in 1993 and continued to teach at Washington University through May 2002.

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

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

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

W. LEE BURGE CHAIR OF LAW AND ETHICS
GEORGIA STATE UNIVERSITY COLLEGE OF LAW

PROFESSIONALISM ISSUES AND ACTIVITIES

National Award for Innovation and Excellence in Teaching Professionalism

(co-sponsored by the American Bar Association Standing Committee on Professionalism and the Conference of Chief Justices and supported by the Burge Endowment for Law & Ethics)

-- January 30, 2004 Conference and Award Ceremony (click here for more information)
-- Applications and Supporting Materials received by the Selection Committee

The Effective Lawyer-Client Communication Project

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

Adrian Evans & Clark D. Cunningham, SPECIALITY CERTIFICATION AS AN INCENTIVE FOR INCREASED PROFESSIONALISM: LESSONS FROM OTHER DISCIPLINES AND COUNTRIES, 54 South Carolina Law Review 987 (Spring 2003) (contains pdf text of article and links to web site information on specialization).

The Heroes & Villains Professional Responsibility Course

-- **Use of Multimedia to teach Legal Ethics (Video)**

***Rethinking the Licensing of New Attorneys—An Exploration of Alternatives to the Bar Exam*, *2004 Georgia State University Law Review Symposium* (Thursday, January 29, 2004)**
Symposium Articles: Discussion Drafts

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

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Speciality Certification as an Incentive for Increased Professionalism: Lessons from Other Disciplines and Countries

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

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Links to materials cited in the article:

AUSTRALIA

General Information:

--Paul Redmond & Christopher Roper, Legal Education and Training in Hong Kong: Preliminary Review, Consultation Paper (2000) (contains good overview of legal education in Australia and other Commonwealth countries)
--Christopher Roper, New Zealand Law Society Proposal for a Specialisation Scheme: Report on the Feasibility Study (2002) (contains overview and analysis of lawyer pecialization programs in Australia, United States, Canada and England).

State of New South Wales

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

State of Victoria

-- Home Page for Specialist Certification (Law Institute of Victoria)
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LAW REVIEW

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

Adrian Evans & Clark D. Cunningham

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

ADRIAN EVANS* & CLARK D. CUNNINGHAM**

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I. INTRODUCTION

It is now a reasonably common practice in a number of jurisdictions for lawyers with acknowledged experience in a particular area of law to seek peer recognition of that expertise. In general terms, applications for specialist accreditation are made by lawyers after several years in practice and concentrated experience in the area of proposed accreditation. Variously described as "specialized

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accreditation" or just "specialist recognition," these programs seek to maximize lawyers' self-esteem, referrals, and income while providing useful information to the community as to specialist ability.

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

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

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

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

2. Indeed, professionalism can be thought of as a process in which knowledge develops into wisdom, skill becomes art, and values rise to the level of virtue.

post-admission professionalism programs–passive listening to CLE lectures, discussion groups, and voluntary lawyer organizations that encourage and reward professional excellence–provide neither concrete incentives nor reliable measures for the maintenance, much less improvement, of professional knowledge, skill, or values for the post admission lawyer.

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

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

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

- a 'NIL' disciplinary record in respect of proven intentional *code* offenses
- satisfactory results in continuing legal education
- a positive rating by colleagues and peers as to whether the lawyer is in "good standing."[3]

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3. For United States requirements, see Kilpatrick, *supra* note 1, at 296-97. For Australian requirements, see CHRISTOPHER ROPER, NEW ZEALAND SOCIETY PROPOSAL FOR A SPECIALISATION SCHEME: REPORT ON THE FEASIBILITY STUDY § 3.4 (2002), *available at* http://www.nz-lawsoc.org.nz/lawtalk/ChrisRoperReport.htm.

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

II. SPECIALTY CERTIFICATION FOR LAWYERS IN THE UNITED STATES

In 1921, the prestigious Carnegie Foundation for the Advancement of Teaching published the results of an eight-year study of the legal profession in which one recommendation was that the profession recognize the reality of specialization by providing differentiated law school training.[4] The recommendation did not find a welcome reception, and a series of American Bar Association (ABA) committees appointed to promote specialization between 1952 and 1967 fared no better.[5] The ABA Model Code of Professional Responsibility, adopted in 1969, prohibited a lawyer from "hold[ing] himself out publicly as a specialist" unless certified by a state-authorized entity.[6] In 1970, California became the first state to establish a certification program; over the next twenty years, less than one-third of the other states set up programs to permit specialist certification.[7]

In 1989, the Supreme Court of Illinois, which had not approved a certification program, disciplined an attorney for mentioning on his letterhead that he had obtained a Certificate in Civil Trial Advocacy from a private organization, the National Board of Trial Advocacy (NBTA).[8] The U.S. Supreme Court reversed that decision: "A State may not . . . completely ban statements that are not actually or inherently misleading, such as certification as a specialist by bona fide organizations such as NBTA."[9] The Court did indicate that a state can require a lawyer who advertises specialist certification to demonstrate

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4. Kilpatrick, *supra* note 1, at 275. This section on the American approach to specialization draws heavily from Professor Kilpatrick's comprehensive article, which is based on her doctoral dissertation in law at Columbia University. *Id.* at 273 n*. Professor Kilpatrick is also a member of the American Bar Association's Standing Committee on Specialization.

5. *Id.* at 277-80.

6. MODEL CODE OF PROF'L RESPONSIBILITY DR 2-105 (A)(3) (1969). A narrow exception was made for lawyers admitted to practice before the U.S. Patent and Trademark office. *See* MODEL CODE OF PROF'L RESPONSIBILITY DR 2-105 (A)(1) (1969).

7. Kilpatrick, *supra* note 1, at 282-87.

8. *See In re* Peel, 534 N.E.2d 980, 986 (Ill. 1989).

9. Peel v. Attorney Disciplinary Comm'n of Ill., 496 U.S. 91, 110 (1990).

that such certification meets "standards relevant to practice in a particular area of the law."[10]

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

III. SPECIALTY CERTIFICATION FOR LAWYERS IN AUSTRALIA

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

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

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10. *Id.* at 109.

11. *See*, *e.g.*, GA. RULES OF PROF'L CONDUCT R. 7.4 (2000) (stating that a "lawyer who is . . . certified by a recognized and bona fide professional entity, may communicate such specialty . . .").

12. MODEL RULES OF PROF'L CONDUCT R. 7.4(c) (2002).

13. Lisa L. Granite, *In No Hurry to Specialize*, THE PENN. LAWYER, May-June 2001, at 24, 24.

14. *Id.*

15. CATRIONA COOK ET AL., LAYING DOWN THE LAW 43-44 (2001).

16. *Id.*

17. Chris Merritt, *National Legal Market Closer*, THE AUSTRALIAN FIN. REV., July 26, 2002, at 13.

many entrants commencing at age seventeen to eighteen.[18] In the more traditional universities, law is often taken with other basic degrees in arts, science, commerce, and, more recently, engineering and information technology.[19] There are eleven prescribed areas of study in the basic Bachelor of Laws ("LLB"), including "Professional Conduct."[20] The content of these areas is controlled by the Law Admissions Consultative Committee ("the Priestly Committee"), formerly known as the "Consultative Committee of State and Territorial Law Admitting Authorities." The Priestly Committee reports to the national Council of Chief Justices.[21]

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

The Articles of Clerkship system is under considerable pressure from critics who allege that the quality of supervision available to

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18. PAUL REDMOND & CHRISTOPHER ROPER, LEGAL EDUCATION AND TRAINING IN HONG KONG: PRELIMINARY REVIEW, CONSULTATION PAPER § 3.1.4, at 36 (2000), *available at* http://www.hklawsoc.org.hk/pub/news (providing an overview of legal education in Australia and other selected countries for the Steering Committee on the Review of Legal Education and Training in Hong Kong).

19. *Id.*

20. *Id.* § 4.7.1, at 62-63.

21. STANDING COMMITTEE OF ATTORNEYS GENERAL, AUSTRALIA, OFFICER'S REPORT CONCERNING MODEL NATIONAL LAWS GOVERNING AUSTRALIA'S LEGAL PROFESSION 52 n.40 (2002) [hereinafter OFFICER'S REPORT].

22. *See*, *e.g.,* Legal Practice (Admission Rules) 1999 (Victoria), S.R. No. 144/1999, R.3.01, *available at* www.dms.dpc.vic.gov.au [hereinafter Admission Rules].

23. *Id.; see also* REDMOND & ROPER, *supra* note 18, § 3.1.4, at 36-37 (detailing the training process in Australia).

24. Admission Rules, *supra* note 22 at R. 3.02.

25. *Id.* at R. 3.01(1)(a)(i).

26. *Id.* at R. 4.12(2).

27. *Id.*

"clerks" is too variable to ensure uniformly competent outcomes.[28] Despite these criticisms, the Articles system is likely to continue as a route to admission, in tandem with PLT courses, in the interests of a consensus between the states and territories.[29]

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

Victoria's requirements for all specialization accreditation include the following: (1) the equivalent of five years, full-time practice as a lawyer; (2) "substantial involvement" (defined as at least twenty-five percent of total workload) in the chosen specialty for at least the immediately preceding three years; (3) a passing score on a written

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28. James Bremen, *Articles of clerkship-the end of an era*?, PROCTOR ON-LINE, Apr. 2000, at 18-19, *at* www.themis.com.au/Themis/BaseSrv/Proctor.nsf; *see also* REDMOND & ROPER, *supra* note 18, § 3.1.4, at 37 (describing the Articles of Clerkship system and the moves toward adoption of a common standard).

29. REDMOND & ROPER, *supra* note 18, § 5.3.8, at 56.

30. *See* Law Inst. of Victoria, *Member Services - Professional Development*, *at* http://www.liv.asn.au/services/services-Professi.html (providing information on specialist accreditation) [hereinafter Law Inst. of Victoria website]. Many of the relevant pages from this site are also available on the web site of the Effective Lawyer Client Communication Project. *See* GA. ST. UNIV. COLL. OF LAW, EFFECTIVE LAWYER CLIENT COMMUNICATION: AN INTERNATIONAL PROJECT TO MOVE FROM RESEARCH TO REFORM, *at* http://law.gsu.edu/Communication/ [hereinafter ELCC website].

31. ROPER, *supra* note 3, § 3.4.

32. *Id.*

33. *Id.*

34. *See*, *e.g.*, Law Soc'y of New South Wales, *Accredited Specialists*, *at* http://www.lawsociety.com.au/page.asp?PartID=670 (providing information on thirteen areas of specialization) [hereinafter Law Soc'y of New South Wales website]. Many of the relevant pages from this site are also available on the ELCC website, *supra* note 30.

35. ROPER, *supra* note 3, § 3.4.

36. Legal Practice Board (Victoria), *2001-2002 Annual Report,* at 21 fig.4, *available at* www.lpb.vic.gov.au/lpbreport2002.pdf.

37. There is no current specialization scheme in New Zealand, but the New Zealand Law Society has commissioned a feasibility report from the College of Law Alliance in Sydney. *See* ROPER, *supra* note 3.

examination; and (4) three positive references from persons who have known the applicant for at least three years, at least one of whom must be a legal practitioner with at least five years of practice experience and significant involvement in the specialty.[38]

These requirements are generally similar to those found in U.S. specialization programs with one significant difference: most U.S. programs define "substantial involvement" very specifically by requiring a minimum number of completed activities such as twenty-five trials for the criminal law certification in Florida, of which fifteen must be felony jury trials.[39] The Australian programs have no such specific requirements and for most accreditations, the applicant need merely provide a statement of the percentage of time spent in the specialized area for each of the prior three years.[40]

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

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38. Law Institute of Victoria Specialisation Scheme Rules R. 4.4, 4.5, 4.8 (2002), *available at* Law Inst. of Victoria website, *supra* note 30, and ELCC website, *supra* note 30.

39. Kilpatrick, *supra* note 1, at 326 chart 1; *see also* RULES REGULATING THE FLORIDA BAR § 6-8.3(2) (requiring a minimum of 25 cases). Other states require a greater variety of completed activities. For example, criminal certification in California requires ten jury trials, forty criminal or juvenile "matters," and any two of the following three options: five post-conviction hearings, three appeals, or ten additional jury trials. Kilpatrick, *supra* note 1, at 326-27 chart 1. For bankruptcy certification, California requires completion of thirty activities, at least twenty-five of which must take place in bankruptcy court in no fewer than fifteen different cases. *Id.* at 351-55 chart 2. Kilpatrick's information is current as of 1997.

40. ROPER, *supra* note 3, § 3.4.

by certified specialists.[41] This paradox arises out of the origin of American specialty certification as an issue of truth-in-advertising rather than as a method of professional development.

In contrast, while the Australian programs also focus on certifying rather than developing competency, they clearly contemplate that applicants will build specialized competency, not just through on-the-job experience, but also by preparing for the certification process itself. For example, both the Victoria and New South Wales web sites offer ways for applicants to join study groups, which seem to be widely used.[42] The Australian specialist preparation period is likely to be different from any individualized study by an American would-be specialist because of another even more important difference between the two countries. All the Australian certification programs require one or more skill demonstrations in addition to a written examination about substantive law. This combination of assessment methods is intended to be, and is, quite rigorous, as evidenced by a 1994 law review article that reported practitioner complaints about the high failure rate.[43] For example, in New South Wales, the criminal and children's law specialties applicants must conduct a simulated court hearing,[44] and would-be personal injury specialists must undergo a "peer interview"

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

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

43. Inge Lauw, *Specialisation, Accreditation and the Legal Profession in Australia and Canada*, MURDOCH UNIV. ELEC. J.L., May 1994, at n.90, *at* http://www.murdoch.edu.au/elaw/issues/v1n2/lauw12.html.

44. See Criminal Law Accreditation Assessment Guidelines, pt. C and *Children's Law Accreditation Assessment Guidelines*, pt. C, *at* Law Soc'y of New South Wales website, *supra* note 34, and ELCC website, *supra* note 30.

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

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

IV. EXCELLENCE IN SERVICE TO CLIENTS

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

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

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45. *See Personal Injury Law Accreditation Assessment Guidelines*, pt. D, *at* Law Soc'y of New South Wales website, *supra* note 34, and ELCC website, *supra* note 30.

46. ROPER, *supra* note 3, § 3.4.

47. Family Law was the first specialty to be certified in Australia (in Victoria in 1989). It has the largest number of certified specialists in Victoria (223) and the second largest number in New South Wales (283). ROPER, *supra* note 3, § 3.4.

48. The family law applicant must also prepare a mock file, including client correspondence and court documents, based on a set of documents prepared by the examiners. This is a "take home" project to be completed over a period of two weeks. *See Family Law Accreditation Assessment Guidelines* 31, *at* Law Soc'y of New South Wales website, *supra* note 34, and ELCC website, *supra* note 30.

49. Livingston Armytage, *Client Satisfaction with Specialists' Services: Lessons for Legal Educators*, *in* 1 SKILLS DEVELOPMENT FOR TOMORROW'S LAWYERS: NEEDS AND STRATEGIES 355, 356, 357, 366 n.1(1996) [hereinafter Armytage I].

At that time there were 763 specialists in New South Wales who had been accredited in the areas of business, criminal, family, personal injury, and property law.[50] The evaluators wrote to all these specialists asking each to identify four clients: two preaccreditation and two who had retained the lawyer after accreditation. This process yielded 424 clients. The evaluators then conducted discussions with two focus groups drawn from this list. A nine question survey developed with input from these focus groups was then mailed to all 424 clients, of whom 55.2% responded.[51] The survey form included a free response section that asked clients to describe in a few lines "what I liked" and "what I disliked" about "how the job was done."

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

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

The evaluators concluded that

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

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50. *Id.* at 367 n.2; THE CENTRE FOR LEGAL EDUCATION & LIVINGSTON ARMYTAGE, A REVIEW OF ASPECTS OF THE SPECIALIST ACCREDITATION PROGRAM OF THE LAW SOCIETY OF NEW SOUTH WALES 7 (1996) [hereinafter ARMYTAGE II].

51. ARMYTAGE II, *supra* note 50, at 7.

52. Armytage I, *supra* note 49, at 357.

53. *Id.* at 365.

54. *Id.* An interesting indication of the relative unimportance of outcome to client satisfaction is the fact that in the "what I liked" section of the survey there was "little mention of outcomes" and that only one client referred to outcome in the "what I disliked" section. ARMYTAGE II, *supra* note 50, at 118, 122.

> This training should be client focused, rather than transaction focused; it should train practitioners to recognise that client needs are not confined to attaining objective outcomes; and it should help lawyers to listen to clients more attentively, diagnose their various levels of needs and demonstrate empathy.[55]

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

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

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

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55. Armytage I, *supra* note 49, at 366. When quoting from Australian and English materials, we have retained the original spelling (e.g. "recognise" instead of "recognize.")

56. Avrom Sherr, *The Value of Experience in Legal Competence*, 7 INT'L J. LEG. PROF. 95, 112 (2000).

57. *Id.* at 118-19.

58. *Id.*

59. *Id.* at 104.

60. *Id.* at 105.

groups.[61] Both clients and lawyers were asked to evaluate the interviews immediately after completion. The experienced lawyers "rated their own interview performance significantly higher" than did the new lawyers, but clients did "not differentiate between the groups."[62]

An Australian initiative that bears some resemblance to specialty certification acknowledges the importance of client input concerning service quality. In 2001, the Best Practice Board of the New South Wales Law Society merged with Quality in Law Incorporated to form a national Australian organization named simply QL Inc., which has the goal of encouraging and recognizing "sustainable best practices" in law firm management.[63] Unlike the Specialist Accreditation Program, QL certification recognizes increasing levels of professional excellence from Level I to Level IV, and its criteria specifically mentions "monitoring client satisfaction."[64] However, QL certification does not indicate that any particular level of client satisfaction has been achieved by a firm, only that a system of monitoring client satisfaction is used.[65]

V. ETHICAL EXCELLENCE

Although many, including Deborah Rhode, continue to repeat that integrity and accountability are key ingredients of professionalism,[66] legal specialists are not, so far as we are aware, specifically encouraged to develop nor assessed for this quality in any country. There should be a test to assess honesty and integrity as qualities at

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61. *Id.* at 109.

62. Sherr, *supra* note 56, at 107.

63. The College of Law & The Law Society of New South Wales, Best Practice Gateway 3, *available at* www.collaw.edu.au/cd/cbp/QLBP%20Framework%202002.pdf (last visited Feb. 7, 2003). Training programs to assist firms in meeting QL standards are administered by the College of Law in Sydney. *Id.* at 4.

64. *Id.* at 7.

65. *Id.* at 10. Indeed, a firm could theoretically receive QL certification without using a client satisfaction monitoring system. A firm is eligible for Level II certification if it scores at least 350 points on a scale where 500 is a perfect score; having a client satisfaction monitoring system only adds a potential maximum of 10 points towards the total score. *Id.* In contrast, internal firm personnel procedures are worth much more (up to 50 points). *Id.* at 11. LawCover, a wholly owned, non-profit subsidiary of the Law Society of New South Wales, which provides malpractice insurance, offers a risk management course that includes one module on client communication: *Listening, Asking & Explaining*. *See* LawCover, *Four Principals' Modules*, http://www.lawcover.com.au/risk.asp?indexid=14 (last visited Jan. 31, 2003). This unit was developed in response to research commissioned by LawCover. *See* RONWYN NORTH & PETER NORTH, MANAGING CLIENT EXPECTATIONS AND PROFESSIONAL RISK (1994).

66. Deborah L. Rhode, *Defining the Challenges of Professionalism: Access to Law and Accountability of Lawyers*, 54 S.C. L. REV. 889 (2003).

least as important as career advancement. Professor Adrian Evans is currently developing one empirical method for the measurement of final-year law students' values which will soon be tested on practitioners as one component of a still-to-be-developed composite measure of ethical values. The first stage of this study has already disclosed both considerable variation in ethical priorities and in motivating values.

[Balance of page 1000 and pages 1001-1003 omitted]

and observed behaviour to assess excellence in service and ethical practice.

VI. LESSONS FROM THE MEDICAL PROFESSION

A. Assessing the Quality of Service

The apparent unimportance of measuring client satisfaction in the legal profession makes a striking contrast to the medical profession. According to a 1995 survey, virtually all hospitals in the United States have some kind of patient satisfaction measurement system in place.[75] In 1994, the United States Joint Commission on Accreditation of Healthcare Organizations included in its standards a requirement to ensure that an organization "gathers, assesses, and takes appropriate action on information that relates to the patient's satisfaction with the services provided."[76] A substantial private industry has developed to conduct patient satisfaction surveys for health care providers; some firms have more than 5000 health care providers as clients.[77] It is increasingly common for doctors to be evaluated by their supervisors based on the results of patient satisfaction surveys.[78]

Doctor-patient communication is treated as an important subject for both pedagogy and empirical research in medical education. One recent review of the literature on doctor-patient communication cited 112 publications.[79] Starting in 2004, a test of communication skills using lay persons, called "standardized patients," trained to simulate

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75. See WILLIAM J. KROWINSKI & STEVEN R. STEIBER, MEASURING AND MANAGING PATIENT SATISFACTION 25 (2d ed. 1996).

76. *Id.* at 23.

77. *See* Neil Chesanow, *Hire a Pro to Survey Your Patients*, MED. ECON., Oct. 13, 1997, at 141, 148, 150; *see, e.g.*, Press Ganey Associates, Inc., *About Press Ganey*, *available at* http://www.pressganey.com/ (last visited Jan. 31, 2003). Press Ganey Associates is one of the leaders in this emerging industry.

78. *See* JEANNE MCGEE ET AL., COLLECTING INFORMATION FROM HEALTH CARE CONSUMERS: A RESOURCE MANUAL OF TESTED QUESTIONNAIRES AND PRACTICAL ADVICE 11:29-11:45 (1997) (describing the Park Nicollet Clinic in Minneapolis, which measures patient satisfaction on an annual basis for all of its first-year physicians). Individual physicians receive the survey results in a report that compares them with other physicians in the same department. The clinic's medical director and each department chair also receive the report which they review with each new first-year physician as part of a comprehensive assessment process. *Id.*

79. *See* L.M.L. Ong et al., *Doctor-Patient Communication: A Review of the Literature*, 40 SOC. SCI. & MED. 903 (1995).

realistic clinical presentations, will be a licensing requirement for all new doctors in the United States.[80]

B. Predicting Professional Behavior

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

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

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80. *Clinical Skills Assessment in the USMLE [U.S. Medical Licensing Examination]*, NBME EXAMINER, Fall/Winter 2002, at 1-3 *available at* http://www.nbme.org/examiner/FallWinter2002/news.htm. The assessment is also available on the ELCC website, *supra* note 30, at Specialization/Medicine.

81. David Stern, Remarks at the Professionalism Conference in Charleston, South Carolina (Sept. 28, 2002), *in Transcript*, 54 S.C. L. REV. 897, 945 (2003).

82. Susan Case, Remarks at the Professionalism Conference in Charleston, South Carolina (Sept. 28, 2002), *in Transcript*, 54 S.C. L. REV. 897, 939 (2003). Reflecting the progressive nature of professionalism, the exam is given in three parts: (1) after the second year of medical school; (2) during the final, fourth year of medical school; and (3) during the post-graduate residency. *Id.*

83. *Id.*

84. Stern, *supra* note 81, at 946-47 (discussing the importance of testing how people will resolve conflicting values); *see also* Case, *supra* note 82, at 943-45 (presenting sample questions).

85. The Georgia Rules of Professional Conduct have an unusual feature of specifying at the end of each rule the maximum potential punishment for violation of each rule. At the end of the Georgia Rule on "Reporting Professional Misconduct," this sentence appears: "There is no disciplinary penalty for a violation of this Rule." GA. RULES OF PROF'L CONDUCT R. 8.3 (2000), *available at* http://www2.state.ga.us/courts/bar/stbarru991.htm. The Georgia rules probably make explicit the actual practice throughout the United States that lawyers are rarely, if ever, disciplined for failure to report the misconduct of other lawyers.

unethical behavior.[86] Evidence already exists for the reliability of two other assessment methods. One part of the standardized patient test[87] has been shown to have predictive value as to ethical behavior. Standardized patients typically fill out a standard patient satisfaction form as if they had been a real patient for the testing encounter. The examining physician also fills out an assessment form which mirrors the patient's form, in effect asking the examiner to predict how the patient will evaluate the experience.[88] Dr. Stern discovered that medical students who gave themselves higher assessments than did their standardized patients were more likely to appear before an academic review board for professional behavior problems.[89] Thus, even though the standardized patient test was primarily designed to test communicative and diagnostic skills, it also has the potential to identify attitudes and values that may undermine professionalism. For law, this is a particularly relevant finding because simulated client exercises are already well developed in clinical education[90] and, at least in Australia, have already been applied to specialty certification.[91] The addition of the parallel client and interviewer assessment forms would be a simple improvement.[92]

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

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86. Case, *supra* note 82, at 939; Stern, *supra* note81, at 946.

87. *See supra* note 75 and accompanying text.

88. Stern, *supra* note 81, at 947.

89. *Id.* at 953. Stern reports that almost no other factor in his wide-ranging data set was able to predict unprofessional behavior. *Id.* The relationship observed by Stern between over-assessing one's own performance in comparison to the patient's assessment and unprofessional conduct by doctors makes Avrom Sherr's findings about English lawyers even more troubling, since in his study it was the experienced lawyers who were more likely to over-assess the quality of their client interviewing. Sherr, *supra* note 56, at 107.

90. *See* Lawrence M. Grosberg, *Medical Education Again Provides a Model for Law Schools: The Standardized Patient Becomes the Standardized Client*, 51 J. LEGAL EDUC. 212 (2001).

91. *See supra* notes 47-48 and accompanying text.

92. The Effective Lawyer-Client Communication Project is in the process of developing model survey forms to be filled out by clients and lawyers at the initial interview that are based, in part, on the procedures developed by the medical profession. *See* ELCC website, *supra* note 30. Professor Cunningham is the director of this project and Professor Evans is a member of the ELCC Advisory Board. The model survey forms are currently being tested in legal services clinics operated by Georgia State University, where Cunningham teaches, and at Monash University, where Evans teaches.

schools, only as an elective for limited credit and short duration.) Specialty board certification necessarily includes such assessment because built into medical residency programs is faculty observation of actual practice.[93] Dr. Stern offers the University of Michigan as an example. Faculty at this institution not only complete summative, longitudinal assessments, but also are encouraged to fill out brief "critical incident reports" on the same day that either exemplary or questionable performance is observed.[94] These reports are particularly valuable because they have the potential of aggregating observations from a number of different faculty members. Dr. Stern reports that his research has shown that when at least eight different supervisors provide evaluations, assessment of professionalism becomes very reliable.[95]

The example of medicine strongly suggests that some kind of supervised practice component, not only as a component of prelicense education but also post-license certification, would be an invaluable way of preventing unprofessional behavior and promoting professional excellence. Perhaps a specialization applicant could substitute such a supervised practice component for some of the mandatory specialization activities required by U.S. programs or to shorten the number of years in specialized practice.[96]

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93. *Id.*

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

95. *Id.* at 950.

96. In June 2002, a joint report prepared by the committees on Legal Education and Admission to the Bar of the New York State Bar Association and the Association of the Bar of the City of New York was issued recommending a pilot project of up to two years to assess the effects of substituting public service work for the bar exam. Participants in the proposed project would perform supervised work in the court system and then be admitted without taking the bar exam if they passed the Multi State Professional Responsibility Examination, a written performance test designed to assess their ability to apply the law in the context of a lawyer's problem and an evaluation of various skills demonstrated during the course of their service. *See* N.Y. State Bar Assoc., *Summary of the Report on the Public Service Alternative Bar Examination*, *available at* http://www.nysba.org/Content/NavigationMenu/Attorney_Resources/NYSBA_Reports/List-of-reports.htm (last visited Jan. 30, 2003). A similar proposal for Arizona is being developed by the Community Legal Access Society. This proposal is on file with authors. Both the New York and Arizona reports are also available on the ELCC website, *supra* note 30, at Specialization/BarExam Alternatives. *See also* Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Exam Should Change*, 81 NEB. L. REV. 363 (2002) (discussing possible changes to the bar exam); Kristin Booth Glen, *When and Where We Enter: Rethinking Admission to the Legal Profession*, 102 COLUM. L. REV. 1696 (2002) (questioning the sufficiency of the bar exam as the principal test of admission to the legal profession).

VII. CONCLUSION

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

One potential benefit of the current approach to specialization by the legal profession in the United States is flexibility. Unlike Australia, where a single state entity controls the criteria and procedures for certification, some American states allow certification by any "recognized and bona fide professional entity."[97] Thus, a state could recognize an organization with a particular interest in or commitment to promoting excellence in client service or ethical practice as qualified to offer an enhanced form of specialization certification without imposing its more demanding criteria and assessment procedures on all specialist applicants in the jurisdiction.[98]

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

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

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97. GA. RULES OF PROF'L CONDUCT, *supra* note 11, at R.7.4.

98. Law schools, especially those with strong clinical education programs, could offer enhanced specialist certification. Another possible entity would be the American Inns of Court, whose mission is "to foster excellence in professionalism, ethics, civility, and legal skills," primarily through collegial discussions and mentoring of law students and new lawyers by experienced lawyers and judges. *See* http://www.innsofcourt.org/contentviewer.asp?breadcrumb=6,9. However, the American Inns of Court do not currently offer a certification program or registry of qualified lawyers. *See* http://www.innsofcourt.org/contentviewer.asp?breadcrumb=6,9,343.

personal incentives for lawyers. Such initiatives are in the interests of reputable lawyering, now and well into the future.

*But What is Their **Story**?*

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*This transcribed presentation for the Symposium on Ethics and Professionalism was based on research contained in an unpublished manuscript by Clark D. Cunningham, What Is Their Story?, available at http://law.gsu.edu/Communication/AmistadEssay/.htm (last visited 6/11/03).

... This website that I mentioned before, among other things, contains information about a pilot project that the Effective Lawyer Client Communication Project is working on now. This pilot project is an effort to try to develop a standard methodology for getting better information about how clients experience the initial interview than I think we currently have. Lawyers, by and large, don't systematically measure client satisfaction or client experience, even at the end of a representation. And they certainly don't do so at the beginning of a representation.

One part of several pieces of methodology in this project is to have this simple one page form filled out by clients immediately after the initial meeting with the lawyer before they leave the office, when the experience is fresh in their mind and when you can obtain almost a hundred percent response rate. This is not just a client satisfaction form. The last question, "If I come back to this office with a different need for legal help I would want the same lawyer to help me," is intended to be the closest thing to a general satisfaction measure. But we're looking at other things as well, for example:

1) the lawyer said things I didn't understand.
2) The lawyer did not understand what was most important to me.
3) The lawyer asked confusing questions.
4) I did not say everything I wanted to say.

If the client agrees with any of these items, the client ***is right***. One of the things that happens with lawyers is that if clients are dissatisfied they tend to interpret that dissatisfaction as caused by unrealistic expectations, especially if they are dissatisfied at the end of the matter. But if a client tells you "the lawyer said things I didn't understand," then the lawyer ***did*** say things the client didn't understand. There's just no question about it. (By the way, you'll notice that there is a flip side to the form, where the client has a free response area, so that if they said "the lawyer said things I didn't understand" they can indicate what they didn't understand here.)

At the same time that the client is filling out this questionnaire, the attorney is filling out this form, which is a kind of mirror image of the client questionnaire. For example, if the lawyer "strongly agrees" with item eight, then the lawyer is saying, "Well, in my opinion the client thought I asked confusing questions." So one of the things these two forms do when read together is to give a pretty good measure of how accurate the lawyer was in his or her estimation of how the client experienced the initial interview.

Our hope with the project at this point is to develop a kind of standard instrument that could be used in many different settings, which would give us a way of really measuring how effective communication is at the initial interview.

CONFIDENTIAL CLIENT SURVEY (CI-Surv8) Site Code ____ Case code_____ Lawyer code _____

 Web Site: http://law.gsu.edu/Communication

This survey will not be seen by anyone until this office decides whether to represent you. If this office decides to represent you, a supervising lawyer will review your answers. Your answers will not be shown to the lawyer who interviewed you unless you check the box at the end of this form.

For questions 1-10, please indicate how much you agree or disagree with each statement about the lawyer who interviewed you. For each item, you may circle any number corresponding to the scale below.

	-4 strongly disagree	**-3**	**-2 disagree**	**-1**	**0 not sure**	**+1**	**+2 agree**	**+3**	**+4 strongly agree**
The lawyer									
1. Made me feel comfortable.	-4	-3	-2	-1	0	+1	+2	+3	+4
2. Said things I did not understand.	-4	-3	-2	-1	0	+1	+2	+3	+4
3. Treated me with respect.	-4	-3	-2	-1	0	+1	+2	+3	+4
4. Did not understand what was most important to me.	-4	-3	-2	-1	0	+1	+2	+3	+4
5. Listened to me.	-4	-3	-2	-1	0	+1	+2	+3	+4
6. Did not explain what he or she would do next for me.	-4	-3	-2	-1	0	+1	+2	+3	+4
7. Was interested in me as a person.	-4	-3	-2	-1	0	+1	+2	+3	+4
8. Asked confusing questions.	-4	-3	-2	-1	0	+1	+2	+3	+4
9. Was someone I could trust.	-4	-3	-2	-1	0	+1	+2	+3	+4
10. Understood why I needed legal help.	-4	-3	-2	-1	0	+1	+2	+3	+4

For questions 11-13, please indicate how much you disagree or agree with each statement.

11. I did not say everything I wanted to say.	-4	-3	-2	-1	0	+1	+2	+3	+4
12. I know what I need to do next.	-4	-3	-2	-1	0	+1	+2	+3	+4
13. If I came back to this office with a different need for legal help, I would want the same lawyer to help me.	-4	-3	-2	-1	0	+1	+2	+3	+4

___Show my answers to the lawyer who interviewed me.

We ask about the following information to help us improve the client survey. Please skip any question if you do not want to provide the information.

Age____ Last school degree: ___Jr. High ___High School ___2 yr. College___4 yr college ___Graduate School

___White ____Black ___American Indian ___Hispanic ___ Asian Other: _____

___Male ___ Female Your first language: ____English ____ Spanish Other: _____

NOW PLEASE TURN OVER THIS FORM FOR ADDITIONAL QUESTIONS.

Please use the space below if you would like to explain any of your answers to the questions on the survey. For example, if you circled +4 to Question 2: “The lawyer said things I did not understand”, you can tell us here what you did not understand. If you have other questions or comments about your meeting with the lawyer, you can also write those down in this space:

ASSESSMENT OF CLIENT INTERVIEW (CI-Asmt8) **Site Code ___** **Case code____** **Lawyer code _____**

(c) Effective Lawyer-Client Communication Project Web Site: http://law.gsu.edu/Communication

For questions 1-10, please respond by imagining how the client would respond if asked the question.

We realize this is a difficult task and may involve some guessing on your part. For each item, you may circle any number corresponding to the scale below.

	-4 strongly disagree	-3	-2 disagree	-1	0 not sure	+1	+2 agree	+3	+4 strongly agree
The client…									
1. Felt comfortable.	-4	-3	-2	-1	0	+1	+2	+3	+4
2. Did not understand some things I said.	-4	-3	-2	-1	0	+1	+2	+3	+4
3. Felt treated with respect.	-4	-3	-2	-1	0	+1	+2	+3	+4
4. Felt as if I did not understand what was most important to him or her.	-4	-3	-2	-1	0	+1	+2	+3	+4
5. Felt like I listened well.	-4	-3	-2	-1	0	+1	+2	+3	+4
6. Felt like I did not explain what I would do next for him or her.	-4	-3	-2	-1	0	+1	+2	+3	+4
7. Felt like I was interested in him or her as a person.	-4	-3	-2	-1	0	+1	+2	+3	+4
8. Thought I asked confusing questions.	-4	-3	-2	-1	0	+1	+2	+3	+4
9. Trusted me.	-4	-3	-2	-1	0	+1	+2	+3	+4
10. Thought I understood why he or she needed legal help.	-4	-3	-2	-1	0	+1	+2	+3	+4

For questions 11-17, express your own opinion, indicating how much you disagree or agree with each statement.

The client….									
11. Did not say everything that he or she wanted to say.	-4	-3	-2	-1	0	+1	+2	+3	+4
12. Knows what he or she needs to do next.	-4	-3	-2	-1	0	+1	+2	+3	+4
13. Would want me to help him/her, if the client came back to this clinic with a different need for legal help.	-4	-3	-2	-1	0	+1	+2	+3	+4
14. Seemed confused.	-4	-3	-2	-1	0	+1	+2	+3	+4
15. Told me the whole story.	-4	-3	-2	-1	0	+1	+2	+3	+4
16. Had unrealistic goals.	-4	-3	-2	-1	0	+1	+2	+3	+4
17. Did not tell me the truth.	-4	-3	-2	-1	0	+1	+2	+3	+4

We ask about the following information to help us improve the survey. Please skip any question if you do not want to provide the information.

Age ____ ___White ____Black ___American Indian ___Hispanic ___ Asian Other: _____

___Male ___ Female Your first language: ____English ____ Spanish Other: _____

Family Law Accreditation
Assessment Guidelines 2001

These notes have been prepared by accreditation bodies in New South Wales, Victoria, Queensland and Western Australia. The notes should be read in conjunction with any rules or guidelines published by individual State bodies or committees. They will assist practitioners interested in becoming accredited in Family Law to understand and to prepare for the assessment process. Included are:

- the performance standards which are the benchmarks for competent practice in this area and form the basis of the assessment;
  - the list of knowledge which underpins the performance standards - knowledge which is applicable in all States is listed in Part A, knowledge which is applicable to local jurisdictions is listed in Part B;
  - the methods of assessment which each applicant is required to undertake;
- the dates of the assessments;
  - an application form which must be returned by **6 June 2001**.

Performance Standards

Practitioners wishing to be accredited should be able to perform the following tasks:

1. Develop a Relationship with the Client by:

1.1 Listening Effectively to the Client

By listening effectively, the practitioner is able to perceive the client's immediate needs regarding safety, children and the financial situation.
The practitioner becomes aware of the client's non-legal needs, and any gender, language, cross-cultural and religious issues, and their implications.

1.2 Communicating Clearly and Appropriately

The practitioner:

- asks effective questions and interacts with the client in a supportive way and, at the same time, adopts methods to test the reality of the client's statements;
- adopts a nondiscriminatory attitude and uses plain language to communicate with the client to dispel myths and to educate regarding family law, its limits and realities;
- responds promptly to the client's inquiries and concerns, demonstrates a commitment to follow the client's instructions (within ethical limits) and an understanding of the client's welfare needs.

2. Gather and Assess Facts and Instructions by:

2.1 Taking Instructions from the Client

(Instructions include both the client's account of the relevant facts and the client's statements on what he or she wishes to obtain or achieve.)

When taking instructions, the practitioner:

- displays thoroughness, persistence and awareness of relevance;
- structures the process of assisting the client to develop a history, and obtains an initial statement from the client.

  Client statements include:
  - the nature of the problem;
  - what the client wants to achieve;
  - the client's account of the relevant facts;
  - the positions of children and any relevant third parties; and
  - a view of the opponent's position;
- draws the client's attention to any gaps or inconsistencies and checks the instructions with the client; and
- identifies with the client the basis upon which costs are being charged (scale or costs agreement).

When appropriate, the practitioner:

- obtains written instructions, for example, when instructions are contrary to the practitioner's advice;
- advises the client on the feasibility of obtaining what the client wants;
- distinguishes realistic and unrealistic expectations and canvasses the question of costs;
- deals with any ethical issues arising from the instructions; and
- keeps a clear record of the instructions.

2.2 Obtaining Relevant Information from Sources other than the Client

The practitioner:

- conducts appropriate searches and makes appropriate requests for documents and information;
- is skilled in obtaining evidence from a variety of witnesses and experts;
- uses court procedures to gather further evidence;
- makes financial inquiries; and
- when appropriate, takes evidence on commission or engages in extraterritorial procedures.

3. Plan a Timetable and Course of Action by:

3.1 Assessing Facts and Marshalling Evidence

The practitioner:

- assesses the facts by cross-referencing documents and statements, and preparing a chronology and statement of issues;
- briefs experts to comment on evidence;
- ensures that experts focus on the questions of evidence required;
- researches and obtains bodies of expert opinion;
- assesses the reliability of witnesses, the competency of experts; and
- determines what is relevant and admissible.

3.2 Conducting Legal Analysis

The practitioner:

- identifies legal principles arising from the facts, the client's instructions, actions by opponents and third parties, if any;
- identifies the extent to which relevant legal principles are clear on contestable issues;
- engages in appropriate research to ascertain legal principles or to develop arguments where legal principles are contestable;
- determines whether to seek counsel's opinion at each stage of the case; and
- seeks appropriate instructions.

3.3 Presenting to Clients Options for Reaching Resolution

The practitioner:

- presents the client with options in relation to the client's problems and an estimate of the costs involved;
- identifies the appropriate legal and other remedies, if any, and the forum; and

· identifies and investigates other legal ramifications of various options (for example, taxation and stamp duty implications, capital gains tax implications and corporate law implications).

The options will include:

3.3.1 No action

The client is to be properly informed of all ramifications of this non-action and reassured if adverse reaction starts.

3.3.2 Non-legal person or service

The practitioner:

- recognises the existence of non-legal issues and their importance to the client at the time;
- will refer the client to the appropriate service or services;
- is able to assess non-legal assistance for the client; and
- is up to date on the range of services available, for example, valuers, accountants, interpreters, refuges, support groups, religious groups, psychologists, psychiatrists, educationalists, employment, social security and housing.

3.3.3 Support measures

The practitioner:

- is aware of the physical, financial and psychological needs of the client, and advises the client to take action if appropriate;
- knows the tactics needed to achieve results;
- brings pressure to bear on the other side but refrains from taking action which might imperil the safety of the client;
- is sensitive to the client's mental state, particularly when domestic violence is involved;
- supports the client while maintaining objectivity;
- clearly communicates the limitations of domestic violence orders and advises the client on how to deal with the limitations; and
- is able to act quickly when required.
- is able to advise client regarding availability of legal aid where appropriate.

3.3.4 Alternative Dispute Resolution

The practitioner:

- knows the various types of dispute resolution processes which may be available and appropriate at various stages of a matter;
- fulfils the requirements of the appropriate rule;

- adopts an attitude of openness to paths other than litigation (for example, counselling, negotiations, mediation, conciliation and arbitration); and
- prepares the client for his or her part in the settlement process.

3.3.5 Court action

The practitioner:

- recommends court action when appropriate but recognises when the process may be too damaging, either financially or psychologically, for the client;
- recognises when to brief counsel; and
- manages the pace of proceedings in accordance with client's needs and instructions in the context of case management guidelines and relevant practice directions.

3.4 Developing the Initial Plan

The practitioner:

- makes strategic decisions in light of the law, the facts and the client's instructions;
- assesses what is to be achieved, and how it can be achieved;
- determines which aspects of the case should be emphasised, which issues are capable of immediate resolution;
- reviews the cost-effectiveness of the proposed options; and
- develops an initial plan in collaboration with the client.

3.5 Reviewing the Plan and Modifying it in Light of Changes

Throughout the matter, the practitioner;

- reviews objectives on the basis of changed circumstances resulting from further instructions, other parties' materials, expert opinion and information gained through documents discovered or subpoenaed;
- presents options responding to the changed circumstances;
- implements strategies, including interim or interlocutory applications or appeals, security measures and expedition; and
- undertakes settlement negotiations, where appropriate.

4. Implement a Plan by:

4.1 Preparing Court Documents

The practitioner:

- prepares court documents which properly present the case and comply with court rules and practices;
- presents material in admissible form;

- structures documents in a way that makes them easily understood; and
- amends documents when required.

4.2 Dealing with Officials and Third Parties on the Client's Behalf

To deal effectively with officials and third parties on the client's behalf, the practitioner:

- is aware of the authority, duties and responsibilities of the various officers and officials of the court; and
- represents the client effectively before court officials and other parties who may assist the client including members of the extended family, church leaders, doctors, accountants or other experts, Child Support Agency staff, Centrelink staff.

4.3 Managing the Negotiation Process

The practitioner manages the negotiating process by considering alternatives and adjusting proposals to meet changing circumstances and stages of litigation.

At all times, the practitioner maintains flexibility, and acts professionally and in accordance with the client's instructions.

4.4 Briefing Counsel and Acting as the Instructing Solicitor

The practitioner considers when to brief counsel, having regard to:

- the length of the trial;
- the complexity of law or facts;
- the emotional state of the client;
- the likelihood of success; and
- the client's instructions to proceed against the practitioner's advice.

The practitioner chooses the appropriate barrister for the matter. As instructing solicitor, he or she:

- understands the relationship between barrister and client;
- plays an active role in the management of the case; and
- acts as liaison between the barrister and the client.

5. Act as an Advocate by:

5.1 Undertaking Conciliation Conferences

The practitioner:

- understands the requirements of the rules and the case management guidelines for conciliation conferences;
- advises the client about procedural aspects and prepares the client for the dynamics of the conference;

- communicates the negotiating plan to the client and ensures the client accepts the opening and bottom line negotiating positions;
- delivers an opening statement which summarises the facts and seeks to persuade that the orders sought are just and equitable;
- prepares terms of agreement and/or orders if the conference is successful; and
- debriefs the client, records the important issues, raises and plans the future direction of the case, if the conference is unsuccessful.

5.2 Conducting the Hearing

When appearing, the practitioner:

- is articulate, prepared and well-organised;
- has the ability to think quickly on his or her feet;
- re-frames client's subjective concerns into reasonable, obtainable legal outcomes;
- explains the process of cross-examination to the client and relevant witnesses;
- presents a clear opening statement;
- conducts effective cross-examination which is well structured, focuses on achievable objectives and bears directly on the issues;
- controls the subject matter of the questioning and avoids arguments with the witness; and
- makes submissions which:
  - are logical in sequence;
  - are on point;
  - summarise the evidence;
  - re-emphasise the key issues in a persuasive manner; and
  - provide a structure for organising and assessing the evidence.

6. Complete a Matter

The practitioner:

- adopts appropriate methods for recording results including agreements between the parties;
- explains any judgments; checks, and if necessary, corrects final orders (knowing the appropriate application of the slip rule);
- advises the client on the consequential procedures including meetings of directors, transfer of property and variation of trust deeds;
- when appropriate, advises on appeal procedures, identifying grounds for appeal;
- prepares and presents to the client final accounts; and
- attends taxation of costs procedures if required.

Methods of Assessment

Applicants will be required to undergo the following forms of assessment:

Simulation

The applicants will be asked to conduct a simulated first interview with a person acting in the role of a client. The exercise will take about 60 minutes, and will be videotaped and the videotape assessed by the examiners.

This exercise is intended to assess a wide range of performance standards, including those relating to interaction between the solicitor and client, taking instructions and giving advice, assessing facts and legal options, canvassing the options with the client and developing the initial plan.

Times will be arranged so that country practitioners only need make one trip to town.

Written Test

There will be a written test. The main purpose of this test will be to assess the applicant's knowledge of the matters specified. The examination will be open book. It will be three and a half hours which includes a half hour reading time.

Mock File

Applicants will be required to prepare an advice for a client in the form of a letter and prepare appropriate court documents. The examiners will assess communication skills as well as legal knowledge.

A portfolio of documents will also be required.

Supplementary Assessment/Assignment

Applicants may be required to undertake further assessment/assignment. This will allow applicants who have failed in some respect to meet the requirements without having to make a further application involving the full assessment process. The decision to provide supplementary assessment rests with the appropriate Committee or Board whose decision is final.

APPLICATION FOR ACCREDITATION AS A SPECIALIST

ELIGIBILITY CRITERIA
please circle

I hold a current practising certificate Yes/No

I have been engaged in the practise of law on a full time basis for at least 5 years* Yes/No

In each of the three years immediately preceding this application, I have been engaged in this area of practice Yes/No

The time I have devoted to this area of practice in each year of the past three year period is not less than 25% of the time required to conduct a full time practice Yes/No

I certify that I am qualified and entitled to seek accreditation Yes/No
or
Because I cannot fully satisfy the prescribed standards I request the Specialist Accreditation Board to exercise its discretion to accept my application. Please refer to the following note: Yes/No

Note:
An applicant who is not able to satisfy fully the standards concerning years of experience in practice and level of involvement in the area of practice may be accepted as a candidate at the discretion of the Specialist Accreditation Board

+ "Practice of Law" does not include pre-admission experience.
***** "Years" run from the date of commencement of practice to the 30 June in the year of application.

EXPERIENCE IN PRACTICE/PRACTICE DETAILS

I was first admitted to practice on ……
I have been engaged in my current position for …… years/months
The time I have devoted to this area of practice in the past three years is as follows:

Year	**Approximate percentage of full time practice**
	%
	%
	%

ENGLAND AND WALES

Quality and Criminal Legal Aid in England and Wales

Due to the high costs of legal aid in England and Wales, the government and the legal profession have each taken steps to assure quality. ***Roger Smith***[†] *describes the main features.*

More is spent in England and Wales on legal aid in both criminal and civil matters than in any other country, per head of population. The total spent in 2002 through the two main channels of aid—the Criminal Defence Service (the term for criminal legal aid since April 2001) and the Community Legal Service—was £1.8bn (U.S. $3bn). Expenditure on criminal legal aid in 2002 was £508m in the lower criminal courts and £536m in the higher courts, a total of £1044m (U.S. $1.8bn). The population of England and Wales is around 52 million.

As a result, the government and its institutions are concerned about value for money. Recent changes are intended to secure that aim. Three elements of the current system of quality assurance may prove interesting to those from other jurisdictions:

a) Accreditation of individual lawyers and legal service providers;

b) Requirements, largely set by the professional bodies themselves, as to how an office should be run and organized;

c) Direct testing of work undertaken on files, initially by a method involving "transaction criteria" (a checklist approach to essential elements in handling a case) but increasingly now involving peer review.

The development of contracts for legal aid providers

With expenditure on criminal legal aid at such high levels, it is unsurprising that the quality of services has arisen as an issue over the last decade or so. From its beginnings in 1950 until 1989, legal aid was administered by the Law Society, the professional association that represents and regulates solicitors (who, with barristers, together constitute the English legal profession). The Law Society took relatively little interest in quality. However, a major increase in concern with quality came when the administration of legal aid was transferred by the Legal Aid Act 1988 from the Law Society to a Legal Aid Board. The new Board was what is known as a "Quasi-independent national government organization" or Quango. In other words, the board was given statutory responsibility for managing the legal aid budget, decision-making in individual cases, and implementing policy; but was otherwise independent of government, save that ministers appointed its members and it had to report on its spending. The Board has since been replaced by a Legal Services Commission (LSC) which is legally the same—created by statute, independent in its decision-making, appointed by the relevant government

minister and bound to follow the guidelines of government policy.

The government requested the Legal Aid Board to concern itself not only with "existing targets and indicators of performance" for legal aid administration but also to look at legal aid practice itself from the perspective of performance. The Board was, of course, in a position to do this in a way that was not possible for the professional body, the Law Society, which was hampered by its representative role. Responding to the challenge, the Board developed the idea of "preferred suppliers," a concept taken from the private sector. It wanted to identify a rather smaller group of practitioners than it had inherited to whom it would give preferential terms and with whom it would work in partnership to set and maintain certain standards for work that was paid for by the board.

"Franchising"

Originally, the Board intended the relationship between itself and providers to be voluntary. However, it used confusing but rather prescient terminology. The board developed in the late 1980s and early 1990s the idea of "franchises"—agreements between itself and the solicitors with which it dealt. Franchisees would be given certain advantages in return for meeting certain standards. The Board explained in an early document:

> ...franchising involves identifying those who can satisfy criteria of competence and reliability, assisting and encouraging them by freeing them from some of the restrictions now applying to legal aid.[1]

In other words, a provider who held a franchise would have the advantage of certain devolved powers and be able to approve certain levels of action that would otherwise have to be agreed by the Board.

The Board was very much influenced by the then fashionable notion of "total quality management" and began, for example, producing lists of the reference books that it required legal aid firms to have in their library and prescribing other "inputs" or conditions on staff training and the like. It soon became clear, however, that more was required to ensure that cases undertaken actually reached a sufficiently high level of quality.

Bad publicity for the profession

Another cause for interest in the quality of legal work in criminal cases came from a major academic study, the results of which were published in 1994 as *Standing Accused—the Organisation and Practices of Criminal Defence Lawyers in Britain*.[2] This was based on one of the largest observational studies of practitioners ever conducted. Its findings were damning. The research revealed that much work was actually undertaken by non-lawyers—paralegals—and that many defense lawyers rarely took the initiative in the running of their cases, being content to respond to the evidence provided by the prosecution. The study was particularly critical of the conduct of solicitors and their representatives in police stations, where it suggested, effectively, that lawyers were doing very little for their clients.

Raising standards by encouragement

The adverse publicity about the standards of solicitors and their representatives during police station interrogations led the Law Society to take action. It sought to encourage solicitors to raise their standards. In particular, it published books setting out best practice for solicitors in criminal cases. The first, *Active Defence*, is now into its second edition.[3] The idea behind it is suggested by its title—defense lawyers must take the initiative, rather than always being responsive to the prosecution. At significant milestones in a case, they must

- "... analyse and take stock of the information obtained so far;
- "... consider the implications of this information for both the prosecution and the defence;
- "... make decisions about the actions to be taken in consequence, particularly defence investigation."[4]

In addition, the Law Society published *Criminal Defence: a Good Practice Guide in the Criminal Courts*, now also in its second edition. The guide's advice is extremely detailed on practical issues that can easily be overlooked, such as the importance of keeping a record when a solicitor attends a police station to be present during the interrogation of a client.[5]

Raising standards by accreditation

The Law Society had independently developed the idea of accreditation schemes to assure the quality of solicitors working in areas like mental health and with children, where concerns had been raised about the quality of work. These schemes also operated to some degree as advertisements for practitioners to publicize their accredited status. Facing attacks on its members' work in police stations, it devised a special accreditation scheme, initially for solicitors' representatives who attended police stations.

The police station duty solicitor scheme—which provides access to a lawyer for anyone who has been arrested and is detained in a police station—has now been extended so that it covers both solicitors and their representatives. The qualification scheme for membership is linked to an accreditation scheme for those who appear in the magistrates' (lower) criminal courts. Together, these form two parts of a "Criminal Litigation Accreditation Scheme (Stage one)." (An advanced "stage two" does not yet exist.) This is likely the most detailed accreditation scheme anywhere run by a representative body of the legal profession regulating the quality of its own members' criminal work. For example, to attain the Police Station Qualification, a candidate has to keep a portfolio of work which covers five cases "in which the candidate has personally advised and assisted a client at the police station when no other solicitor or representative was present."[6] The portfolio is marked as pass or fail by an agency which has been approved by the Law Society as an assessor. The candidate then has to pass a "critical incidents test" which includes a tape of an interrogation where the candidate has to show how and why s/he would intervene. There is a similar structure for the Magistrates Court Qualification

involving a portfolio of short notes on 20 cases and more detailed notes on five. This is then followed by an interview and advocacy assessment.

The Criminal Litigation Accreditation Scheme

Applicants for the Law Society accreditation scheme take a course run by providers and approved by the Law Society, and then take a practical examination where the candidate listens to a tape of an interrogation and has to indicate where and why he or she would intervene. It must be remembered that the legal system of England and Wales is an adversarial one with the defense and the prosecution/police very much feeling and acting as different parties. This may be different in other countries. Underlying the scheme is a set of three competences: knowledge—of the relevant law; skills—such as intervention in an interrogation; and standards.

The professional body—the Law Society—therefore plays a number of roles in relation to the encouragement of quality among practitioners. These go significantly beyond simple representation of their interests and the basic regulation of training to include setting and maintaining standards of qualification and training.

Beyond franchising to contracts

The government Legal Aid Board was never convinced that action by the legal professional bodies would provide a sufficient guarantee of quality of service. So it proceeded to develop a set of its own standards. The first version was known as the Franchising Quality Assurance Specification (LAFQAS) and came into effect in 1993. The Legal Services Commission, which took over from the Board in 2000, developed a whole family of standards for different types of work—including for non-legal organizations giving only advice. In April 2002, it brought all the standards together under a "Quality Mark" scheme. LAFQAS then became the Specialist Quality Mark. To obtain the Specialist Quality Mark, a firm must meet certain standards in relation to its organization. A provider needs to get the Specialist Quality Mark in order to have a contract. Officials are sent from the Commission to each firm before grant of a contract to check for compliance.

The terms of the Specialist Quality Mark are based on standards devised by the Law Society at the urging of the Legal Services Commission.[7] These represent a set of standards for running an efficient office. It is not enough for procedures to be in place; they must also be written down and demonstrably operational. Practitioners have grumbled about the bureaucracy this involves, but a number will privately concede that their business has improved by reconsidering their procedures.

Transaction criteria and auditing client files

In addition, as it devised franchising, the Legal Aid Board sought to find some way of measuring the quality of solicitors from an examination of their files. What it wanted was a process by which a non-qualified auditor could inspect files and come to some sort of preliminary judgment on how well the work had been done. To do this

the Board employed academics to advise them on quality measures that had been tried in other jurisdictions and might work in England and Wales. The academics advised the use of what they called "transaction criteria."[8] These are "a series of points and questions that a trained observer checking the file after the event would use to evaluate what was done and the standard to which it was done."[9]

The idea behind the transaction criteria is that each of a series of questions could be answered by a trained lay person, from looking at the case file.[10] This does depend on a theoretical leap—that good lawyers keep good notes—and the transaction criteria have been criticized from this perspective. However, their use has undoubtedly allowed at least an initial judgment to be made of effective quality. The researchers were always clear about what level of quality was acceptable: "a competence threshold" which was "not perfection." In management jargon, they sought "fitness for purpose." The criteria are organized so that scores attained can be expressed as percentages.

The Legal Services Commission, like the Legal Aid Board before it, has a statutory right to inspect legal aid files, overriding professional privilege. The auditor selects a small random sample of files and gives them a score. The firm passes the audit only if every file scores above the pass mark. A larger sample may be requested if some files pass and others fail.

The transaction criteria are very closely related to the detailed breakdown of procedures laid out above. They are, however, somewhat rough and ready. The Commission is now exploring other ways to judge quality, including sending staff incognito into firms to explore how they are treated ("mystery shoppers") and, notably, peer review. The Commission, like the Board, had been slow to implement peer review because of the assumed cost. However, peer review was initially implemented in relation to immigration and asylum work, where the government was concerned that some practitioners were conspiring with their clients to abuse procedures. Two practitioners, selected for their excellence, visit a firm where a question of quality has arisen and produce a reasoned analysis of a sample of cases.

The reduced numbers of legal aid providers means that peer review is much more practicable than previously. Requirements in relation to quality are incorporated within providers' contracts—and any practitioner wishing to undertake legally aided criminal work must have a contract and, in effect, be of a certain size and competence. As of March 31, 2003, there were 2,900 providers supplying services for the Criminal Defence Service.[11]

Public defender offices

Legal aid in England and Wales is still overwhelmingly provided by lawyers in private practice. There is an experiment involving eight small public defender offices, but their contribution to legal aid provision has been relatively minor to date. They do, however, give the Legal Services Commission direct insight into the work undertaken by lawyers. They are expected to act to the same quality criteria as private practice. Two

additional safeguards are designed to protect the independence of lawyers employed in public defender offices. A code of conduct for salaried employees gives some guarantee of independence. In addition, a Commissioner who is also a leading private practitioner has a role as the professional head of the service outside the strict management structure and can, thus, be used by a member of staff facing any kind of professional issue.

Conclusion

The English legal profession and its legal aid system have elements of uniqueness. It is an adversarial system; there is a split legal profession; jury trials, which are expensive, are a major part of the structure; there are lay judges in the lower courts; legal aid is well established. With all the usual caveats about comparing legal aid schemes in different cultures and contexts, the main lessons from the English experience would appear to be:

- Itemization of best practice and the resulting checklists represent a way in which best practice can be captured, encouraged and monitored.
- The identification of best practice should be undertaken by practitioners and academics working together, so that the standards have a wide degree of credibility.
- The value of an independent body, in our case the Legal Services Commission, to administer legal aid, separate from both the government and the legal profession.

Notes

† Roger Smith is Director of JUSTICE, a London-based human rights and civil liberties organization.

1 Legal Aid Board, *Second Stage Consultation on the Future of the Green Form Scheme 1989*, Para 21.

2 M McConville, J Hodgson, L Bridges, A Pavolvic, *Standing Accused—the Organisation and Practices of Criminal Defence Lawyers in Britain*, Clarendon Press, 1994.

3 R. Ede and E. Shepherd, *Active Defence*, Law Society, 2000.

4 R. Ede and A. Edwards, *Criminal Defence: a Good Practice Guide in the Criminal Courts*, Law Society, 2002, p.37.

5 Ibid. p.61.

6 Law Society, *Criminal Litigation Scheme, Assessment and Accreditation Procedures*, para 3.1.2. Online at http://www.lawsociety.org.uk.

7 There is a separate quality scheme for barristers, not discussed in this paper because it is likely to prove confusing in any jurisdiction which does not have a split profession like the United Kingdom's.

8 A. Sherr. R. Moorhead and A. Paterson, *Lawyers—the Quality Agenda, Volumes One and Two*, Legal Aid Board, 1994.

9 *Annual Report* 1991-92, Legal Aid Board, HC50, HMSO, 1992, p.24.

10 An example list of transaction criteria questions is available on the Justice Initiative website, http://www.justiceinitiative.org.

11 *Annual Report*, Legal Services Commission 2002-3, HC743, HMSO, 2003.

Summary and Introduction

1. The Access to Justice Act 1999 introduced the Community Legal Service (CLS) and the Criminal Defence Service (CDS). The Quality Mark (QM) is the name given to the quality assurance standards underpinning the quality of work undertaken by all organisations of the CLS and CDS entitled to display the CLS and CDS logos.

2. This document outlines the quality requirements for Quality Mark for the Bar. Development of the Quality Mark for the Bar was undertaken by a working group including representatives from: the Lord Chancellor's Department, the LSC, the Bar Council, the Crown Prosecution Service, Chambers' and Barristers' representatives, and other providers and stakeholders in the field. The working group, established in May 2000, considered the Bar Council's Code of Conduct, BARMARK and the Specialist Quality Mark, and subsequently the group visited several chambers in order to ensure that the standard was appropriate for the profession. In common with the development process for all Quality Mark standards, the LSC's objective has been to work in partnership with the Bar to ensure that the final standard commands wide support amongst the profession and its clients. Following the consultation the group was extended to include representation from the Institute of Barristers Clerks and the Legal Practice Management Association.

Format

3. There are six sections in this document covering:
   - The Legal Services Commission
   - The Quality Mark and an overview of the Quality Framework
   - The Application Process
   - The Audit Process
   - The Quality Mark for the Bar and Guidance to the Requirements
   - Representation

4. The Quality Mark for the Bar has been structured to make a clear distinction between Requirements, Definitions and Guidance:
   - Requirements – These are the mandatory requirements which Chambers must meet in order to be granted a Quality Mark, or for an existing Quality Mark to continue.
   - Definitions– These define and expand on the requirements and are mandatory.
   - Guidance – For each process, procedure or activity, background information and further explanation together with suggested solutions and cover some of the methods employed by auditors to find evidence.

5. Any Chambers applying for the Quality Mark for the Bar will need to meet the requirements and definitions set out in this document in section 5.

6. The guidance has been created to provide further detailed explanation, suggest ways in which the requirements can be met (but other ways of achieving the requirements will be accepted at audit), and generally provides information about how auditors seek evidence of compliance with the requirements (auditor guidance). Again, how auditors seek evidence should not be taken as a substitute for the requirements themselves. The information is provided simply to increase general understanding of the Quality Mark for the Bar as a whole.

Implementation

7. The implementation process will take place as follows:

   - Applications will be accepted from a date to be agreed. Audits will be scheduled to begin within two months of receipt of satisfactory applications. Please refer to section 3, "The Application Process" and section 4, "The Auditing Process".

   - Those holding the Bar Council Quality Standard, BARMARK, will automatically be passported into the Quality Mark for the Bar, upon undertaking to meet the additional requirements within 12 months of the application.

Audit

8. A central feature of the Quality Mark family of standards is that they are all audited by the LSC. The Quality Mark for the Bar will become one of this family of standards and will be audited by the LSC. The auditing process will mirror that which is already in place for the Specialist Quality Mark. Details of the auditing process can be found in section 4 of this standard.

Reviews and Appeals

9. A review and appeal process is to be agreed with the Bar Council and will be available from the LSC upon request. Key elements are :

   - The appeal body to comprise of one representative from the LSC and a nominee from the Bar

   - In the event of lack of unanimity the matter to be referred to a second appeal body comprising one representative from the LSC, a nominee from the Bar and a representative from the organisation auditing BARMARK, currently British Standards Institute

   - In the event of lack of unanimity at the second hearing the matter to be decided by majority

Certification

10. Certification to any one of the family of Quality Mark allows the organisation to display the CLS logo. The CLS is a government initiative introduced in April 2000 under the Access to Justice Act (1999). Further details can be found in section 1.

Ongoing Developments

11. The Quality Mark for the Bar is primarily a management standard for Chambers, which seeks to set an acceptable level of service but does not test the quality of advice. A steering group comprising representatives of the Bar Council, the Crown Prosecution Service, the Lord Chancellor's Department and the LSC, the Institute of Barristers Clerks and the Legal Practice Management Association, together with Chambers' representatives, will oversee the ongoing development process.

12. The LSC supports the inclusion of the CPS in the steering group and recognises their contribution, but also recognises concerns raised by the Bar that the inclusion of the CPS may have an impact on criminal defence work. The LSC views it as perfectly reasonable to incorporate standards required by clients where these are known particularly when the client is a major funder and a public body. However the LSC positively supports the assertion that there is a distinction between the CPS and the LSC/CDS and will ensure that safeguards are in place to alleviate potential conflict between defence and prosecution work in chambers.

1. The Legal Services Commission

1. The Legal Services Commission (LSC) replaced the Legal Aid Board on 1 April 2000. This change reflected the substantial development of the role previously undertaken by the Legal Aid Board. The LSC administers the Criminal Defence Service (CDS) fund – previously Criminal Legal Aid, and the Community Legal Service (CLS) fund – a controlled budget available only for clients meeting defined eligibility criteria. The LSC is mandated by the Access to Justice Act 1999 to identify the need for legal services generally and plan what can be done towards satisfying that need. The necessary legal services will be identified and provided, not by the LSC alone, but in co-operation with others, funders and suppliers alike. The Act specifically states that the LSC should "facilitate the planning by other authorities, bodies and persons of what can be done by them to meet that need by the use of any resources available to them."

1.1 The Criminal Defence Service (CDS)

2. The CDS, launched in April 2001, replaced the Criminal Legal Aid scheme and is the responsibility of the LSC. The CDS has a separate budget from the CLS and is a distinct scheme. This separation reflects the fact that the two schemes are responsible for providing different types of service in very different types of case, and that each scheme has its own objectives and priorities.

1.2 The Community Legal Service (CLS)

3. The CLS, launched in April 2000, aims to improve access for the public to quality information, advice and legal services through local networks of quality-assured services supported by co-ordinated funding, based on an assessment of local need.

4. The CLS is working to achieve its aims in three ways (see sections 1.3, 1.4 and 1.5).

1.3 Community Legal Service Partnerships

5. Community Legal Service Partnerships (CLSPs) seek to achieve better co-ordination of services through local partnerships between the LSC, Local Authorities, and other funders of advice and information services together with the service providers, including those in the voluntary and public sectors and solicitors. Partnerships undertake analysis of the local need for legal information and help against current provision, and work towards a better balance between funding, service provision and local need. In this way, future services will be planned with the aim of improving both the quality and the accessibility of legal information and help.

1.4 The Quality Mark

6. This is the quality standard for all legal information, advice and specialist legal services. The Quality Mark for the Bar is described in this document. Entitlement to display the CLS logo is achieved following certification to any one of the Quality Mark standards.

1.5 Communication

7. The CLS/CDS Directory provides information on Quality Marked suppliers in England and Wales, including the level of service and categories of work they provide. Copies of the Directory can be found in many local organisations and facilities including libraries, courts, benefits agencies, prisons, etc. The CLS website (www.justask.org.uk) enables the public to find out more about the CLS, in addition to providing online access to the CLS/CDS Directory of service providers. The LSC provides a Call Centre (0845 6081122) where members of the public can obtain details of CLS and CDS suppliers.

8. The CLS is not limited to organisations receiving public funding. It is considerably broader in concept and can encompass any organisation or individual, whether receiving public funds or charging fees, that provides a legal service and meets the Quality Mark standard. Section 4 (2) of the Access to Justice Act describes the services that can be accepted for assessment. These are:

   'The provision of general information about the law and legal system and the availability of legal services.

   The provision of help by the giving of advice as to how the law applies in particular circumstances.

   The provision of help in preventing, or settling or otherwise resolving, disputes bout legal rights and duties.

   The provision of help in enforcing decisions by which such disputes are resolved.

   The provision of help in relation to legal proceedings not relating to disputes.' (Source: Access to Justice Act 1999)

1.6 The Legal Services Commission's Role

9. The LSC's role is to:

   (a) Work in partnership with providers of legal services to develop and review appropriate quality assurance standards for all members and potential members of the CLS and CDS

   (b) Assist, where possible, in helping Chambers meet the Quality Mark standards through workshops, user groups and external support networks

   (c) Seek confirmation, by a process of auditing, that the requirements set out in the Quality Mark standards are in place and are being maintained by organisations forming part of the CLS and CDS

   (d) Act in good faith and as a responsible public body required to discharge its functions under the Act.

10. The LSC will assess and monitor the impact of the requirements in the standard to ensure that it does not unintentionally exclude or discriminate against (on the grounds of race, disability, sexual orientation, gender, religion or language) any set of Chambers providing services under the Quality Mark.

1.7 Auditor Confidentiality

11. Employees' terms and conditions of employment with the Legal Services Commission provide that they are subject to Section 20 of the Access to Justice Act 1999, and Section 38 of the Legal Aid Act 1988, which obliges employees not to disclose to any unauthorised person any information furnished to the LSC in connection with the case of a person seeking or receiving advice, assistance or representation.

12. In addition, employees undertake that during their employment and thereafter they will not (except in the proper course of their employment, or as required by law) directly or indirectly use or divulge to any unauthorised person any secret or confidential information concerning any third party (including any Quality Marked organisations or their clients). The LSC has an obligation not to disclose such information and employees undertake that they use their best endeavours to prevent any unauthorised publication or disclosure of such information.

1.8 CLS/CDS Logos

13. There are separate logos for the CLS and CDS, which suppliers may use according to guidelines published separately (see Appendix 1).

14. The CDS logo has been developed to indicate a specialism in criminal defence work. It is important that only Chambers which are specialists in criminal defence work display the CDS logo. A Chambers which displays the CDS logo is expected to:

- Have a member of Chambers who regularly advises on aspects of criminal defence work;
- Have a member who regularly represents defendants in the Crown Court.

1.9 Further Guidance and Information

15. Information relevant to Chambers is contained in a variety of publications, including the LSC newsletters Focus, Quality Mark News and CLSP News.

16. The use of other media, including e-mail, electronic data interchange (EDI) and the Internet is being developed. The LSC website: www.legalservices.gov.uk incorporates updates on changes to LSC regulations and documentation.

1.10 Evaluation

17. The LSC seeks to consult regularly with all Quality Marked Chambers. This consultation will take place in a number of ways: regional meetings,

questionnaires issued at audit visits, correspondence and, when appropriate, via specially convened group discussion sessions. All documents for consultation are published on the LSC website.

18. We actively seek comments and feedback on our own performance to help us to improve our own processes in order to provide the best possible service to all Chambers within the CLS and CDS.

2. The Quality Mark

1. The Quality Mark is the quality standard for legal information, advice and specialist legal services. It comprises a set of standards designed to ensure that a service is well run and has its own quality control mechanisms that assure the quality of the information that the service provides.

2. There are three essential elements to the scheme:

   (a) The specification of standards of quality assurance that the Legal Services Commission (LSC) expects suppliers to meet.

   (b) Audits by the LSC (or bodies authorised by the LSC) to ensure that standards are being achieved and maintained.

   (c) Continuous improvement in the service offered by suppliers of legal services to their clients.

3. Experience of quality assurance to date enables both suppliers and the LSC to see opportunities for improvement, not only in terms of the quality assurance standards themselves, but also in the way that they are interpreted for the benefit of clients, Quality Mark providers, taxpayers and funders.

2.1 Quality Mark Structure

4. Continuous improvement is an integral part of quality assurance. The quality criteria will evolve and develop over time and the LSC will work in conjunction with a wide variety of organisations from the legal sector to achieve this. Due notice will be given to all suppliers of any changes to be made.

5. The standards cover seven key quality areas, known as the Quality Mark Framework:

   (a) **Access to Service:** Planning the service, making others aware of the service and non-discrimination.

   (b) **Seamless Service:** Referral to other agencies where appropriate.

   (c) **Running the Organisation:** The roles and responsibilities of key staff, and financial management.

   (d) **People Management:** Equal opportunities for staff; training and development.

   (e) **Running the Service**: Case management.

   (f) **Meeting Clients' Needs:** Providing information to clients, confidentiality, privacy and fair treatment.

   (g) **Commitment to Quality:** Complaints, other user feedback and maintaining quality procedures.

2.2 Benefits of Achieving the Quality Mark

6. The experience of franchised solicitors and NfP agencies over the past six years has shown that the implementation of improved management and administration systems, as required by the Quality Mark, brings numerous benefits in terms ofincreased efficiency and improved use of resources. These benefits include:

   (a) **Improved risk management:** Effective risk management can reduce the likelihood of insurance claims. Research conducted by the insurance industry has identified the that main causes for claims arise from poor administration and managerial control.

   (b) **Improved client care**: Where effective client care procedures are in place, the risk of complaints from clients is greatly reduced. A large number of complaints from clients are due to misunderstandings caused by insufficient or incorrect information provided to the client.

   (c) **Efficient management practices and reduced costs:** Having effective management systems leads to a reduction in administrative failures, preventing wasted costs and poor service to clients.

   (d) **Effective deployment of resources:** Where effective training, assessment and support are provided, staff motivation and morale are improved, and each staff member is able to contribute to the running of Chambers to the best of their ability.

   (e) **Increased client confidence:** As the CLS and CDS develop, public recognition of the respective Quality Mark logos will develop, resulting in clients choosing to access CLS and CDS members for information or help.

The Specialist Quality Mark in England and Wales

Excerpts from the Transaction Criteria for Criminal Matters
(Legal Services Commission)

(Full text available at http://www.legalservices.gov.uk/contract/transaction.htm)

Crime

*This set of criteria covers advice, assistance and representation in **all** criminal matters. However, it would not be appropriate to audit files which only relate to:*

- *advice given over the telephone to a client at the police station;*
- *initial advice outside the police station where charges are not brought against the client;*
- *one-off advice and/or advocacy assistance at court where the client pleads guilty;*

and where the adviser has no further involvement in the matter.

I GETTING INFORMATION

	Yes	No	N/a

This section must be audited in all cases.
*Information may be gathered from anywhere on the file, **excluding** a Pre-Sentence Report*

General information

1. Does the file show the following details:

1.1	The client's name?	[ ]	[ ]
1.2	The client's address?	[ ]	[ ]
1.3	The client's telephone number?	[ ]	[ ]
1.4	The client's date of birth?[NFG]	[ ]	[ ]

II ATTENDANCE IN RELATION TO AN INVESTIGATION N/a [ ]

This section should be audited in all cases in which an adviser takes instructions either at the police station or in relation to a police station attendance. Where an adviser instructs agents to attend at the police station, the adviser retains responsibility for the work undertaken and its documentation and as such this would be audited as if it had been undertaken by an employee of the office.
Where there is a police station attendance by the adviser (or instructed agent), evidence for compliance will only be taken from documents produced or obtained contemporaneously, as well as any letter confirming instructions.

***Where the client was represented at the police station by another supplier** it will be the responsibility of the adviser to ensure that appropriate information and advice is evidenced either from the previous firm's papers or gathered by the adviser. Where the client was not represented at the police station the adviser must gather and record the evidence for compliance. In either case, evidence for compliance need not therefore be produced or obtained contemporaneously. Evidence may be found anywhere on the file except for a pre-sentence report. For these matters questions 2 – 5 will be not applicable.*

Source of instructions / Access to client N/a [ ]

Where the client is only advised by telephone, questions 4 and 5 will be not applicable.
Where the client was unrepresented at the police station, or was represented at the police station by another supplier, questions 2 – 5 will be not applicable.
[Note: questions do apply where the supplier instructs an agent to attend – see note above, p1]

[NFG] *1.4 - The client's precise date of birth is required for compliance.*

		Yes	No	N/a
2.	Does the file show:[NFG]			
2.1	The date **and** time the firm was initially contacted about the client?	[ ]	[ ]	
2.2	The name of the member of staff who first spoke to the client?[NFG]	[ ]	[ ]	
2.3	The name of the fee-earner first contacted about the client?	[ ]	[ ]	
2.4	The time the fee-earner first spoke with the client?[NFG]	[ ]	[ ]	
3.	Where the case was a Duty Solicitor telephone referral, does the file show:		N/a	[ ]
3.1	What time the adviser telephoned the police station?	[ ]	[ ]	
3.2	Whether the adviser spoke to the client?	[ ]	[ ]	
	and, if so,		N/a	[ ]
3.2.1	Does the file record the advice given?	[ ]	[ ]	
4.	Where the adviser was attending at the request of a third party, does the file show: [NFG]		N/a	[ ]
4.1	The name **and** contact details of the third party?	[ ]	[ ]	
4.2	The relationship of the third party to the client?	[ ]	[ ]	
5.	Where access to the client was delayed, does the file record:[NFG]		N/a	[ ]
5.1	The reason given for the delay?	[ ]	[ ]	
5.2	The extent of the delay?	[ ]	[ ]	
5.3	Whether representations were made by the adviser?	[ ]	[ ]	

Information obtained from the police on arrival at the police station.
Where the adviser is in attendance at the police station, evidence for compliance for questions 6-8 will only be taken from information gathered from the police ***before the interview****. Evidence can be taken from a copy of the custody record if the adviser notes that this has been seen or that a copy has been obtained* ***at the time of the police station attendance.*** *Evidence will not be taken from a transcript of an interview.*
Where the client was represented at the police station by another supplier *or where the client was not represented at the police station evidence for compliance may be found anywhere on the file except for a pre-sentence report.*

6.	Does the file evidence that the adviser has obtained or seen a copy of the client's custody record?[NFG]	[ ]	[ ]	
7.	Does the file show that the following information has been gained <u>from</u>			

[NFG] *2 - This section covers mandatory requirements under the General Criminal Contract, Part D s2.12.*
[NFG] *2.2 - This should be the first member of staff, whether or not a fee-earner, who spoke to the client either over the telephone or in person.*
[NFG] *2.4 – This could be in person or by telephone.*
[NFG] *4 - e.g.: Relative; friend, etc.*
[NFG] *5 - Under certain circumstances, the police have the power to delay access to the client under s.58 Police and Criminal Evidence Act 1984.*
[NFG] *6 – Merely recording the custody reference number is not sufficient for compliance.*

		Yes	No	N/a
the police:				
7.1	The name of the officer in charge of the investigation?	[ ]	[ ]	
7.2	Whether the client is attending voluntarily or under arrest?	[ ]	[ ]	
	and if arrested;		N/a	[ ]
	7.2.1 The time of arrest?	[ ]	[ ]	
	7.2.2 The time detention was authorised?	[ ]	[ ]	
7.3	The nature of the allegation/s or charges?[NFG]	[ ]	[ ]	
7.4	The police version of events/evidence?[NFG]	[ ]	[ ]	
7.5	Whether there has been a previous interview or any questioning?[NFG]	[ ]	[ ]	
7.6	Whether the client has said anything to the police?	[ ]	[ ]	
7.7	Where another person has been arrested or is being sought in connection with the alleged offences:[NFG]		N/a	[ ]
	7.7.1 Their name/s?	[ ]	[ ]	
	and, if there are co-accused in custody:		N/a	[ ]
	7.7.2 Whether they have made any statement or comment which might implicate the client?	[ ]	[ ]	
7.8	Where a search of premises has occurred or is intended:		N/a	[ ]
	7.8.1 The legal authority for the procedure?	[ ]	[ ]	
	and, if the search of premises has already occurred:		N/a	[ ]
	7.8.2 Whether evidence has been gathered as a result?	[ ]	[ ]	
7.9	Where a body sample has been taken or is intended to be taken:[NFG]		N/a	[ ]
	7.9.1 The legal authority for the procedure?	[ ]	[ ]	
	7.9.2 Whether consent has been obtained?	[ ]	[ ]	
7.10	Where an intimate or non intimate search has taken place:[NFG]		N/a	[ ]

[NFG] *7.3 - e.g. theft, assault, criminal damage.*
[NFG] *7.4 - i.e. the alleged circumstances of the offence and any evidence, such as being caught in the act or in the vicinity, stolen goods found etc.*
[NFG] *7.5 - An interview should be defined as any questioning regarding involvement/suspected involvement in a criminal offence where this is carried out under caution. Questioning should be defined as any questioning regarding involvement/suspected involvement in a criminal offence that is not carried out under caution. Compliance should be given where the adviser has addressed whether any questions have been put to the client* ***and*** *whether or not the client has been cautioned.*
[NFG] *7.7 – This relates to all co-accused.*
[NFG] *7.9 - This includes both intimate (e.g.; blood; semen; urine) and non-intimate (e.g.; hair; saliva) body samples. Do not include fingerprints, photographs, handwriting samples or samples in road traffic cases.*
[NFG] *7.10 - Non intimate search refers to a search where item/s of clothing are removed. This does not include a standard search of the contents of pockets at the time of detention.*

		Yes	No	N/a
7.10.1	The legal authority for the procedure?	[ ]	[ ]	
7.10.2	Whether consent has been obtained?	[ ]	[ ]	
7.10.3	Whether evidence has been gathered as a result?	[ ]	[ ]	
7.11	Does the file show:			
7.11.1	Whether the client is a 'person at risk'?[NFG]	[ ]	[ ]	
7.11.2	Whether the client has any particular needs?[NFG]	[ ]	[ ]	
7.11.3	Whether the adviser has assessed the client's fitness for interview?[NFG]	[ ]	[ ]	
8.	Where the client is a juvenile (under 17) or 'at risk', does the file show:		N/a	[ ]
8.1	The relationship of an appropriate adult to the client?[NFG]		[ ]	[ ]
8.2	The name **and** contact details of an appropriate adult?[NFG]	[ ]	[ ]	

Instructions from the client, prior to an interview.
*Where the adviser is in attendance at the police station, evidence for compliance for questions 9-16 must be gained from the client **prior to any interview**, unless a private consultation is denied.*

9.	Does the file show that instructions were taken from the client concerning the substance of the allegation(s) against them?[NFG]	[ ]	[ ]	
	and where allegations are not accepted by the client:		N/a	[ ]
9.1	Is the client's version of disputed points recorded?	[ ]	[ ]	
10.	Where there are witnesses in support of the client, does the file show		N/a	[ ]
10.1	The name(s) of the witnesses?[NFG]	[ ]	[ ]	
11.	Where there is an alibi, does the file show:		N/a	[ ]
11.1	Details of the alibi?[NFG]	[ ]	[ ]	

Medical problems

[NFG] *7.11.1 – Special provision is made in Codes C and D of PACE in respect of mentally disordered and mentally handicapped people and others whose understanding is limited by reason of mental incapacity. The adviser should make an assessment and this must be evidenced for compliance to be given.*
[NFG] *7.11.2 – This could be medical (e.g. prescribed drugs or medication), physical (e.g. where the client is disabled) or could be a service (e.g. a doctor or translator). There must be positive evidence on the file addressing this.*
[NFG] *7.11.3 – Where the adviser was not present at the police station it will be sufficient for compliance that the custody record notes that the client was fit for interview or that the client confirms that they were fit for interview.*
[NFG] *8.1 - An appropriate adult can either be a parent /guardian, social worker or another responsible adult*
[NFG] *8.2 - Compliance in respect of contact details will be given where the file records an address or telephone number of the person or, where applicable, their service/organisation.*

[NFG] *9 – Record compliance where the file notes that instructions are not to be taken from the client at this point. The adviser may have good reasons for not taking instructions. In such instances the sub-question should be recorded as not applicable.*
[NFG] *10.1 - This does not relate to any co-accused.*
[NFG] *11.1 – i.e. where, when*

		Yes	No	N/a
12. Where the client was suffering from a medical condition which is relevant to the fitness for interview or safe custody of the client, does the file show:[NFG]			N/a	[ ]
12.1	That the adviser has noted the nature of the medical condition?[NFG]	[ ]	[ ]	
12.2	The client's explanation of the effect of the medical condition?[NFG]	[ ]	[ ]	
12.3	Whether the client was under or prescribed any medication?	[ ]	[ ]	
12.4	Whether it was appropriate to have an entry made in the custody record?[NFG]	[ ]	[ ]	

Clients with injuries

13. Where the client alleges they suffered an injury during the course of the alleged offence, arrest, or detention, does the file show:			N/a	[ ]
13.1	A description of the injury?	[ ]	[ ]	
13.2	The client's explanation of the cause?	[ ]	[ ]	
13.3	Whether there are any witnesses to the injury?	[ ]	[ ]	
13.4	Whether the injury affects the client's fitness to be interviewed?	[ ]	[ ]	
13.5	Whether details of the injury were entered on the custody record?	[ ]	[ ]	

Co-accused

14. Where there are co-accused, does the file show**:**			N/a	[ ]
14.1	Whether any co-accused is known to the client?	[ ]	[ ]	
14.2	The client's version of the co-accused's role in the offence?	[ ]	[ ]	
14.3	Where the adviser is requested to act for any co-accused does the file show:		N/a	[ ]
14.3.1	Whether there is any conflict of interest?	[ ]	[ ]	

Advising the client

15. Where the client is a juvenile (under 17) or 'at risk', was the client advised:[NFG]			N/a	[ ]
15.1	On the role of the appropriate adult?	[ ]	[ ]	
16. Where non-intimate samples were taken, was the client advised:[NFG]			N/a	[ ]

[NFG] *12 - Medical condition refers to any physical or mental condition, illness or disability which affects the client. This includes alcohol or drug addiction but is not applicable where the client is simply under the influence of drink or drugs. The question should only be addressed where the adviser notes that there is a relevant medical condition.*
[NFG] *12.1 - e.g. asthma, heart condition, drug addiction. It is recognised that advisers may not be medically trained and compliance should be given for any note of what is or appears to be wrong with the client.*
[NFG] *12.2 – i.e. symptoms such as dizziness/nausea or risks such as fits, coma etc.*
[NFG] *12.4 - If a note has been made on the custody record, then this is sufficient for compliance. Where no note has been made, it is sufficient for the adviser to note either that this was unnecessary or that the adviser requested that an entry be made.*
[NFG] *15 – Also answer 'n/a' if the client was unrepresented or represented by another supplier at the police station.*

	Yes	No	N/a
16.1 Regarding the retention of such samples?	[ ]	[ ]	
16.2 Of the implications of any refusal to provide a sample?	[ ]	[ ]	[ ]
17. Where intimate samples were taken, was the client advised:[NFG]		N/a	[ ]
17.1 Regarding the retention of such samples?	[ ]	[ ]	
17.2 Of the implications of any refusal to provide a sample?	[ ]	[ ]	[ ]

Advising the client prior to interview **N/a [ ]**

Do not audit questions 18 to 22 where the client admitted the offence. Where the adviser attends at the police station prior to interview, the advice should be given prior to interview. Where attendance on the client is subsequent to interview, the adviser must confirm that the client has been advised or must give appropriate advice at the earliest opportunity.

18. Does the file show whether the client was given advice in respect of:			
18.1 The implications of failure to raise any facts that they may later seek to rely upon in their defence, when being questioned under caution or on being charged?	[ ]	[ ]	
18.2 Whether to answer questions put by the police?[NFG]	[ ]	[ ]	
and, if advised not to answer questions,			
18.3 Whether to lodge a 'prepared statement'?	[ ]	[ ]	

'No comment' interview / prepared statement at charge **N/a [ ]**

Questions 19 to 22 should only be answered where the client makes a 'no comment' interview and/or a prepared statement.

19. Was the client advised whether to give reasons for making a 'no comment' interview and/or prepared statement?	[ ]	[ ]	
20. Where there is an alibi, was the client advised of the implications of:		N/a	[ ]
20.1 Failure to raise any facts that they may later seek to rely upon when being questioned under caution?	[ ]	[ ]	
21. Where, on arrest, any objects, substances or marks were found on the client or in the place of arrest **and** the presence of these is in issue:		N/a	[ ]
21.1 Was the client advised of the implications of failure to account for the presence of these when questioned?	[ ]	[ ]	

[NFG] *16 - These do not include samples in road traffic cases or samples of handwriting.*
[NFG] *16.2 – Answer N/a if the file notes that the client is willing to provide a sample*
[NFG] *17 - Do not include samples in road traffic cases or samples from the mouth.*
[NFG] *17.2 - Answer N/a if the file notes that the client is willing to provide a sample*
[NFG] *18.2 – Answer 'n/a' only where the client was unrepresented at the police station.*

	Yes	No	N/a
22. Where on arrest the client was found at a material place, at or about the time the offence was committed **and** the presence is in issue:		N/a	[ ]
22.1 Was the client advised as to the implications of failure to account for this when questioned?	[ ]	[ ]	

Interview

23. If the client had an adviser at an interview does the file show:		N/a	[ ]
23.1 The adviser's own notes of the interview?	[ ]	[ ]	

On leaving the police station

24. Does the file show the outcome of the client's detention or voluntary attendance?	[ ]	[ ]	
25. Where the client was charged, does the file show:		N/a	[ ]
25.1 Date **and** time **and** venue of the court hearing?	[ ]	[ ]	
26. Where the client was released on police bail:[NFG]		N/a	[ ]
26.1 Bail back date **and** time?	[ ]	[ ]	
26.2 The name of the police station to which they must surrender?	[ ]	[ ]	

Advice on leaving the police station

27. Where the client indicated they wish to make a complaint against the police:		N/a	[ ]
27.2 Was the procedure for making a complaint explained to the client?	[ ]	[ ]	
28. Where the client suffered an injury during the course of the alleged offence, arrest or detention:		N/a	[ ]
28.1 Was the client advised to have photographs taken of the injury?	[ ]	[ ]	
29. Where bail was granted after charge, was the client advised of:		N/a	[ ]
29.1 The consequences of failure to answer bail?	[ ]	[ ]	
29.2 Any conditions, security or surety imposed?[NFG]	[ ]	[ ]	
and where conditions have been imposed:		N/a	[ ]
29.3 The consequences of breaching bail conditions?	[ ]	[ ]	
30. Where the client was released on police bail, was the client advised of:[NFG]		N/a	[ ]

[NFG] *26 – May be referred to as s.47(3) bail, Part IV bail or 'bail back', this refers to bail issued by police prior to charge whilst further evidence is gathered, witnesses interviewed or an ID procedure is planned etc. Questions 25 & 26 are mutually exclusive.*
[NFG] *29.2 - Where no conditions, security or surety have been imposed, the client should be advised that bail is unconditional.*

	Yes	No	N/a
30.1 The consequences of failure to answer bail?	[ ]	[ ]	
31. Where bail was refused, has the client been advised of:		N/a	[ ]
31.1 The likely prospects of success of a future bail application?	[ ]	[ ]	
and, where a further application is to be made:		N/a	[ ]
31.1.1 The procedure for future bail applications?[NFG]	[ ]	[ ]	

Previous attendance at the police station **N/a [ ]**

This section should be audited when the client attended the police station in relation to the offence prior to consulting the adviser. If the adviser subsequently obtains a copy of the custody record, then this can be used as evidence for compliance.

32. In relation to that prior attendance at the police station, does the file show:			
32.1 Whether the client received legal advice?	[ ]	[ ]	
and where no legal advice was received:		N/a	[ ]
32.1.1 Whether legal advice was requested?	[ ]	[ ]	
and where legal advice was received:		N/a	[ ]
32.1.2 Contact details of the former adviser?	[ ]	[ ]	

Non-attendance at the police station **N/a [ ]**

33. Where the adviser was requested but did not attend the client at the police station:			
33.1 Did the adviser give advice directly over the telephone to the client?	[ ]	[ ]	
33.2 Does the file record the advice given?	[ ]	[ ]	

III IDENTIFICATION PROCEDURES[NFG] N/a [ ]

This section should only be audited when an identification procedure takes place. If none takes place go to Section V.

34. Prior to the identification procedure, has the adviser obtained the original description(s) provided by identifying witnesses?	[ ]	[ ]	
35. Does the file show:			
35.1 The type of identification procedure to be used?	[ ]	[ ]	

[NFG] *30 - May be referred to as s.47(3) bail, Part IV bail or 'bail back', this refers to bail issued by police prior to charge whilst further evidence is gathered, witnesses interviewed or an identification procedure is planned for example. The question should be answered 'n/a' where the adviser takes on the case at a time after any s.47(3) bail has been resolved.*

[NFG] *31.1.1 - As a minimum, the client must be advised in a letter or attendance when a bail application may be made on their behalf.*

[NFG] *III – Identification procedure refers to an identification parade, group identification, video identification or confrontation. It does not refer to fingerprints or the taking of samples.*

	Yes	No	N/a

*This section must be audited in all cases in which criminal proceedings are instituted against the client and the adviser continues to act for the client. Evidence may be found anywhere on the file **except** on a pre-sentence report.*

Getting Information

48. Does the file show that the adviser has obtained detailed instructions from the the client?	[ ]	[ ]	
49. Does the file show:			
49.1 Whether the client is the subject of any other current criminal proceedings?	[ ]	[ ]	
49.2 Whether the client is subject to any relevant court orders, bind over or rehabilitation?[NFG]	[ ]	[ ]	
50. Does the file show that the adviser has requested or obtained:			
50.1 Details of charges?	[ ]	[ ]	
50.2 Prosecution disclosure?	[ ]	[ ]	
50.3 Copies of previous convictions? [NFG]	[ ]	[ ]	
50.4 A copy of the custody record?[NFG]	[ ]	[ ]	[ ]
51. Where the prosecution has provided any documents or disclosure, does the file show:		N/a	[ ]
51.1 Whether the adviser has given the client the opportunity to comment?[NFG]	[ ]	[ ]	
52. Where there are witnesses in support of the client:		N/a	[ ]
52.1 Has the adviser taken proof/s of evidence?	[ ]	[ ]	
53. Where medical records are to be sought:		N/a	[ ]
53.1 Has the adviser obtained a signed authority from the client?	[ ]	[ ]	

Advice on proceedings

54. Does the file show that the client was advised as to:			
54.1 What the prosecution will have to prove?	[ ]	[ ]	
54.2 The strength of the prosecution evidence?[NFG]	[ ]	[ ]	

[NFG] *49.2 - This must be specifically addressed. It is not sufficient for compliance that the file shows the client has no previous convictions.*
[NFG] *50.3 – Copies of previous convictions must be requested/obtained in all cases.*
[NFG] *50.4 - 'N/a' is only an option where the client is not arrested and is issued with a summons to appear.*
[NFG] *51.1 – This may be in writing, in an attendance at the office or at court prior to a hearing. Where in an attendance this must be specifically noted in an attendance note.*
[NFG] *54.2 – Give compliance if the file contains signed instructions from the client that they wish to plead guilty without being informed of the strength of the prosecution evidence.*

		Yes	No	N/a
54.3	Reasons for advice as to plea?	[ ]	[ ]	
54.4	Which court will deal with the offence?	[ ]	[ ]	
54.5	The likely sentencing options in the client's particular case?[NFG]	[ ]	[ ]	
54.6	The implications of an early guilty plea?	[ ]	[ ]	

55. Where the client has admitted the offence but disputes the prosecution evidence: N/a [ ]

55.1	Has the adviser explained the procedure for a Newton hearing?	[ ]	[ ]	
55.2	Has the adviser discussed with the client the evidence to be covered by a Newton hearing?	[ ]	[ ]	

Mode of Trial **N/a [ ]**

This should only be audited where the offence is triable either way.
Do not audit this section where the client is under 18.

56. Does the file show:

56.1	Whether the client has been advised of the plea before venue procedure?	[ ]	[ ]	

and, where the client pleads not guilty or enters no plea: N/a [ ]

56.2	Whether the adviser explained mode of trial procedure to the client?	[ ]	[ ]	

Advice on progress of the case

57. Does the file show that the client has been given the following advice and information about the progress of the case:

57.1	Advice about how long the case is likely to take?[NFG]	[ ]	[ ]	
57.2	Written confirmation of the steps that the adviser is going to take on the client's behalf?[NFG]	[ ]	[ ]	
57.3	Written confirmation of the advice given (or justification for not providing confirmation in writing in exceptional circumstances)?[NFG]	[ ]	[ ]	
57.4	Information about when the next contact will take place?[NFG]	[ ]	[ ]	

VII BRIEF TO COUNSEL / SOLICITOR ADVOCATE **N/a [ ]**

Do not audit this section in relation to instructions for bail applications, Pre-trial Reviews or pleas in mitigation, but include Newton hearings.

58. Where there is a brief to counsel, does this include[NFG] : N/a [ ]

[NFG] *54.5 – Generally all sentencing options should be explained. Give compliance where the client is advised that there is only one option open to the court.*
[NFG] *57.1 - A broad indication of the time estimated to resolve from start to finish will be sufficient. This must be case specific.*
[NFG] *57.2 - This refers to advice given either at the outset, or during the progress of the case. It does not include advice in relation to the outcome of the case.*
[NFG] *57.3 - See NFG for qu. 72.2.*
[NFG] *57.4 - It is important from the client's perspective to know when they should expect further contact.*

Introduction

In order to achieve and retain the Quality Mark Standard of the Community Legal Service, advice and specialist legal service providers are required to implement a client feedback process. Section G of the Quality Mark aims to ensure that advice and specialist legal services providers obtain *regular feedback from clients which will enable service standards to be developed and improved.* Potentially, this process also provides you with an opportunity to speak to clients after the case is closed or enquiry resolved.

Organisations are able to develop their own system for obtaining client feedback or use an existing system providing it conforms to the requirement as detailed in the Quality Mark documents. However to assist organisations we developed the Client Feedback Questionnaire and an analysis tool to accompany it.

This pack contains template documents that can be used to set up your own client feedback process. There are three main items of information in this pack:

- This User Guide
- Questionnaire template
- Analysis template

The following sections address a number of questions and practical issues involved with running the client feedback process. We are unable to provide any I.T. support and request you refer to the guidance documents. However, if you have any other comments or queries, please contact the Legal Services Commission directly:

Client Feedback Questionnaire

legal services COMMISSION

As part of our commitment to improving the service we provide, we send our clients this feedback questionnaire. We would be grateful if you could help us by completing this form and returning it in the enclosed envelope (you do not need a stamp). Please be assured that the survey is completely confidential and unless you complete your details at the end, we will not know who has taken part. You may recall that _____ dealt with your enquiry/case.

Agency Name _____

Law Area Code _____ **Date Issued** ____ /____ /20____

Fee Earner/Advisor _____

Q1. How satisfied were you with our overall level of service?

PLEASE TICK ONE BOX

- ☐ Very satisfied
- ☐ Fairly Satisfied
- ☐ Undecided
- ☐ Fairly dissatisfied
- ☐ Very dissatisfied

Q1a. If dissatisfied, please tell us briefly why this is.

_____

Q2. Did we give you information/advice that was easy to understand?

PLEASE TICK ONE BOX

- ☐ Very easy
- ☐ Fairly easy
- ☐ Undecided
- ☐ Fairly difficult
- ☐ Very difficult

Q2a. How might we improve?

_____

Q3. How informative did you find our staff?

PLEASE TICK ONE BOX

- ☐ Very good
- ☐ Fairly good
- ☐ Undecided
- ☐ Fairly poor
- ☐ Very poor

Q4. How well did we keep you up-to-date with progress?

PLEASE TICK ONE BOX

- ☐ Very well
- ☐ Fairly well
- ☐ Undecided
- ☐ Fairly poor
- ☐ Very poor
- ☐ Not Applicable – one off advice given

Q5. How well did we listen to what you had to say?

PLEASE TICK ONE BOX

- ☐ Very well
- ☐ Fairly well
- ☐ Undecided
- ☐ Fairly poor
- ☐ Very poor

Q6. Did we treat you fairly at all times?

PLEASE TICK ONE BOX

☐ Yes ☐ No ☐ Don't know

Q6a If you believe you were treated unfairly due to e.g. your ethnic background, sex, religion or any other reason please tell us briefly what happened.

_____

_____

Q7. Would you recommend us to someone else if they needed legal help or advice?

PLEASE TICK ONE BOX

☐ Certain to ☐ Unlikely to

☐ Likely to ☐ Certain not to

☐ Undecided

Q7a. Please give your reason(s) for your answer to Q7.

_____

_____

Q8. Was the result of your case better, worse or the same as we had advised you?

PLEASE TICK ONE BOX

☐ Better ☐ Same ☐ Worse

Q9. Please tell us how you heard about our organisation and whether it was easy or difficult to make initial contact.

_____

_____

Q10. Do you have any further comments or suggestions that may help us to improve our level of service? Please continue on another sheet if necessary.

_____

_____

Thank you for completing this questionnaire. Your responses are completely confidential. However, if you would like us to contact you to discuss any of the issues raised, please complete your name and address below.

IF YOU DO NOT REQUIRE US TO CONTACT YOU PLEASE LEAVE THIS SECTION BLANK.

Name: _____

Address: _____

_____

_____

_____

AN ANATOMY OF ACCESS

EVALUATING ENTRY, INITIAL ADVICE AND SIGNPOSTING USING MODEL CLIENTS

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UNIVERSITY OF LONDON

4th December 2002

EXECUTIVE SUMMARY

This research uses model clients (also known as 'mystery shoppers') to test the approach of 294 Specialist Quality Mark holders when approached by clients needing advice in a category of work in which they do not specialise. The purpose of this was to gauge the frequency of signposting (advising the client to see another provider) and referral behaviour (making an appointment for the client with a specific provider), as well as the tendency of some agencies to provide advice outside of the categories of law in which they have specialist contracts. Where such advice is given, we were able to test the quality of that advice using quality peer review. The methodology also provides significant insight into the level and nature of access problems faced by clients, in particular in their ability to make contact with NFP agencies on the telephone. It enables a tracking of initial attempts to access the service, the first point of contact and pathways to advice or alternative providers after that. As such it provides an anatomy of access into the CLS. The key findings can be summarised as:

- Not one model client was 'referred'
- 12% of visits resulted in severe access problems.
- We estimate that between 35% and 40% of clients were signposted to an appropriate supplier.
- We estimate that a similar proportion (35% to 40%) were signposted to a less appropriate provider (e.g. they could have been signposted to a Specialist Quality Mark provider practising in the relevant locality). There is a gap between what we regard as less appropriate and what is permitted by the Quality Mark. That gap should be scrutinised and possibly diminished.
- 6% received advice and were not signposted, but given the quality of advice this decision was probably justified.
- About 12% received advice which was poor enough to suggest that the decision not to signpost was probably not justified. 7% (i.e. just over half of those receiving poor advice) received advice which appeared to be damaging to the client's interests.

A relatively minor change in behaviour on the part of suppliers (ensuring providers signpost to specialists not others and discouraging non-specialist advice where there are suitable alternatives) could substantially improve the 'seamlessness' and quality of the CLS.

There is also interesting evidence of the nature of poor advice by non-specialists and the potential for specialist advice to promote preventative law, saving public funds and making a direct impact on clients' lives.

MODEL CLIENT SCENARIO 2

HOUSING

You are a single parent living with your young child in a privately rented one bedroom flat. You are in receipt of income support (£53.75) and entitled to housing benefit. You have recently moved to the local area.

You signed a tenancy agreement three months ago – you have a written agreement and remember that it is an assured shorthold tenancy for a fixed term of six months. The landlord is a friend of a friend and said that if everything goes OK you will be able to stay for longer. You have no copy of the tenancy because you sent it to housing benefit office when you made your application for housing benefit on moving into the flat. The rent is (£) per calendar month. You had the rent checked by the housing benefit office (a pre tenancy determination) prior to signing the tenancy and housing benefit office advised that they would pay whole amount. You pay the gas and electricity separately on top of the rent and as far as you know the landlord pays the water rates. You also paid a deposit when you moved in of a month's rent in advance which you borrowed from family.

You applied for housing benefit as soon as you moved in to the flat. You got a receipt for the application which is at home. About a month ago you received a request from housing benefit office for your child's birth certificate and you supplied this - again you have a receipt at home - but you have heard nothing from them since. You intend to go into the housing benefit office again today to try to find out what is going on. If they are still not able to confirm that the application has been dealt with you want to know if there is anything you can do about this. Apart from the deposit the landlord has received no money from you and you have missed three months rent.

Two days ago the landlord rang and said that he'd had enough of waiting for the rent. He thought that housing benefit would be paying and he's now fed up. He said that he didn't care that the tenancy still had 3 months to run - he wanted you out. He didn't say when but he mentioned the weekend. You found this upsetting because he sounded quite angry. He's a friend of a friend and so you think that he won't just chuck you out but you are anxious nevertheless. You have to think of the child. You do not want the adviser to write to or contact the landlord at this stage because you think that at the moment this may just make him angrier.

You want to know what landlord can do - can he just chuck you out before the end of the six months - can he put you on the street? What can you do if he does - can you get help from the local council because you aren't sure that you could borrow a deposit again to find a new place? You would like to stay in the flat really and you like the area but are worried about being thrown out. You also want to know what you can do about the housing benefit situation.

NB

1. advice to be given on assumption that agreement is an assured shorthold tenancy - very unlikely not to be;
2. rent needs to be adjusted according to area;
3. housing benefit issues very common in London and Essex - presuming that similar problems elsewhere;
5. client should present as an eviction case - mentioning the threats from landlord - otherwise she may get diagnosed as a welfare benefits (housing benefit) case

MODEL CLIENT NAME	_____	PERSONAL VISIT 1		(11)		
SUPPLIER CODE	_____	TELEPHONE CALL..... 2		(12)		
SCENARIO	_____	TIME ARRIVED/START OF CALL	_____	(13)		
DATE OF VISIT/CALL	_____	TIME DEPARTED/END OF CALL	_____	(14)		

I confirm that the visit reported on here was conducted according to the instructions given at the briefing on 19 June 2002	(15)			
SIGNED _____	(16)			
DATE REPORT COMPLETED _____	(17)			

PART A – QUESTIONS GENERAL TO ALL SCENARIOS

MAKING CONTACT

1. How did you first make contact with the firm/organisation ? (21)

By telephone	1
In person	2
Written communication	3

2. How many times did you have to call before you got through to a person ? (22)

Once/Made contact on first attempt	1
Twice	2
Three times	3
More than three times	4
Did not make contact	5
Not applicable	6

3. Was access easy ? (23)

Yes	1
Fairly	2
No	3

FIRST POINT OF CONTACT

4a. So far as you are aware, what was the status or function of the person who initially communicated with you from the firm/organisation ? (24)

Receptionist	1
Secretary	2
Triage	3
Lawyer	4
Advisor	5
Other	6
Don't know	7

4b. If 'Other' at Q4a., please specify: (25)

.....

.....

.....

.....

5. When you first made contact did they . . . (26)

... deal with scenario immediately, there and then	1
... arrange an appointment for an interview in person	2
... arrange an appointment for an interview by telephone	3
... tell you they could not help you and did not suggest an ..... alternative form of assistance	4
... tell you they could not help you but suggested an alternative form of assistance	5
Other (Please specify below).....	6

.....

.....

.....

6a. If they told you they could not help, did they explain why ? Give details (27)

.....

.....

.....

.....

6b. If they suggested an alternative form of assistance, what was this ? If they referred you to another organisation/firm, give details. (28)

.....

.....

.....

.....

.....

DETAILS OF INTERVIEW

7a. If an interview took place, what was the status of the interviewer ? (29)

Triage	1
Secretary	2
Lawyer	3
Advisor	4
Same person as at Q4a	5
Other	6
Don't know	7

7b. If 'Other' at Q7a., please specify: (30)

.....

.....

.....

.....

8. Did the interviewer give you his/her name ? (31)

Yes	1
No	2

9a. Please state the date and time of the interview (32)

Date

Time

9b. Was the interview on time ? (33)

Yes	1
No	2

10. How long was your interview (in minutes)? (34)

11a. Do you feel you had time to explain the problem ? (35)

Yes	1
Not sure	2
No	3

11b. If 'No', or 'Not sure', why not ? (36)

.....
.....
.....
.....
.....

12a. Did the interviewer provide any advice on your 'Scenario' problem ? (37)

Yes, dealt with the problem..... 1
Yes, dealt with some of the problem 2
No, suggested I go somewhere else 3
..... Other 4

12b. Please explain your reply at Q12a. (38)

.....
.....
.....
.....

SIGNPOSTING AND REFERRAL

13a. If the interviewer suggested you go elsewhere, what did they suggest ? (39)
(TICK AS MANY AS APPLY)

Provided the JUSTASK helpline Number (0845 608 1122) 1
Suggested the JUSTASK website 2
Suggested I ring the Law Society 3
Suggested an unnamed CAB (ie no particular office) 4
Suggested a specific CAB (named a specific office) 5
Provided me with a list 6
..... Other 7

13b. If 'Other', please specify (40)

.....
.....
.....
.....

14. If you were given a list, which list was it ? (41)

.....
.....
.....
.....

15. If you were given a list, could you take it away with you ? (42)

Yes 1
No 2

16. Did the interviewer make a referral to a specific organisation including making, or attempting to make, contact themselves first with that organisation on your behalf ? (43)

Referred me to a specific organisation and attempted to make contact on my behalf (the attempt was unsuccessful) 1
Referred me to a specific organisation, and made an appointment for me on my behalf 2
Referred me to a specific organisation, but did not attempt to make an appointment on my behalf 3
The interviewer did not refer me to a specific organisation 4
Not applicable..... 5

17. If you were referred to a specific firm or organisation, name the organisation: (44)

.....
.....
.....
.....

18. If they did recommend/suggest or refer you to a specific firm/organisation, did they then advise you as to the likely charges/cost of any of the different alternatives ? (45)

Yes 1
No 2
Unsure 3

19a. Were you asked to sign any forms ? (46)

Yes 1
No 2

19b. If 'Yes', please give details (47)

.....
.....
.....
.....

20a. Disregarding the legal advice provided, how would you describe the advisor's overall manner ? (48)

Very helpful	1
Fairly helpful	2
Not very helpful	3
Not at all helpful	4

20b. Give a brief reason to explain your choice (49)

.....

.....

.....

.....

.....

21a. At the end of the interview, did you feel you had been given clear advice on how to proceed with your problem ? (50)

Yes	1
No	2

21b. If you answered "No" to Q21a, give a brief explanation why: (51)

.....

.....

.....

.....

.....

.....

MODEL CLIENT NAME	_____	PERSONAL VISIT 1		(32)		
SUPPLIER CODE	_____	TELEPHONE CALL..... 2		(33)		
SCENARIO	_____	TIME ARRIVED/START OF CALL	_____	(34)		
DATE OF VISIT/CALL	_____	TIME DEPARTED/END OF CALL	_____	(35)		

I confirm that the visit reported on here was conducted according to the instructions given at the briefing on 19 June 2002	(36)		
SIGNED _____	(37)		
DATE REPORT COMPLETED _____	(38)		

PART B:Housing Scenario **(Please tick one box only)**

1a. Did the advisor advise you that you probably had an 'assured shorthold tenancy' (70)

..... 1

No 2 2

1b. Did the advisor tell you what an 'assured shorthold tenancy' means ? (71)

Yes 1 1

No 2 2

Unsure 2 3

2. Did the advisor advise that you cannot be evicted from your home without a court order ? (72)

(Illegal eviction - you cannot be evicted from your home without a court order. Protection From Eviction Act 1977.

Yes 1 1

No 2 2

Unsure 2 3

3. Did the advisor tell you what to do should your landlord try to evict you without a court order ? (73)

(In an emergency client can: call police or call local authority who have a tenant liaison officer who will speak to a landlord in these circumstances; or come back for legal representation if needed. They are likely to be eligible for public funding to obtain an injunction preventing the landlord evicting.)

Yes 1 1

No 2 2

Unsure 2 3

4. Did the advisor give you advice about how eviction proceedings can be prevented or slowed down ? (74)

(Rights as an assured shorthold tenant. Landlord can take eviction proceedings:
a) within fixed term possession proceedings can be brought on assured tenancy grounds under Housing Act 1988 - provided (i) the tenancy agreement includes a clause allowing Landlord to re-enter or terminate tenancy for breach of covenant or if one of statutory grounds for possession exists and (ii) correct notice of proceedings given. (iii) Prove ground under Schedule 2 Housing Act 1988. In this case mandatory ground 8 can be used where rent arrears are over 2 months rent.
b) once fixed term has expired landlord can take accelerated possession proceedings -Provided correct notice served - 2 months - Notice Requiring Possession - court will order possession. As at time of writing can ask the court to adjourn possession proceedings pending Judicial Review in respect of housing benefit.)

Yes	1	1
No	2	2
Unsure	2	3

5. Did the advisor advise what could be done to get the housing benefit application determined ? (75)

(Housing Benefit - Council are in breach of regulations governing determining housing benefit applications: HB (General) Regs 1987 - reg 76(3) - claims should be determined within 14 days or as soon as reasonably practicable thereafter. Letter before claim could be sent on client's behalf in respect of Judicial Review proceedings, further advice to client re public funding and proceedings for Judicial Review.)

Yes	1	1
No	2	2
Unsure	2	3

6. Did the advisor give you advice on the implications of leaving the house voluntarily ? (76)

(Local authority help
a) as homeless under Part VII Housing Act 1996 obligations to unintentional homeless in priority need - but application likely to be premature at this stage and client should be advised of finding of intentional homelessness and implications of leaving the flat voluntarily at this stage – So do not leave the house voluntarily !
b) longer term - is client on the housing register ? Can make an application now.)

Yes	1	1
No	2	2
Unsure	2	3

7. Did the advisor get your priorities right - ie understand that you want to
(a) get housing benefit sorted out
and
(b) make sure you are able to stay in the property ? (77)

Yes, focussed mainly on (a)	1	1
Yes, focussed mainly on (b)	1	2
Focussed on both (a) and (b)	1	3
No	2	4

PLEASE DETAIL ON THE ACCOMPANYING SHEETS
ALL THE ADVICE GIVEN ON THE ABOVE ISSUES AND ANY OTHERS

Table 15: Housing Advice – Specific Questions (by sector)

	Yes	No	Unsure
Did the adviser advise you that you probably had an 'assured shorthold' tenancy'?	67.6	32.4	
NFPs	69.6	30.4	
Solicitors	63.6	36.4	
Did the adviser tell you what an 'assured shorthold tenancy' means?	29.4	61.8	8.8
NFPs	26.1	65.2	8.7
Solicitors	36.4	54.5	9.1
Did the adviser advise that you cannot be evicted from your home without a court order ?	97.1	2.9	
NFPs	95.7	4.3	
Solicitors	100.0		
Did the adviser tell you what to do should your landlord try to evict you without a court order ?	47.1	47.1	5.9
NFPs	43.5	52.2	4.3
Solicitors	54.5	36.4	9.1
Did the adviser give you advice about how eviction proceedings can be prevented or slowed down ?	32.4	50	17.6
NFPs	30.4	43.5	26.1
Solicitors	36.4	63.6	
Did the adviser advise what could be done to get the housing benefit application determined ?	26.5	58.8	14.7
NFPs	34.8	47.8	17.4
Solicitors	9.1	81.8	9.1
Did the adviser give you advice on the implications of leaving the house voluntarily?	11.8	82.4	5.9
NFPs	8.7	82.6	8.7
Solicitors	18.2	81.8	

Base: 34, 23 NFPs, 11 solicitors

Model clients were also asked whether advisers got their priorities right. The answers are shown in the following table.

Table 16: Did advisers get the client's priorities right (housing, by sector)

	Yes, focused mainly on (a)	Yes, focused mainly on (b	Yes, focused mainly on a)and b)	No
	%	%	%	%
Did the adviser get your priorities right – ie understand that you want to (a) get housing benefit sorted out and (b) make sure you are able to stay in the property ?	29.4	14.7	50.0	5.9
NFPs (n = 17)	39.1	4.3	56.5	
Solicitors (n = 11)	9.1	36.4	36.4	18.2