performance, then we need to understand what cognitive and affective processes led to that performance on that one day in those particular circumstances for that individual student.

Clearly, we must expect our students to be able to articulate their legal reasoning processes. If we are unhappy with the one-off summative assessment of oral skills as a means of validating a student's competence to move to the next stage of training or practice, does a subsequent reflective discussion help? In spite of reservations, the authors would give a strong affirmative reply to this. It is helpful at the most basic level because it provides additional information for assessment. It is not, however, a panacea for the ills of the summative assessment. Much depends, for example, on when the reflection takes place and how it is elicited. It seems intuitively valuable to get a student's reaction to their performance as soon after the performance as possible. This helps align the thinking of the assessor(s) with that of the student. It has the potential to uncover the reasons why certain things were done rather than others, assuming the skill of the assessors and the openness of the student to reflect honestly, combined with her capacity to articulate the theories behind the actions. But this does not give time for the learner to aggregate all the important (for them) aspects of the experience and to modify their frame of reference.

We still do not know what lessons have been learned from the event, which the learner might generalise into effective theories of action for the next stage of learning. If we lack confidence in the assessment content itself as a reliable and valid indicator of future capability, we are little further forward in being able to report to the profession and, through it, to the public at large, that the student is ready and able to proceed to the next stage of development.

The experience of external examiners

P Harris & A Bone

36 *Law Teacher* 2, 2001, pp 168–183

The external examiner system provides one of the few ways in which the academic quality of the law courses provided by law schools can be externally assured. To date, the only other such input for most law schools will have been through external advisers or panel members at periodic validation or review events. The roles and responsibilities of external examiners in the higher education system have been the subject of public debate on several occasions since the mid-1980s.

Although much is expected of external examiners, very little is known about them as a group. There is no central register of external examiners. We do not know how many there are in the system and little or nothing is known about their perceptions or experiences beyond the limited contacts we all have through our own law schools. This survey was designed therefore to try to obtain information on external examiners engaged in undergraduate law courses at UK law schools. Who are they, how do they relate to the institutions who employ them, how do they carry out their work and what are their perceptions of their role?

The first task was to identify external examiners in order to distribute the survey questionnaire. After two email shots to a total of 88 law schools in England, Wales, Scotland and Northern Ireland, using the lists of Heads maintained and used by the Committee of Heads of University Law Schools, information was obtained from 60 law schools in Higher Education Institutions (HEIs). Between them, these HEIs had 302 academic law staff who acted as external examiners at other law schools. A total of 302 survey questionnaires was then mailed out to Heads of schools, with the request that they distribute the questionnaires to those members of their staff who were externals.

From this information, it is possible to estimate the total number of external examiners in law currently in the system. Sixty law schools, between them, have 302 staff acting as externals. That is an average of five per law school. If we assume that all the 28 non-responding law schools also have at least five staff acting as externals, then the estimated number of academic lawyers acting as external examiners on undergraduate qualifying law degrees is 442. This figure is, if anything, likely to be an underestimate for a number of reasons.

The response rate was 43.4% of the total number of questionnaires sent out to externals at law schools, which represents slightly under 30% of the estimated total population. This response rate is considered to be acceptable and the results are indicative of the experiences of external examiners in law.

External examiners in law tend to be predominantly male. Interestingly, external examiners from old universities are more likely to be male than externals from new universities. 126 (96%) stated that their background was 'white'. Interesting though these data are, they cannot be compared with overall numbers of academic staff at law schools, since although some data exist on the numbers of women in senior posts in law schools, none exist on the ethnic background of academic lawyers.

How did they gain their appointments as external examiners? There is a widespread notion that appointments as externals are the result of an 'in-club' of contacts. It seems, however, that most academics are contacted directly by employing law schools, suggesting that professional reputation is more important than 'networking'.

The information from the current survey strongly suggests that the distinction between old and new

universities remains important, because two-thirds of the responding external examiners were at old university law schools.

It is normal practice to invite external examiners to examination (or assessment) boards. Overall, visits to old university law schools seem to have been considerably less frequent than those made to new university law schools. Whilst external examiners have always been provided with relevant course information and examination regulations, a number of universities now do rather more by way of induction of their external examiners.

The role of the external examiner is essentially one which involves communicating and discussing assessment-related matters with internal staff at the law schools where they examine. Very few examiners reported that they had ever reported to their employing law school any 'threats to academic standards'. More than 90% of examiners reported that they were satisfied with the fairness and consistency of the assessment process, as well as of assessment board meetings.

Several respondents indicated their reluctance to continue as external examiners. One was only prepared to do the job at one institution at any one time and stated that this was because the fee was so 'modest'. Another stated the role was becoming 'more onerous' and yet another made it clear that once current commitments had ended no more would be undertaken as 'the role has become nominal and the number of students excessive'.

A clear theme emerging from the data in this survey is the persistent divide between 'old' and 'new' universities. Marked differences emerge with respect to the frequency of externals' visits to employing institutions; induction; opportunities for discussion with staff; and above all, the apparent reluctance on the part of old university law schools to employ external examiners based at new university law schools. There are some suggestions, too, from respondents that new universities may expect externals to take on more units than is the case at old universities and that new universities are more generous regarding fees than are old universities.

CLINICAL LEGAL EDUCATION

Mandatory pro bono publico for law students: the right place to start
C M Rosas
30 *Hofstra L Rev,* 2002, pp 1069–1101

There are many positive effects that law students experience as participants in *pro bono publico* ('pro bono') programs. Students who participate in their schools' mandatory pro bono programs are already fulfilling an obligation that extends to all members of the bar. Because it is an ethical obligation that applies to all lawyers, this responsibility should be a concern of all law students as well. However, pro bono is by no means a common element in the American law school curriculum. While some law schools around the nation have introduced public service graduation requirements, the majority of ABA-accredited schools have yet to make such advances.

While the definition of an attorney's duty has been refined over time, the assertion that the courts, and the legal system generally, should be a public resource has been a constant. After the most recent amendments to the ABA's Model Rules of Professional Conduct ('Model Rules'), Rule 6.1 requires that attorneys aspire to render at least (50) hours of *pro bono publico* legal services per year, of which a substantial majority should be provided to persons of limited means or organisations designed to address the needs of these persons.

It is important to note that this rule is not 'enforced' in most states; lawyers are not subject to any disciplinary proceeding if they fail to adhere to the rule. Despite the improved clarity in the rule's language, despairingly few attorneys perform any pro bono work at all. At the same time, the number of persons in need of such services is alarmingly great. Just as the needs of low-income individuals are expected to continuously expand, the decline in funding is also anticipated to persist. It is mainly for these reasons that pro bono experience must be integrated into the law school curriculum, so that the importance of this professional obligation is understood even before law students make the transition to practising members of the bar. However, the current atmosphere in most law schools inherently discourages students from performing pro bono work by failing to integrate an emphasis on social justice into the curriculum.

Partly in response to this negative effect, the ABA altered its accreditation standards for law schools, requiring them to encourage students to participate in pro bono activities and to provide opportunities for them to do so. Because one of the roles of law schools is to instruct students about professional responsibility, preparing students to follow Rule 6.1 once they are practising must be a goal of legal education. Mandatory pro bono programs assist in the effort, by assuring that every graduating law student has been exposed to such an experience and has been made aware that such work is an ethical obligation of the profession.

The increasing need for free legal assistance also supports the introduction of a mandatory pro bono requirement for law students. Additionally, students benefit practically from pro bono work by getting hands-on experience with real clients. The acquisition of lawyering skills,