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Continuing Legal Education – Ambition and Reality

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Ambition and Reality

The book contains presentations and papers given by the various speakers during the conference organised by the Faculty of Law in February 2023.

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Preface

The education of lawyers does not end with obtaining a law degree, but all the contrary: Continuing legal education is of central importance for legal professionals and the whole of legal industry. Both the education sector and the legal sector are undergoing profound change due to new business models and information technology. Providers of continuing legal education and universities in particular are therefore confronted with various questions and challenges to adapt to constantly changing requirements.

The Faculty of Law of the University of Zurich as the leading provider for legal education in Switzerland, held therefore on February 15th and 16th, 2023 an international conference on that topic. The conference featured speakers from universities, law firms and associations as well as undertakings from Switzerland, Germany, the UK and the US. The individual presentations provided insight into the state of continuing legal education in the respective countries and addressed topics such as legal innovation, digitization, the role of law schools, and expectations from legal practice regarding continuing legal education.

The organizers of the conference would like to express their sincere gratitude to the speakers and authors of the various contributions in this publication; they enable us to continue the debate about the shape of continuous education in the field of law. The publication consists of manuscripts and transcripts of the speeches presented at the conference.

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I. International Best Practice

1. Continuing Legal Education in Switzerland – Situation today

Andreas Kellerhals

At the beginning of this two-day conference, we would like to show the existing possibilities in continuing legal education (CLE) in Switzerland and also focus on what we have been doing in Zurich so far. CLE was not traditionally a topic that universities have offered. Universities have primarily focused on primary education, referring to bachelor's programs, master's programs, and Ph.D. programs. A CLE program as such did not really exist here for a long time. It was not really seen as a university task. It was left to bar associations and other groups that were out there to train practitioners and not so much the academic world. In the old days, there was also this presumption that what you learned at law school would be enough to last a whole professional lifetime. This is something we cannot imagine any longer today.

The first law school in Switzerland was the University of Basel, founded in the 1460s, thus at a very early stage. But it was a small law school and the same was the case for other institutions that were started earlier. In Berne, there was a legal chair at an institute in the 1600s and then the real university was founded in 1834. Similar things happened in Zurich and Geneva. In Zurich, we had a first legal lecturer after the Reformation but the university as an institution was only founded in 1833. Similarly in Geneva, after the Calvin Reformation took place, law was introduced as a topic to be lectured and the university was subsequently founded in 1872.

If you wanted to pursue a sound legal education in the old days, this was note in Switzerland. In the German-speaking part of Switzerland, most would go to Germany. As mentioned, legal education in the old days was supposed to last the whole life. Of course, the development of law was much slower. It was very slow. And if you had studied those cases which had been decided by the courts, you were more or less fixed and in safe hands.

The idea that an initial legal education is sufficient only for a short period of time to cope with demands of modern professional life only developed later. In Zurich, for example, there is a university statute that is the basis for all of the university's activities. Only in 1998 a provision was added that further education was also something the university must offer. Before that, there was no

requirement. Since then, they must offer continuing education, including CLE. Education for graduates is therefore a more recent phenomenon in Switzerland. The University of St. Gallen is recognized the first university in Switzerland – in many ways also the leading institution – that recognized CLE at a very early stage.

Before 1983, there were no real activities here in Zurich, at least not to my knowledge. A first step was taken in 1983, when a foundation for CLE was established here in the Canton of Zurich. The courts, the faculty, and the law association came together and said: We must establish an institution that provides seminars, not courses, but seminars – daily seminars – on legal developments in order to help our members, the legal professionals, keep with developments important for their daily activities. This foundation is still around and produces four to six daily events throughout the year, more or less.

A next important step was the establishment of the Europa Institute at the University Zurich in 1992. This is a private association, but associated with the University, and of course associated with the law faculty. The Europa Institute is a very active driver in legal education. We do 40 to 60 seminars a year, daily seminars, but also CAS (certificate of advanced studies) education programs for the law faculty. Right now, we have CAS courses in the areas of Compliance Management, Inhouse Counsel, European Law, Legal English, Data Protection, Cybersecurity, and others comping up in the next months.

The Institute has also established an Open Access publishing house about three years ago, where we publish all the events that happen here. For example, this conference will be published in Open Access. The big advantage is that people from all around the world can read and access the publications. If we use a publishing house in Zurich, distribution is limited to the legal community of Zurich and the surrounding environment. Oddly, important publications in English are rarely read in such a context. The establishment of our publishing house is a significant event, though the financing of future events remains to be seen. The Institute active with China, the United States and Eastern Europe, which will not be covered at present. The establishment of the Europa Institute provided the faculty and the university a framework on which they could build their activities in CLE. In 1996, the faculty for the first time established a program that was an LL.M. program in International Business Law. Originally, this was only a part-time program lasting two years. This program still exists and has been expanded into a full-time LL.M. program that runs every other year and is designed for international lawyers – so people from all around the world – and is taught completely in English. Every year we attract between 20

and 30 students from abroad to attend the program. It is amazing when people in the Hindukush somehow find the University of Zurich homepage and our program. Of course, sometimes finances are an issue, but we have been very creative over the years to solve that problem. This has been around now for almost 30 years, and it is in a way a success story, I think we can say that. There has also led the establishment of our first an alumni organization. Zurich was very slow in doing so. Initially, they were unaware of all the former students at the university and had no access to them, and especially also no return. St. Gallen, on the other hand, created a wonderful infrastructure this is at least partially, financed by alumni, something we could only dream of in Zurich. But we are working on that and of course this would be wonderful to develop.

There are a few other developments at the University of Zurich which might be of interest: have the special attorney training in cooperation with the Swiss Bar Association and other universities. We have a Tax LL.M. We have created the foundation for a CAS course on medical law, this is an interdisciplinary education program. In 2020 we also started a cooperation with the "big neighbor next door", the ETH and we have a common program in International Governance and Law. This sums up our activities in Zurich so far.

What is the Zurich Law School doing so far in CLE? We have three LL.M. courses, and we have 13 CAS programs. We have one DAS course in cooperation with the ETH. There are three specialist attorney training courses, 40 to 50 one-day seminars in cooperation with the Europa Institute. We have additional education programs in China, the United States and in Eastern Europe. It is quite a big array of activities that we have created over the past few years.

Compared to other universities – and we will have a look at that in a minute – Zurich is in a quite good position. But of course, there is work to be done, and that is why we also have this conference here today.

We still have room to improve. The coordination could be better. Zurich University's appearance as a university and the provider of such services could be stronger. We could have better cooperation with partners in Switzerland but also abroad. I believe our strategy needs to be revised. And, as previously mentioned, infrastructure is insufficient. We need more of it but we

There is a need for us to rethink what we have been doing and what we should do in the future. In this respect, this conference is very promising to us because we will see your perspective on the developments, what needs you see

in the future and where you see things headed. This would be very helpful for us to look at, especially to answer the question: What should a university today offer in CLE?

We just had a look at Zurich. Let us have a brief look what other universities are doing, just to see what else is going on in Switzerland.

The first university is Switzerland's youngest, the University of Lucerne. It was only founded in the year 200, but they are quite actively engaged in the area of CLE. They organize conferences and seminars, though not as many as Zurich. Of what they offer, much is designed for Central Switzerland. They have an express continuing education program for lawyers. This includes short seminars and events that focus on developments in specific areas of law. The University of Lucerne also hosts the Lucerne Law and IT Summit. They offer a CAS is in agricultural law, which is very specialized, but certainly unique in Switzerland. They also offer a CAS is in arbitration. Additionally, they have the Swiss Judicial Academy. This is an education program for courts and judges in Switzerland. They also have something similar with the Academy of Public Prosecution. Finally, a cooperation program with legal professionals from Ticino. We had something similar here in Zurich though it proved to be quite difficult. It continues only on a very small scale.

The University of Basel is the oldest university in Switzerland. Their activities may be a little less extensive than what we do in Zurich. Of course, Zurich is the biggest law school in Switzerland and the biggest university in Switzerland. The University of Basel has done seminars and conferences since 2002. They offer CAS in cultural policy and cultural law, something we are not engaged in thus far. They also offer courses on nonprofit management and law, on foundation law and more. They have a special cooperation with the Basel Bar Association. This is an area where we could do more in Zurich. We do have a cooperation with the Bar, but the Zurich Bar Association is very big, and they do a lot of things independently, so they may not have an interest in cooperation as much as other bar associations do. Nevertheless, this is something we would be happy to explore further. Finally, they have the Europa Institute in Basel, which offers a postgraduate program in law, politics, and economics.

At the University of Bern, they have a special Continuing Education Office that manages continuing education for the entire university but also with regard to law. In the legal field they organize seminars. The Banking Law Conference they organize every year is well known. Then they have a legal magister MAS LL.M. This is an LL.M. program that consists mainly of lectures which are part of the master's program being taught already at the university Students pick

from available courses and once they attend enough lectures, they obtain an LL.M. This is a different approach from Zurich, with a separate program and separate teachers in the LL.M. programs. Then they have courses in Criminology and International Business Criminal Law, also something we do not focus on. They offer a CAS in Capital Market Law, and an Executive Master of Public Administration. This summarizes what University of Berne is doing in CLE.

The University of Fribourg is also quite active. They founded an Institute for International Business Law, and they also offer LL.M. in International Business Law, similar to what we do. They offer an LL.M. in Contracts and Arbitration, a CAS in International Contract and Arbitration, tan LL.M. in Compliance – not only at CAS – which is quite demanding. They offer an LL.M. in Commodity Trading Law, also a very specialized area. And something very interesting and innovative they have is an LL.M./MBA dual degree program. Students that attend that program obtain both an LL.M. and an MBA concurrently. This is amazing. It also appears very efficient cost wise. Current MBA programs cost from CHF 70'000 CHF 80'000 for a good program. An LL.M. program costs CHF 30'000 to CHF 40'000. Taken together, this means around CHF 120'000. If students can obtain both for CHF 90'000 you make a good deal. I'm uncertain as to the actual cost, but I this combined program is very innovative. I'm also unaware of its length. They also offer CAS in Asylum Procedure, Compliance, Criminal Procedure Law. The latter is also something we are not planning to offer. Fribourg is a quite active – if you want – competitor or partner of Zurich.

The University of St. Gallen (St. Gallen) has been a leader in innovation and a longtime frontrunner in Switzerland in CLE. Many developments that occurred in Switzerland had their origins in St. Gallen. Also, they founded their Executive School of Management, Technology and Law, which is headed by Bruno Mascello. It is very innovative and certainly something that is worth looking at as an example for others. They hold many conferences there, though nowadays they do fewer one day seminars. There is another institution that does that at St. Gallen, but they focus mostly on management and law programs, and in that field, they are very big and very successful. St. Gallen once offered an LL.M. in International Business Law, which stopped being offered a few years ago. Additionally, they organize conferences, seminars, and big CAS and DAS program in the area of compliance and others such as Law for Business, Law for Managers, which are also well known. Moreover, they offer courses in Data Protection, Criminal Procedure Liability and Insurance Law and Litigation, to name a few. St. Gallen's program is quite impressive and could serve as an example for other institutions.

The question of how CLE ought to be offered in Switzerland remains. For us, the role of the universities is in CLE is important.

As mentioned, originally CLE was left to the bar associations and other groups. Nowadays, universities must offer CLE by statute. We must remain be engaged and keep an eye on how others are having success. We must ask: How much do we want to invest in that? How much do we want to do it with partners out of practice? This is a question we have yet to answer. We will study and look at it in the near future.

What is the role, the combination, the cooperation with the bar association or inhouse groups? It is very important to define that. A frequent question is whether we should have a mandatory education program for practicing lawyers, like other groups – like doctors or also *Fachanwälte* that we have in Switzerland – they have to yearly attend 30 or 40 hours of education in order to retain their license. This question has not come up for attorneys in Switzerland. There are models abroad such as in the United Kingdom, where there is a requirement for lawyers to have an active role in continuing education. Perhaps this is something to consider for Switzerland. If this were implemented, it would be a major event for all those who provide services in that field. But the overall question should be: Is there a need and can we improve the quality of the legal practice in Switzerland? If we conclude that such a requirement would help, it should be seriously considered. Another consideration is a form of preparation school for the bar exam. There are mixed views on this. Some argue that there must be a difficult bar exam because there must be limits on who may practice law as an attorney. On the other side, the argument is that the Zurich bar exam is too difficult, causing an unacceptable rate of failure, and that therefore there ought to be way to let candidates prepare in a uniform way. We have been in talks with the Bar Association, the Zurich courts, and others. For now, there is not much movement to observe in this respect.

Another point to consider is whether there is an obligation or requirement that CLE programs are financially self-sufficient and funded. This is usually the case, but sometimes it is not. If it is not, financing options must be looked at if there is a belief that a program should be offered.

The Covid pandemic forced our programs online. We discovered the advantages and disadvantages of this new form. We will have to decide how much of our education program in the future should be accessible through the Internet. Do we still require people to be present or is it probably the new trend that people do not come or only come from time to time and otherwise they

sit at home or in the office and do the education part themselves? How much do we want to offer that? How much is this possible? This is not completely decided yet.

Also, how important are the certificates we are handing out? Is it important for the business practice to have a CAS certificate or is it rather important that they get the knowledge and the information, and they do not care about what we are handing out as a so-called academic record.

Another question that is always important – and I know that St. Gallen is very good at this – is: How important are non-legal skills for lawyers, especially knowledge about business, management, development? That you can only counsel your client well if you know his or her business. Therefore, there is certainly a need for lawyers to be better educated about other areas of non-legal skills in Switzerland. Other areas of law than business law because business law has been the center of the focus so far. Furthermore, specialization or translation is also a very general question. What I have not listed here, but is an overarching issue is artificial intelligence (AI). How is this going to change the legal practice and how is this going to change the education services we are offering? I have no clear answer to that, but I am looking forward that we can bring some more light onto this during the discussions in the conference we have here today and tomorrow.

Overall, CLE is an important task, and it is seen as an important task by universities in Switzerland and by the University of Zurich specifically. We naturally have room to improve, and we are constantly looking to improve our program. I believe we can learn from each other, that is obvious. There must be a clear strategy r. We hope to get some points for this out of this conference, in order to try to reach the general goal, to improve the quality of the legal profession in a constantly changing environment.

2. Trends and Key Skills in the Legal Business

Bruno Mascello

Thank you, James Bellerjeau and Andreas Kellerhals, for this important conference. I am pleased with the cooperation we have as universities and with what you are doing in Zurich, because only with a joint effort can we elevate the legal profession to a different level.

In preparation for today, I was wondering whether I should bother to show up? I fed ChatGPT with the title of this conference and asked it to write a one-page speech for me. And it did produce an excellent one-pager. Since I am not fully satisfied with the outcome, I think there is still some merit in doing my presentation in person. I will provide some impulses on how to develop continuing education by looking at five different aspects.

First, I will start with a brief overview of the current *trends* in the legal market. I am referring to my trend pyramid with four focus areas which still provides a useful overview. Let's start by looking at the market of the legal profession, where we see *globalization*, *technology*, and *liberalization* as important drivers. Focusing on human lawyers next, we see *demography as* a key factor. In addition, we need to consider the *new generations*, and the evergreen *war for talents*. A third perspective homes in on the customers, who are driven by three different trends: an ever-increasing number of *legal risks*, with ESG being the most recent case in point; *operations*, which are becoming more and more important; and ongoing *efficiency* challenges, because money is always scarce in legal departments. And finally, we have the law firms, which are challenged by their *business model* that is still mainly built on hourly billing and leverage, by *profitability* challenges and of course, *competition* from legal departments, other law firms and alternative legal service providers. We need to keep all these drivers in mind when we talk about continuing education because these trends are also the driving forces behind the daily business of lawyers and their need to develop.

Second, I would like to address the topic of *non-legal and social skills*. I am convinced this is the key for tomorrow's lawyers to distinguish themselves. The reason is that customers simply expect lawyers to provide correct legal advice. Lawyers in legal departments and law firms will also need to accept that a big share of their office time is not directly spent on mandates and pro-

viding legal advice, but on running the business, performing operational tasks, and managing staff. And CEOs expect their lawyers to support the company in strategic questions and beyond that in other fields that are not directly linked to legal questions. One is the area of reputation, values, and ethics, which is growing because the issues of sustainability and ESG are becoming more important. Questions concerning these matters are added to requests for proposals, and law firms are asked to provide information about their carbon footprint. The question therefore is whether legal service providers are ready for these changes and how continued education can help them. There are many non-legal and social skills we could cover in continued education.

Lawyers are considered to be knowledge workers. Customers expect lawyers to have impeccable legal expertise as a matter of course. However, they also expect lawyers to understand how their company works, to be conversant with their industry, to know who their customers are, to possess business acumen and the skills related to management issues. However, the most important thing for me are the relationship elements, which also include communication, presentation, visualization, negotiation, and leadership skills. When we talk about relationships and you ask lawyers what the most important thing is that they want to have, they often say: I would like to be perceived as a trusted advisor. As a result, we expect every lawyer to be a jack-of-all-trades, which means that they should tick all these boxes, yet that is very rare. But this package of skills forms the persona and is important for a lawyer to succeed.

Third, I would like to address the topic of *career* options. How do lawyers plan their career? Usually, they start with a bachelor's and master's degree in law, they take the bar exam, sometimes do a Ph.D., and maybe even a post-graduate diploma such as an LL.M. or nowadays increasingly an MBA or a double degree. And finally, they follow up with a specialization by doing further legal deep dives. This is lawyers' traditional education. We focus on the law because we are afraid of leaving our comfort zone. However, this fails to take into account the developments in the employment market. What we see today is that regardless of which legal area you started in, i.e. in a legal department or a law firm, you can leave your previous system at any time and switch to a different legal department or go to another law firm, or you may be promoted to general counsel in a company, or you can even opt out of the traditional legal career path and become a CEO. And you can always leave and go back again. Everything has become more fluid. You are no longer bound by the one single traditional career path which you opted for after law school and then pursued forever. What is common to all lawyers' career paths is that the longer you work, the less important legal knowledge becomes. Of course, you still need to

have a solid legal basis which is regularly updated to avoid any liability cases. But the more you work, the more you will notice that personality elements and management skills become increasingly important.

Fourth, I would like to look at the topic of *innovation*. Today, if you merely have an idea, that does not seem to amount to much. You are expected to produce no less than an innovation. Yet this is not sufficient either: it must be a disruptive innovation. However, an innovation always starts with an idea first. If the market accepts and buys it, it will become an innovation. And once you start to move up the food chain and penetrate the subsequent market levels by making an impact on all of them, we may be able to begin to talk about a disruptive innovation. Therefore, not every brilliant idea may become a disruptive innovation; indeed, only very few will. But however small a change may be, you will need to keep in mind the different stages of change you have to go through.

For the fifth and last point, let us look at executive education or continuing education and assess who the stakeholders are that bear responsibility. First, of course, I think it is the universities because they lay the foundation for tomorrow's lawyers. Second, it is the employers, i.e., law firms and companies which need to continue to improve and further their own lawyers. Then we have the professional associations, which are also responsible for the education of their members. Fourth, we have dedicated executive education providers with private institutions and universities, which bear the same responsibility. And finally, we have the students themselves who need to be responsible for their own employability, which cannot be delegated to universities, the government or any other third party. If a person wants to remain interesting for the market and for potential employers and customers, they have to be responsible for themselves as well. By the way, the good news was that ChatGPT also recommended that it was important for legal professionals to engage in continued education.

Now that we have thought about these five topics, do we need to replace anything in tomorrow's education programmes? Is it the focus on data and knowledge, since lawyers are considered to be knowledge workers, or is it about competencies and skills? If we look at technology, for example, with the rise of legal tech some few years ago, it was thought that lawyers ought to be able to program and create codes. With AI and ChatGPT, we now need to know how to create good prompts. And for knowledge workers the technology around ChatGPT may become a kind of game changer. Whatever is decided should be important for a lawyer, the challenge for universities will always be to decide whether it is important for the students and how it can be integrated into

an existing curriculum. It is of course very easy to add a new topic on top of everything else. But assuming that students are not bored today, the correct and fair answer would be to find out which existing lecture can be replaced when adding a new one, and the replaced one might then be covered by other stakeholders, such as a professional association.

Executive education is constantly changing. It is a joint effort in which all stakeholders have a share. Ultimately, however, it remains each individual's and each lawyer's responsibility to retain their own employability and be able to offer the required knowledge, competencies, and skills. The universities and executive schools need to support them and offer continuing education services. Incidentally, at the University of St. Gallen we have provided executive education since the 1960s as a matter of certainty, but it is only next year when it will be formally added to the university statutes on a level with teaching and research.

3. Continuing Legal Education in Germany – Digitalization

Dirk Hartung

Let me begin with a brief introduction to my home institution: Bucerius Law School in Hamburg, Germany. The school is named after Dr. Gerd Bucerius, a famous German publisher, politician and lawyer by training. Bucerius Law School, founded in 2000, is a private institution, which is atypical in Germany, where most of higher education institutions are publicly funded. In addition, Bucerius is rather small. We educate about 120 people per year and a total of 400-500 LL.B. students on our campus at any point in time. In addition, we offer a Master of Law and Business Program with 30 to 50 participants per year. Our master is a professional degree. It requires prior working experience and participants typically have one to two years of professional experience. Students can obtain either an LL.M. or an MLB, which is a Master of Law and Business. It targets professionals working at the intersection of law and business. We attract students from all over the world with Eastern Europe and South and Latin America often accounting for meaningful parts of the student population. While our LL.B. primarily targets Germany, our Master Program is also designed to add an international spirit to our campus. Bucerius Education GmbH is our for-profit subsidiary specializing in event management and continuing education. Compared to the wider landscape of higher education in Germany, Bucerius is atypically young (23), atypically organized (private) and atypically entrepreneurial as our core value is Mut (bravery). This is great for innovative topics and good for me personally, as it provides space for researchers like me with a somewhat atypical perspective on legal research and legal education.

Against that institutional background, these are the topics I would like to cover today. After a brief personal introduction so that you can assess my credibility, I want to provide some context in the form of current digital trends and developments in the legal industry. Thereafter, I will spend some time talking about relevant content for continuing legal education and finish this presentation with some thoughts on the appropriate teaching methods.

I am primarily affiliated with our Center for Legal Technology and Data Science. My research follows two very different approaches: One is doctrinal research in professional law and market regulation for legal services – including court organization and procedural law but with a focus on the legal profession. The second approach is legal data science, by which I mean research of legal questions with methods from computer and data science.

One recent example of the is a popular paper titled "GPT takes the bar exam". Michael J. Bommarito and Daniel M. Katz look at how well large language models including GPT-3 do with one part of the American Bar exam (and followed up shortly after the talk with the famous paper "GPT-4 Passes the Bar Exam"). If you prefer more of an introduction, we this is the paper titled "Natural Language Processing in the Legal Domain". It is a survey of more than 600 papers, ten years of NLP and law research, describing how we arrived at current achievements in the field of generative AI and law. Another method we frequently apply is network science as we are interested in societal relationships.

The final part of my research is conducted at our Center on the Legal Profession (CLP). To be as close to the market as possible, our CLP is organizationally situated with Bucerius Education – our for-profit subsidiary. If you were interested in an example of the type of work we produce, here are some of the reports that I co-wrote with Christian Veith from BCG, examining how technology influences and changes the market for legal services in in law firms. That is the first one on legal technology in law firms in 2016. Another edition provided an inhouse perspective in 2018, and most recently we looked at the digitalization of justice systems in 2022.

After this short introduction, let us turn to the question du jour on continuing legal education (CLE) and the role digitalization plays both as a topic and a method.

From a statutory perspective section 43a of the Lawyers Act (BRAO) contains the basic duties of the profession including an obligation to engage in continuing professional development in subsection six. One single sentence, six words. That is the legal situation. That is what lawyers are required to do. Given the importance of CLE one would assume that there must be more details specifying this requirement elsewhere. If you are with the organization of the legal profession in Germany, you would expect this to be at the self-governance level. This leads you to section 59b BRAO, which covers the competences of what the Federal Bar but unfortunately does not mention CLE at all. In other words, for the time being that one sentence is all we have. I leave it to

Stephan Göcken, who will provide some of the historical background and discussions about this one sentence and the very unclear structures below it in another chapter. I can hardly think of a more competent expert to unravel the long discussions of and political reasoning for the current situation.

In contrast, however, we do currently have detailed regulations about CLE for lawyer-specialists in section 15 of the Specialist Lawyer Act (FAO). They may be obtained by writing qualified publications or attending conferences and seminars for minimum of 15 hours per year.

For all generalist, the absence of a statutory requirement of CLE does not equal the absence of regulation at all. Instead, lawyers are required to keep up to date through professional liability. The case law on section 49a BRAO contains mostly cases in which lawyers did not keep up with current legal developments and as a result were liable for damages incurred by their clients from adverse court decisions. Unfortunately, there is no clear idea of what lawyers must actually know to avoid liability. I will spare you a detailed analysis of the case law and instead turn to an area, in which we have a rather good idea about the required knowledge. It happens to be what our subsidiary, Bucerius Education, is selling most successfully even though it is not legally required at all:

The actual knowledge of legal practice or – in other words – the business of law. For a number of reasons, which I will come to in a moment, this increasingly means digitalization and the digital business of law.

The main macro societal development is the increase of legal complexity over time. The total amount of information and the interconnectedness of that information is rising much faster than what we can keep up with. In a recent paper titled “Complex Societies and the Growth of the Law” we have found that over those 25 years, since the mid 1990s the total amount of legal, regulatory information has grown both in the United States and Germany. We did look not only at numbers on the statutory level, but also on the level of regulations in the paper titled “Measuring Law over Time” and found similar growth. The sheer number of words of federal regulations and statutes in Germany has grown by a factor of 1.5 or more than 50% since 1995. While this indicates increased demand for legal services in general, a closer look reveals that this growth equally appears in structures – chapters, subchapters – which most readers of the law use for orientation. Both of these, however, are dwarfed by the growth of statutory and regulatory references.

Usually, when a section references another the user – often the lawyer trying to answer a legal question – must follow it and therefore read both the referencing and the referenced sections. When the number of references increases, the task of collecting and deciphering the relevant information becomes ever more difficult. The largest growth in references has occurred within the regulations in the United States, which have grown by over 150% or more than two and a half times. In addition, the United States show much more legislative activity in the regulations than in the laws, which could in part be explained by an increasingly divided congress. In conclusion, there is a lot more information, and it is much harder to navigate. Since this is precisely the job of lawyers, they must be equipped with proper tools to handle this complexity.

Also, in the United States my colleagues looked at reports by companies who are publicly traded that must report potential legal risks to their shareholders in what is called a 10-k form. The basic idea is that if a risk is realized and negatively affects the share price the company could avoid liability if it had previously reported said legal risk in this form. Some members of our research team examined this data in a paper titled "Measuring and Modeling the U.S. Regulatory Ecosystem" and counted all individual statutes for any given year and aggregated them. The number increases from around 50'000 such references in the mid-1990s to currently well over 200'000. That is a more than a four time increase of what companies report as relevant laws influencing their risk management and eventually their share price. From a different perspective, this is another observation showing that matters for lawyers are becoming more difficult, more tedious.

That complexity extends to our courts, too. In data compiled by the German Federal Statistical Office we have found that average duration of civil court proceedings in district courts (Landgerichte) has increased from six to over ten months (so by around 40%) in the last two decades. During that period the case load of these courts has luckily become much lighter, but it is only a matter of time until current developments such as mass litigation will overstrain the courts and break the system. In the courts an increase in legal complexity leads to longer proceedings because properly assessing the facts and navigating increasing amounts of regulation simply takes a lot of work. At constant levels of productivity, this leads to more time spent to resolve legal matters. But that does not have to be the case: the solution is that we need lawyers, judges and clerk to become more productive. They must be able to handle more units of legal complexity in the same amount of time. That is the core challenge and that should be the goal of continuing education for every sin-

gle legal professional. One productivity multiplier is technology, the other is division of labor and therefore standardization, process management and improvement.

It is by now a familiar notion that technology plays a relevant role in law firms. It has a dramatically important impact on the way they operate on their value proposition, their operating model and truly their entire business model. We know that clients no longer just come for legal advice, but that they need help with this overwhelming amount of regulatory information. We know that modern legal advice is more than just smart ideas, as Bruno Mascello said earlier, but clients increasingly require factual information and mechanisms for gathering it to make legal decisions. For some clients this may require the design of an expert system.

Other clients might be required to produce many additional documents, for example in the context of ESG compliance. There is very little room for legal innovation in the form of better doctrinal ideas but a lot of potential for improving how documents are created, tracked and changed. Naturally, these altered needs influence the products lawyers, and their firms offer and the way they generate revenue. Traditionally, the billable hour revenue models are fairly straightforward as a production cost-based way of assigning value. Looking at alternative fee arrangements such as caps or lumpsum payments revenue models already seem to take into account an increase in complexity.

This is reflected also in ownership of a larger part of the advice/business of law value chain by law. Instead of a single person providing legal, more and more diverse people are involved. As an example, many law firms now offer post-merger integration management once the agreement is signed and the deal closed. Since an increase in diversity of roles is mirrored on the client side with technology and operations teams working in legal departments relationships and interfaces exist on these levels, too.

As a result, the cost-structure changes from only salaries to people and technology. The subsequent requirements for investments lead to meaningful and difficult discussions about access to capital. Who can own a law firm? Who can invest in a law firm and how to motivate and compensate non-owners appropriately? The answers to these questions likely contain a change in the organizational model: We go from a pyramid to the rocket scheme.

The model of the past is familiar. It's all lawyers on all levels. Many junior lawyers at the bottom, fewer senior lawyers towards and very few very senior lawyers at the top. This leaves no room for other types of professionals playing

increasingly important roles in law firms. There are, for example, business development and legal operations professionals, who create important revenue streams for the firm without formal legal qualifications. As they make their way through the ranks, they start to ask for influence and compensation mirroring their economic importance.

In Germany, there is an emergence of actively managed law firms whose senior business executives are not qualified as lawyers. They do not own any part of the law firm because our law currently forbids it, but firms usually find creative solutions to let them participate financially in the fate of the company. As a result of professional management, these firms are capable to distinguish themselves in the market. Their success is at least in part driven by the technological development. Because people who know about this, who know about process improvement and who can decide which technology to use can make very valuable contributions if they get a seat at the table.

This fact changes the value proposition. While the core remains similar with parts legal advice and part legal risk management, additional layers such as project management, technology consulting and software development complement the offering. As companies wonder for example about which contract lifecycle management software to buy, they increasingly turn to their legal services providers and are ready to pay for this type of advice. Managed law firms have an answer to this type of questions and therefore a business offering. There is a growing, latent market for auxiliary technologies increasing the speed visibility of legal services, but firms are offering tools that are not legal at the core but have compliance aspects such as KYC, AML or CTF checks. The result is that what used to be a services business is now much more a product-services-bundle business.

For example, Cooley, which is a renown Silicon Valley law firm, partnered with Carta in early February. Carta is a legal technology company providing equity and other startup financial management tools. In the current collaboration Cooley attorneys use Carta's tools and offer a combination of Carta's software with Cooley's advice to startup founders. Founders get access document drafts pre-approved by Cooley and augmented with the technology suite from Carta. They no longer send emails back and forth, but just pick a specific bundle. If founders encounter a specific legal problem, they already have a point of contact for legal advice from Cooley within the software while Cooley already has all relevant data for said advice. As such this product combines expertise on law with technology and uses a new design and delivery mechanism for legal services.

Alternative legal service providers (ALSPs) or law companies are non-law-firm providers of legal services. Bruno Mascello mentioned Elevate, Axiom and Unitedlex as examples for standalone law companies. Some ALSPs, called captive ALSPs, are owned by a law firm. They often engaging in tech consulting, operational consulting, compliance with use cases in the Know-Your-Customer, Anti-Money-Laundering and Counter-Terrorism-Financing domain or ESG.

In another twist, the German market has recently witnessed the emergence of mass litigation defense units as another type of legal providers. They were caused by a strong increase in mass litigation following the Volkswagen scandal (though other car manufacturer also mass defrauded their customers as a reaction to a very large number of cases filed by claimant attorneys, these companies were looking for legal providers, who could handle tens and hundreds of thousands of cases for them. While they initially started with a wide array of law firms, these firms over time launched specified subsidiaries. Most of them are not organized as law firms or even as a partnership and have as many employees from the tech side as they do have legal professionals. This is because handling tens and hundreds of thousands of cases requires both operational and technological expertise.

On the client side, we have witnessed massive insourcing leading to increasingly large teams of in-house attorney at many companies. This, in turn has led to the need for management and operational improvement. The resulting professionalization of the in-house function is referred to as *legal operations*. What started with a couple of legal professionals in highly regulated industries about a decade ago has grown into a movement of thousands of people worldwide. The Corporate Legal Operations Consortium (CLOC) annual institute – an industry meeting and trade show – is a massive event filling some of the larges conferences spaces in the US. Typical activities and tasks of legal operations professionals include vendor, risk and knowledge management, financial planning and budgets, as well as technology landscaping, acquisition and implementation. They do this using a variety of technological approaches including data analytics and collaboration software. Approaches include process improvement and ideation methodologies such as Six Sigma and Design Thinking. Legal Operations has been shown to lead to tangible results in terms of cost effectiveness, efficiency, higher work quality and better talent retention.

There are estimates showing that introducing legal operations can lead to significant increases in key performance indicators and happier employees. Let's turn to a case study for a moment: Jason Barnwellis the general manager for Digital Transformation of Corporate External and Legal Affairs at Microsoft. He conducted an experiment called the Microsoft Trusted Advisor Forum, where Microsoft asked all their panel law firms to come together and present an idea on how they could change the way they deliver legal services to Microsoft. Their market position as the best lawyers could get them on the panel. But once they were on the panel, Microsoft wanted to hear what they would do differently from their competitors. To make things a little more interesting, they should not only tell Microsoft, but also all their competitors working for Microsoft. The story goes that out of all providers only ¾ actually followed the invitation while the remaining slots were then quickly filled with alternative providers. After an enthusiastic initial presentation, the process has proven to require a lot of continued investment for all sides. While the outcome is still evaluated, this is a clear example of a client that is explicitly demanding a service, which goes beyond traditional legal advice or in Microsoft's words: "Innovation that demonstrably improves legal service delivery".

Another example is Merck, originally a German pharma company, a global corporation with a very forward-looking general counsel, who has invested in legal operations skills and built a contract management system, which they are now offering to other in-house departments. From a law firm's perspective suddenly, your clients become your competitors. Contract lifecycle management is something that law firms used to handle for their clients. Now the clients are selling software to other potential clients for this. It is obvious that this is highly relevant for the market of transactional legal services.

For legal professionals primarily active in the courts, here is an example for digitalization from the German judiciary today. There are a few dispersed, outdated solutions for interaction with the court, including is a dedicated email service for lawyers, the high cost of which (about 40 Mio. Euro) has made it somewhat famous. From a technology perspective the judiciary has been dormant for a long time, when even mere video hearings were difficult to impossible to conducts. However, this is rapidly changing with a new political appetite for change and digitalization.

There are a number of highly individual projects such as chatbots for court registries, automatic machine learning-based anonymization of court decisions, digital labor law courts etc. which bear witness to this development. Currently, there is discussion on fully virtual, online hearings, for certain civil

law claims and there is a proposal of video documentation of criminal law proceedings. While these are mere prototypes now, they will lead to tangible justice reforms. More importantly they demonstrate that there is suddenly a government, which sees value in digitalization. The current ruling coalition party sees potential to gain political capital by digitalizing the justice system and there is a wide-scale debate about it, much more than there in the past.

It is very likely that Germany will continue to travel in this direction over the next five to ten years. Some of the existing solutions will be improved. They will be integrated into a joint system. There will be additions, like a legal solution explorer and other self-service tools for parties. There will be online proceedings for different types of claims. Much hardware and software will be updated and specifically built for this.

For our purposes the most important takeaway is, that someone in the judiciary must make this a reality. IT in a typical court setting is like facility management today, not a very attractive job a more of a sanity factor for judges and clerks. This is changing. Within the judiciary, more and more people who emphasize digitalization, can build a career on it. As a result, digital justice is becoming an interesting topic for young judges, who often bringing in more experienced IT professionals. Increasingly, digital skills play a role in the training courses for future judges.

This accelerating pace in justice digitalization naturally has effects on lawyers, who work primarily in civil and criminal litigation. They will have to figure out how to navigate a world, in which at least some proceedings may not require lawyers' participation anymore: The Civil Resolution Tribunal in Canada, which handles specific types of claims fully digitally and without the involvement of a lawyer is an example for a court, in which this is already taking place. While this sounds scary at first, there may also be profits from a new digital capability of courts as lawyers who embrace digitalization no longer hit a barrier when matters go to trial. In summary, digitalization has reached the judiciary in many parts of the world adding to a context of increased complexity in all parts of the legal profession.

For the final part, let us look at the content of continuing legal education on digitalization. I believe the foundation should be a thorough technical understanding and interdisciplinary readiness. Lawyers do not need to get a Ph.D. in computer science. However, they need to be capable to meaningfully in an interdisciplinary setting and should understand what computers can and cannot do. Most recently, lawyers should develop an intuition how to answers questions such as "How is Chat GPT going to change X, Y and Z?"

The second part concerns the business of law: strategy, governance, budgeting, leadership etc. These are some of the parts that – when you think back to Bruno Mascello's presentation – are more towards the mature end. But obviously, when integrating a new case management system in the courts or building a new tool for a practice, as Cooley has done, change, process and project management become equally important.

The third part is technology law as it provides the legal framework for many current developments. Companies and lawyers are increasingly willing to adapt law to existing technology. A lot of recent legal innovation for example around digital hearings in the judiciary were possible because people had the opportunity to experience first-hand an easy technology solution such as Zoom during the pandemic. Turning interim solutions into permanent, robust ones now requires a certain degree of technical understanding on the part of the legislator.

Those are the three pillars, the three types of skills I advocate for. Some of them being vast fields of knowledge, this begs the question how any level of understanding can be achieved by lawyers? For the foundations of technology, this should happen at the university level as this is typically the only place where people have sufficient time to understand them. At Bucerius Law School, we start with an introduction to Computer Science without programming and very little mathematics. We teach computer architecture, algorithmics and concepts of computer science. This content takes time to learn, and it is rather difficult, even more so since it requires different skills than a traditional law curriculum. This is also what makes learning it "on the job" incredibly difficult as it is far removed from the everyday business of legal practice.

This is equally true for our second class: Programming. At Bucerius Law School this is an introductory class to the programming language Python. It is important to note that law students do not train to become professional software developers. Rather, they are given time to think through the concepts from algorithmics, apply them to real world problems, write some actual code and familiarize themselves with a development environment.

Our third class, an introduction to Data Science contains entry-level statistics without mathematical proofs but with applications to legal problems. While the class won't make you a statistician, it is designed to provide data literacy. It covers mostly descriptive statistics and stops short of Bayesian concepts.

Finally, we teach an interdisciplinary, collaborative class with the Computer Science department at the University of Hamburg. It is designed for law students with some prior knowledge and an idea for an application in the legal technology space. They join computer science students in a software development internship to build and present a first prototype of the software. While the result won't we working programs, both student groups develop an understanding for the other discipline and learn to work together in a team.

Finally, our class on regulating technology, technology law and ethics is more on the legal side of the spectrum. Students discuss current technological developments from a technical, legal and ethical side. They examine existing laws and regulations and look for optimization potential and underlying technical misunderstandings.

Many of these topics could also be taught in continuing legal education but I would caution against it as the time from learning to being able to apply the content meaningfully is too long. When a senior associate comes back from a weekend at the University of Zurich, the firm having paid a significant amount for, the partner is likely going to ask: How does what you learned apply to our business? If the answer involves Dijkstra's algorithm's usefulness for navigating through a network, it is not very likely that the firm is going to book another class. Therefore, when we teach Introduction to Programming to lawyers, it has to be geared more towards practice: How could it be applied it in budget analysis, how you use it for designing research systems and how to integrate it into existing processes? While we have a rather successful programming workshop for current lawyers, it does not go as deep as the classes mentioned above.

Other topics such as technology landscaping are much more important for practitioners. The usefulness is obvious: As a lawyer you have to know what technology is out there. The diversity of legal technology providers can be intimidating. The tech index at Stanford CodeX lists more than 2000 providers. Making sense of this for attorneys in all different types of contexts, classifying what types of solutions and software are available and how they can be used is something that sells rather well in a professional education context. From a provider's perspective it is an intriguing product as it should be repeated regularly – every six to twelve months ideally – to be most useful.

There is another field of products in executive education, which I classify as "Big Picture". One example would be the Bucerius Open Innovation Lab. It brings people in leadership positions from different parts of the market such as general counsels, managing partners and legal startups together to discuss

industry trends. They tackle questions such as: What does digitalization mean for your firm? How do you compare to your competitor? What do clients think about? How do law firms price innovation products? All these point to unsolved problems, so there is a market for people who want to think about this jointly under some guidance. This is for people who want to think through the strategic implications of this changing world for their business, who want to develop and test ideas and who want to be able to – whenever that happens – ask someone who is knowledgeable about the market. Would a specific idea work? Would you buy this? Would you consider developing this together?

While this is a rather successful product for a traditional continuing legal education setting, it sometimes crosses into consulting. For our subsidiary this means developing capabilities on consulting on legal operations, law firm management or product development.

For similar providers, there is an entire market for universities, law societies or bar associations. Building and providing expertise on digital legal services is a commodity in strong demand. So, while legal tech landscaping is on the lower end of the spectrum, this is a more difficult offering to design, but something that lawyers would obviously buy as a CLE product at rather attractive rates.

For an academic scholar of the legal profession being involved in these programs is both challenging and exciting. It provides very useful data for applied research as I hear from people in the field and get unfiltered knowledge about what they are interested in, where their problems lie and what they intend to solve them. Oftentimes I can instantly take their comments, write up case studies and integrate them into my classes. This is of immense value: If we want to prepare students for practice, we must know what people in management positions worry about. We want to know what skills senior associates lack. We want to know where the industry is headed. These insights feed into the greater university curriculum as well, hence making it a very productive way to spend time.

I will end with some remarks on how we deliver these educational offerings. One thing that we have developed inhouse at the school and for which we are about to establish a separate company is *dskrpt* – a platform for text-based legal education. For a while university believed that we had it all figured out with videos and podcasts. But our most important teaching materials still come in PDF form. PDFs are static, collect no data about their usage and are somewhat inflexible. This is why we were unhappy with their role to provide students with texts in both a university and a continuing legal education setting.

It took us about two years to build *dskrpt*. Now you get this sleek, modern looking application that has all your materials in one place and stores them. So, if you want to go back to that seminar five years ago you will find it there. It is very text-centric and text-based. You can mark the text up, you can chat with other people that were in the seminar, you can chat with the instructor right next to the text and anchored to the relevant parts of it. In addition, court decisions, statutes and other materials are integrated in the same interface. In the future, the main purpose of this platform is to gather user interaction data and to see what helps people and what they understand easily, to give feedback to the people writing these materials and to hopefully be able to use machine learning to guide people and create more individualized types of materials.

The second product I want to share is Bucerius Legal Tech Essentials. It is an unusual offering for Bucerius Law School because it is entirely free to participants. As we believe that education has a value we normally always charge for our classes. During the pandemic however, we started this massive open online course for which you could just sign up and participate from our living room. You would hear from people in the innovation field, in legal operations, in legal tech, founders of legal tech companies, regulators, bar associations and legislators. Both lecturers and participants had an opportunity to connect with each other and leave the solitude of lockdowns all over the world.

While we did not intend it, this turned out to be the greatest brand building and marketing tools that you could possibly imagine. From 2020 to 2022, we a hand over 12'500 participants from over 120 countries. In marketing terms these are high quality leads. Participants really liked it, and our net promoter score is extraordinarily high (85,58) while the median overall satisfaction is 10/10. For a continuing legal education provider, it had additional benefits: It was a way of keeping in touch with our lecturers and try out new ones at very little cost in both a normal and continuing educational context. But it also had very tangible results for us: Participants have gone on to take part in fee-based programs such as our Summer Program Legal Technology and Operations, our Master Program and Executive Education offerings. If you count raw participant numbers Bucerius Law School reached more people during these three years than during its entire history.

4. Continuing Legal Education in the UK

Melissa Hardee

I am very grateful for the opportunity to speak to you to today about Continuing Legal Education in the UK. Having listened to the speakers so far, however, I feel I need to explain some differences between the UK and the other jurisdictions we have heard about, particularly European jurisdictions.

I was very impressed to hear that Swiss universities are concerned about improving the quality of the legal profession – a concern I do not believe you would find mirrored in the UK. In the UK, there is in fact a tension between the legal profession and the academy as to the purpose of the law degree: is it in fact a liberal arts education, as is asserted by the academics, or should it be vocationally focused, which is the argument of the profession, which wants 'oven-ready' lawyers from 'day one'. Further, the drive for post-graduate legal education comes largely from the academic side rather than the profession. This is not the case in all common law jurisdictions: in Australia, where I first qualified, an LLM is seen as an insignia of specialist knowledge and expertise, where the LLM is undertaken as a practitioner.

A difference with the USA, is that the law degree in the UK is an undergraduate degree. This means students often fall into a law degree because of not knowing what else to do if they have good grades. The issue in the UK is that law students coming straight from school have little life experience or life skills. This is in contrast to jurisdictions, where Law is studied either as a post-graduate degree, as in the US, or as part of a five-year combined degree programme, as in Australia.

Another factor which impacts on legal education in the UK is the drive or, rather, push, for employment. The quality assurance body for higher education, now the Office for Students, publishes an annual Graduate Employment Survey, which causes anxiety in all UK universities. The problem we have in the UK is that the majority of law degree graduates do not enter the legal profession.

Consequently, for that majority, the greater value of their law degree is as a liberal arts degree, rather than as a vocationally focused degree. I have carried out two funded research projects into the career intentions of law degree stu-

dents in 2011, both of which showed that the majority of students enrolling on a law degree in the UK (approximately 79%) intend to enter the legal profession, whether as a barrister or solicitor. By the end of the degree, however, this has dropped to below 40%, as students become aware of the reality of limited job opportunities in the legal profession.

One further difference worth mentioning is the liberalisation of the legal services market in the UK, which took place under the Legal Services Act 2007, which has meant that lawyers are no longer the sole providers of legal services, and lawyers can be part of multi-disciplinary partnerships, and non-lawyers can be made partners in a law firm – to mention just a few of the features of this liberalisation.

Turning now to continuing legal education in the UK.

CONTINUING LEGAL EDUCATION IN THE UK

For all regulators of a legal profession, there is a perennial challenge of how to assure the ongoing competence of the lawyers it regulates so as to protect the public, which is of paramount concern, but also to protect the reputation of the profession itself and uphold the administration of justice and the rule of law.

The most common regulatory approach is to require lawyers to do a set number of hours each year to continue to develop and maintain their legal knowledge and skills. The argument against this is that it is usually an arbitrary number of hours. Does that argument justify not having an hour's requirement at all?

The problem is that we also need to deal with the reality of human nature. Lawyers are busy people with many demands on their time. Even the most conscientious lawyer, with the best of intentions, may lapse and not do what they need to do and when they need to do it.

So, some sort of imperative, such as a minimum hour requirement, is needed to help lawyers help themselves.

But is a 'one size fits all' approach the way to achieve this? At any given time, lawyers vary in their experience and their expertise.

Are there some skills, knowledge or areas of expertise that are more important than others, for the protection of the public?

Given that lawyers have a professional and ethical responsibilities, should the responsibility lie with the individual lawyer – or their employer, particularly if the employer is a regulated entity?

Should there be exemptions in certain circumstances?

How can compliance be assured – through monitoring? Or does this create an industry in itself, requiring regulatory resources to check CPD records for every lawyer?

What sanctions can be imposed if the regulator identifies non-compliance?

I don't have the answers necessarily, but what I would like to do in the next 40 minutes is to consider these issues in the context of the continuing legal education requirements for lawyers in the UK, which provides example of all these possible approaches. First though, I need to explain what we mean by "the UK", and also say something about the legal professions in the UK. I am also going to go 'off-piste' and say something about the impact of reforms to pre-qualification legal education and training in England and Wales may have on assuring competence.

"The UK"

The UK is a unitary sovereign country, which comprises four 'countries': England, Wales, Scotland and Northern Ireland. The significance of this for the purposes of my talk is that there is no single legal jurisdiction or legal profession in the UK; rather there are the legal jurisdictions of England and Wales, of Scotland, and of Northern Ireland, each with their own legal professions.

The legal profession

The legal profession in each of the UK jurisdictions is a split profession, split between solicitors and barristers (called "Advocates" in Scotland), each profession with its own regulator, as set out the slide. So, not only are there three different jurisdictions in the UK, within each jurisdiction there are two lawyer professions, each with its pre-qualification and post-qualification legal education and training requirements. And to make life more complex, there is no reciprocity between the different professions in a jurisdiction or between jurisdictions overall. So, a lawyer qualified in one UK country is regarded as a 'foreign lawyer' by the other jurisdictions.

For the benefit of jurisdictions with a fused legal profession, it might be helpful if I explain the difference between solicitors and barristers, since this also informs the continuing legal education that each need.

The differences between solicitors and barristers were more marked historically than they are today, due to reforms brought about by something called the Clementi Review of the regulatory framework for legal services in England and Wales, and the ensuing Legal Services Act 2007, which I mentioned earlier. To put it simply, barristers have, traditionally, been the advocates, and solicitors the draftsmen. A more nuanced split is set out on the slide: how it was before the Legal Services Act, and the changes that have been brought in subsequently.

There are still differences in attitudes, behaviour and culture between the two professions. However, the differences in regulatory terms are less: for example, whereas previously a barrister could only be instructed by a solicitor, there is now a direct access scheme which allows members of the public to instruct a barrister direct, without going through a solicitor. Previously, only solicitors could conduct litigation; now barristers may as well. And, solicitors can achieve higher rights of audience, which they were not able to before, and may also be made King's Counsel and judges.

Continuing Legal Education in the UK

In the UK, continuing legal education is referred to as "Continuing Professional Development" or "CPD". It has various definitions, which goes to a fundamental point, which is you need to be clear of the objectives you are trying to achieve first and foremost.

Prior to 01/01/2017, the requirements were as set out in the table on the slide, with each profession in each of the three jurisdictions having the ubiquitous minimum hour requirement.

Jurisdiction	Profession	No. of CPD hours required	Other CPD requirements
England and	Solicitors	16 hours	
Wales	Barristers	New Practitioners' Programme: 45 hours over 3 years. Established Practitioners' Programme: 12 hours p.a.	NPP: to include 9 hours Advocacy + 3 hours Ethics
Scotland	Solicitors	20 hours p.a. (incl. min 15 hours verifiable + max 5 hours self-study + 1 hour risk management)	
	Advocates	10 hours p.a.	

Northern Ireland	Solicitors	10 hours p.a.	
	Barristers	12 hours p.a.	

Now:

Jurisdiction	Profession	No. of CPD hours required	Other CPD requirements
England and	Solicitors	None (from 01/09/2016)	Reflect, Identify, Plan and address, Record, Evaluate. Answer question to renew PC.
Wales	Barristers	NPP: 45 hours EPP: none (from 01/01/ 2017)	NPP: (incl. 9 hours Advocacy + 3 hours Ethics) Established Practitioner Programme: plan and record CPD each year
Scotland	Solicitors	20 hours p.a.	(incl. min 15 hours verifiable + max 5 hours self-study + 1 hour risk management)
	Advocates	10 hours p.a.	
Northern Ireland	Solicitors	10 hours p.a.	
	Barristers	12 hours p.a.	

This changed for solicitors in England and Wales from 01/11/16, when the SRA removed the minimum CPD hours requirement entirely, regardless of post-qualification experience, and replaced CPD with a "continuing competence" regime. The SRA's requirement was that:

> "All solicitors must remain competent to carry out their role and keep their professional knowledge and skills up to date. This applies to all solicitors who have a practising certificate, whether they work in the UK or overseas."

Continuing Competence, as it was called, required a solicitor to:

Reflect, Identify, Plan and address, Record, Evaluate.

In order to renew one's practising certificate each year, a solicitor now has to answer the following question:

> "Have you reflected on your practice and addressed any identified learning and development needs in the past year?"

And that's it.

The Bar Standards Board has taken a similar approach to barristers in England and Wales, and removed the requirement from 01/01/17 for barristers more than three years' qualified:

> "There is no minimum number of hours that you need to complete.
>
> – You now have individual responsibility for deciding what training you require.
> – There is no longer a requirement to complete accredited hours.
> – You have increased flexibility in the types of CPD activities that you can complete.
> – We will assess whether you have planned and completed your CPD in a structured way.
> – Assessments of CPD will be made with regard to what CPD has been completed in previous years."

However, the BSB retained a requirement for barristers who are less than three years' qualified, and, as part of that requirement, has specified particular areas to be covered, namely, advocacy and ethics.

Both Scotland and Northern Ireland have retained a requirement for a minimum number of hours, irrespective of an individual's length of qualification.

For any jurisdiction considering introducing a mandatory regime, I would counsel them to learn from the experience in the UK, and in England and Wales in particular.

Options for CPD requirements

There are four particular options I would like to consider for mandatory CPD requirements: a requirement for a minimum number of hours, a requirement for the types of activities that will be recognised for CPD purposes, a requirement for CPD in specific or priority areas, and where the responsibility should fall.

Minimum number of hours

As I have shown on the slide, Scotland, Northern Ireland and the Bar Standards Board in England and Wales use some form of minimum hours requirement. The problems with this are that the number is usually arbitrary, and a minimum does not usually encourage people to do more. This was the SRA's argument for introducing continuing competence without a minimum hours requirement.

Recognised or permitted activities

This is a requirement that certain activities have to be engaged in, or only certain activities will be permitted to account for meeting the minimum hours requirement. Again, this is somewhat arbitrary. Under the old CPD regime, the SRA did not permit solicitors to count reading. However, reading journals, case reports etc are how lawyers keep up to date with developments in the law – which begs the question: is the CPD regime about ensuring continuing competence or not?

Specific or priority areas

A number of jurisdictions and their professions recognise that a lawyer should do more of a specific activity or area, and specifies, ethics, for example, or advocacy training. This too can be arbitrary.

Responsibility

The SRA in introducing Continuing Competence was concerned to move away from an arbitrary hour's requirement and to require solicitors to take responsibility for reflecting and identifying their development needs and addressing those needs. Prior to Continuing Competence, the SRA had a regulatory role in monitoring the CPD records that solicitors were required to maintain. The SRA has relieved itself of this responsibility and passed it on to the individual solicitor. So, as a solicitor, I have to reflect on my practice; through that reflection, I have to identify whether I have any training needs; then I need to plan and address how I am going to meet those training needs; and then I have to evaluate the effectiveness of what I have done.

I actually believe the concept of Continuing Competence is right: as lawyers we should take responsibility and identify whether we require training or development in order to meet the required level of competence expected of us at our level of experience and in our particular role and practice. It is therefore conceivable that someone who is very experienced may have no development needs in a particular year – assuming they are keeping up to date with the law and practice that is relevant to what they do.

The Bar Standards Board has also put the onus on the individual Barrister in England and Wales, as has the Law Society of Scotland. Scotland, however, has also recognised that lawyers are human beings with human frailty, which means the best of intentions do not always result in the required action. That

is why it has retained a minimum hours requirement on top of the obligation on the individual solicitor to reflect, plan and undertake their training – and why it monitors 5% of CPD records!

A further refinement under the SRA's Continuing Competence regime, however, is that it has not only placed responsibility on the individual solicitor, but it has also placed responsibility on the organisations it regulates, called regulated entities, which employ solicitors. However, a regulated entity is not just required to ensure that its solicitors are competent to carry out their role and keep their professional knowledge and skills up to date, it actually required that a regulated entity ensures that everyone it employs is competent for the role they perform. That is quite a regulatory responsibility – some would say burden – for law firms regulated by the SRA.

Exemptions and exceptions

As a general comment about compulsory requirements, the problem with a 'one-size-fits-all' approach is that, to ensure fairness, one is also going to need to have exemptions and exceptions, for example, for long-term illness, maternity leave, paternity leave – to name a few. These exemptions and exceptions then require a regulatory framework and process themselves.

Monitoring and sanctions

As with laws, regulatory requirements are ineffective without implementation and sanctions for non-compliance.

Interestingly, the SRA says that it monitors the annual declarations we have to make as solicitors to renew our practicing certificate each year, and that it uses the information to explore concerns. These "concerns", however, are not concerns about continuing competence but is part of the SRA's risk-based approach to regulation. Whether a solicitor has or has not complied with the continuing competence requirements is only going to arise if the SRA has reason to look at that person for other reasons. If the SRA identifies an issue with an individual solicitor or a firm, the SRA may decide to engage with the solicitor or the firm, and the SRA could review training records should they carry out an investigation. Similarly with firms, the SRA will investigate if there is a reason to, in which case the SRA may ask to look at training records. The consequence of failure to comply with Continuing Competence may be an aggravating factor in a disciplinary action. However, the disciplinary action would be about something else the SRA had been investigating, rather than continuing competence for its own sake. The question is: does the SRA's approach actually qualify as monitoring and sanctions? The Law Society of Scotland does

monitor. It says: "Every year we will look at a sample of 5% of all the solicitors' records and they do. Continued failure to comply may be referred to their practicing certificate committee." In other words, failure to comply with the CPD requirements is a ground for regulatory action to be taken, in contrast with the position of the SRA in England and Wales.

The Legal Services Board, as the oversight regulator in England and Wales, in about 2018, started to express concern about the competence of solicitors. It conducted a study and has now published a new statement on statutory policy on ongoing competence which sets out clear outcomes that the legal services regulators should meet to ensure the lawyers they regulate have the necessary skills, etc. The LSB required the Bar Standards Board and Solicitors Regulation Authority to implement measures by January 2024, to develop an evidence-based approach to how they are going to implement the policy, and to provide progress updates in January 2023. The SRA has provided its response, which I will come to, and the BSB released its response last night, which I have only been able to have a brief look at.

The LSB based its policy on consumer research, which found, for example, that 95% of people believe lawyers should be required to demonstrate that they remain competent throughout their careers. I don't think anyone can disagree that consumers should be able to rely on authorized persons having the necessary and up-to-date skills, knowledge, attributes, and behaviors to provide good quality legal services. So, the LSB wants regulators such as the SRA and BSB to provide greater assurance that their regulated professionals remain competent throughout their careers and not just when they enter the profession. The reason is that the LSB identified that while legal services regulators have comprehensive measures to ensure authorized persons are competent upon entry to the profession there are few routine formal measures to ensure ongoing competence. The LSB considers that CPD can be a valuable learning and development tool to support ongoing competence, but it cannot be used in isolation. However, just having an hour requirement is not adequate, and, particularly damning, the LSB found that neither regulator had comprehensive and up-to-date information to establish the levels of competence of their authorized persons after the point of qualification. Therefore, the regulators are not able to identify the necessary measures to ensure ongoing competence that are targeted to areas of risk or harm.

These findings are particularly concerning, not least because they point to regulatory failure. However, to be fair to the SRA and BSB, how do you establish levels of competence based on empirical evidence. The reality is that there

is really only circumstantial evidence, such as complaints and disciplinary proceedings. Dirk Hartung referred to the market as the control, which is true: An incompetent solicitor is not going to get much work from their clients, and may be sued by their clients, and/or sacked. Unfortunately, there is nothing that goes with them, though, to say they are not competent, and they can get employment somewhere else, unless they get struck off or there is some sort of condition put on their practicing certificate. So, this expectation of the LSB is very difficult.

The SRA's response to the LSB, in summary, is that it is going to carry on as before. The SRA devised a statement of solicitor competence some time ago, which sets out the competencies expected of solicitors, added to which the SRA takes a risk-based approach to regulation. From a quick read of the BSB response, the BSB is going to have a review of regulation of the early years of practice, but its approach otherwise appears to be similar to that of the SRA.

CONCLUSIONS

So, what can we say about continuing legal education in the UK?

Basically, it is an eclectic mix of approaches but with no way to say whether or not they are successful.

In Scotland, the Law Society of Scotland has taken the same approach as the SRA in England and Wales, and placed responsibility onto the individual solicitor. However, it also recognises my point that lawyers are human beings after all, with the same frailties as anyone else, and therefore the Law Society of Scotland has retained a minimum number of hours of CPD each year – a higher number than other regulators interestingly. The Law Society of Scotland has also committed to sampling 5% of CPD records annually.

However, the more complex the scheme and its requirements the more difficult it is for lawyers to understand and comply with it.

The more rules you create, you do two things:

- You create a system for creative lawyers to get around.
- Inevitably, the requirements that are specified become seen as the only requirements – exhaustive rather than advisory. That means that there is no incentive for doing more than is specified.

The bottom line is that we need to ensure that those who qualify as lawyers are competent to start with; that they have the appropriate ethical and moral behaviours which mean that they will do what is necessary for them to stay competent for whatever it is that they do (and what a lawyer does will change during the course of one's career).

It is interesting that the oversight-regulator for legal services in England and Wales, the Legal Services Board (LSB) expressed concern in 2018 – a mere two years after the SRA dispensed with a minimum hours requirement – that there might be an issue regarding the competence of solicitors in England and Wales. Since then, the LSB has reviewed what regulators, such as the SRA, have in place and has issued a statement of policy on ongoing competence, which sets out expectations of what the regulators should do to provide assurance that authorised persons remain competent throughout their careers. Regulators, such as the SRA, are required to have fully implemented measures by January 2024 and has asked for progress updates by January 2023.

Personally, I actually think "continuing competence" is the right moniker/expression – as is continuing legal education or continuing professional development. The problem comes when these are abbreviated to "CC", "CLE" or "CPD" – the focus is on the acronym rather than the meaning and underlying significance.

The other problem is that it is impossible for a regulator to ensure competence simply by way of specifying requirements for continuing legal education or continuing professional development.

There are other ways this could be done, although no system is perfect:

- Specialist accreditation. At present, if you qualify in one of the UK jurisdictions, you are not restricted as to what legal work you can do – other than advocacy. It is a bit like a driving licence: you are licensed to drive a manual or an automatic car, and to drive on a motorway and at night, even though you may have obtained your licence without being competent in any of these things. There are membership organisations, such as the Association of Personal Injury Lawyers, membership of which involves an assurance of training. However, other than solicitor advocates in England and Wales, there are no regulator-required specialist accreditations.
- Re-validation after a certain number of years. Doctors have to re-validate every five years and submit annual appraisals plus evidence of training in

order to be re-validated, amongst other things. Re-validation of lawyers has been resisted to date in the UK, although the debate has been ongoing for some time.

One would have thought that, given the concerns expressed by the Legal Services Board about the competence of solicitors in England and Wales, one might have expected to see some regulatory 'teeth' put in place by the SRA and BSB. I'm not sure there has been, which is why it perhaps isn't surprising that the SRA's recent response to the LSB's concerns is, basically, to continue on as before, with no intention of making any changes any time soon.

There is one further complication for the legal professions in England and Wales, though, which is the liberalisation of the legal services market by the Legal Services Act 2007. Under that Act, anyone can provide legal services. The providers in the current market break down into:

- LSA Authorised
- Non-LSA authorised
- Unauthorised

There is therefore an argument supporting the SRA's hands-off approach. Otherwise, solicitors and barristers would be required to meet a higher standard, with consequent additional financial costs and time, which would put both professions at a disadvantage commercially, as their fees for the legal services they offer would need to cover these additional costs. The argument continues that the public would be prepared to pay for a qualified lawyer, rather than an unqualified provider of legal services. I'm not sure that that is actually true: can distinguish the competent provider of legal services by the fact of their qualification as a lawyer. In the UK generally, there is a crisis in terms of access to justice, particularly in the criminal law sector due to cuts in government-funded legal aid, but not just criminal law. Thus, the use by the public of free legal advice though pro bono clinics – or other, cheaper, providers of legal services. The problem is that if solicitors and barristers are not competent – and they are always under the spotlight – it could drive the public even further towards the unregulated market, where lack of competence could result in inappropriate or unnecessarily disadvantageous outcome.

Answers on a postcard, please!

Interestingly, when the SRA proposed its Continuing Competence reforms, many in the profession were against losing the minimum hours requirement, as it was a way of making them do what they needed to do. Unlike Scotland, which samples 5% of CPD records, the SRA's approach is not to sample records but to leave it entirely to the individual solicitor.

I would say that out of all the continuing legal education regimes in the UK, the Law Society of Scotland's CPD scheme is probably the one that combines the best addresses these considerations and approaches: individual responsibility plus a necessary impetus of an hour's requirement; recognition that, e.g., risk is very important, but also recognising the diversity of practice and the profession.

Something the LBS said that I would like to pick up on the underlying assumption of any continuing professional development or continuing legal education scheme must be that the lawyer is competent to begin with, so that continuing development or education is building on, refining and maintaining competence. This, dare I say it, has become an issue with the qualification requirements for solicitors in England and Wales. The point is that, if there is a question about competence on qualification, is continuing legal education really going to be able address this?

Pre-qualification legal education and training

Competence on qualification is really 'the elephant in the room'. The LSB refers to the assumption that a lawyer is competent to begin with. This raises some rather controversial reforms to the legal education and training framework for solicitors in England and Wales.

Prior to 1st September 2021, the legal education and training framework for solicitors in England and Wales comprised an academic stage, vocational stage, and work-based learning stage. The academic stage required a Qualifying Law Degree (accredited by the SRA and BSB) or a non-law degree and one-year conversion course, called the Graduate Diploma in Law. The vocational stage required successful completion of the one-year Legal Practice Course, and the work-based learning stage was a two-year training contract, involving regulatory-required supervision and training.

That's where we were in England and Wales up until 31st August 2021.

A bit like the meteorite that hit earth from outer space and, apparently, wiped out the dinosaurs, the Solicitors Regulation Authority lobbed its own meteorite and wiped out the legal education and training framework for solicitors in England and Wales on 1st September 2021. In its place it brought in a centralised assessment called the Solicitors Qualifying Examination or SQE.

For qualification as a barrister in England and Wales or Northern Ireland, a solicitor in Scotland or Northern Ireland, or an Advocate in Scotland, the legal education and training framework has remained intact: academic stage, vocational stage and work-based learning stage.

In England and Wales, the legal education and training framework for solicitors has been swept aside.

Under this new SQE route, the only academic requirement to qualify as a solicitor became a degree – not necessarily in law, it can be in anything – or the equivalent, such as an apprenticeship, which I will mention in a moment. On that basis alone of having a degree, a graduate may apply to sit the SQE. If they pass both parts of the SQE, provided they, firstly, have two years of "Qualifying Work Experience", and, secondly, meet the regulator's character and suitability requirements, they may apply to the SRA to qualify as a solicitor. That's it.

The SQE is in two parts: the first part assesses Functioning Legal Knowledge by way of multiple-choice questions. The second part assesses Practice Skills by way of objective structured clinical examination, or OSCEs, which are used in medical education.

So, no longer is there a requirement for a law degree, let alone a Qualifying Law Degree. Further, no course of study, whether academic, vocational or practical is required, accredited, validated or even recommended by the Solicitors Regulation Authority. Theoretically, someone could sit in their bedroom reading some books and then sit, and potentially pass, the SQE. The only test of competence for qualification as a solicitor is the SQE. The analogy that the SRA has used is that you don't need to pay for driving lessons to pass your driving test. The counter argument is whether you would want a doctor who has not actually studied medicine to operate on you.

One of the reasons the SRA used for introducing the SQE was the bottleneck in LPC graduates obtaining training contracts. However, the SRA had to introduce a centralised assessment for the new solicitor apprentices that were due to complete their apprenticeships with an end date assessment and decided to have it replace all routes to qualification, not because those routes were not producing competent solicitors.

The SRA believes providing complete flexibility will increase diversity and widen access to the professions.

FINAL CONCLUSIONS

Time will be the test of whether continuing competence is effective as a means of giving the public the confidence it deserves of ongoing competence. However, if competence on qualification cannot be assured, which is the question raised by the introduction of the SQE, then what competence are you continuing to assure, and a CPD system or continuing legal education cannot be remedial. The SRA is doing a ten-year review, which is a long time to wait to find out if the SRA has in fact got it wrong.

Thank you very much.

5. Continuing Legal Education in the US - Situation today

Jed S. Rakoff

I should mention that federal judges in the United States are exempt from the mandatory requirements because they are imposed by the states, not by the federal government. I have therefore watched this development over the last 40 or 50 years from a sort of detached and sometimes bemused point of view. But for almost everyone else in the legal profession, CLE is mandatory. That is true in 46 of the 50 states. It began with just two states back in 1975, but it very quickly was adopted elsewhere. Typically, what is involved is something around ten to fifteen hours of mandatory additional legal education, three to four hours of which are required to be on ethical standards in the law and the rest on new areas or new developments in the law. It is mostly run by bar associations, by law schools, and by nonprofit legal education groups, though there are also some for-profit companies involved. The programs must be approved by the state authorities in the relevant state. For the lawyers, CLE is somewhat expensive. One study suggests that the average lawyer in the United States spends about USD 5'000 a year on fulfilling the requirements for mandatory CLE.

When considering that young lawyers right graduating from law school in the United States very often come out with hundreds of thousands of dollars in debt, the additional USD 5'000 a year for mandatory CLE is no small matter. It is, by contrast, something of a money maker for bar associations, law schools and others involved in providing these programs. Many times, the speakers at these programs, who are prominent lawyers, will donate their speaking for free. So even though there are considerable administrative costs, the providers of these programs make some money out of it, which of course makes them very happy.

The original rationale for these programs was not just to strengthen the legal skills of legal professionals, but also to make them aware of new areas, developments in the law that they may not otherwise be aware of, to improve their ethical sensitivity, to improve the public image of lawyers and perhaps – at

least it was suggested – it could also reduce the number of malpractice claims made against lawyers, or at least complaints made against lawyers in the various states.

It is fair to say, now that we have had several decades of experience with mandatory CLE, that it has a mixed record in achieving these ends. Most lawyers are seeking to improve their skills, but that is motivated, to be frank, by the fact that the legal profession in the United States is highly competitive and ever more specialized. Totally independent of mandatory CLE, lawyers seeking to gain clients, seeking to compete with their colleagues in the law will spend a lot of time reading the latest articles, legal periodicals, talking to their colleagues about new developments, even reading court cases. They are motivated to do that, both to make themselves better lawyers, but also to make them more competitive lawyers. For many lawyers there is not much need for additional CLE.

Because they must fulfill their CLE requirement, many lawyers will dabble in something they do not know much about, just to see what it is like. That can have a broadening effect, which is positive. Virtually all law schools now require ethical training for students entering the law, nevertheless the CLE programs will reinforce what they have already learned. That has a positive effect, especially in what is a very competitive industry in the United States. When there is intense competition, there is always a temptation to cut corners. CLE in ethics may have some effect in moderating that impulse. But there is no data that suggests that the lawyers in the 46 states that provide mandatory CLE are any better or any less sued or any more ethical than lawyers in the four states that do not have this requirement.

It is hard to draw an exact analogy. It is hard to study whether there are subtle effects that cannot be measured, but at least it raises a question of how meaningful and effective mandatory civil CLE really is. One recent study, for example, looked at the number of complaints filed against lawyers in various states and there was zero correlation between the number in states that had mandatory CLE and the four states that did not. The four states did not have a higher number of complaints filed. More importantly, in the states that had had mandatory CLE for decades, there was no decrease in the number of complaints filed against lawyers. There was no particular increase either. It was more or less stable throughout that period. But it suggests at least that mandatory CLE was not having one of the intended effects of reducing complaints against lawyers.

As for public perception of lawyers, this is an ongoing problem. I am so proud of the role that lawyers have played in the history of the world, in the history of preserving freedom, in the history of promoting democracy and so forth, not just in the United States, but worldwide. But to be frank, the public perception of lawyers in the United States is quite low. It is partly because people do not understand the adversary system. It is maybe for any of a number of reasons. But it has not changed over the decades that there has been mandatory CLE. In the most recent Gallup poll, lawyers in the United States were considered to be at the low or even very low end – by 28% of the population – in terms of public esteem. And that, again, has been fairly constant over the last few decades.

This is a smaller point, but there has been some criticism in many states that not only are judges typically exempt from these mandatory requirements, but many state lawyers – lawyers employed by the state – are exempt. It is hard to know why that should be other than simple lobbying on their part. In any event, that is not well received.

A different approach exists in the federal system by what is called the Federal Judicial Center. Judges are not required to have any CLE, but the Federal Judicial Center, which is the educational arm of the federal judiciary, holds numerous conferences throughout the year to make judges aware of new developments in the law. They are a huge success for the following simple reason: They are always held in terrific places. The most recent one I attended was in San Diego. San Diego is a lot better in the winter than New York. These are typically two- to three-day conferences with very high-level speakers, often law professors or established stars of the bar, as well as fellow judges. It is fair to say that judges frequently do pick up new insights when they are not enjoying the beach.

I think CLE is a good thing, but I am not sure that you need the stick of making it mandatory as opposed to the carrot of making it attractive. In any event, for better or worse, there is no indication that the 46 states that have mandatory CLE are going to undo that. So, it is here to stay. If I had a magic wand, I would change the assets and expenditures that are used for CLE – which are very substantial – and use them for other purposes. One example, and this is a little bit off the subject, but perhaps of interest. A very severe problem in the United States is the provision of legal services to people of average or modest means. Ironically, indigent people, who are quite poor, often do receive free legal services. But I am talking about everyday working-class people. Because the legal profession has become ever more specialized, it has also become ever more

focused on providing services to corporations, to businesses, to people who can pay considerable fees. While the competition has led to some reduction in those fees, they are still way beyond the price that can be afforded by everyday people. The average partner in a law firm in the entire United States charges USD 600 an hour. That is too much for any everyday person who needs some legal services to afford. Some of the slack was taken up by class actions, but the Supreme Court has done a very good job in making those ever more difficult to bring, except in lawsuits where substantial money is involved. Again, not necessarily accessible to the kind of people mentioned above.

In fact, the average American gets into mostly two courts: the housing court, because they either are suffering foreclosure on their mortgage or because they are having a dispute with their landlord if they are in a tenant in an apartment *or* family court where they are going through a divorce or a custody battle or something like that.

In those two courts in the United States, individuals, whether they are plaintiffs or defendants, are represented by counsel in less than one third of all cases. In fact, in many states, individual parties in housing court and family court are represented by lawyers less than 10% of the time, an extraordinarily low percentage. And it makes a huge difference. Those who are represented by lawyers are successful, usually by way of settlement, in 50% of the cases. Those who are not represented by lawyers are successful in less than 5% of the cases. So, it makes a vast difference.

The solution to this problem would be to use the facilities of CLE for a different purpose. Namely, to create a corps of legal technicians. This would be roughly equivalent to what are known in the United States as nurse practitioners, folks who can do in the medical field much of what a doctor can do, though not the most sophisticated things. But they have enough knowledge and experience to do everyday matters. The legal equivalent, sometimes called legal technicians, would be people who would receive a very basic legal education, maybe six months in an institute of some sort, then would be apprenticed to another already certified legal technician to gain some experience – again for maybe six months – and then would take an exam that would allow them to practice not in the most sophisticated matters, but in everyday matters, like representing someone in family court, representing someone in housing court, drawing up wills, drawing up simple business documents and the like. They, I think, would be prime candidates for CLE.

This would be very helpful in furthering and improving their skills. If I had my magic wand, I would do with away with mandatory CLE, although, of course, encouraging people to continue their legal education, and divert the resources into creating a corps of legal technicians. This actually was tried for about ten years or so in the state of Washington and then it was overturned by the Supreme Court of Washington because it was attacked by everyday lawyers as the unauthorized practice of law, since it had not been created by legislative decree. That challenge won out and the program was stopped. This is a great shame. It also illustrates the somewhat narrow competitive view of most lawyers, that they view this as a threat to their economic welfare. In any event, there is nothing that would prevent a legislature from creating such a course. In the meantime, for better or worse, all but four states in the United States, have continuing CLE. It is cumbersome, but it must be done. Very few lawyers will tell you that it really had a major, substantial, impact in either their legal proficiency or their legal ethics.

6. Further education for lawyers beyond mandatory requirements

Richard Norman

As an international lawyer, I firmly and passionately believe in the need for further education. Not least because I did not do enough of it when I was in-house. The reasons I did not do enough further education are not any of those associated with being lazy or uncommitted. I always felt I was too busy, I felt I was stressed, and I felt that I was fire-fighting a lot of the time. I did not stop, take a step back and say: Hey, what about me? What about my life after Dell Computers? What about my own career and investing in my own career? And in many ways, if I could have heard any of these presentations today, it would have given me the chance to stop and to step back and to say: What do I need as a lawyer if I am going to have a long career? Because all of us do.

This is not a sprint; it is a marathon. It is a marathon of a long career, and the law is changing. People are changing, employers are changing. How does one bullet-proof a career for the future? I have often felt that I did not do enough, and I am a strong believer in the need for further education. I have been very fortunate to lecture for the Europa Institute and for the University of Zurich in the LL.M. program. It gives me an insight into what the students are looking for. The first question I always ask them is: Why are you doing this course? 90% of them say that it is because they need it. They need better international legal English, a better understanding of the common law, or they need an LL.M. program to understand several areas. We must cater to those needs. We must ask: What do lawyers look for? And how do we make these programs pragmatic, practical and fit for purpose?

This is not always the case. Many people in this business are providing so called "legal training." Those programs are often way too academic. There is also the perspective of business clients. I worked for four multinational companies, the last of which was Dell Computers. When I joined Dell, it was less than 1000 people. When I left, it was 60'000. The revenue went from under one billion to 60 billion during that time. And with growth comes opportunity. Opportunity for legal expansion, for new entities, for new countries and also for a lot of legal problems. There was never a time that I can remember when somebody was not suing us. When there was not a class action lawsuit. To-

wards the end there was also a major investigation by the European Union on competition law. We had our pressures and we needed good lawyers. My experience of going to meet with lawyers in 20 odd countries was, firstly, they did not always have a very good idea of client interviews. Secondly, they had not done their homework in terms of seeing what the client needed. I remember going with my general counsel to a lawyer in Kuala Lumpur and he did not know what Dell's business was, and he did not know why we were meeting him. In fact, he did not really want us there at all. I had not set that up very well and I felt embarrassed about it. By contrast, I went with the same GC to Paris, where we met with Baker Mackenzie. The head of the firm came to meet us – she was called Christine Lagarde – and she spent a very nice half an hour with us telling us everything she knew about Dell, and she could not have been more charming and humbler in her approach. I can see as a business client what those lawyers should be offering. As a personal client, when your own money is on the line, you have a slightly different perspective. One of the things I would like from the lawyers I work with, is for them to set expectations. Not whether I am going to win, but when I will get an answer or a response. I need a response and please do not say: I will get back to you. Please tell me *when* you will get back to me. Give me a rough idea of what it is going to cost, and it would be helpful to know how it goes from here. Through that perspective, I develop an idea of what I think is a good private practice lawyer, and also a demanding, but at the same time reasonable, business client lawyer, in-house lawyer.

First of all, you need to know the law. Bruno Mascello is absolutely right. There is so much more than just legal expertise. You need all these other skills. But we do need, primarily, solid expertise. One of the advantages – it is an expensive system – of the barrister system in the UK, is that they have specialized practitioners. One may call a barrister from Nestlé in Vevey and say: I have an intellectual property problem. I have got a trademark problem. And you should get somebody who does nothing else, who knows the law and who is right up to date and who has the expertise you are looking for. It is nice to have those specialized practice areas. It also makes it difficult for CLE to cater to all these different specializations, as we heard earlier. That is why we have so many different courses. As Andreas Kellerhals said, the University of Zurich has 13 different CAS, catering to such different specialized areas.

The other reason that practitioners attend our courses is for networking and contacts. It is amazing how much value gain from these courses simply by meeting with other lawyers and saying: We have this problem. Have you got this problem? Who do you know? Who do you use? Have you had any expe-

rience? And it is all free, shared networking. This is invaluable. In addition, we must address all these issues like cryptocurrencies. When we look at the course that JAMES BELLERJEAU has started on inhouse lawyers, we can see what is on offer. They syllabus includes topics t like Artificial Intelligence (AI) and Internet of Things (IoT) and licensing for intellectual property (IP). In my time as a lawyer, we went from being very focused on property to intellectual property. I remember Michael Dell saying that we could close down or lose everything tangible in the company and replace it on the basis of one quarter's cash flow. But the intellectual property, the trademarks, the patents, the reputation and brand were irreplaceable. And lawyers need to understand that and be up to date with IP issues. That is the first thing.

Written skills in a language that is not your own requires work. It requires work and time. The lawyers who come to our Legal English course – CAS Legal English and the Common Law – are usually very fluent. They are in general fantastic with their comprehension. But their writing skills are not on the same level. But of course, lawyers should be good with words. 'In the beginning was the word, then came the law'. Lawyers must have the ability to persuade, to influence and to negotiate. We must teach these skills. This is a big part of what JAMES BELLERJEAU does in the course. Negotiation skills, an ability to express yourself in a second language. We have a section on practical legal English usage. Some of it may appear as a little arcane and stylistic, but it does make a difference.

For example, a private practice lawyer sends their client a note and says: You have not paid my bill. That sounds a little bit blunt. But if instead they say: It appears that the account has not yet been settled. This sounds a little better, such simple examples about communication give course participants an ability to adapt them to their own needs. Furthermore, the course includes some of the key concepts such as common law and certain things that do not easily translate to other languages. For example, 'consideration' in the area of contracts, is difficult to translate in a civil law context. One must unpack the concept in order to understand the terminology.

Communication skills are paramount. The lawyers that I knew that were successful in a multinational company were either successful for the wrong reason because they only spoke good English and people thought they were good lawyers, which was not always the case. Or because they really had a nice combination of legal skills and the ability to summarize and communicate those to senior management. There are some great lawyers I have known who failed because of their lack of communication skills.

The teaching topics are very different from when I first started at Dell. We have the common legal strategy and risk assessment and risk management. There is a separate CAS on compliance. There is competition law, one of Andreas Kellerhals' focus areas. We are now getting into some other areas such as ESG with a focus on environmental issues. We have crisis management as well as contracting. Litigation and dispute management, data protection, cybersecurity, which is a big issue these days. We also offer IT outsourcing, IT and AI licensing, IP and M&A. We have legal outsourcing, corporate governance and finally the non-legal skills which Bruno Mascello referred to and which are increasingly important with large legal departments, and legal departments that are struggling to acquire credibility with senior management. One of the things we have worked on over the years is the perception of the legal department in companies and how to improve it. Do you understand the business well enough? Are you close enough to the business? Businesses will not give you much time. It is probably easier if you work for a hotel company than if you work for one of the big high-tech companies in software in particular. It is a little more difficult to understand some of those issues unless you are Dirk Hartung. It requires getting closer to the business. This is a good example of how we can add value for inhouse lawyers. In all honesty, if I had done this course – I had invested three months before I started at Dell – I would have been more successful. It would have helped me considerably in my career.

There is a question for lawyers to differentiate between empathy and professional detachment. I know a doctor who said to me: Look, if I start empathizing with my clients, I could not do my job. Certainly, a surgeons need to be compassionate about their outcome, but they cannot start putting themselves in their patients' shoes because they would get too involved. I just cannot get too close to them. To an extent it is the same with lawyers. We need to put ourselves in our clients' shoes, but not too much. Having said that, one of the things we do not do too well as lawyers sometimes is listening. There remains much to work on with client interview skills. There are even client interview competitions available for law students now. Finally, I have always felt that as a personal client, it is just great when the lawyer sets expectations around what you can expect from the case and by when you will get the advice that you are looking for.

At a minimum, to have enough digital literacy to be productive. To keep good archives. To know where all your documents are. To not start from zero when you get a new contract. To have those templates and particularly these days when you are working out of the office, you cannot go to the library, and you cannot easily call on someone else and ask whether they have a copy of this.

Being organized is key. Time must be allotted for training in this area. This is not necessarily legal training. I could have done with a little more training on a lot of the Microsoft products, I confess.

In conclusion, furthering education in both soft skills and hard law is not just desirable, it is necessary. We are all professionals and as professionals, we live by our wits. We live off our knowledge and our skills. We do not with the sweat on our brows, but we do need to invest in our careers. And those soft skills must be developed. We must find the time to do this, and we need to ensure employer support for the training. There are two aspects to employer support. The employer should support you personally to invest in your career and to add to your CV. But also, the employer should be supportive of in-house training. When we advised people on competition law at Dell, we first asked the head of the business unit to start the session by saying: 'This is important. Listen up.' If you do not receive that support, it may be difficult to retain the attention of the sales team attending the meeting.

Choosing the right provider is crucial. I often say to the lawyers who have started the course with us: You have spent the money. Now what really matters is your time, the investment of your time and effort. First of all, you have to come on the right course. You will meet really experienced people. If you start trying to cut corners and you have already spent some money, but you then find that you have the wrong tutors, it is very disheartening.

Here are a couple of clichés to finish: 'The price of success is continuous improvement'. We know that to be true in our careers. 'There are no elevators to success. You must use the stairs one at a time', That includes training and legal education. You are not just going to become smarter overnight by your own efforts or lying in bed thinking about things. You need a bit of help. And then as Abraham Lincoln said: 'If you think education is expensive, try ignorance'. Thank you.

7. Comments about Day 1

JAMES BELLERJEAU: We heard first from the Dean of the Law School who kicked this off in the sense. The school is interested in the topic. They want to find out more because they perceive there to be a potential gap. And then ANDREAS KELLERHALS, who has been focused on the CLE topic perhaps for the longest in the university for many decades, gave us two things: One, an overview of the state of CLE in Switzerland at the various schools that are providing it. Two, a long list of questions: What is it for? Who is it for? Who should be responsible for it? Are degrees necessary? A whole bunch of questions which we have only started to scratch the surface on. But I would say it started the spirit of the conference, which was really: We are interested in an open discussion about pretty much all aspects of CLE.

Do you want to add anything to the opening of the conference and either the Dean or ANDREAS KELLERHALS' comments?

RICHARD NORMAN: What I did not realize is that it is a relatively recent phenomenon this CLE. It has not really been in place since the 1990s, but now CLE is an important task of the university and I think most universities recognize that. It sets the scene for saying: We have both an opportunity to make some money and to enhance our reputation as a university, but also an obligation and responsibility to the profession to help them with the training needs that they have.

MICHELE DESTEFANO: To what you just mentioned earlier. At a lot of universities, I know that it is true that there are certain things that professors think they should teach if they are tenured and certain things that adjuncts are okay to teach and there is a lot of second-class citizenship about adjuncts. Some adjuncts are terrible, and some tenured professors are terrible teachers. You mentioned specifically that some of the CLE is too academic. I could not agree with you more. Some of the CLE is too boring. Some of the CLE is taught by people that do not know how to teach. CLE has been around, I think, since the 1970s in the US. I could be wrong, but I think it was the late 70s. If we are going to have universities get more involved, who should be the people leading that? For example, I teach in Harvard Law School's executive education program and most of the teachers there are from around the world, not necessarily from Harvard, because not all Harvard professors have the practical skills to teach what we teach in those programs. So how do we do that as universities? I do

not know the answer. Sometimes the university will try a new program in executive education that gets a lot of attention, – and I am not talking about Law Without Walls, I am talking about something different – and then suddenly the tenured professors are like: Wait a minute, I did not know about that. Who approved that person to do that? And then it gets put on hold because these other professors who maybe know nothing about executive education, training or the topic do not think that this is adequate. I do not know how we solve that problem. Ideas?

James Bellerjeau: I will maybe make a comment about that generally and then I will give a specific example. Lawyers suffer from a serious problem, which is thinking that because we are smart in one area, we are smart in all areas. And that is no more the case for us than it is for any other expert. My short answer would be, of course we need subject matter specific experts if we want to provide the best service. But perhaps it is a structural question, a strategic question. What are you trying to deliver? Who are you delivering it for? And the answers are going to be different because we saw that the potential needs of CLE are also quite different. I can tell you my experience – since they are actually both out of the room – with the University of Zurich law faculty, the Dean and Andreas Kellerhals. With a tremendous amount of support from Andreas Kellerhals and pushing, it took us six years to create the Inhouse Counsel course. One of the reasons for that was that in creating the course, I said to the study commission, the faculty: With all due respect, I do not want any of you to teach a single module of this course, because that is not what it is for. Substantive law, you have just covered. Now, I want in-house counsel to tell the students their perspective. Because the point of this – it was an in-house counsel course – of course, that was a special, extreme example of what you are describing. But the point was: Subject matter experts are necessary. And to the credit of the University and the law faculty here, they said: Yeah, okay, we are willing to let you do it. We are not going to provide a tremendous amount of support to you because you are not asking for it. They did, however, provide – I do not want to suggest they did not provide support, that would be not correct – the full weight and name of the University, but said: Fine, you want to run it, go ahead, and run it. If you can have such a discussion, if the University sees that it is interesting it works. In the meantime, we have moderated it a little bit. Right now, we have people from outside. Law firms presenting occasionally, there is a professor who will come and present. Finding the right subject matter experts would be something that I would recommend enhancing

the value that you are delivering to your students in any event. Your students can tell whether they have somebody who knows what they are talking about. Would you like to add to that, RICHARD NORMAN?

RICHARD NORMAN: I would be interested in the St. Gallen perspective. Would you want to add to that, BRUNO MASCELLO?

BRUNO MASCELLO: Faculty is very important. Participants in our classes are averaged at some 40 or 41 years of age and they are not bored. They are sacrificing time. They immediately realize if a faculty member is valuable to them or not. I would not say we forbid faculty to teach. It depends on what kind of content it is. Sometimes they teach, but in a limited way. I agree. I was surprised to hear that it took six years to make this program.

DIRK HARTUNG: We have been running our master's program, as I said, which requires some prior practical experience. For the first five years, it was very close to practice, with some people from the faculty involved, but mostly practitioners. Then private institutions in Germany have to get accreditation for their programs. Our accrediting body is comprised of only the highest and smartest professors in the country. There is a research council that does that. In order to be able to provide the program for the future, we were forced to make it 50% taught by faculty, which is an incredible burden, because you have people that do not want to teach there, and you have participants that do not benefit from the people teaching there. Every year, this is the toughest constraint. Because what you want to do is you want to bring in new people, practitioners. And every time, you have to balance it with some poor soul that now has to do some business law or insolvency law for people that might not want that at all, so that we have 50.1% taught in that. I think that is one of the inner conflicts when you do this type of training that not necessarily has to come from the faculty because I can tell you that the faculty has absolutely no need for more teaching in that program. Except for those who are interested, of course, but especially, for example, the criminal law people are not very much into all the business law things. There is that additional role that outside regulators can play depending on how it goes. It could be the bar association; it could be other people who have to certify the program.

ANDREAS KELLERHALS: I know that problem so well. It is embarrassing. When we introduce a new program, we have to submit it to a board of continuing education of the university. And every time we submit a program and the list of the teachers, they come back and say: Hey, why do you not have more professors from our university? And I say: Because we cannot use them. First, they do not want to teach and secondly, they do not have the skills. We need special-

ized practitioners, otherwise you end up teaching an introduction into business law course or so. But if you want to really dig deep into the topics and into the details, you need practitioners. And that is a problem every time always say something. 50% is a terrible rule. I mean, we sometimes have just one, right? But if you had to have 50%, you can forget about the topic. You will not be deep into the topic itself.

Bruno Mascello: We have the 50% rule as well and maybe we are fortunate. More or less, we must use it as well. It is called HSG DNA, we need to have some 50% as well. But to be honest in that course we are doing now for the lawyers where we teach management topics, HSG, as a business school, hopefully has good lecturers in this regard. We have people who have been teaching lawyers for many years and our quality control is rigorous. For each and every lecturer, the participants certify. If the first time you fail on a level, you get a coaching, and we try to see if you fix it. Otherwise, we do not care how many titles the person has, they will be replaced. Because at the end it is the market that decides who satisfies and who does not. You were lucky you got the waiver.

Michele DeStefano: Part of what we are talking about is a pipeline issue. Let us face it: Most of us did not get trained on how to teach. The professors in the room. They just threw us in there and we learned by trial and error. Some of us were innately good at it and some of us were innately bad. And it may vary based on the content and the size of the class. Some people are great with big, some are better with small classes. One wonders if training the trainers, something I talk about a lot, maybe we should be training the trainers. For example, Harvard paid for me to go get training in the Harvard case method. I had already been teaching the program a few years, but I loved it. It is rare that the professors go get trained and I think we should. Maybe that should be CLE for any professor if you want to stay a professor. Because that might be a solution to some of the regulatory restrictions or just faculty preferences, to be able to teach in their own program.

James Bellerjeau: Yes. And it is no surprise that there is also a significant gap for in-house lawyers and partners in law firms as well. No one teaches you how to manage a law firm. No one teaches you how to manage a legal team. And so, there are several gaps. That is good of you to point out that it also exists in the teaching, the professor context. Something to add to the list of potential CLE topics, I guess, or continuing education, I should say.

We shall continue with our summary and come to your presentation, BRUNO MASCELLO. It is also a personal example of how one can cross the line from not having a foot only in one world or another world. You bring experience from both the in-house perspective, private practice, and now many years teaching and managing. A professor is not a professor, in other words, in terms of the value that they might bring to their classes. But in terms of what you presented to us earlier today. My takeaways were: First, that we should recognize CLE happens in a larger context. It happens in the larger context of the market. What is happening in the economy and companies, the demographics of the people who are affected, that non-legal skills are intensely relevant. We have heard that a couple of times, but you made a strong case for it. And you also made the point that we need to consider updating traditional education. Maybe we need less of certain types of training and more of other types of useful skills that people can put to use and that we should understand continuing education as a lifelong enterprise. I would also say – just to correct the record – that you said that you have been providing continuing education at the University of St. Gallen since the 60s. Is that correct? They were the pioneers. Would you like to add anything to that summary, RICHARD NORMAN?

RICHARD NORMAN: No, I really valued your presentation. Thank you, BRUNO MASCELLO. I was interested in your statistic that for senior lawyers, only one third of what they communicate is legal advice. The rest has to do with soft skills, and it has to do with the relationship with your client or your managers and the way you manage that. That has a lot to do with your own personality and your own skill set. Which is not just hard law, but a soft skill set. So, I think in many ways, what you said was a great advertisement for the course we are running here for the CAS. Those are some of the very key areas that we are trying to address on this inhouse course.

JAMES BELLERJEAU: Which – I am sure – was not his intention.

BRUNO MASCELLO: It is a different approach. I know your program and we do it a little bit differently. But there is room for both of us, of course, and the market decides what kind of program they want to have. But just to add one sentence after your presentation. We should not forget one thing, that there is an overspill effect. If you do great in all these hard skills. Actually, I normally call them social skills now, because it is not soft skills, they are hard skills. If you do well in these social skills, it has an overspill effect because they think then you are a great lawyer. If you are less optimal in these kinds of skills, you can be a brilliant lawyer. Nobody will believe it. Keep in mind the power in these non-legal skills which can influence how you are perceived as a lawyer.

RICHARD NORMAN: I fully agree.

JAMES BELLERJEAU: When I teach the communication and writing skills, I title it: The Day You Became Smarter. Because people think you are smarter and a better lawyer when you are a good communicator. 100% agree with that. We can trick them.

DIRK HARTUNG, I am going to just say that – at least from my perspective – you made us all feel old. I mean that in a good way, because you opened our eyes to how much innovation is taking place in the area of law that we may or may not absolutely realize every day. I took note of your comment: Anything but law. Anything but substantive law. And you made a strong case for explaining how technology is impacting the practice of law already now. Your school is very unusual, not just in Germany, but it seems elsewhere as well. It was quite interesting to hear how you are training your students in understanding the impact of technology and being able to use it effectively once they graduate. You mentioned the relevance of technology on lawyers themselves, on law firms, on in-house practice, legal operations. I think I also took away the point that a great deal of legal innovation is happening, not necessarily from lawyers as such, but from the market. Market players are driving innovation. You talked about the impact of your own list that your school is publishing of legal service providers. It is a long list now, thousands of providers, that frankly is scary as well as interesting and exciting because they are not all going to succeed. What does that mean for the people who have started to work with one that disappears five years from now? Nonetheless, the content of making lawyers more future proof seems to be an understanding of technology at a high level, an understanding of change management from a strategic level and a governance level. And then lastly, understanding how you can fit digital and digitization topics into the legal framework. Quite a lot of interesting thoughts for us to chew on, I think.

RICHARD NORMAN: Yeah, I found it a real eye opener, DIRK HARTUNG. I do not think every law school is going to get anywhere close to what you are doing. I think you are unique at the moment, but you do set the standard for where they have to at least get part of the way. I think the big service you do for your students or anybody on those courses is that they give them a sort of basic ability to relate to a client like the one you mentioned from Microsoft. That MS Trusted Advisor. You get a fellow like that coming along saying: In order to be our lawyer, you need to understand these following things about Microsoft.

And if you have not had some of those building blocks or foundation stones, you lost. It is a great service you are doing to people who want to move into that technical world. Did you want to add anything in return?

DIRK HARTUNG: No, I will take all of that. Thank you so much. It is interesting to hear all the things I said that I now learned I actually said. They are very accurate. I have got some good quotes that I will take.

ANDREAS KELLERHALS: Maybe I am wrong, but I think you are in a position as a private law school that you can pick and choose those students you want to have, and you probably have more applications than students you accept. That is a completely different world from our university where in a way, everybody who has a matura can come and study law here. For the first six semesters, we, in a way, try to see who can continue and who not. There is an economic loss of all those who spend one or two years at law school and do not make the bachelor's degree. If you are in a position to make the decision at an earlier point and say: We decide who can enter the school. Once you are in, you are probably going to make it. It is in a way a smarter position, but it is not possible in Switzerland to change that. We have this mass university where you have 800 students in the first semester for a special lecture and in a way, it is a nightmare.

DIRK HARTUNG: We invest substantial resources into the selection process with a written and an oral part. A lot of things go on to make sure that we end up with nice human beings as well. The tricky bit, though, and that normally always triggers the question: 80% of them get an honors degree compared to 25% in the overall market, is that only because we preselect them? Preselection plays a role, no doubt. But there is a secondary challenge that people do not necessarily see. We select 240 out of roughly 700 to 750 people after our written exam and then 120 out of those total 700 to 750. We are thinking about expanding. Good news. I will get some of the wonderful treatment, maybe one day, of larger classes. But if you want to be able to select 120 excellent people, it has the downside that you have to attract 120 really good people, at least. It puts a pressure on the institution. A lot of what we do is to signal to the market that when you are someone that would have a good degree, that would be interested, that is willing to go an extra mile, maybe for technology, we have to make you apply first. And we have to do that much more than, say, our friends at the University of Hamburg. Because they are not under that pressure. Nobody says: What is their rate of honors and degrees? It is a blessing, no doubt about it. But it is also a curse. Because I know if I am thinking about the current head president of the Hamburg Bar Association, who has the benefit of

two children, one of which went to our school and one of which went to the public university. His daughter, I believe, got the better grade at the university compared to his son, which is 100% our fault, I take it. You will see that you have to justify that. And while that is tough, that is also motivating and can help you in internal discussions and say that we have to do better because we have to attract these people. Just as a remark, as a secondary challenge. The last thing you want young people who have applied for a private university in a public market to think is what you just said. The second part of our selection procedure roots that out. We want nerds, we want people who are not realizing the talent they got and interestingly enough, that often matches up with their results in the written exam. We are having the second round to have socially nice people. But the tough part of the job is actually the written one. Those 240 people are much more likeable than the 720 to begin with. Is there that image? Probably, in the market. Do we do anything to foster it? No, it is quite the opposite. We would never use the bad e-word that you did. Which is a privilege of institutions that kind of do not have to market it. But that has to do with the fact that it is, as you said, unique and quite extraordinary and that we do have a lot of funding from a source, the ZEIT Foundation that is irrationally disinterested in business success. Because they want to do good. That is literally what a good foundation gets you. It has to do with that fact that they care about societal impact, not so much money made or elite image or anything.

James Bellerjeau: All right, I shall continue then. Thank you for that discussion. Melissa Hardee, I think you provided a couple of things that were quite helpful. Besides the overview of how CLE has traditionally been performed in the UK. For me, it was a series of lurches, if I can and let me explain what I mean. They are not your lurches; they are the lurches that are happening in the market. You described them quite well. On the one hand, a very helpful reminder that everything we are discussing has a historical context. Whether it is short or long. The countries and the jurisdictions we are talking about, they have an existing practice, it is there for a reason. We are not going to create change without dealing with resistance to change. There is an existing framework we are already operating within that is quite important and you describe the complexity associated with the fact that there are a number of countries, three different jurisdictions, that each have a combination of barristers and solicitors, and each of them have their own regulator, and there is an uber regulator on top, leading to seven different bodies that are all affecting or somehow influencing the question of how CLE is provided.

The lurches I am referring to are, on the one hand, if the purpose of continuing professional development is to protect the public, enforce the rule of law, and ensure the competence of lawyers, how on earth do you explain the Legal Services Act and the liberalization of the provision of legal services? When anyone, with or without a degree, can open up shop and provide services? *Point 1* of the lurch. *Point 2* of the lurch was what first seemed like an admirable approach to CLE with mandatory requirements. In at least one of the jurisdictions, the UK and Wales I believe, the mandatory element has now been replaced with an individual responsibility to approach learning appropriately. I could not help but remark on what RICHARD NORMAN ended with. You are not going to get smarter lying in your bed thinking about it. But that seems to be exactly the approach of the UK regulator. Why do you not reflect, identify areas of improvement, make a plan, record what you have done. It could work wonderfully and perhaps the UK bar is consisting of real professionals who will take that responsibility to heart. But in any event, it seems to me that there was a series of interesting developments, some recent developments, even just last night, for which the experience of the UK market is going to serve as an experiment, an object lesson, I am not sure how to describe it. But it was an interesting overview that you provided for us of the current state of play. Your remarks were cut short, we did not have a discussion, so we are happy to extend that discussion now to people who may not have had a chance to provide a comment or ask you a question.

RICHARD NORMAN: Yes, and following up, thanks. MELISSA HARDEE, you are the expert in this area. You have written three books on this, and I do not know anybody in the UK who knows this area as well as you do. What is your personal recommendation for CLE in in the UK? It does not look satisfactory to me at the moment.

MELISSA HARDEE: I must be careful because the SRA uses me in relation to SQE (Solicitors Qualifying Examination) for foreign qualified lawyers. I think I understand the motivation. I think where it has come from is that an hour requirement only is a very crude tool to try and achieve what is ongoing competence. And I do not think it can be done in a single way. I think the SRA, for its own reasons, has gone too far into deregulation. As I said, I think the Scotland probably have the better solution. But the trouble is it is so complex, and I think complexity, you end up with a one size fits all or you are trying to carve out all the exceptions that might well cater for other things, like in most countries now. The legal profession practice is so wide, so diverse. We have talked about criminal lawyers and corporate lawyers. They are very different in what they do. I think that is a problem. My own solution? Well, I am not sure there

is one, but as I mentioned after your talk about what firms are doing in terms of internal training, the idea of having career paths for lawyers, competence frameworks so people can develop and underpinning that with training. If that is going on, you are achieving competence and continuing competence. As you rightly say, that is fine for the big firms, but more difficult for the smaller ones. But the trouble is we have such a diverse profession now and it is trying to find a solution. I think everyone thinks that there is one magic solution. It is a bit like an Abracadabra moment. We can say one thing and that is going to do it all. I do not think it can. I think the one thing that has come out of all the presentations today and the discussions is that it is not that simple, and we are talking about different things at different times, and I think there is behavioral change that is required, I think there is cultural change that is required. I think there is a need for impetus to get people to do the right things. I do not disagree with continuing competence and the lawyers having to take responsibility themselves. I am just not sure that that requirement without anything else is sufficient if what we are also looking for is protection of the public and the reputation of the profession and access to justice and protecting the rule of law. I just do not think you can do it all in one thing.

And that is why I showed some of the definitions that they have. It just shows you need to understand what it is you are trying to achieve first before you then try to find the solution. Whereas what has happened is everyone has jumped on the bandwagon of: CLE or CPD that is what we need to do as lawyers. I am married to a medic, a surgeon, who has to revalidate every five or six years. We have sort of gone: Okay, we need to do something to continue competence. But we have not stepped back and started at the beginning and said: Okay, what are we actually trying to do? What are we really trying to do and what is the best way of doing it? I think there has been a lot of jumping on the bandwagon. If I had my way and I ruled the world – which I do offer to do at different times – I would start again with a blank sheet of paper and a whole range of individuals in the room.

Richard Norman: Design thinking.

Melissa Hardee: Design thinking, yes, we should have a chat. But seriously, and work out what the objectives are, where you want to get to and then what the best way of doing it is. But also, something you said, and I think a number of people design thinking have said, it is very important to understand the client perspective. To understand the different perspectives of the people that are involved and affected by it. I think there is a lot of unintentional ignorance of those positions. The people that are required do the training, the people

that must pay for the training, the people that have to deliver it, the universities who may want to be involved. I think there is a lack of understanding all around. I think it would be getting stakeholders together and problem solving.

RICHARD NORMAN: Well, it is obviously a regulated profession, and it is going to stay that way, but the regulation could be limited to purely protecting the public, not necessarily to training.

MELISSA HARDEE: Well, in a way it has gone that way, because they do talk about protected bodies and groups and things like that. Whether there are particular responsibilities coming in, you could have that. As I say, it depends on what you are trying to achieve.

ANDREAS KELLERHALS: MELISSA HARDEE, I think the UK often is a kind of role model, ahead of time to the rest of Europe. We are looking there and say: Hey, what are they doing? It does not always work out terribly well, I think, with the liberalization of the railways and so on we were not persuaded by that. And similar thoughts come up when we look at the complete liberalization of the legal service market. That nowadays a law firm, as an incorporated can be bought by anybody and then be run as an investment. In a way it pushes this image of greedy lawyers because the only thing they do is make as much money as possible. Do you think that was a good development in the UK that this liberalization went that far? Something that in Germany, in Switzerland, I think also in the US would not be possible, right?

MELISSA HARDEE: Personally, no, I do not think it was. But it was driven by a feeling of need for competition in the market and the idea was that market forces would create a lot of opportunity and provide greater choice for people. I am not sure. I do not feel that having a complete liberalization where anyone can go out there and offer legal services without anything behind that is actually good for access to justice. Because if the advice that they get is deficient, you have actually got to make things worse. And I do not mean that in relation to any of the other professions that are covered as authorized, which cover license conveyances and chartered legal executives and notaries and all that sort of thing, I am not talking about them. But it is the ones that are not regulated by a professional regulator as we would know it or not regulated it at all. You just hang up a shingle. I am not sure that is achieving what the Legal Services Act was set out to achieve necessarily.

DIRK HARTUNG: Just to provide a different perspective. I find it incredibly exciting. I am also probably on the liberal side of regulating the legal profession. It is okay that it is not my country, on a personal level, but I want to see what hap-

pens because we have never tried the combination of a quasi-liberal legal market with today's technology tools. We have at various stages tried it in a time where people could not easily give feedback. We are credence goods. And that is what is going on, it is the problem that consumers cannot judge the quality of the legal advice. That is the core problem on all of it. We have seen it in other markets. Uber solves it very differently than taxi medallions do. I for one am excited to see what happens when we let those market forces roam freely. Because it is not like when there was less regulation everything was chaos. It is one huge experimental study that I find very interesting. If we look at alternative business structures a lot of what people thought would happen did not happen. But also, from both sides. The liberals thought now everyone will invest and then very little of that happened and you see how these markets actually develop in real life.

I am excited and I am excited about what I perceive as a complete lack of regulation of continuous education and qualification. That is interesting for sure. I want to see if there is not a market response where people do it anyway. Where people get a certain level of education, get a certain level of continuous education in order to avoid liability or other measures. I, for one, am very glad that the United Kingdom has gone that way.

Melissa Hardee: What is really interesting is when the continuing competence was introduced, when it was even mooted, the profession was against it. The preference was actually to keep some sort of hour requirement because of the need to encourage people to do it. And when they did it, a lot of the firms still require their solicitors to do a certain amount of CPD. You are right in that thing. The other thing I was going to say, to an extent in support of what you are saying, I have a real issue with the access to justice. I think anyone in society should be able to get good legal advice. And one of the good things that has come out of the Legal Services Act and things and also combined with the developments in IT, is that there is a lot more self-help available. And law firms are doing this. Where you do not have to pay expensive fees to lawyers to do basic stuff. They are making document templates available that you can then use yourself to produce your will or your basic contract or something like that. I think that is really good because I do not think there is enough of accessible legal advice.

I should say, 25 years ago, in the firm, I introduced computer aided drafting as a way of trying to make processes more efficient and everything. And there was incredible resistance. Lawyers did not want to do that because they felt

it took away their personality and they could not use their favorite document in the bottom drawer. But these things have been around. Now they are being utilized properly and I think actually that is a really good thing.

JAMES BELLERJEAU: Okay, I will continue so that we can wrap up within a little bit of our expected timeframe. From JUDGE RAKOFF, we learned two very interesting things. One, US federal judges do not have a continuing education requirement. And two, they hold their conferences in exotic locations, which creates a significant demand for them. I think we should take lessons from this. I suppose in addition, he did tell us that if you look at the purposes of CLE, as the United States approaches it, for example, that lawyers learn about substantive areas of law, they learn about ethics, they help enhance the public image of lawyers and increase the general competence of lawyers, the result is decidedly mixed. In fact, the only thing that seems to be working is that lawyers' skills do improve, but he hypothesized that that would happen anyway because there is a market demand for it. So not a strong endorsement for the merits or the performance of mandatory CLE. He did mention a suggestion that tailors a little bit what you were just describing or suggesting, MELISSA HARDEE, which was access to justice. He pointed out that in certain arenas, housing court and family court, a significant majority of individuals who go to those venues are unrepresented and they have poor outcomes. He pointed us to a suggestion that is in the market, which is using some of the funds that we spend on CLE to create something called a legal technician, a person who is trained on a much quicker basis, but in a narrower area to then provide support for people in those settings. We had a discussion about that, but in principle, those were the main points that I took away from JUDGE RAKOFF.

I will briefly summarize a few comments from MICHELE DESTEFANO's remarks. You continued on the discussion of CLE in the US. But particularly from the perspective of legal innovation. You described what are the traditional skills that lawyers maybe thought that they needed to have and put them below the bottom of the pyramid of skills that lawyers need to think about obtaining to become truly effective client-centric service provider and described the three elements of the pyramid that you showed us. Then you discussed an approach centered around design thinking that is a method – potentially – of delivering a way for people to learn those new skills. You explained why that is not obvious or easy, because lawyers do not have what you described as an innovator's DNA but gave a number of examples of how design thinking can be taught to legal professionals and results in their becoming much more client centric.

We have talked about this before, looking at the needs of the customers, the people who are consuming services, that serves those needs in a considerably better way.

It was, certainly compared to what we have heard in the other contexts, truly an innovative approach to thinking about continuing education or innovative education for lawyers.

RICHARD NORMAN: Thank you very much, MICHELE DESTEFANO. Would you add a little more about the design thinking course in Miami? Do you have a course called that or is it just a separate initiative of your own?

MICHELE DESTEFANO: I teach two different design thinking courses. Through Law Without Walls, I lead teams. Right now, we do a three-day sprint, and it is being hosted at the University of St. Gallen, courtesy of BRUNO MASCELLO. There I will use the method that I have developed over the course of three days. That is for legal professionals, business professionals, law, and business school students. Each team is sponsored by a corporate legal department or a law firm or law company and given a business of law challenge or social justice challenge. Over three days they learn design thinking methods like client interviews, understanding different perspectives of stakeholders, eventually ideation as well and how to present and communicate on a stage with other people. The other course that I teach is at the University of Miami, and it is right now housed in the engineering school, and it is called Design Challenges. It was a form of a full semester course where I had students – we call them freshmen so they are just entering college and are around 18 years old – who we selected, much like DIRK HARTUNG was talking about, we went and cherry picked 30 students who showed markers of having a certain ability in terms of creativity and leadership and put them in this new major called Innovation, Technology and Design. I wish it had existed when I went to college. Because what we did, there were twelve of us fellows from around the university that developed it with a white sheet of paper The whole major pulls from the communication schools, engineering, business, and liberal arts. Instead of a four-year program, it is three years. Over the course of that time period, they are going to go through seven design challenges sponsored by corporations, much after the Law Without Walls program. I taught the course for the first time in the fall. We do not even know what we are talking about with this new digital data. It will be very interesting to hear what we all think in ten years when this next group are lawyers. That is one thing I would say.

JAMES BELLERJEAU: I did also talk to one of the participants during the break about exactly that point. The generation of lawyers coming up right now, they are going to shape this discussion quicker than we think and in ways that we cannot anticipate. That is what disruption is all about. But we are probably creating the seeds of our own undoing here with being as innovative as we are. But it is something we should try to steer if we cannot stop it.

RICHARD NORMAN, you provided us a nice way to summarize and end the day by giving us the perspective of both the person delivering legal services and the inhouse perspective to the person consuming services from outside counsel to the person then teaching generations of students. A broad perspective of how one should think about your main question, which is: What is it that makes a good lawyer? You spent a short amount of time on, yes obviously, substantive law. But that was not the purpose of your discussion? The purpose of your discussion was to talk about all of the other things that one needs to learn to become an effective lawyer. And they are what you call soft skills. What we can talk about in terms of other things, but in principle they are communication, business acumen, emotional intelligence, digital literacy. You explained a little bit what you meant by all those things and why it is helpful and what are some alternatives for obtaining such training. You ended with a point that has not gotten a lot of airtime today, I will spend a little bit of time on it tomorrow. But I think it is a good question to raise to the room, which is: Why should your employer support your training? We talked about the individual seeing the value in it and pursuing it because they want to out of different reasons. And why should your employer support the training? That is a question that, of course, depending upon what it costs and who pays for it, is answered in different ways. But it is one that any provider of CLE does need to keep top of mind. Are they providing, if you are market oriented, a value proposition that customers can easily identify and if not, why? But you did raise that point. I think it is a good point and we have not answered it yet.

RICHARD NORMAN: I think from an inhouse legal department point of view, it is one way to retain talent. Because a lot of these guys say: What is my next step? How do I become general counsel? And I sometimes had to say: You got to move on to move up, because I am not going anywhere. Then you say, well, but you can learn laterally. You can expand your practice area and I will support this training program if you want to go on that. If the person is good and you want to retain them, that is one thing the employer can do.

Melissa Hardee: Sorry, I was just going to give a very sad answer to the question. In the UK, one of the reasons that firms do that and see it as worthwhile doing is because it lowers their premium for their professional indemnity insurance. Increasingly, the insurers are being quite specific about what they expect to see. I am afraid there is a very practical reason for that as well.

Richard Norman: Yes, and I do not know if there is any leniency issue in competition law. If you have done some training and you have told everybody some of the rules around competition law, it does help. Whereas if you have told everybody to ignore it, it does not. So, there are some good reasons for the employer as well.

Dirk Hartung: Quick follow up. That is incredibly good news, because if I know one thing about the insurance industry is that they are not doing anything if they do not have the data to back it up. We have heard several times that all this training we are providing means nothing. But if it really meant nothing, then no insurer in the world would lower the premium. There must be effects, even though we might not know the size. Probably someone does have data that it improves or lowers the risk if you have some amount of training.

James Bellerjeau: It could also simply reflect that insurance companies have inhouse counsel too. It is a good point. I like that. It is an indication that there is value to this service.

Richard Norman: The only other thing I would add is that some lawyers get by without soft skills because they are such experts in their area. When I was a young solicitor, I went in to see one of the top barristers on a specific point. He did not bother to shake my hand or to welcome me. He looked out of the window and just gave me some advice and then charged me for it. And I think if the person is enough of a subject matter expert in an area that people are prepared to pay for, they can probably dispense with some of those. But most lawyers do not have that luxury.

II. Expectation of the Legal Practice

1. The Role of Law Schools

THOMAS GÄCHTER

I. The Role of Law Schools in Legal Education in General

Trivially speaking, law schools or law faculties are simply educational institutions where the law is taught, and future professionals are trained in the law. And yet, this simple definition raises more questions than it answers:

- What is this imparted law comprised of? Does it only comprise the laws in force or also their underlying principles?
- Is education understood as working *on* the legal subject matter, i.e., providing insights into the law, or as working *with* the legal subject matter, i.e., application to concrete cases? Or is it the two of them combined?
- And who are the professionals this education is aimed at? Is it only lawyers and judges, or does it also include other professions that deal with law?

The role of law faculties and the type of education they provide differ depending on the answers to these questions.

At least in the case of higher education institutions that are financed and organised by the state, some legal references can be found regarding the fundamental role of law faculties. Mostly, however, these statements are so generic that they cannot truly be grasped without an actual look at the study programmes and the requirements for a successful degree.

A few months ago, the Faculty of Law at the University of Zurich adopted a set of principles that defines its mission, its vision for 2030 and its core values.[1] I will refer to these principles from October 2022 over and over in the following.

According to them, the general mission of the university's Faculty of Law is as follows:

[1] Faculty of Law of the University of Zurich, Kernelemente der Gesamtstrategie RWF 2030, 5 October 2022.

> «The Faculty of Law performs jurisprudential work in research and teaching in the interest of its particular target groups as well as the general public. In doing so, it also provides corresponding services. »[2]

This does not make us much wiser about the questions raised in the introduction. It is, however, clear that the faculty not only serves the education of future professionals, but also researches and teaches in the interest of the general public.

The general mandate is specified by various further principles. The two most relevant principles are reproduced here:

> «The Faculty of Law increases and deepens scientific knowledge in the entire field of law, promoting both basic and applied research. It uses the findings from its independent research as a basis for education, continuing education and services. »[3]

> «The Faculty of Law enables persons in professional life to keep their legal professional qualifications up to date or to expand them within the framework of continuing education.»[4]

Two characteristics of modern law faculties are made particularly clear here:

- Their activities include both scientific deepening and practical application.
- The independent research of a faculty forms the indispensable basis for all of this.

Thus, knowledge and skills are not only imparted, but also increased and deepened with own research achievements, so that they may subsequently be applied in teaching, continuing education, and services.

Recently, the Faculty of Law has also been paying special attention to continuing legal education. Not least this circumstance has led to the creation of a professorship that contains continuing legal education in its denomination – i.e., the professorship of our esteemed colleague and conference leader Andreas Kellerhals –, but also to the emphasis on continuing education: People who are already in professional life should be able to keep their legal qualifications up to date or expand them within the framework of continuing education.

2 Kernelemente (Fn. 1), A1.

3 Kernelemente (Fn. 1), A1, point 1.

4 Kernelemente (Fn. 1), A1. point 3.

This is precisely the question at hand: What role should and can law faculties play in continuing legal education? On what basis and with what intention should they take action in this field and what does this mean for law faculties?

II. Answers of the Law Faculties to Questions of the Time

There may have been a time when the legal principles that were in force at the time of one's study were still essentially in force at the end of one's professional career. However, it seems to me that that time is more of a fiction at the basis of our traditional education model than an empirical-historical fact.

Societal conditions have developed at an ever-increasing pace over the past 200 years. Each generation has experienced numerous upheavals and changes in its legal professional life.

It is certainly true that these upheavals and changes are taking place at a much faster pace than they did a few decades ago. The fact that in many cases the basic study of law is sufficient until the end of one's professional career is not owed to the permanence of the knowledge imparted, but to the *relative persistence of the skills in reasoning, analysis and methodology* that are imparted in law studies. Lawyers are thus continually exposed to new questions, even if they always work in the same legal field, but they can master them with the tools acquired in law studies.

More recently, however, new questions have arisen at a rapid pace, where the competence once acquired during study reaches its limits: How, for example, should cryptocurrencies and blockchains be recorded, what does artificial intelligence mean for intellectual property law, what legal consequences will climate change have, from migration to claims for damages?

These questions can only be solved in practice if the corresponding solutions are conceived, linked to existing principles, and critically examined somewhere. In European structures, all of this takes place in law faculties. Research institutions such as the Max Planck Institutes in Germany may also be capable of this. However, even private think tanks, of which there are only a limited number in Europe, are less suitable for comprehensive reflection, especially since they are often geared to specific interests and rarely encompass the spectrum of an entire faculty or even an entire university.

The principles of the Faculty of Law of the University of Zurich, which have already been mentioned several times, summarise this essential task as follows:

> «The Faculty of Law contributes to the shaping of the future by creating foundations for the reflection of societal developments as a place of free and public science. With their work in research, teaching and service, its members visibly contribute to the fulfilment of the goals and tasks of the University of Zurich as well as to the solution of societal challenges. »[5]

Here, too, it is essential to understand law faculties not only as a place of education, but above all as a place of scientific reflection, which then flows into education and continuing education. The principles of the Faculty of Law at the University of Zurich are also expressed as follows:

> «Members of the Faculty of Law continuously deal with the current needs of business, politics and society, recognise developments as well as changing framework conditions at an early stage, are able to shape emerging legal topics and questions in an anticipatory and substantial way as well as to help shape public discourse, and thus make a significant contribution to societal development. »[6]

This claim, however, also makes clear that the generation of knowledge by law faculties is not a one-way street. It is rather the current needs of economy, politics and society that must be listened to. In turn, academics can only accomplish this if they are in constant exchange with practice and thus remain in touch with current developments.

If a law faculty, i.e., its members, generates the corresponding current knowledge, it is crucial to disseminate this knowledge and make it available to practice. So far, this has been done in different ways:

- As part of education, Bachelor's and master's students are provided with and trained in the knowledge that is, at the time of their studies, current.
- The various specialist publications by university members, namely monographs, journal articles, handbook contributions and commentaries, continue to be of central importance for the dissemination of new legal knowledge. With the help of these constantly updated sources, lawyers have always kept their reasoning and knowledge up to date.
- Also of importance are the textbooks, which are, in our culture, used far beyond their actual use in teaching, namely in advocacy, in courts or in administration.
- Continuing education conferences, where the latest developments are shared with professionals from the practical field, are also classic and

5 Kernelemente (Fn. 1), V1.

6 Kernelemente (Fn. 1), V1, point 1.

have been prevalent for decades. This type of knowledge transfer is now well established and there are only few topics on which various university and private providers do not offer conferences.

– Finally, and this shall be the focus in the following, there is a growing and increasingly important range of systematic and in-depth programmes in continuing education that result in a certificate or a formal degree such as CAS, DAS or MAS resp. LL.M. Systematic education courses of this kind, which aim to achieve a certain depth and quality, depend on cooperation with universities or university members and are often offered directly by universities.

It becomes apparent that there is a «delta», namely between the current specialist knowledge developed and prepared at the law faculties and the level of education and information in practice. It is true that the committed practitioners will regularly keep themselves up to date with the sources of information and selectively deepen specific questions. The gap between what was acquired during study and what is currently valid is constantly growing.

III. Education as a Continuous Process

Here we have arrived at the center of the problem: The acceleration of societal, economic and technical developments calls for greater efforts on the part of lawyers to always remain sufficiently up to date in order to fulfil their professional tasks lege artis.

Another factor must also be considered at this point: Despite the decreasing half-life of legal knowledge, professional careers are becoming longer and longer. On the one hand, people tend to complete their studies somewhat earlier than before, as the Matura age has fallen; on the other hand, the period of activity in old age will have to change, as life expectancy has increased, and the health condition of older professionals has improved considerably. An extension of the period of activity beyond the age of 65 is certainly to be expected, especially in academic professions – I can tell you this with great certainty as a social security lawyer. Although the retirement age will not rise today or tomorrow, sooner or later Switzerland will follow the trend in our northern neighboring countries and raise the period of activity to 67 years and more.

If professional life becomes longer and longer and changes occur more and more quickly, the rucksack once put together during study will only be sufficient in professional life in cases that do not focus on actual specialist knowledge and instead demand other skills. Core legal professions, however, will always require continuing education.

In view of the perspectives just described, a master's degree obtained at around the age of 25 ought to suffice for around 42 years! If you look back 42 years from today and recall that in 1981, mobile phones were not yet in use, that almost no one owned a computer and that the internet had been invented but could only be used by a few nerds, you realise just how long of a time that is. Or, regarding Switzerland specifically: The former marriage law was still in force at that time, the husband was still the head of the family and had to authorise the gainful employment of the wife, the Federal Constitution was far from being revised and the codes of procedure were still cantonal for almost another 25 years. In short, 42 years is more than an eternity in legal terms. Even the best lawyers would, with knowledge solely acquired 42 years ago, no longer be taken seriously.

Thus, if a lawyer works in a core legal profession for 42 years, there will probably have to be several periods of continuing education during this long professional life, in which the concrete specialised knowledge is brought up to date again with the latest research and development. A tried and tested means of doing this are the systematic continuing education programmes already mentioned, which can impart up-to-date knowledge in a certain field or on certain questions in a well-founded manner. It is precisely for this reason that the Faculty of Law at the University of Zurich has set itself the goal of supporting continuing education as a task throughout the entire faculty and of meeting these requirements through a continuous and broad expansion of continuing education programmes.

A look at the latest figures, however, shows that we are far from the desirable numbers and effects in this regard:

For example, in 2021, 308 people at the Faculty of Law of the University of Zurich earned a Bachelor of Law, 339 people a Master of Law and 50 people a PhD. In contrast, at the level of continuing education, only 11 people earned an MAS or an LL.M. in 2021 and 106 people earned a CAS. These figures are currently rising steadily. Measured against the almost 700 degrees, however, the total of just under 120 continuing education degrees is far too few. To credi-

bly anchor systematic continuing education in professional life, the number of continuing education degrees would have to significantly approach the number of regular degrees.

The realisation that a whole professional life cannot be mastered with the knowledge once acquired at university has meanwhile also dawned on practice. In Swiss advocacy, for example, education to become a specialist lawyer has gained a foothold. In various fields, experienced practitioners who have to prove themselves as such can undergo a specialised continuing education programme, which is roughly equivalent to a CAS in scope. The title of specialist lawyer is then acquired with the final examination. In order to retain this title, specialist lawyers, much like specialist doctors, must attend a certain number of courses each year. With regard to the professional level and thus also to the quality of the professional practice, this is in itself a very welcome development.

It is regrettable, however, that the corresponding continuing education programmes, which were originally rightly located at universities, i.e., provided by the universities within the framework of agreements with the bar association, have increasingly detached themselves from the universities and law faculties. Even though profane monetary reasons may be the real cause here, this detachment of these specialised courses from the university context equates to a scientific devaluation. Of course, many members of universities lecture in these courses. This alone, however, cannot compensate for the lack of integration into the university quality assurance systems.

Systematic continuing education offered by law faculties can and should be more than mere updates of knowledge though. In the context of increasingly long employment biographies, they also offer experienced practitioners the opportunity to expand their knowledge into new fields or to switch to completely new fields. They also enable systematic re-entry after career breaks or entry into the Swiss labour market for lawyers with foreign degrees. For these target groups, there are still rather few offers, which is of course very regrettable.

With respect to lifelong, scientifically based learning, it would be desirable for all professionals to acquire at least one, preferably two to three systematic continuing education degrees in their lifetime to keep up with the times. The law faculties are called upon to create an appropriate offer.

Now, I would like to talk about another function of continuing education by law faculties that should not be neglected: Continuing education, as already indicated, is not a one-way street. When experienced professionals return to the university, they do not do so as simple students. Rather, they bring with them a wealth of experience and numerous questions that university theory might not even encounter otherwise. Beyond that, they also come with a genuine professional interest, for they know from years of experience that specialist knowledge is the capital of any professional activity. In contrast to many young students who are not yet able to assess what exactly they are learning for what purpose, the thirst for knowledge among experienced students is much more pronounced and specific. This makes continuing education both attractive and challenging as a field of activity for lecturers at law faculties.

Experience shows that the intensive interaction in continuing education courses results in new contacts between students and lecturers, but also between the students themselves. These networks, which are established in the context of courses, often last for many years and are highly valued by the participants.

IV. Conclusion: Law Schools Between Theory and Practice

If one now attempts to draw a conclusion as to what role law faculties play in continuing legal education, it can be summed up that this role is central, but not yet as prominent and visible as it should be in view of the great need for continuing education.

University teaching is only gradually discovering the potential of continuing education. Above all, lecturers only become aware with their own experience that teaching in continuing education courses provides numerous inspirations and insights that are difficult to gain otherwise.

For a continuing education of high quality that ultimately also helps the professionals who make use of it, the foundation of the knowledge imparted is paramount. Systematic continuing education that leads to certified degrees is more than just a list of facts and figures. It only promises added value if it is research-based like the rest of university teaching.

However, according to the understanding of the Zurich Law Faculty, which I fully share in this regard, the basis of all scientific knowledge transfer is the competence to independently generate knowledge and to connect this knowledge in accordance with scientific standards. Without this ability, it seems to me that sustainable continuing legal education cannot be guaranteed.

In the interest of continuing education, law faculties should therefore strive to provide a sufficient and well-founded range of courses for practitioners before institutions without a corresponding research background and therefore only capable of reproducing knowledge and not generating it. The Humboldtian topos of the unity of research and teaching actually applies almost more strongly in the field of continuing education than in education, because continuing education must – in order to stay up to date – inevitably take in and process the most current developments, which is only possible in a meaningful way on the basis of scientific reflection.

Continuing legal education offered by law faculties is therefore theory-based, research-based and practice-oriented.

It is only with a high theoretical standard and well-founded research performance that law faculties can competently reflect and further develop the questions that practice presents and needs.

2. The View of the Zurich Bar Association

Lukas Wyss

The Zurich Bar Association (ZBA) is the professional organization of the independent and self-employed attorneys in the Canton of Zurich. We are a section of the Swiss Bar Association, which is the umbrella association for all the cantonal sections and associations. We have more than 3600 active members and about 1500 passive members. Passive members are still friends of the Zurich Bar Association that want to stay connected but are no longer practicing as independent lawyers. About 95% of independent lawyers in the canton are members of the Zurich Bar, though it is not mandatory to be a member. But we are quite glad and happy that we have such a reach across the Canton of Zurich. As already mentioned, we are the largest section of the Swiss Bar Association. We represent about 30% of the lawyers across Switzerland. Last but not least, we are a founding member of the Europa Institut and have had quite a good cooperation on various topics ever since, including CLE. When I put together this presentation, I was also surfing around a bit on our website just to see how we describe ourselves., I discovered that the promotion of continuing education figures quite prominently on our website. I was really happy about that.

The ZBA offers a number of services to the public. We have so-called "podiums", where speakers talk about new developments. We had one in April on inheritance law, which entered into force on 1 January. We have a pro bono legal information service which is called *Unentgeltliche Rechtsauskunft*. There, the public can seek advice from one of our members. They get a 15-minute session of legal advice and get input on possible next steps and options, etc. The ZBA has four locations in Zurich and about 60 to 80 appointments a week. So, that really works well. The ZBA has an office that is open and available during regular business hours. The office receives about five to ten telephone calls per day where members and other people seek advice. The ZBA is involved in a service called the "standby service criminal defense". It is a service where at least five criminal lawyers are available 24/7. If you are detained by the police and you need criminal defense, you may call that service line and get automatically connected. This service is also used by prosecutors because it ensures a random selection process for defense lawyers, which is quite important, obviously. A similar association exists for administrative detention. The

ZBA maintains the Commission on Legal Fees. If case a client believes that the invoice received from the lawyer is highly excessive, there is the possibility to approach that commission. We have a Committee on Ethical Rules. Again, that is relevant for CLE. If you are of the view that your lawyer did not adhere to the professional rules such as conflict of interest, lawyer secrecy, etc., but also if you think that the advice you are getting has not been diligently rendered, that is the place to go. The ZPA runs a platform where you can find your lawyer.

For its members, the ZPA offers quite a large number of services. That is just a selection. We host at job fair, where about 20 to 30 law firms attend and can interview candidates. We have a mediation service, though it is actually mandatory to approach the association if lawyers have a dispute among themselves. We obviously do a lot of lobbying, also on a political level. "Sanctions" was definitely a highlight topic in the last twelve months, obviously. But then, CLE is definitely one of the ZBA's most relevant pillars.

When it comes to CLE, the ZBA has two platforms. One platform is the expert groups. We have 21 expert groups, for example on employment law, M&A, investigation, compliance, litigation, etc. Any member of the ZBA can subscribe to become a member of such an expert group. Expert groups have between 80 to 100 members. The expert groups are headed or co-headed by an expert in the relevant area of law. This works quite well. It is perceived as relatively attractive to head such an expert group. The expert groups are relatively flexible. Some expert groups issue a program in January that covers the entire year with, for example, six sessions. They regularly distribute newsletters on developments, court cases, etc. Obviously. some expert groups are a bit slower, but that is to be expected. We believe – and that goes a bit into the direction of what Thomas Gächter mentioned – the education and the discussions and the workshops and the presentations in the expert groups are relatively practical in that they are presentations held by practitioners. Of course, there is always an academic leg, in particular if there is a new inheritance law or a new piece of legislation in financial market regulation. Then it also has an academic twist. But it is still an education that is given by practitioners, by our members. The expert groups are well recognized, in particular for smaller law firms who obviously have more difficulty to have discussions to push each other forward in their daily life. It is one of the most important pillars that we have as a bar association.

In addition, we host events on more organizational topics. Questions like: How to run a law firm? What are the pitfalls? Where must Ibe careful? For example, the revised Swiss Data Protection Act enter into force on 1 September. If

you are a criminal lawyer, it might be fair to say that you do not really know what you have to do when it comes to data protection. We host a webinar on data protection which is relevant for the law firm itself. Last year we hosted a seminar on cybersecurity. We have events on legal tech, but then also events on professional rules. I would say this is the part that goes more into the organizational direction. Then, the ZBA has a number of cooperations. Some of it is relatively formal, like the course that is held every other year, Practical Basics for Lawyers. It is structured in ten modules of half a day each, in cooperation with the Europa Institut. The ZBA is mainly in charge of identifying speakers, but the whole event is then well organized by the Europa Institut. Then there are a bunch of more informal cooperations. We know that we have a lot of members who are speakers or professors in parallel. I guess this is exactly the exchange that is relevant between the more academic side that is possibly a bit more coming from the university, etc., and the more practical side, which is something that we can definitely render.

Let us speak about the Swiss regulatory framework for lawyers and how this is relevant for CLE. For lawyers in Switzerland, the most important piece of legislation is the Swiss Lawyers Act. It has been enacted about 20 years ago, and you will not be surprised to hear that before that time, each canton had its own Lawyers Act. There are still cantonal Lawyers Acts, but such cantonal acts may of course not be in contradiction of the Federal Lawyers Act. The same professional rules apply across Switzerland, but lawyers also have free movement. Back in the days, if you were admitted in one canton, it was not quite clear whether you could practice in other cantons. Compliance with the Swiss Federal Lawyers Act is subject to supervision by state authorities, which in Zurich are connected to the *Obergericht*, *Aufsichtskommission der Rechtsanwälte*, but it is also supervised by our Committee on Ethical Rules.

The Swiss Federal Lawyers Act does not impose an explicit duty for CLE. There are no specific provision saying: You must do it. But there is a general duty in art. 12a, which requires lawyers to render their legal services diligently and faithfully. As lawyers, you may ask yourself what this means and you start reading books, commentaries and also some court rulings. And fairly quickly you will start realizing that generally the requirement to diligently render your services also requires you to do CLE.

Another set of rules are the Swiss Rules on Professional Standards, which are self-regulatory rules enacted by the Swiss Bar Association: *Die Schweizerischen Standesregeln*. Compliance is subject to supervision on a cantonal level by the committees. Again, there is currently no explicit duty for ongoing

legal education. Again, you have to render your legal services diligently, so there is the same connection to legal education. However, the current Swiss rules on professional standards are under revision for various reasons. Two sets of drafts have already been circulated. Interestingly enough, the new draft contains a rule that requires CLE. To my knowledge, the exact meaning of that rule has not really been discussed, in the sense that: Is it just something that describes the way you have to render your services? Or is this a duty, compliance of which will be subject to specific monitoring, and lawyers would risk ending up in front of our Committee of Ethical Rules if you do not do CLE? I doubt that this was really the idea. Rather, I believe that this rule was meant to explain in more detail, what it means to act diligently as a lawyer. But we will see.

When it comes to CLE – and THOMAS GÄCHTER has mentioned it already – we should speak about the title *Certified Specialist* SBA *(Swiss Bar Association)*. The *Certified Specialist* SBA is a program that was set up by the Swiss Bar Association. It is an educational process and upon successful passing of an exam, you are being awarded a title Certified Specialist in employment law, criminal law, etc. The rules of the Swiss Bar Association on the *Certified Specialist* SBA contain mandatory CLE. Accordingly, once the title *Certified Specialist* SBA has been obtained, candidates must undertake further educational trainings such as attending seminars. Those lawyers have to earn a certain number of credits over time and report it to the SBA. Failure to do so results in the revocation of the title. So, this is one example of a clearly mandatory element of CLE.

The previously mentioned Standby Service Criminal Defense is formed as an association. Lawyers may apply to be put on the list of criminal defense lawyers and the association assures that at least five lawyers are on standby around the clock. It is attractive to be on the list. It is an easy acquisition tool for criminal lawyers. According to their statutes, lawyers can only be put on that list, in case they can proof to be specialist in criminal law. In addition, the association requires lawyers that are on the list to do CLE and report it to the association. We have a general framework that actually ignores the topic, and then we have an association that started thinking of: Who do we want to have on the list? How do we ensure quality? We as an association cannot set up a service where prosecutors can call and then get a lawyer that actually does not know much about criminal law.

My last point and possibly the most important point is: What is the position of the Zurich Bar Association? Obviously, CLE is important. We have heard how quickly everything is moving. How developments accelerate through new

technologies, through a movement of society, etc. Therefore, it is obviously very important that there are formats and programs and educational tools for CLE. We, as the ZBA, provide such formats through our expert groups, which is a contribution to that whole concept. But our main point as a bar association remains: CLE is very individual. Some colleagues, and here I do not fully agree with THOMAS GÄCHTER –really do like reading. He said: They do not like reading, and that interaction is required for an efficient continuing education. I believe there are still a couple of colleagues that like reading. As an example, look at the revision of the Swiss corporate law. If you followed the law-making process and you kept yourself in the loop throughout the last two years, starting with the first draft of the act, followed by the consultation procedure and the first feedback that from the legal market, etc., I believe that is a perfect CLE. Obviously, there were also workshops that you could attend, etc. But we believe it is very individual because it is your personal choice how you want to do it. Second: We as the ZBA believe that CLE very much depends on the area of law in which you are practicing. Take inheritance law, for example. Even though it has just been revised, there was relatively little development over the past decades. The total opposite is the financial market regulation, where you essentially have to keep up on a weekly basis, on a monthly basis, because of new technology, because of new need to develop regulation further because you have – like cryptocurrency –new technology that you have to think about how to tackle. It very much depends on the area of law you are practicing in.

We believe that a direct duty for CLE may be justified in some circumstances. Take the example of standby service criminal defense. I guess there, if you are a prosecutor and you detain a person and according to the Swiss Criminal Procedural Code, you realize that they must have a legal defense, you start thinking of: How do I make my selection? Therefore, I believe that this is an example, where a strict requirement for CLE makes sense. But it remains challenging to come up with a general framework on mandatory CLE. Because, as I have explained, there are many areas of law so there is no single rule that fits all.

The last question is how to monitor CLE. Are we certain that mandatory workshops or the attendance of certain educational programs are an added value? Just look at the seminars at the Europa Institut. It is a shame, but about 50% of the people in the room are on their smartphones while one of their colleagues is holding a presentation. This is just the reality. If you think that this is the solution, I would – and that is also the position of the Zurich Bar – very much doubt. We believe that the supervision on a case-by-case basis, by looking at the question whether the legal services were rendered diligently, is admittedly

an ex-post control and not an ex-ante concept. But at the end of the day, possibly the only relevant point. I am open to discussion and happy to take questions. Thank you very much.

3. Continuing Legal Education - Mandatory or Optional?

Stephan Göcken

Ladies and gentlemen,

We certainly agree that continuing education is necessary and required in all professions. Practising a profession without further training means standing still, remaining at the level of what has been learned up to a certain point in time. Stagnation is the enemy of moving forward. In a situation of supply and demand, a standstill leads to a loss of knowledge. It can also cause damage, namely when, due to a lack of further training, the service that is to be provided no longer corresponds to the "state of the art". It disregards knowledge that is indispensable for the provision of the service. Errors occur; those who order a particular service – in our case the client – are put in harm's way. Consequently, the client is no longer satisfied, and the provider will no longer be asked to provide services. In free competition, the provider loses market share and may even disappear from the market altogether because he does not receive any new orders.

In principle, the market regulates itself. However, in a state governed by the rule of law, this principle applies only to a limited extent. A constitutional state is governed by rules. Lawyers in Germany, as organs of the administration of justice, are subject to particular rules. Professional freedom is restricted by professional law. However, this does not contradict the principles of the rule of law, free and democratic society. On the contrary: the legal profession is the guarantor of citizen participation in the law. The legal profession's freedom is one of the fundamental pillars of any state governed by the rule of law. It is the lawyer's role to implement the rule of law. This is why lawyers are fundamentally different from other professions, which are of course also important for our society. However, even the so-called free market is not a free, unleashed, self-regulating market. It is subject to rules and restrictions that are supposed to control market behaviour. In a state governed by the rule of law, the professional law of lawyers has the task of steering the behaviour of lawyers.

Yesterday, Dirk Hartung gave you an idea of the basic concept underlying the obligation of continuing legal education in his lecture "Legal Education in Germany – Digitalisation". Let me briefly recall the main aspects:

- The duty of continuing education is one of the lawyer's basic duties. It is explicitly referred to as a 'basic duty' in the title of Section 43a of the Federal Lawyers' Act – in German: Bundesrechtsanwaltsordnung, in short: BRAO. This basic duty is then further developed in paragraph 6.
- It states: "A lawyer is obliged to engage in continuing professional development".
- The legislator's catalogue of duties does not provide for further specification of this statutory mandate.
- The so-called Lawyers' Parliament – or Satzungsversammlung, in German – is not authorised to flesh out this basic duty. Section 59b BRAO does not provide an authorisation in this regard.
- Conclusion: Lawyers do have a professional duty to undergo further training. However, no further details are given. Neither does the law provide for special regulations on monitoring the duty. Breaches can therefore not be proven. It is not possible to impose a sanction under professional law.

In short: The duty is ineffective because it is only an appeal.

The BRAK positioned itself for the first time on the regulation of a verifiable mandatory continuing education in the context of its 5th European Lawyers' Conference in April 2005. However, its considerations to approach the legislator with a regulatory proposal failed due to the rejection of the political leadership of the Federal Ministry of Justice. At the time, the BRAK stood alone with its demands, even though numerous European countries such as Belgium, the Netherlands, Luxembourg, England and Wales, as well as Scotland and Northern Ireland already had mandatory continuing education. The rejection prevailing at the time has since changed. Together with the BRAK, the DAV has also been calling for a more concrete definition of mandatory further training for several years. However, a government draft prepared by the Federal Ministry of Justice during the 18th legislative period in 2016 (BT-Drs. 18/9521 of 5.9.2016) failed in the course of the legislative process. The German Bundestag's Legal Affairs Committee unanimously rejected a government draft bill that would have added the necessary competence to the list of competences of the Lawyers' Parliament under Section 59a BRAO.

Thus, the legislator had rejected for the second time the introduction of a concrete general duty of continuing education. With the introduction of the so-called catalogue of basic duties in the context of the "Great BRAO Amendment" of 1994, the Legal Affairs Committee had already refused to grant the Lawyers'

Parliament the competence to further substantiate the duty, which the government draft had actually provided for. The reason given at the time was that lawyers should not be dictated in what way they fulfil this professional duty (BT-Drs. 12/7657, 16, 50). The Legal Affairs Committee renewed its rejection in 2016, simply stating: "Beyond the detailed continuing education obligations that already exist for specialist lawyers (in German: Fachanwälte), we can see no need for a general definition of concrete continuing education obligations for all lawyers by the Lawyers' Parliament at the German Federal Bar, as intended by Section 59b (2) no. 1 letter h)" (Ausschussdrucksache 18(6)293 of 3.3.2017). This was despite the fact that not only BRAK and DAV, but also the Lawyers' Parliament itself had asked, with a large majority, to be given the required competence. It had even submitted a catalogue of regulations. The then Minister of Justice, Heiko Maas, who had initiated the draft in the so-called Grand Coalition, also felt duped by the Bundestag's legal policymakers.

How could it have come to this? Is the German Bundestag's Legal Affairs Committee the safe haven of the legal profession's freedom? The small Gallic village that successfully defends itself against the overpowering, well structured, thoroughly regulated Romans. The discussion about the introduction of a duty of continuing education for all lawyers, not only as a basic duty with an appeal function, but as a duty subject to sanctions, revolves around the concept of freedom. Those who oppose it see no need for regulation because the liberal profession of the lawyer is based on the trust in his integrity and thus also in his responsibility for the quality of his work, the foundation of which is a comprehensive course of study and two state examinations. This foundation, this particular combination of highly demanding training to become a fully qualified lawyer, who can choose between becoming a lawyer and becoming a judge, and the basic trust in the function of the organ of the administration of justice, follows Gneist's idea of letting every individual lawyer decide for himself how to practice the profession, with as much free and unregulated self-determination as possible. The Legal Affairs Committee followed this idea in 1994, and again in 2016. However, in the 1994 amendment, it backed up the understanding of the lawyer's freedom as an institutional guarantee by introducing mandatory liability insurance. Because at the time, the legislator did not lose sight of the protection of the client, who associates the title of lawyer with quality advice. Professional liability insurance, as regulated in Section 51 BRAO, was a novelty in 1994 and has been a mandatory requirement for admission to the Bar ever since. It secures the client relationship with 250,000 euros for the individual lawyer and its omission has consequences. Because failure to take out professional liability insurance cover means withdrawal of the

lawyer's admission to the Bar. This is the sharpest sword, because it affects the choice of profession. Mistakes made by the lawyer in the client relationship, which may also be due to a lack of further training, are covered though.

The Legal Committee's line of argumentation in the context of the failed attempt at regulation in 2016 was short, but also new. The Legal Committee did not have to deal with its old position, backed up by the introduction of Section 51 BRAO. To support its stance, it relied on the "continuing education obligation that applies to specialist lawyers anyway". When reading this brief explanation, one is initially puzzled. Is the Legal Affairs Committee ignoring a mainstream that is, after all, well-founded, supported by the majority of the legal profession and demanded by academia? After all, the venerable Association of German Jurists – Deutscher Juristentag -, which still meets and deliberates with deputations in strict procedures that have been in place since its foundation, supported the BRAK's demand as a recommendation in its negotiations on the occasion of the 68th Conference in Berlin in 2010. And one of the most recognised lawyers' academics, Martin Henssler, assesses the reasoning of the Legal Committee as "ludicrous" and condemns it as a snub of "years of discussion by the entire professional community" (Henssler in Henssler/Prütting §43a RN 235). Is there a magic potion that protects the small Gallic village from these powerful eloquent attacks?

It is worth examining the Legal Committee's argumentation. A look at the figures and the statistics, leaving aside hurt feelings and subjective gut feelings, helps to shed light on the willingness of the legal profession to engage in further education. For nothing other than the willingness to continue education, which is the basis of the appeal contained in Section 43a (8) BRAO, is being called into question. There is a constant insinuation that freedom is being exploited in order to not comply with an obligation. Therefore, freedom must be controlled in the interest of the client.

The Legal Affairs Committee's argument seems short-sighted at first, where it refers only to the Fachanwälte, the Bar-approved specialist lawyers. As of January 1st, 2022 (the current figures for 1.1.2023 are currently being collected, but they are likely to have gone down only a little bit), there were just under 167,000 lawyers admitted to the bar in Germany. 45,403 of these lawyers held at least one of the 24 specialist lawyer titles. A total of 57,065 specialist lawyer titles were awarded. Many specialist lawyers thus held several titles. A maximum of three is permitted. In Germany, specialist lawyers must undergo controlled continuing education. The regulatory competence lies with the lawyers' Parliament, which sets the corresponding framework in the Professional Code

of Conduct, the BORA, which is, after all, a federal law. Lawyers who do not comply with this obligation, which is controlled by the Bars, lose their specialist lawyer title.

Thus, according to the relatively current state of affairs, just under 27% of all German lawyers have been awarded a specialist lawyer title and are subject to a controlled training obligation in this specialist field. Admittedly, the percentage of specialist lawyers is increasing annually in relation to the total number, which has now been decreasing for several years. But is this sufficient for the argumentation of the Legal Affairs Committee? If well over a quarter of a group meet the requirements, there may be justified doubts. The question arises as to how the other three quarters behave.

Here, too, a look at the figures will help. The German legal profession has long since ceased to be as homogeneous as it was in 1994, when there were only 6 specialist titles and the legal profession was strictly regulated, working predominantly as sole practitioners and in smaller partnerships. This situation has changed. Today, lawyers advise and represent clients in a broad spectrum of professional practice forms that was unheard of in those days. From large international law firms to sole practitioners, the possibilities are multiple and constantly changing and adapting. Important for an assessment of the numbers of specialist lawyers is the not insignificant group of corporate lawyers. As a rule, these lawyers do not work in law firms and do not hold the title of specialist lawyer. Their number is currently around 21,000 and increasing. Also, we have to leave out the so-called titular lawyers, who are in retirement and at best still handle a few clients in a sideline capacity, without holding a specialist lawyer title. Their number has not been surveyed, but it is likely to be relevant, so that the proportion of specialist lawyers in relation to actively practising lawyers is more likely to be around 35%.

Of course, this figure alone is not enough to dispel doubts. If there is proof that more or less one third of the legal profession is engaged in continuing education, this finding cannot apply across the board to the larger group of 65%. However, the overall view still requires a look at the group of specialists. This is because not every lawyer advertises his services with a title of Fachanwalt for a particular area of law that he works in. Numerous lawyers advertise special knowledge, which may well concern segments of specialist lawyers' fields and require in-depth knowledge in these areas. The current STAR survey, the Statistical Reporting System for Lawyers (STAR) by the Institute for Liberal Professions (IFB), conducted on behalf of the BRAK, gives interesting insights. In a representative survey, the legal profession in 2022 was also asked,

among other things, about specialisation. On average, 82.4% of the respondents stated that they had a specialisation. Of these, 83% in West Germany and 79% in the Eastern part of Germany. Specialisation increases in the age group between 35 and 55. Here, it is 85%, while it then decreases slightly with increasing age to 75% in the age group of 65 and older. This result is surprising because it contradicts the assumption expressed by many that only specialist lawyers and lawyers in large law firms regularly undergo further training. Independent individual lawyers and small law firms, too, exist in the legal market because of their specialisation. Moreover, specialisations were indicated in more than 40 areas of expertise, which suggests that not only in-depth knowledge in these areas is available, but that further training must also take place in order to maintain existing expertise in the competition for cases.

We can therefore say that not only specialist lawyers with mandatory continuing education, but also an extremely large number of experts with optional further training, maintain the quality of their advisory services and thus follow the appeal of Section 43a (8) BRAO. Or you could put that the other way round: a general suspicion that 65% of lawyers working in law firms who do not hold a specialist title, do not comply with their statutory general obligation of continuing education, is difficult to justify. Nor can the surprisingly low proportion of generalists at 18% lead to any other conclusion. On the contrary, there is no evidence that this relatively small group, whose proportion probably increases with age, does not undergo further training.

It therefore remains a presumption that there are lawyers who do not undergo any kind of further training or even do not fulfil one of their basic duties because they refuse to engage in continuing education. It would be interesting to investigate whether mistakes due to a lack of further training, which lead to the lawyer being held liable, lead to a differentiated approach regarding generalists, experts in certain areas of law, and Fachanwälte. We do not know of any statistics in this area and the insurers guard their secrets.

Let me summarise the findings based on the available figures and the STAR survey: 35% of lawyers working in law firms are subject to a controlled and sanctioned continuing education obligation. Up to 85% of lawyers working in law firms are verifiably undergoing further training due to their specialisation. They are obliged to do so as Fachanwälte or do so voluntarily in their area of expertise. There are no findings on 15% of so-called 'generalists', even if they are in principle subject to an obligation to undergo further training. At any rate, from what we know, no clear statements can be made about them; they are mere presumptions.

This brings me back to the initial question, which continues to be treated emotionally in the legal profession as well as in legal policy. The legislator regulates the duty of continuing education as a so-called basic duty. However, he does not provide further details on the grounds that there is no need to control a profession of trust. The legal profession does not seem to abuse this trust. At any rate, according to the statistical findings, at least 85% of lawyers undergo further training and thus comply with the appeal of Section 43a (8) BRAO. Do we therefore need a clarifying regulation for the remaining 15%? Considering the advance level of trust that is put in them, the answer is probably "no". This is one way to argue. In that case, there would be no need to further specify the duty of continuing education in more concrete terms. The other way round, however, is the way it should be. If 85% are already undergoing further training, why should the rest not be doing the same? What can you say about a law if it does not have the power to make a duty more specific; is the glass half full or half empty? What does it actually look like when the legislator formulates a claim, a duty, and then fails to live up to it? Gut feelings and emotion do not belong in a law. Of course, the legal profession is a profession of trust. It is an organ of the administration of justice according to Sections 1 and 3 BRAO. It is special not only because of its role in the administration of justice, but also because of the joint education up to the Second State Examination on an equal footing with the profession of judge in Germany. This is unique and special compared with other countries worldwide. Perhaps this is also why one should be careful when drawing comparisons. But: the legislator has decided to regulate the profession or lawyer despite its freedoms. And for good reason. The law governing lawyers is a law with a steering function. The lawyers' professional duties serve to ensure the participation of citizens seeking justice in the law and to implement the rule of law. Where they serve to protect the client – and the basic duty of quality assurance undoubtedly serves this purpose – the BRAO's rules aim to protect the rule of law and the legal profession's reputation preemptively, and not to restore them ex post. It is therefore also a construction error or, in other words, only half a leap, if the legislator formulates a basic duty, but leaves further specification to trust. This has nothing to do with freedom, even if trust in the legal profession is fundamentally justified, as proven by relevant data. However, it is annoying that the legislator leaves a basic duty to gut feeling and thus opens the doors to mistrust in the legal profession.

4. The View of an In-House Counsel

James Bellerjeau

I have had mixed feelings over the course of these two days, and I cannot help after today's presentations to wonder if we are missing the point. Quite massively missing the point. And what I mean is: We are talking about mandatory versus voluntary, 15 hours or 25 hours. I care about the other 2400 hours that my lawyers are spending much more than I do the few hours they spend on CLE, if they spend any at all. After the fact complaints, sanction of lawyers, mandatory insurance also completely misses the point. Those are utterly lagging indicators of the quality of the lawyers' providing services. There is a way to figure out if your lawyers are doing good work. We do it in our companies all the time, every year. We evaluate them constantly. That informs the topic of my remarks today: What I am looking for in lawyers and what I appreciate in lawyers, and I mean this with no disrespect to the people who are involved in the important business of legal research and of educating lawyers. That is important. But that is not what I want from lawyers once they enter practice, and I will explain why.

Going through the perspective of: What does an employee want for their career? What does an employer want out of their employees? Why selfishness is both the bane that bothers all of us, but the cure to the problem and then how I think we can design continuing education that satisfies all the constituents. And then what I mean by plumbers versus professors. Of course, I will say a word or two on that. But first I want you to imagine yourself in this scenario: You have had a busy week. You have had a productive week. You have dealt with a countless number of crises and problems that crossed your desk. And now, bliss, you are facing a weekend free of problems. But just before you can leave the office, an email pops up on your screen: Hey boss, can we meet for a few minutes? There goes your quiet weekend. Because we all know what the dreaded no subject meeting request means. It is always one of the following two things: Your employee wants to come and tell you that they are quitting, or they are not quitting, but they want something. It is always one of those two things, right?

I will tell you something surprising about the answer to this question: Which do you prefer? After more than 20 years serving as general counsel of a large US public company, I came to view an employee quitting as the easier of the situation. I will tell you why. Because it provides you with certainty. I suffer a disruption, of course, at that moment when the employee leaves, but I know how to deal with it. I have had, I will admit, sometimes the job updated and posted on the same day because: The employee left, I have a problem, assuming I cannot talk them out of it, of course, which we try.

The other circumstance where a high performing employee comes to you and says: Hey boss, I want something. That signals an unmet need, a desire on their part. And as soon as they voice that desire to you, then it becomes a problem, a source of satisfaction to them. It is not going to go away until something happens. You may ultimately satisfy your employee, you may not. But for the immediate term and for the foreseeable future, your job as a manager has just become that much harder. What is it your employee actually wants when they come to you in this discussion? I think, in my experience, they want one of three things. They want a promotion, they want more pay, or they want a development opportunity. Ultimately, I think that is good news for the continuing education market, because all roads lead to the continuing education topic. That is because the employee thinks in their head, not unreasonably: If only I had another degree or a qualification, then I would increase my market value, I would stand out compared to my peers and I would be next in line for a promotion that comes with more pay.

What does the manager think as opposed to what the employee thinks when they come and ask for this opportunity? I think it falls into one of five categories and I admit to having had all these thoughts myself at one point or another. The first one that runs through your head is: Damn it. We just got our budget approved. Why did you not tell me this last week? I do not have any money to give you an unscheduled raise. I do not want to tell you; we just benchmarked the team's salaries. How can I justify paying you more than your peers? How can I justify paying you more than what I just told management you were worth? Or: The hierarchy problem, my legal department is relatively flat, and I am fully staffed. I cannot create a new position just to make a new advancement for you. I cannot give you a new responsibility just on paper. By the way, if I do create a rule to promote you, I am going to win away your colleagues and the team as well. The one in the middle. How is this good for me, the company? How does me paying for your CLE help the company? You will spend time away from work. I am not really sure you are going to learn anything that is relevant to your job. What is the business proposition? The fourth

one: Delaying the inevitable. What happens when a person goes off and participates in a CLE course? Many things. Among them, they meet interesting colleagues from other companies. Guess what? The grass is always greener over there: That person works for a glamorous company. It looks so cool. I wonder if I could find a job over there. If history is any guide, that person is still not going to be satisfied a few months or half a year later, and they are going to quit anyway. So, this might just be delaying the inevitable. And lastly, your degree tells me nothing about your performance. Your qualification tells me nothing about how well you are going to do on the job. That is not why I find you valuable. I find you valuable because of what you do for me every day on the job. This creates a potential conflict between what employees want and what companies want. Is there a way to resolve the tension? I think you can do so by examining this through the lens of selfishness. Employees are selfish, managers are selfish, but we can use that by acknowledging it. First, let us see who is the selfish one in this scenario. Is the employee selfish when they come with their needs, when they ignore the potential problems, they are creating versus their peers in the team, and when they do not care necessarily about the company's problems. All that stuff I just mentioned that is running through the manager's head. The employee could not care two cents about that. They care about themselves.

Or is it the boss who is selfish when they say: I am interested in satisfying the company's needs? I have to worry about the team dynamics, about money, and about your performance on the job. I think you could make a case easily that both sides are being selfish. But I think they are being rationally selfish, appropriately selfish. It is utterly appropriate and understandable to expect people to act in accordance with their perceived self-interest. If there is anything you can predict reliably, it is that people will act according to their incentives. What do we do about that? Do not fight it. You shall acknowledge that people are always going to act in accordance with their interests. And just like a good negotiation, you want to find areas where those interests overlap. Can I give you something that you want that does not hurt me? I think in order to leverage this correctly, we need to view CLE from the right perspective and then look at how it is delivered properly to deliver on those perspectives. Let me explain what I mean. What is the right perspective to take on CLE? What is it there for? And remember, the manager who is trying to send their employees to a continuing education program has to justify it. They have to answer all those questions that their boss is going to be asking, that their finance team is going to be asking. How do they do it?

Here is what I would suggest as elements of that conversation. It is actually helpful to have a certain number of mandatory CLE requirements, despite all the bad things that I may have said or thought about them. When you are trying to justify sending your employee to a training, it certainly is helpful to say: Well, listen, you hire these expensive professionals into the company. They are some of the most expensive employees that we have. Of course, you need them to maintain their professional qualifications. So yes, they have a certain number of hours of CLE that they need to satisfy, this is part of it.

That sort of ends the discussion when there is mandatory CLE. That is something to keep in mind, by the way, for all of the trust and respect we wish to have as a profession, for all of the freedom and flexibility we wish to have, as the colleague from the federal bar in Germany just described to us, sometimes having the mandatory element takes away some of the discretionary discussions that otherwise take place.

I came across a very interesting survey early on in my tenure as general counsel, which looked at the cost of inhouse counsel and the total legal costs that the company incurred. What came out from that study, this is from the Conference Executive Board, is that the companies with the most expensive lawyers had the lowest legal costs. How did that happen? Well, it turns out what they were measuring was the tenure of inhouse lawyers. The longer inhouse lawyers served in the role, the better they were able to understand the company's business and the better they were at managing and reducing legal risks for the company. I understood that to mean that the value proposition for inhouse counsel increases for every year they are in the role. Every year I can keep my lawyers, they learn more about the business, they learn more about managing risks for the business. It is in the company's interest, in other words, to keep their inhouse counsel. We keep them by giving them development opportunities, however you want to define that, and we can define it broadly. But if a lawyer sees that their career is going to progress inside the company, they are less interested in looking at the grass over on the other side somewhere else. There is a value proposition to the company, in other words, in showing employees a development path. I want my lawyers to be subject matter experts in the fields they are responsible for. The law does change frequently and rapidly. I need lawyers to stay up to date on what they need to know in order to be proper professionals. I do that because I want them to manage the job well, but I also want them to manage the job broadly. The more my inhouse lawyers can do, the less I need to rely on expensive outside counsel. I love outside counsel, but I love not using outside counsel whenever I can because they are highly expensive. My inhouse lawyers are also expensive, but not in the

same way. The more my inhouse counsel can do, the better a value proposition they represent. The more I can justify keeping them well trained. Therefore, if they do represent a good value proposition, it is correct and appropriate to *pay* them appropriately. Which means also paying for their continuing education.

So, in this way, you may have a sensible discussion about what is the genuine value of CLE to the company. What do we get from it? Well, we get a heck of a lot, as it turns out. We keep our employees knowledgeable; we keep them in the company, we keep them performing at a high level. Now, with that in mind, what is a responsible way to undertake CLE? If I have a choice of different programs to attend, which ones would I pick that satisfy the objectives I have just outlined?

How about this? I want to efficiently meet whatever those mandatory requirements are whether it is 5 hours, 15 hours, 20 hours, or whatever. Do not nickel and dime me to death with 20 lunchtime sessions over the course of a year. Because it is never just an hour out of the office, right? It ends up being a half day. They have to travel. They have to get there. They are distracted. Give me a single conference spread out over two or three days that satisfies the entire year's requirements. As a boss, I am greedy. I do not want people to travel. I do not want them distracted. Go get it all done in one big bite, if you can.

Similarly, we have heard from several people about how complex and diverse the law is. If you can have 35 or 40 *Fachanwälte*-areas and lots and lots of specialties, make sure that you are offering some that are relevant to my business. That means you may have to offer a lot of them and accept that it is going to be interesting only to a small segment of the population. A certain amount of segmentationis inevitable here.

There is a significant distinction between the theoretical, research type of knowledge, that a professor might focus on and the practical, hands-on knowledge, that an inhouse counsel might need to focus on. It is simply not relevant to know the law to the same extent that a professor of law needs to know, because it just does not come up in practice 95% of the time. Sometimes it does, but then honestly, those are the cases when I go and hire an outside counsel who has kept extremely up to date on the cutting edge of the law. For the very large majority of what inhouse counsel do, *good enough* is absolutely good enough.

Practical versus theoretical is an important thing to keep in mind, at least in terms of the CLE that you might offer, in terms of which audience you are trying to attract. The bar association might be interested in cooperating with the law faculty exactly to make sure that they maintain that high level of legal knowledge. The law faculty might partner with inhouse counsel to deliver a different type of practical knowledge to the inhouse counsel. There is a role to play on both sides, if you understand this is what my audience is looking for.

Let us practice now in applying these criteria. How do I, sitting there listening to the proposal from my employee, evaluate: Yes, I will give you that one and I will not give you that one. They come and they say: I would like to take a two-year master's program in international law leading to me getting an LL.M. degree.

Here is how I respond to that: Too expensive, too long, it is mostly for your benefit. Why am I paying to bolster your resume? Because you are going to quit within two years anyway after you get the darn degree. Cynical thought, but it is the one that honestly runs through our heads. Okay, how about the two-day association of corporate counsel annual meeting? There, I can get all my CLE needs satisfied in one go. There is a whole mix of programs and different tracks within those programs where I can pick a topic that is relevant to my company. Yes, I will do that. I will do that this year. I will do it every year. Not expensive. A couple of CHF 1,000, right? How about something in the middle? A 14-week CAS course where you have half days on Fridays and Saturdays. Well, that is interesting, let us talk about this one. You, employee, must make an investment of your weekends so you are committing something to the success of this training. You are going to learn more because it is more intense. That benefits me as the company. You get a certificate at the end, which I do not mind because that benefits you. This is a yes for me, if I am talking to an A player, somebody whom I want to keep and whose career I want to advance.

The discussion is of course going to be different every time. What I want to suggest is not that that is the answer, so much as there is going to be a thought process that runs through: How much time commitment is there? How much cost is there? And what are the relative benefits to the employer and the employee? You must find that sweet spot where it does not cost too much, it does not take too long, and provides obvious benefits to the company, obvious benefits to the employee. Ultimately, the choice of alternatives comes down to weighing these costs and benefits considering the legitimate needs and interests of both of the parties, the company and the employee.

Finally, with regard to plumbers *versus professors*, it is really this: What is the environment in which we are operating as inhouse counsel. I do not mean to suggest that is the environment but what I want to say is: When your toilet is clogged. What do you want? You do not want a lecture about fluid dynamics. You do not want a presentation about why it is important to put the drain flange on the tailpiece before the escutcheon. You want that mess cleaned up right now. You need people who know how to do things practically with the law. I have used this quote before. It is an important when it comes back to define for me what inhouse counsel practice is about every time. It comes from a task force the New York State Bar Association put together back in 2011: We used to think being a good lawyer meant knowing the law. Now, we think being good lawyer means knowing how to do useful things to solve client problems. You know the law? Great. I need you to know how to apply the law to solve problems. And guess what? Just like the best plumbers, the best lawyers do learn basic theory before entering practice. They must have a firm foundation in the law. But I find the ones who go on to great service realize that learning more law, learning more theory, that is not the hard part. That is not the hard part. The hard part is solving client problems in the real world. Because in the real world, the problems are unexpected. They come up quickly under time pressure. And guess what? You are also subject to severe constraints from the business. A theoretically perfect answer is almost never appropriate for us because it is not achievable in practice. It is messy. There are compromises. We just must get it done somehow.

The task thus becomes: What works, that we can actually do? As a lawyer, a manager approving CLE programs, I always ask this question: The more a CLE program helps my lawyers work like plumbers, in the sense that they can efficiently solve real world problems, the more likely I am to approve it. And so, what I took away from the discussions – I prepared this before I obviously heard what everyone else had to say – is that the CLE market is very diverse. There are different people with different needs. And just like it does not appear to be anyone's idea that any kind of mandatory CLE is going to satisfy everyone's needs, I am going to suggest that the substance of your course is also very clearly necessary to be tailored to the people who are taking that course. And inhouse counsel has special needs, as I have suggested.

5. The View of a Law Firm

Flavio Romerio

Homburger is a law firm with about 150 lawyers, with a total headcount of about 400 people. Our offices are only located in Zurich. We have all our people on eight floors in a building here in Zurich, called Prime Tower. Our strategy – and that has important implications – is what legal professionals call a national champion strategy. We do not try to be a global law firm. We do not want to be everywhere. Our purpose is to serve Swiss legal needs, and in particular, Swiss business needs. In that universe, we focus on the more complex and challenging matters, and we decided to do that with interdisciplinary teams. Teams drawing on experts from all the relevant fields of our firm. Also, technology is an important enabler of our work. Once you set a strategy the way we do, it has deep cultural and organizational implications. Because if you want to succeed with this strategy, you need to carefully think about your organization and culture. CLE plays a very important role for implementing this strategy, but other things also matter. For instance, how we distribute profits in our law firm is the direct result of the way we want to do business. We want to encourage collaboration and accordingly, you need to distribute profits in a manner that encourages collaboration.

We practice law in a limited number of fields, and we regularly go through strategic reviews to determine whether these are the right fields. Are there other fields we want to be practicing in? Or are there fields we should abandon? From time to time, we phase out certain businesses, primarily because these fields become standardized and no longer need the type of legal services we want to provide. This may also happen if a field becomes too commoditized, or if we have low-cost competition that can do as good of a job or an even better one than we can at our higher fees. Because, as I mentioned in the beginning, technology is a key component in our strategy, we invest a lot in technology and that has a direct impact on our cost base and therefore on the cost of our services as well.

Our clients typically hire our law firm because they believe we deliver a high quality of services. We have consistent and integrated service levels, and we seek to deliver a high efficiency. The quality to which we aspire to deliver is the direct result of a deep specialization in our practice fields. Lawyers in our firm

typically practice in one particular field. For instance, we have lawyers who are just practicing competition law and nothing else. We have lawyers who practice employment law and nothing else. With that focus, they acquire that deep specialization that our clients want. At the same time, they expect that our lawyers have a broad practical experience. When they come to us and ask for legal advice, they do not want a lawyer who is faced with that specific legal situation for the very first time, but somebody who has a broader perspective. You only get a broader perspective by doing the same thing repeatedly. That is how you really become great. If you play the violin, you are never going to be great if you do it only twice a year. You need to practice violin every day for five, six, seven, eight hours to reach a certain level. And even then, it may not be enough. This is our way of the famous 10'000 hours that you need to put your all into something in order to be great at it.

You have probably seen this "T" in the last two days (with "generalist" on the top horizontal bar and the "specialist" in the vertical bar, together forming a T). We are not and we do not strive to be generalists. Our people do not practice across the board. Our 150 lawyers practice in relatively narrow fields to become specialists. Nonetheless, the generalist view is important to us because our lawyers, when they advise clients, need to have a broader picture. They need to understand what is happening left and right of their possibly narrow field of work. I will give you one or two examples from our work. One of them is: Recently, as Andreas Kellerhals mentioned, when I am not managing the firm, I work in white collar and the investigations area. We recently investigated a member of the board of directors of a listed company. We had to investigate whether this person complies with certain internal and external rules. In doing so, it is not sufficient just to understand how to run an investigation, but there also needs to be an understanding of the employment law situation. You need to understand the fundamentals of executive compensation, because if you get it wrong, you can go to jail in Switzerland. You need to understand stock exchange rules, in particular disclosure rules, and you need to have an idea of corporate law if you want to terminate a member of the board of directors during the year and outside a general shareholder meeting. Consequently, when you run an investigation, you need to have a broad understanding of these topics and issues in order to see them. The same applies to other matters, and in that sense, we want everybody at our firm to be a generalist. However, when I see that there is, for instance, an executive compensation issue or a disclosure issue, I call on experts in that field to bring their deep specialist knowledge to the table. I won't research what it means from a compensation perspective myself. The same is the case, for instance, with: M&A trans-

actions. You have an M&A lawyer who has the lead on contract drafting and negotiations, but you have a tax specialist who knows how best to structure a transaction, because that is essential. We have a lawyer from our finance team because the acquirer may need funding and to issue a bond or increase the capital. We have a lawyer from competition law who manages the antitrust approvals, and maybe if it is a pharma company, you have an expert who looks at the patent portfolio. It is a mix of these specialists forming these teams, and it is not just one lawyer who covers all aspects. We try to foster a culture where our people seamlessly work together so that the client has an easy user experience when dealing with our firm.

When you do what we do, you need to attract smart and ambitious young lawyers. These young lawyers are the lifeline of our firm. Without them we could not exist and without them there would be no future of our firm. It would just exist until we retire and then we would turn off the lights. When you attract these types of lawyers we want to attract, they want to grow. Both professionally and personally. Such a learning curve is essential for these young talented lawyers. Our hiring and the way we employ young lawyers is geared to attract a specific type of young lawyers. Persons who are curious and want to learn and grow. This focus is, to give you just one example, the reason why we pay good salaries, but we never ever would pay the highest salaries in the market. We are mid-market with our salaries, where our competitors are, but we are not at the highest level. The moment you pay the highest salaries in the market, you attract the wrong people. We are looking for young lawyers who want to learn, who are curious, who are engaged and not those who want to maximize their personal revenues. You can easily weed them out by always being below the highest salaries. I am always grateful for the law firms who offer the highest salaries because they take up money-centered lawyers so that they do not end up in our firm. In contrast to these firms, we focus on fostering a learning culture, and that learning culture is front and center at our firm.

We have that focus because our business model requires it. We do it because clients expect it, and we do it to attract smart, ambitious, young lawyers. Now, what do we do? In our firm, we have two layers of continuing education. One of them is the *personal development* and the other is the *specialist legal development*.

The objective of the personal development is to help employees of our firm, from the youngest lawyers to senior lawyers like me, in their development as persons and as professionals. It starts with the trainee lawyers, who we help prepare for the bar exam. We have structures and regular training sessions to

help them get ready for the bar exam. We also take them to offsites bi-annually for two-day sessions, which of course also have a social component, but the main purpose is to work together. Senior lawyers take the time for these two days to sit down with our trainees and work through test exams, in order to get the trainees ready for the bar exam. On average, lawyers have a 50% pass rate at the bar exam in Zurich, our young lawyers nearly always pass the exam. Of course, we have that because we try to hire the smarter lawyers and the better students when they graduate from university. But we think it also has to do with the way we help them get prepared. Once they return as associates, they enroll in our firm-wide basic legal training. These are yearly modules to educate these young lawyers on a number of things. Part of it are purely professional trainings. What does a lawyer do? What are the professional duties? How do we deal with conflicts of interest? What about the business aspects of what we do? But we also give people a general understanding in each of the main specialty areas that we practice.

When you start out in our litigation or arbitration team, we think it is essential that you also have an understanding about banking and finance and what our colleagues in the banking and finance department do. The same goes for transactional work. Many of our clients are listed companies, so we need to have a basic understanding of stock exchange rules, disclosure rules, etc. And that is what we teach them. When you are in your specialist area, you need to understand what is left, right, and have a broader perspective. That is what we train people to have. After about one and a half to two years after associates have joined our firm, we enroll them in a program we call the ADP, the Associate Development Program. That program includes a preparatory phase prior to the offsite, and then it has two to three-day modules over the course of about a year. The purpose of the ADP is to develop professional and personal leadership skills: How to work with teams? How to motivate other people? How to grow personally? How to deal with adversity, problems, and issues? How to become a leader? All of that is part of the ADP program.

After a full five years, the associates enter a Partner Assessment Program. That is a voluntary program. All other programs until that point are mandatory. Everybody needs to enroll in that part of the journey, but some people want to move on and become a partner of the firm. For these lawyers, we have a program to prepare them for the partnership decision. For that, these lawyers, together with a committee of partners, develop a business and career plan. For example, what their plan A is and what their plan B would be. We also have an external assessment firm that takes them through a process that includes a full one-day assessment to identify personal strengths and weaknesses. Then

the firm will help to develop a plan to address weaknesses and further develop the strengths. Finally, once you are a young partner, we have another program which is called the Young Partner Program, which mentors the young partners on how to be a partner, what it means to be a partner in all its facets, personally, financially, etc. All these steps and programs make up the personal and professional development journey at Homburger.

Independent of that journey, we have specialist training. Our firm is organized into four main practice teams. We have a corporate M&A team, a banking and finance team, tax team and a dispute resolution team for state court litigation and arbitration. These teams meet weekly for about 45 minutes to an hour. There is always a presentation in these meetings where lawyers present case studies and discuss legal developments. Sometimes we invite guests. In our white-collar team, for instance, we invited one of the prosecutors of the Zurich office to discuss a particular topic in criminal prosecution cases of corporates. We also discuss market developments, and then, what is also important and part of our culture, we have constant training sessions on the various types of AI and IT tools we use in the various practice areas. These team meetings take place every week, the entire year. In total, each team has between 40 to 45 of these sessions of 45 minutes per year. Attendance is mandatory and important because that is our structured way of making sure that the senior lawyers stay on top of new legal developments and all know what is happening, but it also is the path for young lawyers to acquire that specialist knowledge that we think they need to succeed as lawyers. Then, of course, you also have the training in particular cases, where people constantly learn how to do things.

Members of our firm are frequent participants at CLE events, but not of service offerings here in Switzerland. Almost all of our partners have an LL.M. degree from a US law school. We also have two partners with an MBA. It's similar for our associates, where about one third has a LL.M. degree. Their percentage is lower, because when you look at the career trajectory of associates, very often, the LL.M. is the point where they revisit their career perspectives, and many of them move on to pursue other professional options. The high rate of LL.M.'s is remarkable because the cost of these programs is so enormous. Tuition fees at Harvard currently are about USD 60'000 or USD 70'000, and that is without living costs. So, they probably invest around USD 100'000 out of pocket, plus the opportunity cost of not working for a year. It is a remarkable investment, and it also shows the type of people who are our associates: They value education and intellectual stimulation over immediate financial return.

The United States still dominates the post graduate education, but we now see more diversity. We now have lawyers who go to Shanghai for a year, to Singapore, to Australia. But it is mostly the US. Why? There is an obvious reason. It is a lot of fun to study for a year at a US law school because, as those of you who have been there all know, the intellectual level is so much higher than at Swiss universities. The bar to get into Berkeley or Harvard is much higher than to be admitted to the law school of the University of Zurich. As a result, you have very smart people at US law schools, and it is much more engaging. Then there are the effects of tradition and the herd effect. Because it has worked for others, it is going to work for me. You also acquire language skills that are essential in today's world. Then of course, the US legal system. The US is the world's largest free economy, and it has an enormous pull factor. The influence of US law is still considerable, and I expect that the influence of the US law will substantially grow over the next decade.

There are sometimes decades where nothing happens and then sometimes there are weeks when decades happen. We all know that artificial intelligence is out there, and people are working towards developing a general form of AI. And everybody just said: Yes, it is out there. But most people did not know much about it. Last December, people finally got to see what general AI means and started to think about the potential that this technology has. But for these AI systems to work you need data. In the US you have lots of data because all SEC filings of all corporates are publicly available. All court filings are publicly available, and they are available in full because they have no data protection. Everything is there. It is digitized and without data protection and that is the fuel that you need to run these artificial intelligence systems.

Switzerland is different. Curiously, between 1900 and 1925, driving a motor car was not permitted in the Canton of Grisons in Switzerland. The Grisons legislator believed that motor cars were too noisy, stinking, dangerous, and that they take away work from horse carriages. Data protection law, the way we practice it in Switzerland and Europe, is what the anti-car law of the Grisons was at the time. It prevents progress, and it will prevent Europe from using artificial intelligence in the same way that other markets use it. The US legal AI has access to and can use a huge volume of digitized legal data, and we do not. And hence I expect that the importance of the US legal system will grow because legal answers will become available much easier, faster and much more efficiently in the United States compared to the Swiss and European legal systems, which will lose relevance and create numerous comparative disadvantages for Swiss and European businesses and people.

With regard to CLE, I would like to single out the *Tagungen*, the workshops and seminars. These are mostly one day, sometimes two-day events. Our firm broadly participates in these types of CLE. They are especially important for us. Some of us organize these types of events and we regularly appear as speakers in them. They are important. If we look at the "T", as previously discussed, the reason is they are in the specialist part of that "T". It is a gathering of specialists working in a specific field talking about its latest developments. You have inhouse lawyers, outside lawyers and regulators such as FINMA and prosecutors at these events, bringing together the full spectrum of the legal community. The breaks provide an opportunity of speaking to each other. Regulators such as FINMA or Federal Prosecutors may talk about technical aspects, but these aspects are particularly important for practitioners in these areas. They may also discuss their expectations, how they deal with specific issues. Accordingly, because these seminars and *Tagungen* are the specialist part of the "T" and bring together people who practice in that part of the "T", they are very important for us.

Additionally, we have longer seminars that the universities also offer, the CAS and MAS. I and other senior members of our firm are regularly invited as speakers at these programs, and I find them particularly enjoyable. I enjoy them because you always have experienced professionals in the room. It is a small group, as we have today, and people actively participate. It is immense pleasure to be a part of these sessions. But for us as a law firm, they are less relevant for the education of our own lawyers. I have penciled down four main reasons why these types of courses are not relevant for us. First, as previously discussed, each practice, of our firm has its own specialists with relevant knowledge and experience, and we turn to them to hold firm-internal educational sessions in the team meetings. For instance, there is a CAS or MAS for employment law, but we have employment law specialists, and they most likely know as much as the teachers of these CAS or MAS. Often, our specialists themselves teach specialist CAS or MAS courses, but they also teach in our firm at our team meetings, and our lawyers hence lack a reason for going elsewhere.

Second, many topics of CAS or MAS programs are not relevant for what we do and the limited fields in which we practice. For instance, one university offers a program on asylum law. That is very important, but not something we practice. It would make no sense for somebody in our firm to attend that CAS, because we are not offering that service.

The third reason again has to do with the "T". From what I can tell, these courses often lack the depth and the specialization we seek. For instance, I teach at a finance CAS which the Universities of Bern and Geneva offer. It is a well-organized, interesting course, but it lacks depth because they cover so many topics, and you can only touch each topic at a high level. For instance, I talk about FINMA proceedings and investigations and that is an extremely broad topic which by itself could easily fill a CAS. But the CAS offered by the Universities of Bern and Geneva, of course, need to cover many topics and therefore can never go to the depth we would be interested in.

And the last reason is probably the most important – these types of courses just do not fit into the career trajectory at our firm. Our associates typically start at our firm at the ages of 28 to 30. In the beginning, they focus on the learning curve in the field they have chosen. That is their focus, and they can be very busy. At that stage they are already learning much in our firm while practicing law and through the educational and development programs we organize for them, so they do not think about enrolling in a multiyear program outside of our firm. On average, associates stay at our firm for three to four years. But some of these CAS and MAS courses are exceedingly long and thus do not fit into the professional lives of young associates. It would make little sense for them to enroll in such a course. In the next age layer are the young partners in our firm. They are in the busiest and most charged phase of their lives. They need to build up their own practice. They need to come to terms with all the management and entrepreneurial aspects of being a partner in our firm. They need to find clients. They need to resolve cases. Many have a family and small kids. That is many balls in the air at once. They simply have no time to pursue any multiyear CAS or MAS. Then you have the more senior partners, such as me. I guess that when you are 50 or older, you again start seriously looking at outside personal and professional development options to broaden your personal horizon. But what I see, what our senior partners do, what I do: We are typically not looking to Swiss universities for this kind of development. Instead, people follow their personal interests typically at foreign universities and programs offered by private vendors. As an example, I personally have a special interest in technological development and what it means for the law, for law firms, for lawyers and for me personally. That is why I regularly go to Silicon Valley to attend a variety of programs that are offered there on latest technological developments. That is not something that is offered here, even though we have the ETH, because that entire entrepreneurial spirit is simply different in the Valley.

6. A School for Lawyers - The Geneva Experience

Hadrien Mangeat

Switzerland has a great opportunity. We are a very small pocket of land with very few people and yet we have five, six amazing public universities. I know people who have been trained in all of them and I think all of them are amazing. My wife is a bright American lawyer. She is a Yale, Stanford and Harvard educated person. We have talked about education a lot together and yet, although it is true that going to Yale, Stanford, Harvard is a special experience, I think the quality of the teaching we get here from public universities is remarkable. It is quite amazing, and I think it is good to acknowledge it when we can and so we can continue working on this. Because the Geneva experience kind of brings one answer, among many, to issues we heard the people from academia talking about and also to practitioners in the field. I think that the lawyer school in Geneva is something that brings everything together.

It is basically the Geneva answer to many of the issues we talked about today and yesterday. Basically, the distinction between what universities want to do and what law firms are expecting. And we see it does not always match, and this is our response. I will try to present it and I will try to make the case that it is perhaps a sort of hidden mandatory CLE that you get in between your studies in law school and your experience in the law firm. And I will argue that it is a welcome shot of CLE that you get at the right time in your career.

Maybe just one caveat which was not mentioned in my biography. I have a small role in this school as an examiner of some exams. It is a very small role I play, and the president of the school allowed me to say pretty much anything, so I am freed from any shackles. The good I am going to say about the school is only because I really believe that there is a lot of good in it.

The Geneva legal landscape: Basically, I do not know what image you have of it, it is a small canton, it is a small city at the end of the country, it has only 500'000 residents. Yet the legal landscape is quite sophisticated. It is smaller, but I would argue it is not too unfamiliar from what you have in Zurich. 2500 attorneys. This means about five attorneys for 1000 people. My understanding of the US market is that five attorneys for a thousand people is a lot. There are not many large cities with above five attorneys per 1000 people. That also

plays a role in our approach to CLE. Geneva has many large local and international companies. We have international organizations. We have a strong financial marketplace. It is a hub for international arbitration and many other such things. The consequence of this is one thing: Maybe there are too many lawyers. This creates a tension in the legal market, because now people do not find internships. The mandatory internship that the federal law requires of us is a real issue in Geneva. Now, people are forced to apply two years, two and a half years in advance if they want to find a good internship. You are not even done with your bachelor's degree, and you yet have a few years ahead of you and you're already applying for an internship. We at the firm are already fully booked until 2025, for example, and people have three to five university diplomas. They speak three to five languages. Everybody must have studied or worked abroad. It is a very dense market.

This also means that we must be able to provide specialized services. We deal with sophisticated and demanding clients. This plays a role in terms of CLE. With a sophisticated and demanding pool of clients requiring very specialized services, you will more easily fulfill your duties in terms of CLE. To become an attorney in Geneva is quite a journey. You start with a bachelor's degree right away after high school. It is full-time law from day one and three years of that. Then, one and a half years of master's degrees (MLaw), same thing, full-time in law. And then three: The unicorn, the CAS in Legal Professions, this is our lawyering school, our school for lawyers in Geneva. This takes one semester, half a year. Then you have the one and a half mandatory internships in a law firm. You can do six months in court, but not more. You must find at least a twelve-month internship in a law firm. Then, the bar exam which takes about a quarter of a year of studies.

This program takes about eight years in total. In reality, with the gaps in between some of the sections, when you start your internship, how much you study for it all of this: It is quite a long program. It is seven to eight years of being fully committed to law.

The school for lawyers, École d'avocature in French or ECAV is a part of the University of Geneva. This is the first very important thing that we must establish. It is not only something by lawyers, for lawyers, it is a program of the university. It is a somewhat weird and different program mandated by the legislature and the government, but it is still part of the University of Geneva and the law school of the University of Geneva. Itis managed by a board of directors who are appointed by the government.

It lasts for one semester, and it gives you a CAS. It costs more than other university programs. At the University of Zurich, a semester costs around CHF 500 or CHF 1'000 francs a year. Our program costs CHF 3'500 for the registration fee and the school is also responsible for organizing the final bar exam. You have this CAS, which is elementary, pass or fail If you do not survive the shot of CLE, you will not become a lawyer. Then, after an internship, you have the bar exam, and the school is also responsible to organize this.

To create the program, we had to modify the law on the profession, the Geneva Law on Lawyers. The legislator did that in 2009 and it entered into effect in 2011. The government created special regulations on it and the doors opened in February 2011. We now have a little bit over ten years of experience, which makes it possible to try to provide an assessment for you. Why did we create this school? First, the preparation for the internship was not sufficient. Law firms were not happy with how people performed behind their desk on day one. They were not efficient enough, not productive enough, they did not know what they were doing. It was not good enough for the law firms. Second, the quality of the training provided by the different law firms was too different. The observation was that, well, maybe you are trained by Homburger or Lenz und Staehelin in Geneva or something that has a dedicated training program, or maybe you have an old school mentor who takes you to court, who corrects your court submissions, who teaches you the job, which was the purpose of the internship at the beginning. But mostly, we realized that many candidates did not have a good internship. They were not well trained, were not being well educated by their mentors and that had a bad effect on the legal market. Third, becoming a lawyer took too long. The problem was that before the lawyer school, you did your law school, then, you did the internship, which took a little bit longer, and then the bar exam came much later. Sometimes six months later. When you failed, you did it a year longer, and then you had a third chance. Maybe it came a year and a half later or two years later. There were candidates who, after an eight or nine-year program failed and who, after committing another three to five years to law, could not become a practicing attorney. This was this was deemed as an issue that that needed to be resolved. Fourth, the rate of failure was high. Well, that is what I just explained. Too long and the rate of failure too late in the process was deemed unacceptable.

The main objective is to better prepare candidates for the internship – make the law firms happy – and provide a common set of tools. One idea behind that was: Not everybody is going to get the same quality of internship. Some internships will not be satisfactory, but at least everybody will get the core tools of practicing law before the internship. Even if the internship is not the greatest

on the market, you will already have most of what it takes to become somewhat of a good attorney. Third, it shortened the mandatory internship. It was 21 months, and then became 18 months. It used to be 21 months of internship and then a three-month preparation period. And now, ideally candidates may finish their internship pass the bar exam on the next day. It really depends. Some candidates take ten days, others take two months. Both versions work. It depends. But no preparation time is a bit of a dream.

By whom is it taught? And I think this is a very interesting point in the in the context of all what we have discussed this past two days. We don't have the previously discussed 50% faculty to professional ratio. In Geneva, we decided to have attorneys, judges from the civil, criminal, and public courts at first, second and third instance. We host clerks from the federal tribunal, which adds great value. We have prosecutors. We have law professors, but the six law professors who are teaching at the school are practicing attorneys, they are partners in firms, and they are actually practicing the craft. We have mediators who are not necessarily attorneys. We have a doctor and a psychologist. What is interesting in all of this, it is about 30 attorneys, about 15 judges, two prosecutors, six professors, two mediators, one doctor, one psychologist. I do not have the exact number, but basically, the law professors are 10% of the teaching pool.

We teach weekly courses on civil, criminal, and administrative procedures. These famous procedure courses, which Bruno Mascello wanted to get out of the glass of beer, they are in the école d'avocature in Geneva. But one of the big pushes in reform now is to take the procedure and give it back to university. I think even though it is the core business of what we do as litigators and maybe the core skills of a beginning attorney, nobody wants to teach it. We will see how it develops. But for now, there is a very strong teaching of procedural matters. Then, also weekly courses on procedure before the federal courts, and then rules of the legal profession. Then there are special courses on different specific topics and then, the most interesting at that stage of your career is workshops. How do you draft a court submission in criminal, civil and public law? How do you plead before a court? How do you negotiate a contract? How does mediation work? How do you conduct a hearing? How does it work? What is your role? Where do you seat? How do you speak? When do you not speak? Can you talk to your client? How does that work?

Here I can talk a little bit about my personal experience. I was one of the first students at that school and this was really interesting. At that stage it was clear for me that I wanted to become a litigator. So, when I was at that stage, af-

ter four or five years of theoretical learning at the university, which was great, this was amazing, to be taught by judges. These judges who were my teachers are people I pleaded in front of later on. The lawyers who taught me how to behave in a courtroom, where the lawyers I pleaded against in the courtroom a few months or years later. Who can teach you better to do that than these people in this context?

After ten years, the general assessment was that the quality of the program was deemed to be good. The program was deemed to be oriented towards the practice of law and how to become an attorney. It was accepted that candidates were better prepared, better equipped to start the internship and their life in law firms. It was recognized that the selection or elimination of some candidates happened earlier. Now, if you do not get your CAS, you cannot be an attorney in Geneva. And this comes quite early. You have your bachelor's degree, your master's degree, you do one semester and at the end of this semester, you pass or fail. If you fail, you do not move on to the internship stage and you do not fail after another three to four years. For the past ten years, the final selection at the school for lawyers is around 15% of people who are definitively put to the side. At the bar exam, after the internship, it is about 1.5%. This is on target.

There are very few candidates who, after all that work, do not manage to become attorneys. Is it shorter? The only thing I am not convinced about is that it is not much shorter than before. It is still a path of seven, eight, nine years and I am not sure we have made much progress on that front. Does it need a reform? Obviously, since day one. It had not even been created yet and people at the bar were already explaining how it should be amended. This discussion has been going on for ten years. As the former head of the Young Bar, a member of the bar itself, a member of the CLE Commission, I have spent hours, tens of dozens of hours in groups trying to figure out how we could amend it. Obviously, you can make something better. But the naysayers at the bar who say: This does not work, it was better before, they are still students, the interns are weak, we were better before. These are people of a certain age, who knew a time when I think the *license en droit* could be done in about three years. I do not think at that time, when they started their internship, they were much better equipped than the candidates now. I do not believe it.

Personally, I wanted to be a litigator. I did the program and when I started on day one as an intern. I was really happy to have these tools. I was maybe not the best intern, but I was able to write court submissions. I was able to go to hearings almost every week alone. I was able to counsel clients. I was doing

the job. My mentor, who was a god of the bar at the time, of a certain age, provided me with strategy. He taught me: When you threaten somebody, be ready to pull the trigger. It seems trivial, but when you start your career, it's needed advice. That is what he gave to me. But exactly how to write a court submission, maybe not so much. The strategy, yes. And by the way, the trigger thing: It seems anecdotal, but how many times in my career as a litigator have, I had to tell a client: If you want me to make empty threats, you need to find someone else. I am not going to jeopardize your credibility. I am not jeopardizing my credibility. And so, one of the first pieces of advice I got from my old mentor was actually useful throughout my career. But for the technical side, I was very happy to have gone through the lawyer school.

CLE in Geneva is very comparable to what is happening in Zurich. We do not have mandatory CLE. We have talked about this a lot. We have talked about a label or a seal r. between 2000 and 2022 but decided not to go this way. In the end, I think we are happy with the way it works now. We favor the fact that we have a vast offer and a vast offer of quality that comes from universities. Geneva attorneys go to be educated in Neuchâtel, in Fribourg, in Lausanne, sometimes maybe even in Zurich, Berne or Basel. But we do move. The University of Geneva proposes amazing full day teaching on criminal law, on family law, on construction law, on banking law and Geneva attorneys do go there. They pay for it. It is, I think, much less than what the US attorneys pay every year, but they get an amazing deal out of it. The different commissions of the Geneva Bar – it is not only the CLE commissions – provide many of seminars teaching soft skills. We have talked repeatedly about soft skills. The Committee of the Geneva Young Bar is also a large provider of education, of CLE. Almost every other day, or at least every week, there is an educational offering in Geneva. I think we have a good experience about crafting the conferences that we host. We know what the practicing attorneys are looking for and, in most cases, we are able to provide it and it easily. Twice a year the CLE Commission gathers 20 attorneys or professors on a Saturday morning between eight and twelve that come and present caselaw for ten minutes each in different fields of law. They provide colleagues with an update. Twice a year, lawyers pay quite a considerable amount of money to wake up at six in the morning, be at the university at eight and get that four-hour case law shot or booster maybe.

Non-mandatory CLE works. There is perhaps one exception I would consider, which is the specialized certification of the Swiss Bar Association. In Geneva, I it is highly regarded, and more and more professionals aspire to get it. SBA certification is not mandatory, but the quality of the certificate and the way practitioners perceive it make it so that most people now are really seriously

thinking about getting it because on the market it does make a difference. Even though it is not mandatory, it is in high demand. And then if there is a small part of mandatory CLE within that, once you are deemed a specialist, why not? I personally, I do not see how we can implement mandatory CLE. I do not see how – in a generalist perspective – we can do anything. When you think that in the countries where they do it, it is 10, 15, 20 hours a week. Take the shot of the lawyer school, it is more than 200 hours of CLE right in the arm on a period of four months. And I think 200 to 250 hours in four months is more efficient than ten years or 20 years of CLE or having to sign a letter, playing with your phone. I do not see how we can implement a better system with a mandatory CLE.

When considering internships, the ideal solution is a well-structured and valuable internship. If that existed, I would plead for a system with great internships. In reality, most law firms don't provide great internships. In the absence of great internships, the lawyer school is a good compromise. Between ambition and reality, the reality is that we must compromise with the lawyer school and forget the ideal of the great mentor who is going to teach you everything from day one. Such is life.

Lastly, regarding the challenge of encouraging individuals not to pursue the bar exam, the issue of an oversaturated job market for attorneys is a concern. We have too many people who want to become attorneys, but just only practicing of a few years before changing careers. One potential solution would be the creation of a school for inhouse counsels. This could offer an attractive career path for practitioners who would prefer an inhouse role, by creating a diploma that has enough value so that the industry would recognize it and not require everyone to hold the bar. We do not have the answer, but if Zurich could pilot such a program it, that would invaluable. If you could do it for us for the next ten years and then we will have another discussion, that would be great. Thank you very much.

7. Comments about Day 2

ANDREAS KELLERHALS: Dear colleagues, we had a long two-day session. At the end, the final discussion is something that people often skip. Everybody's happy if it's brief. Nonetheless, we should do it because it was an interesting exercise, we had on a topic that is not terribly sexy and not a *Strassenfeger*, as it would be said in German. I am grateful that you have made it to the final discussion. Our approach is relatively informal. We have a microphone for those joining us online, but everybody speaks from his or her seat, if you agree.

I have just a few very simple questions that I would like to hear about from you. The first question for me is: What is your main takeaway from this discussion? What is your gain, your main gain, from this two-day seminar?

RICHARD NORMAN: It was a great conference and I think it opened my eyes to many things that are happening. I did not realize there was so much going on and there are of course, opportunities to do more. I did not realize that the law firms are doing so much themselves. I think the bar association has this area of specialization as well. This is a very clear area of certification and to that extent I do not think you need any compulsory or mandatory training for CLE in Switzerland. The UK has moved away from it anyways, in a fairly random manner. But I think that a lot of it is being covered and where the CAS must focus is on the gaps where the law firms are not getting to or where it has not already been covered by the specialized areas. I think there are some gaps. Those are my first impressions.

ANDREAS KELLERHALS: Okay, other impressions? MELISSA HARDEE, what is your general feeling? There have been differences and e similarities with the issues and some of the solutions. Somebody asked me yesterday what I would do, what my solution would be. I have actually had many thoughts about that and so I am going write about it because I think it is a very nuanced subject. The idea of whether CLE should be mandatory or not is quite complex. I have got some ideas. It needs to be more sophisticated and recognize what has already been done. It was fascinating hearing about the law firms because I did it similarly in my firm. One of the things I proposed many years ago to the regulator was that there should be a recognition of what firms are doing and that should give them a dispensation from any mandatory requirements so that the regu-

latory focus could then be put on those who were not actually training their lawyers sufficiently and keeping them up to date. But anyways, they went another way. I think there is going to be much food for thought on that subject.

The other thing that I am taking away from this is how much I have enjoyed the environment and the colleagues, and I realized why. It's because in Switzerland and Germany, there is such a pride in legal education and in the profession being proud of their legal education, which appears to be lacking in the UK. Having to return to a place with an incredible divide between the academy and the profession, I found it very inspiring here. So, thank you very much.

MICHELE DESTEFANO: I found it to be fascinating. In my career, I've always tried very hard to be more international and less American. Because Americans can be very focused on what Americans do. So, I loved hearing what other countries were doing as it relates to CLE and the seriousness with which people are spending time on it. Because in the US, it is kind of a laughingstock. It is just considered pretty bad. A lot of our CLE, not all of it, but lawyers – like we all said – do not take it as seriously. And that is because I think we have not spent enough time on the content and trying to make it higher quality. I do not believe that we offer exemptions to the law firms who are doing great jobs at providing training or the ACC or inhouse legal departments. And that is something that should be brought up. It kind of lit a fire as well for me: The latest buzzword these days, as opposed to innovation and collaboration, is a *culture of learning*. I think this is a really well-timed conference, because if we could instill that idea of the culture of learning that many of the people talked about, that lawyers innately have because they want to be good at their job, I think that is really what CLE is designed to do. And I think, in America at least, we have lost that.

ANDREAS KELLERHALS: It is interesting that in the US, the standing of CLE is so low. If you imagine, you attend a three-year law school, then you do a crash course, then you pass the bar exam, and then you could put the sign on your door, "Law Firm Alfred Meyer". With absolutely no expertise and no experience.

MICHELE DESTEFANO: Yes, that is absurd. Which is why I was so intrigued by the Geneva experiment, which I think is a great purple squirrel. I think it is also terminology. We have labeled CLE as almost second-class citizenship. Check the box. Whatever state you are in, if you are lucky enough to be in *Passachusetts* (Massachusetts), you never have to go to one of those seminars. But those attorneys are still learning in their firms or inhouse.

And there are many other executive education opportunities at Stanford, MIT, and Harvard. Tons of the universities offer them Fordham, you name them, in various areas. It is just they are not part of CLE. They are part of an education that happens after school. There is some kind of divide there that maybe needs to go away. It seems weird that somebody that is going to Harvard's leadership program for a week and learning a lot and being interactive, profiting from the Socratic method – the case method – also has to go sit in a CLE in front of their computer on a weekend to kick those hours, especially when we buy lawyers by the hour, six-minute increments. Wow, colossal.

THOMAS GÄCHTER: This has been one of the conferences where I have benefitted the most from. Maybe it is because I am very interested in this matter, also for the faculty and we really are about to formulate our strategy. But I think all the speakers here have brought very interesting insights and I have really learned a lot. What we should not do is to try to cover it all. Because that is not our job. I have learned that law firms, big enterprises with internal lawyers, they already do a lot. We have to concentrate on what we are good at and stratify our courses to those things that are not on the market. We should not try to focus on, let us say company law, because the big firms already do it. They maybe do it better than we could do it and closer to practice. Of course, we can offer some courses, but not on an inhouse level with 50 specialists. We should try to find the gaps that have been mentioned and offer something in these gaps. I think we have a lot to offer, but we should not try to cover it all because there is already a lot out here.

BRUNO MASCELLO: First, I had many learnings. I had things I understood better, also your approach, which I appreciate. I do not agree with all which has been said, of course, the last two days, but that is good. A lot of impulses, ideas and since I have to teach strategy for lawyers tomorrow, I actually have good examples I would like to share with the students of how certain institutions deal with that and how they could deal with it a little bit better.

The first learning is: Law schools, do not prepare individuals for everything and what we learn in law school does not last for 40 years. I think this is a basic assumption when we talk about CLE. Let us take it as a given, we do not prepare for life. That is why we need CLE.

Then, the second point I took away is what should be covered with CLE. We always talked about legal topics. I am a believer in non-legal topics, but that comes naturally with what I am doing. We should ask: What should we cover as a university, as bar associations, as companies and law firms, so each of them has a certain responsibility to cover.

The third point is: Who should cover it? We are close to a next buzzword, which is co-creation. Should we not all prepare some parts of it? Not everybody should do everything, because everybody has some strengths and weaknesses, and some can do it better than the other ones. And there is a need for shared responsibility when we talk about that.

Fourth is the process: When we started to talk about mandatory and optional. I do not think we should go down the path of mandatory CLE. That does not work, we know that does not work and I would like to raise this point again. Why not prepare – strategically – a kind of seal for attorneys, which is a kind of quality element for the future. I will give you an example for that. If you buy a Mercedes, which is passing the bar. After the bar, if you have a Mercedes, you do not go to any garage to do the service, because if you want to sell it, for example, you want to change the job and want to go somewhere else. You would like to show the service booklet which is the CV. You do not want to sell your Mercedes having been serviced by a small garage, which is not the expert in Mercedes cars. Why cannot we build something on that and build on incentivizing the lawyers to be interested, to actually get the ticks of good services in their life, to be able to have this service, because competition is out there. And I do not agree with what the UK is doing. They have given up the competitive advantage now. Because they are just going down in quality services and they will not win the game because the other ones are faster and cheaper. I think it is the wrong direction, again talking about strategy in the business.

Andreas Kellerhals: A lot of expectations, right?

Bruno Mascello: Yes, it is excellent, and I will also make one or two changes back with my business unit, as I have also gained some ideas of what I could offer.

Andreas Kellerhals: Excellent and maybe we should sit together and see what each of us is doing, as there was the idea of coordination so that not everybody is offering everything. Maybe we can follow up on that as well.

missed the presentation, but we will definitely have some exchange on that.

Andreas Kellerhals: In Geneva they shortened the 21-month internship requirement to 18 on those three months are now schooling days at the university, in a joint venture at the Bar Association and the courts. There they have a lot of lectures on very practical skills such as how to write a memo, how to plead, what to wear in court and things like that. This aims to prepare them better for the internship. Not so much for the bar exam, but for the internship. Maybe this is something we could think about too, right?

LUKAS WYSS: Absolutely. I mean, it is possibly a bit of a shift of the educational programs away from the law firms to an organization that does that in preparation of the time that you are going to spend at a law firm. Number one, at our law firm, this is something that you would normally learn on the job. Number two, obviously, we do have internal educational programs at Walder Wyss that people go through and that includes how to plea if you are a member of the litigation department. It is possibly already a bit more focused depending on the area and the team that you are part of, but it would be a shift. And yes, if you join a smaller firm after that time, it is definitely an advantage if you have done it already. And that is also the split between what is going on within law firms and what is going on at university. I agree with what you have said, but that is mainly true for larger law firms, right? Smaller law firms, they do not have the ability to offer that. This might indeed be a gap because most law firms have their educational programs just internally. It is not something that they would offer to the public unless it is a client marketing event or something.

ANDREAS KELLERHALS: I see, the big firms in a way are offering these services already for their internal lawyers. In that case, it might be an addition to what is already there, but that is probably not so attractive. Therefore, it is a difference between small and mid-sized firms and the big ones. Whether the big ones want to give that up is doubtful, because in this way you can educate the people in the way you want them to work later on. It is your style. You can form them and how they work later in your firm. That is less the case if they attend a school that is run by others and does things differently, where you do not have an influence on it. So, you would not be that happy if I take that, in a way, as granted.

LUKAS WYSS: Also, within the law firm, your educational program looks different depending on whether you are part of the litigation team or whether you are part of the corporate M&A or the banking and finance team. It does look different. There are some basic elements which are similar or identical. In particular during your internship at Walder Wyss, this is pooled during that period of time, but afterwards, it is already focused on what you are going to be an expert at.

ANDREAS KELLERHALS: I am not sure the Geneva model does that. It looks to me more like schooling on how you behave generally. We do that at Europa Institut, this *Anwaltsausbildungskurs*, but this is done after the bar exam when people have started to practice. But that was my question about the timing. Then, interestingly enough, in your presentation about the Geneva model you mentioned the question that we should have an inhouse school in order to take

pressure away from the bar exam, on people who never want to litigate. They should not have to go through that. The question is, should we think about the creation of alternative lawyer models, something that has been around for some time? At the beginning we thought the Bologna model make it easier for people to stop after the bachelor and do something else. But there were no good jobs around for "just bachelor lawyers". Maybe we should think about that. What do you think, James Bellerjeau, about an inhouse school?

James Bellerjeau: I am reminded of something I think Flavio Romerio said in his presentation about what he took away from law school, which is after 30 years and perhaps a bit more, it is not any of the substantive law, but to learn how to think as a lawyer. There is probably a significant amount of things, more than I think you might give credit when you talk about specialization, at least for inhouse, there is probably a fairly large overlap of topics that would be consistent across firms, whether you work at Dell or at Mettler, at a consumer facing company, at a business facing company. I am guessing there is a large body of things that I would say all inhouse counsel would benefit from learning how to do, just like a litigator might benefit from learning how to do basic things in a court. So, yes.

Andreas Kellerhals: Would this be a replacement for taking the bar exam, or do you prefer to have people on your inhouse team that have passed the bar exam?

James Bellerjeau: It is this problem of substantive law versus the other things that a degree says. It used to be that if you went to university, that sent a signal, not that you necessarily learned anything that is useful to me, but that you were of a certain level of concentration, intelligence, ability, and consistency. You could stick with something for several years and pass it. It demonstrated, in other words, personal characteristics that were important to me. What kind of a person are you? I rely less on the signaling function of university degrees now because I do not know what the hell a person learns anymore at some universities. Some universities I can trust, but many of them I would almost rather have you skip altogether. Law schools have not gone down that road. What I mean with that is that I think there is still a valuable substantive and signaling function that law schools create, that I would be uncomfortable eliminating and saying: If you want to practice inhouse law, you do not need to pass the bar exam. We do not have quite the same distinction from the common law, the US perspective of saying that there are lawyers and there are two paths:

You either pass the bar exam and you are "a lawyer" or you do not, and you are something else. For us, you go to law school, you take the bar exam, and that is it. I like that.

ANDREAS KELLERHALS: It is another two years, right? It takes two years to pass the bar exam with an internship and preparation. It is quite an investment here.

JAMES BELLERJEAU: It is here, yes. And that serves its purpose. I do not want to get into the substance of the merits of the different systems. Just to say that at a minimum, the law school education itself and the bar exam that then students take at some point, I think, still serves a useful function for me also, as inhouse. When I know that they are learning things that are not relevant to their inhouse practice, I still find it valuable.

ANDREAS KELLERHALS: That is the old idea that you are only a real lawyer if you pass the bar exam. You know how to do it, but you cannot, right?

BRUNO MASCELLO: In my former life, when I worked for an international company at the head office, we wanted to have attorneys only. For two reasons: First, it is a kind of proven education, a kind of quality seal you get because, you know: This guy or this girl has done a little bit more than average. And the second is much more important: Because they had to deal with external counsel, and they should understand how they work. That was the reason why we wanted to have only lawyers with the bar. And by the way, JAMES BELLERJEAU, for the element you mentioned. We had a six-month grace period for lawyers coming from law firms to switch mentality. To get rid of the consultant mode and to get to inhouse counsel. And six months worked pretty good actually.

ANDREAS KELLERHALS: HADRIEN MANGEAT, you were talking about the Geneva model, and this gave us quite some ideas to reflect upon. We do not know whether this is something we can realize in Zurich, but I think it is an interesting model. Besides that, what can you take home from this conference, from Zurich to Geneva?

HADRIEN MANGEAT: BRUNO MASCELLO just mentioned it very quickly, but one of my main takeaways is how important it is going to be for us to get up to date everything beyond just the law in the next few years. Not The insights from DIRK HARTUNG have been quite inspiring and interesting and at the same time, what he is painting for the next few years is really challenging for us. My concern is that we are fully committed still, to think about how to get our act straight in terms of how to learn law, how to practice law, and yet we are going to be hit in the face with all the rest very quickly.

What is lacking in the lawyer school – and this could be a weakness – is design thinking which Michele DeStefano was speaking about and maybe understanding digital technology that Dirk Hartung was speaking about. The non-legal stuff apparently needs to be at forefront now and let us assume we are already great attorneys.

Andreas Kellerhals: Flavio Romerio, we were very impressed by what you said. Here at the Europa Institut but also at the law faculty we very much depend, I think, on expert knowledge from you and your colleagues and the colleagues of similar firms as Homburger as lecturers and specialists. I think that is something we lack here at the university. We can only offer what we know and what we do not know we have to take import in a way. The cooperation with you is of absolute importance to us, the support and that we can count on your willingness to cooperate with us. We also remember that you are not so much interested in LL.M. programs, not so much interested in CAS programs and that your focus to participate, but also to participate as speakers maybe is the one-day seminar model we are offering where you can go into the deep parts of topics and not so much having an overview perspective. That is what I take from your presentation.

Flavio Romerio: The way I see it is, we are part of a broader legal community here and we are combined by our interest, for some even passion, for legal things. We all make different contributions. University makes contribution, the authorities make a contribution, we as law firms make a contribution. It is only with all these contributions in various roles that the whole thing works. For me it is absolutely a natural thing. We have great appreciation for everything that universities do. We could not do it without the university and so we are very happy to work together. I often have the feeling that there is not enough exchange in that legal community. That there is the ivory tower, there are the authorities, there are the law firms. But I do think, in all our roles, we are part of one whole, and it is mutually beneficial. It is always a pleasure to be here, and you know that many people in our firm feel the same. We have teachers here at the university and are always happy to contribute and participate in all of your events.

When looking at legal education within law firms, we are very fractured and that is why I spoke about our own firm in the beginning. That holds true for us and maybe some of our peers, but not for everyone within the industry. The vantage points are very much different. If you are in a small criminal defense law firm with three, four lawyers, that is a totally different. If you are in a small firm that, for instance, focuses on asylum law or if you are a family law prac-

titioner, you are in a totally different environment and have a totally different need. I can only, and I would like to make that clear, speak to our very particular environment and what we do and what our needs are. I do not think you can necessarily draw conclusions for the entirety of the bar. A good part of the lawyers in the Zurich Bar are organized in larger firms that have these own internal educational programs. But there are all the others out there who do not have that, and they are probably still – maybe you have the numbers – about half or a third of the bar which are in smaller firms.

ANDREAS KELLERHALS: That is one year more than you would do here, right? Six years.

Audience Comment 8: Six years plus two years of master's studies if you want. It is like medical school. That is a lot, and it is not efficient, which is the paradox. I got two very important points from here. MICHELE DESTEFANO mentioned *innovation* after JAMES BELLERJEAU's presentation, that there was a fourth point in addition to the three models he showed on the slide. And there is a fifth, which is mine, which is a business. It is an entrepreneurial activity, which is driven by a market need. When I found it, I buckled, and now it is a business. And then the second word is what JAMES BELLERJEAU mentioned this morning on *partnerships*. Because I think there is a different take from people that are like JANICK ELSENER. He is me 20 years ago. I think we should listen to him, what he sees as the legal market in ten years.

ANDREAS KELLERHALS: Thank you very much. I have one last question to you. As many of you now have such a positive attitude to what we did these two days. Should we do that again? Or should we do it somewhere else? I mean, it does not have to be in Zurich. San Diego? Let us continue on that via email. But maybe we can create something like an international sounding board of CLE, it might be interesting to pursue this discussion as we have just started here in this framework.

JAMES BELLERJEAU: I would say no. And I will say why no. Because you should not do this conference again. You have in this room, or very close to this room, everything you need to design a strategy to move forward. I do not mean to say you have enough to write a Ph.D. dissertation. If I think about how I created strategy, you need to gather quite a lot of information to be able to be in a position to make decisions. You should do this conference again, but it should be to discuss the hypothesis, to discuss alternatives, to discuss ideas, not to discuss the same topics again.

I do not mean to criticize, but I am saying you have done so much in two days with this group of people that I think you should go off and now do your hard work of thinking and writing and synthesizing. Take three months, take six months, develop a strategy together with the faculty and with other people that you wish to communicate with by email and then have another conference in San Diego, yes. That says: Hey guys, here is our hypothesis. We want to try a hybrid of the UK-Geneva-Zurich model. What do you think?

And then your road test your idea a little bit. That is what I would recommend. I do not think you need more consultation. That is just my personal view. There was so much good input that happened here. Now you need to synthesize and strategize.

Andreas Kellerhals: I absolutely agree with you. I was not talking about repeating this conference, but just keeping this topic on discussion, because we have obviously not finished the discussion at all. We just started it somewhere. Or maybe we can continue the debate. We will send out emails and see what the reactions are, and then decide from there. I do not know, Thomas Gächter, that is the end.

Michele DeStefano: Janick you are a Law Student, what are your thoughts on this topic?

Janick Elsener: I was not prepared for this, but I am happy to take the opportunity. What I gathered is that what is probably the most important thing to learn at law school, we cannot be prepared for the next ten years. Times are changing at a very quick pace. Nobody can really keep up. There are new fields of expertise born on a daily basis, at least from what I see, and I only scratch the surface of all of these topics.

Really, the most important thing is that you have a solid base and then from there you can then develop into the person, the legal person, but also the person as such, your character. This you must do by yourself, and I do not think that this could ever be taught at universities or at schools. For me, the best thing about school and university was always to ignite my curiosity to learn about things that I would not come across without university or without school. I think that this is what the university should continue to do, because I feel privileged to be able to study in Zurich, where I feel like I do have that opportunity to really develop as a character.

Andreas Kellerhals: Then I would like to thank everybody who participated. It was a pleasure. We made new friends, and it was interesting, controversial, nice, interesting, stimulating.

The education of lawyers does not end with the law degree. Continuing legal education is of central importance for legal professionals and the whole of legal industry. Both the education sector and the legal sector are undergoing profound change due to new business models and information technology. Providers of continuing legal education and universities in particular are therefore confronted with various questions and challenges.

The Faculty of Law at the University of Zurich, as the leading provider in Switzerland, therefore held a conference on February 15 and 16, on the occasion of which these questions and challenges were discussed. The conference featured speakers from universities, law firms and associations as well as companies from Switzerland, Germany, the UK and the US. The individual presentations provided insight into the state of continuing legal education in the respective countries and addressed topics such as legal innovation, digitization, the role of law schools, and expectations from legal practice regarding continuing legal education.

With contributions from:
James Bellerjeau / Thomas Gächter / Stephan Göcken / Melissa Hardee / Dirk Hartung / Andreas Kellerhals / Hadrien Mangeat / Bruno Mascello / Richard Norman / Jed S. Rakoff / Flavio Romerio / Lukas Wyss

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