The Legal Questing Beast: Vocational Students' Research Strategies, Motivations and Emotions

Abstract

In the context of the Bar Vocational Course, this project enquired how students perceive their research strategies when they interact with repositories of legal information. The research captured and analysed the students' descriptions of these engagements and their motivations for as well as their emotional responses to undertaking research tasks. Some tentative comparisons are made between the students' strategies and those reported by a small number of junior barristers.

Introduction

Self motivation and an ability to work unsupervised are expected of professionals and how learners prepare for taught sessions and formative assessments is therefore especially significant on programmes that lead towards qualification as a lawyer. Research into the law and analysis of the facts in light of that law underpin all written and interpersonal skills for practising lawyers and also students engaged in simulation exercises. How students go about these task particularly outside the formal learning engagements is not fully understood and rarely investigated[1]. This gap in educators' knowledge is surprising, given the proportion of time students are required to spend on these tasks. Teachers no doubt hold expectations about what takes place in students' unscheduled time, and when interrogated by them about how they have conducted their preparation students may consciously or sub-consciously recount versions of what they did to match them. However, these presumptions and stories may obscure and distort the realities that they seek to represent. This report describes the research strategies of students who were on the Bar Vocational Course (BVC) at City Law School, City University London in the academic year 2006-07. Data of a similar nature was gathered from a small number of practising barristers to contextualise the results.

Barristers are referral experts who operate in loose relationship with instructing solicitors and form short-lived relationship with their lay clients. These experts deploy their legal knowledge to gain and maintain advantage in the adversarial arenas where clients' problems are resolved. Identifying specific legal information to solve these problems requires barristers to identify issues, select resources, and apply the law to the facts in order to predict solutions to legal problems. Students on the BVC are also required to

[1] R. Widdison, "New Perspectives in Legal Information Retrieval", (2002) 10 *International Journal of Library & Information Technology* 41 compares concepts of knowledge systems and mere information systems and considers the roles of forgetfulness and editing of knowledge for those engaging with online legal resources. F. Bennion and K. Goodall, "A New Skill? Law-text Analysis" (2006) 3 *Web JCLI* argue that new skills are required to handle law texts: these include the general intellectual skill of identifying issues, and those necessary for formulating the rules and actions to reach the actual or arguable legal result. The article describes the key components of law-text analysis and argues that it should be taught as a pervasive topic on law programmes.

approach legal research in a selective, precise and efficient manner. The primary mode of learning on the programme is simulation, and students participate in tutorials and lectures and work in libraries. Though the learning activities are modelled on practice, the environments within which they occur are similar to those found at the academic stage. A common criticism made of students on the BVC is that they continue to employ strategies and resources that are more suitable for the academic stage rather than display the practitioner-like habits to resolve their make-believe clients' legal problems. For example, some students on the programme remain loyal to undergraduate texts, show a reluctance to engage with the primary sources of law, and have difficulty interpreting and selecting relevant material. This research aimed to gain an insight into these and other dilemmas as students moved towards professional research behaviours by identifying students' research strategies and analysing descriptions of their interactions with repositories of legal information.

The exit standard for the BVC is ready for pupillage, the final stage leading to a full practising certificate. At the academic stage of their legal training, students would have engaged with resources that may be quite different to those used by practitioners. This is particularly the case with legal commentaries on the law, but to some extent is true for primary legal sources especially if students relied upon digests of the law and case books. Students entering the vocational stage will nonetheless hold a range of legal skills to varying degrees of competence. The Bar Standards Board, which validates BVC programmes and its replacement the Bar Professional Training Course (BPTC), requires legal research methods to be dealt with as part of induction for students or otherwise early in the programme, in order to furnish the student with the necessary skills to:

- follow a line of investigation […] using both paper based and online resources;
- effectively building on prior experience to underpin the various knowledge and skills areas;
- demonstrate an understanding of the structure of legal literature and the media through which it is made available;
- make effective use of a law library (using both paper based and IT resources), keeping up to date with developments.[2]

The BSB's website tells students that to enter the BVC they are expected to have "appropriate expertise in Legal Research Skills"[3]. A joint statement issued in 1999 by the Law Society and the General Council of the Bar has the following to say about the expected standard on the completion of the academic stage of training:

> General transferable skills: students should be able to apply knowledge to complex situations; […] select key relevant issues for research and

[2] *Bar Professional Training Course: Course Specification Requirements and Guidance* (Bar Standards Board, 2009) p 54.
[3] http://www.barstandardsboard.org.uk/Educationandtraining/whatistheacademicstage/ [accessed 19.03.10]

> to formulate them with clarity; use standard paper and electronic resources to produce up-to-date information; [and] make a personal and reasoned judgement based on an informed understanding of standard arguments in the area of law in question.[4]

The shift to the use of practitioner texts is a necessary step towards professional qualification but, at times, it can be a painful move out of the comfort zone of undergraduate texts.

Although anchored in the legal vocational course, the project's methods may be of relevance to other legal vocational programmes. The transition away from undergraduate learner to expert professional with the associated behaviours is a little-investigated area of learning. The experience of students on the Legal Practice Course (LPC) for intending solicitors has been investigated through analysis of self-reflective reports to reveal the role of trust in learning and the social capital that leads to initiative and collaboration.[5] The results of that research, like the present one, identify positive and negative characteristics in the learning experiences and provide information about how to support students to maximise their development into trainee practitioner.

Research Methodologies I: Student Survey

The full-time and year one part-time cohorts on the BVC at City Law School were surveyed with the use of a questionnaire that incorporated a variety of tick box (e.g. Likert scale and directed options) and open-ended questions with space for additional comments to allow respondents to describe their strategies and their own responses to research tasks. The questions were grouped into topics. Students were invited to draw on their experience of using paper and online resources, and their preferences between the two formats when locating primary law and commentary on it. There were also sets of questions on the frequency of conducting research in the skills and procedural subjects on the BVC, and the reasons for doing so, that is, whether they undertook research merely to refresh their knowledge of legal principles, to update it, or to deepen that knowledge base. Using similar options for responses, the survey asked respondents for information about their use (or non-use) of named legal commentaries within the context of formal feedback (mock assessment) exercises in opinion writing skills, examination in chief skills, and legal submission skills supported by a written skeleton argument (an outline of the content of the submission). Personal data such as gender, age and prior legal academic qualification was also gathered.

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[4] *The Joint Academic Stage Board Guidance on the Determination of Learning Resources for Recognised Law Programmes*, http://www.barstandardsboard.org.uk/Educationandtraining/whatistheacademicstage/JointAcademic/ [accessed 19.03.10]. This position appears to be unchanged in the as yet draft 2010 joint statement to be issued by the Solicitors' Regulation Authority and the Bar Standards Board.

[5] K. Barton and F. Westwood "From Student to Trainee Practitioner: a Study of Team Working as a Learning Experience" (2006) 3 *Web JCLI*

The surveys were distributed at the start of a small group session towards the end of the Legal Research and Opinion Writing Skills courses in the first term when students had been on the programme for just over 3 months. The questionnaires were anonymous, but students who wished to enter a prize draw for four £25 gift tokens provided their email addresses. A student representative collected completed surveys and sent them through the internal post to the author, who input the data with assistance from members of the library staff.

Response Rates

A total of 475 completed student surveys were returned, a response rate of 83%. The 2006-2007 cohort on the full-time BVC was 524; that on the part-time year 1 cohort was 44; in total 568 students. Only 456 of the 475 respondents identified which course they were on, a presumption was made that those who did not (19 respondents) were full time students. Thus the response rate by programme was:

Full time	94%	(427 + 19 = 446)	85%
Part time Yr 1	6%	(29)	66%

Focus Groups

Two focus groups tested preliminary conclusions from the survey results and the written comments that accompanied them. Both groups were facilitated by the author accompanied by the head of the library. Students had the project explained to them and were presented with a summary of the analysis carried out to date. The focus groups took place approximately 11 weeks after the survey had been distributed. Since that time students had sat final assessments in Legal Research and Opinion Writing Skills, but the results had not yet been published.

Group A included three full-time students, two male students and one female. All three were overseas students. Group B included six full-time students: one male and five female, and one part-time female student. It appeared that one of the students was from overseas and the others appeared to be UK students. Participants were not asked their age, but it appeared that in Group A there was on older student and in B two, all probably in their 30s; all other students appeared to be in their 20s.

Gender, Age, and Computer Skills

Forty eight per cent of the respondents were male and 52% female; this reflected very closely the gender balance on the student cohort as a whole. All survey results were scrutinised by reference to gender, but no discernable or significant gender bias was noted in preference for online or paper resources or when investigating the descriptions of research strategies revealed by the survey.

The age of respondents was sought to investigate the role of emerging technologies in legal research. That is to interrogate whether the age of the

learner influenced preferences of paper or online formats of legal resources. The age categories of respondents were:

<22	10%
22-29	73%
30-44	14%
45-60	3%
>60	0% (<1%)

Respondents were asked to assess their computer skills ability level. The question was general and answers were a subjective assessment so the results are merely indicative. Some students may have restricted their answers with reference to their confidence at searching databases. This was the presumption of focus group A, whereas focus group B reported that they had office skills applications in mind when addressing this question.

Poor	1%
Basic	14%
Competent	64%
Advanced	21%

In most age groups the results conformed to the whole group, but respondents above 44 years of age showed a greater tendency towards poor and basic skills (8%, 15%) and advanced skills (31%). The life experiences of these students may explain this polarisation. Some for example may have developed above average computer skills in the workplace whereas others may not have had these opportunities. (Presumably this group of students would have participated in secondary education before computers were in common use and may not have received sufficient IT skills support at the tertiary stage.) This suggests that course designers need to consider offering additional targeted support for older students to enable them to access online resources.[6]

Research Methodologies II: Practitioner Survey

Locating and engaging barristers with the project was the most challenging aspect of this study. Barristers in independent practice are spread across many sets of chambers from which they are absent for long periods of time. A comprehensive and statistically valid survey of the English and Welsh Bar's approaches to legal research was well beyond this project. There have been very few significant attempts to understand how legal practitioners conduct their research into the law and most of have been within the context of librarianship with an understandable focus on the paper and online resources

[6] Law librarians may be best placed to suggest strategies for addressing this phenomenon and this profession has conducted its own research into it. For examples see K. Thomas, "Teaching Legal Research from the Inside Out", (2005) 97 *Law Library Journal* 117; J. Crossley and C. Tylee, "Developing an Online Interactive Guide for Law Students", (2005) *Legal Information Management* 5(4) 232-235; and S. Booth, "Getting It Off the New: Use of the World Wide Web in a Firm of Solicitors" *Legal Information Management* (2004) 4 (2) 97-104.

rather than the human actors' strategies and emotional responses to this task.[7] However, the author gathered some anecdotal accounts of junior barristers' research strategies to shed further light on those described by the students and to test the water for a possible future project. It would be extremely valuable to those involved in vocational and academic legal programmes to know more about the strategies employed by professionals. This knowledge would help educators to engender within their learners the specific skills that are employed by practitioners at a level that is consistent with their programmes' aims.[8] However, the habitat – preferred by the individual or imposed by the working environment – may well be an extremely influential factor. Research into the working practices of solicitors in firms reveal differences to those of the barristers working in independent practice within chambers.[9]

Two interviews were conducted by the author with personal contacts at the independent Bar to seek suggestions for suitable areas of enquiry with other practitioners in ways that would cause minimal disruption to busy working professionals. Next the co-operation of a barrister in a mixed common law and criminal set of chambers was gained. That set had ten practitioners between 3 and 5 years' call who specialised in a wide range work. Thus although the data set was small it had the advantage of including junior practitioners who were working on tasks of a complexity that were comparable to those on the BVC and within legal areas that students would be exposed to. It is acknowledged that as well as not being statistically valid this methodology has

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[7] M. Spencer, J. Spencer and P. Kent "Practitioners' Use of Online Law Reports: Implications for Law Schools" (2002) 2 *Web JCLI*. This small survey of solicitors, barristers, law centre managers, academics and students reveals the extent of each group's use of on-line law reports. Through the use of a survey respondents' attitudes to on-line and paper law reports were revealed. The results were used to promote the teaching of skills of analysis and discrimination of sources of law online within legal education to increase students' legal knowledge and skills.

[8] The most significant and sustained studies of work at the English and Welsh Bar have been conducted through the Institute for the Study of the Legal Profession. See J. Shapland, and A. Sorsby, *Good Practice in Pupillage* (Sheffield University 1998); J. Shapland and A. Sorsby, *Starting Practice: Work and Training at the Junior Bar*, (Sheffield University 1994); J. Shapland, R. Wild and V Johnston, *Pupillage and the Vocational Course*, (Sheffield University 1992). These survey-based studies confirmed that the BVC, at the appropriate dates, was broadly relevant and useful to practice, with the clear recommendation from the researchers that it remain a general practice rather than a specialist programme. In the 1994 report it is reported that legal research skills developed on the BVC were used a lot by 58% of the responding junior barristers, used a bit by 35.7% and not used by 6.4%. The Bar Standards Board is currently conducting a review of the pupillage, and is expected to report on its findings later this year.

[9] A study of the Bars of the UK conducted in the 1990s offers insights into barristers' own conceptions of their working environment: J. Morrison and P. Leith *The Barristers' World and the Nature of Law*, (Maidenhead, Open University Press, 1992). Solicitors' working practices have been addressed in several studies that focus on medium to large firms, for example L. Empson (ed), *Managing the Modern Law Firm: New Challenges, New Perspectives* (Oxford, Oxford University Press, 2007). The role of learning in law firms has also received attention, most recently M. Hardee, *Legal Education and Training – A Practical Guide for Law Firms*, (London, Lexis Nexis, 2010) which offers an explanation of the regulatory framework for legal education and training in Great Britain and the responsibilities of firms.

further weaknesses. The main danger raised with self-reporting of how tasks were executed is that this commonly results in the general statements that reflect the respondents' views about how things ought to have been done than how they were performed in practice that is logic-in-use.[10] Thus respondents may employ retrospective thinking that is constructed with the aid of beliefs about what ought to have taken place in simplified, tidied up and selective ways rather than reporting the messy real-world practices that were actually employed. In an attempt to ground their reflection on noteworthy actions and thus gain cogent responses practitioners were asked to report one recent example of research that they had conducted. They were asked to complete an open question style survey to narrate the strategies that they employed on that last occasion when they had a case that required some significant legal research. They were also asked to report what motivated them to undertake that research and to state briefly what steps they took to execute it and the resources that they employed. Finally they were asked to describe any human assistance they had sought and received to undertake this work. This was essentially an invitation to the participants to describe their actions retrospectively with no direct requests for explanations in an attempt to achieve some validity through seeking reports on how they went about completing a task rather than inviting interpretations or justifications for their actions.[11]

Responses were received from all of the barristers – thanks to the encouragement of the contact practitioner within chambers. Unfortunately not all respondents found it easy to articulate their motivations and processes, and some of the descriptions of the strategies that were communicated were incomplete. Although disappointing these incomplete reports suggest that they were attempts to report real-life experiences rather than offer logic-in-use accounts which could presumably have been communicated with greater ease. Thus the data such as it is may only be used with extreme caution to provide the occasional counterpoint to the more significant data gathered from the students.

Student Survey Results and Analysis

Frequency of Research: By Subject

Students on the BVC are expected to locate and apply relevant law in all subjects, but it is generally recognised that some areas of the programme require more thorough legal research than others. An analysis of the survey results suggests that students are highly selective about when they will conduct significant research and one of the main determiners is the subject within which the research task is embedded. Thus BVC subjects main be ranked as follows:

[10] P. Knight, *Small-scale Research*, (London, Sage Publications, 2002) p. 68

[11] They could therefore be classified as a species of think-aloud protocols (TAP); K. Ericsson and H. Simon, "Verbal reports as data", (1980) 87 (3) *Psychological Review* 215, and K. Hannu and P. Pallab, "A comparison of concurrent and retrospective verbal protocol analysis" (2000) 113 (3) *American Journal of Psychology* 387.

- Students always/often research extensively for Opinion Writing and Legal Research
- Students frequently research extensively for Civil Litigation and Evidence (plus Criminal Litigation), and do so equally for each subject
- Student only occasionally research extensively for Criminal Advocacy and Civil Advocacy
- Students rarely research extensively for Drafting

The focus groups broadly confirmed this selectivity and the hierarchy of subjects. Written subjects such as Opinion Writing and Legal Research Skills were clearly privileged. Group A opined that advocacy classes that required submissions to be supported by a skeleton argument (a piece of written work albeit a modest one) encouraged students to research in greater depth than those that merely required oral submissions. In contrast some students in group B made it clear that they devoted more time to research in preparation for all interpersonal skills sessions. Both groups explained that little research was conducted in preparation for Drafting Skills sessions because the course manual[12] offered sufficient material, and that where this was not the case Blackstone's Civil Practice[13] (a practitioner text distributed to students) complemented it adequately.

Reasons for Research: By Subject

The analysis of results of questions and comments that focussed on the aims of the research that students had conducted also revealed a needs-must approach with a similar ranking of subjects:

- When researching for Legal Research and Opinion Writing the vast majority of students do so to deepen their legal knowledge
- When researching for Criminal Advocacy and Civil Advocacy on the whole students do so to deepen their legal knowledge
- When researching for Drafting some but not all students do so to deepen their legal knowledge

The focus groups were not at all surprised by these results, and when asked for their comments made similar ones to those given for the frequency of research. Deepening existing legal knowledge was seen to be akin to researching new areas of law, and where exercises demanded this there would be a greater frequency of research activity in the written skills of Opinion Writing and Legal Research Skills.

Conclusion

Greater effort is expended on preparation for text-based tasks than for interpersonal skills ones. Students' comments in the survey and focus groups noted a willingness to use practitioner resources when specifically required to do so, but otherwise were apparently heavily reliant upon prior learning (itself presumably based on student texts). Some students were reluctant to use

[12] D. Emmet, David et al, *Drafting*, (Oxford, Oxford University Press, 2009)
[13] Oxford, Oxford University Press, 2009

primary legal sources because they were ill-equipped to exploit them perhaps due to low levels of computer skills and a unfamiliarity with the databases.

What Motivates Vocational Students to Conduct Research

The survey responses and the focus groups revealed some of the motivations that students have for conducting research into the law. These motivations were closely related to the students' emotional responses to their work, and, to some extent, explain why students sometimes did not undertake research thoroughly or at all. The following overview of motivators and de-motivators for conducting research have been disseminated to subject leaders and course designers at CLS to improve the learning experience for students – not least to create exercises that students will more readily acknowledge require engagement with primary as well as secondary sources of the law.

Motivators for Research

The fear of making errors in front of tutors and peers was identified as a major driver for locating law and especially for ensuring that it was relevant to the exercise and accurate. This motivation was associated with face-saving and as one member of focus group B put it, there is a fear of looking like "a complete idiot on your feet". Students perceived written work as more vulnerable to corrections of the law in class than oral skills performances. This is not surprising given the use of projectors in the classroom to display students' written work to invite peer feedback and for the tutor to comment on relevance, accuracy and so forth. On the whole students spent longer and invested more intellectual energy preparing for written work than for interpersonal skills performances.

Where students lacked confidence in their existing knowledge or were required to move into novel areas of the law because it was beyond the undergraduate curriculum then they more readily identified the need to conduct research. However, this recognition was not always met with a positive emotional response. Some individuals reported that they felt uncertain in this new area of the law and felt it necessary to research the same area several times for example consulting several books on the same subject spending a disproportionate amount of time in the process and to that extent they worked inefficiently.

The opportunity to employ academic-stage research strategies on the BVC was welcomed by some students because they felt more confident about their existing skills (where it had been retained) and welcomed the opportunity to work within this comfort zone. One of the most common academic research strategies was reading widely around a topic to capture as much information as may be relevant to it. As will be seen, this generalist (and at times kitchen sink) approach was in stark contrast to the needs-driven approach exhibited by the practitioners, one that is based above all on relevancy and getting the job done within the resource hungry world of work.

Not surprisingly students reported peaks of research activity in preparation for unseen summative assessment and performance in the seen ones. The next

busiest periods were those around the time of the mock assessment exercises that appear about half way through the course of each subject. The focus groups agreed that more time is devoted to research at these times together with the associated activities of photocopying, visits to the library, and book borrowing. The assessments were perceived as high risk, high return events which heightened the desire to get the law right to the best of one's ability.

De-motivators for Research

Students in the focus groups were frank about laziness and a lack of commitment to some tasks being impediments to research activity. Caution is required here as there was a tendency in the focus groups to generalise about other students and their behaviour without evidence or concrete examples and no willingness to make personal admissions that they shared these undesirable habits of mind.

Inhibited access to appropriate resources was identified by a high number of survey respondents as the main de-motivator for engagement with the law whether in its primary state or through the medium of legal commentary. Some students noted the inconvenience of transporting texts from the library to their homes or other places where they chose to work. Noise and the ambient temperature (too hot and too cold) in the library were cited as significant reasons for not working there. Sixty-five per cent of respondents stated that their preferred location to prepare for session was their home and below 30% of students preferred the CLS library. Lying beneath statements of the preferred place of work and the unwillingness to transport heavy books is the suggestion that some learners were prepared to sacrifice access to printed materials for the personal comforts that were identified as the main reasons for working at a distance from repositories of printed resources. (The CLS online resources would be freely accessible via the Internet with the use of a password.)

Respondents readily acknowledged their reliance on the manuals and the practitioner works on civil and criminal procedure and evidence that are distributed to them at the start of the programme. Students noted that for some subjects the practitioner texts in particular were sufficiently detailed to obviate the need for further research. Other responses suggested that some of the manuals were similarly sufficiently detailed to remove the need for recourse even to the practitioner texts.

Some respondents commented that what they perceived as oversimplified exercises on the programme had so reduced the complexity of legal issues that no meaningful research into the law was required. Advocacy classes in particular were perceived to be about the facts, which meant that preparation for performance merely required a mastering of them and recall of pre-existing undergraduate law. Where there was the danger of any short-comings from a lack of legal knowledge it could be resolved on the hoof with verbal explanations to the best of one's ability in the circumstances and corrections with the aid of the tutor's input or that of one's peers. These factors were

perceived by one member of group A to reflect the reality of practice and its stressors where there was not enough time for extensive research.

The Metaphorical and Emotional Language of Research Employed by Students

The students used a wide variety of terminology and metaphors to describe the strategies that they had employed to prepare for sessions. This was particularly the case during the free ranging discussions in the focus groups where clusters of metaphors about research and students' emotional responses to the experience emerged. An analysis of these metaphors contributes to the understanding of how learners perceive legal research and the strategies that they employ to execute it. Studying the language employed illustrates their emotional responses to learning and offers a further insight into this pervasive but largely private task. The analysis falls into two categories. First an exploration of the language used to describe their research and second the metaphors students employed when recounting emotions during the execution of those tasks.

Task-related Metaphors
Seeing: e.g. seen, overview, every single view point, show it to me, focus.

The metaphor of looking for the law was the most common and confirms the textual nature of the law. Metaphors such as viewpoints and overview correspond with the complexity of the structure and content of legal texts, and used to explain the need for general understanding before seeking specific, relevant data. These characteristics correspond with the complexity of the intellectual tasks students encounter and are complimented by metaphors of journeying and searching.

Journeying: e.g. finding new routes, where to start, starting point, going back, going into depth, cover all my bases.

In these ways students acknowledged the uncertainties and iterative nature of legal research. The journey metaphor is re-enforced on the Legal Research Skills course by the requirement to record in note form the route taken from the identification the legal issues through to location of relevant primary law. These routes are not linear, but branched ones, and the tasks set often deliberately have no clear starting point. The uncertainty and iterative nature of these metaphors corresponds therefore to the learning tasks themselves.

Searching 1: Seeking: e.g. going back, click around (online), feel around, find out, leads, don't want to miss anything, discover, missing.

Searching 2: Questing: e.g. covering same or similar ground more than once i.e. 'seen it before', hit the ground running (at start of course), mystery, right answer (opinion writing).

These two clusters reveal an appreciation that when one researches the law one may or may not have an object in mind. Metaphors of search and quest

were closely related and often blended into one another. The former captured the students' understanding that the research tasks required them to locate specific law. They suggest a game-like approach to research, that the law is hidden in some way (perhaps deliberately by the tutor) and that, if one knows how to read them there are clues and leads within the instructions to students. Some of the contexts within which the game metaphors occur suggest that students discern that a playful challenge has been set by the tutor, but others have more negative overtones that the game is hardly worth the candle. There are also seeking metaphors here that evoke investigative and detective work. The questing sub-set of searching metaphors is related to hunting and to pursuit, which contain within them connotations that the quarry is some specific piece of law. However, there are undertones of negative emotions such as melancholy and futility. Like medieval knights, students pursue the answer, receive intimations of it but ultimately go round in circles, glimpsing but not capturing the legal questing beast. To extend the analogy, there is a grail quest: only the few will locate all accurate and up-to-date law and thus reach the right answer. This may reflect the highly competitive nature of the programme as well as the pursuit of the seemingly ever elusive pupillage and ultimately success at the Bar.

Emotion-related Metaphors

Apprehension of getting the law wrong was expressed as a fear of a loss-of-face through tutor-led feedback in opinion writing sessions or the public humiliation of making an error in advocacy presentations. Avoidance of public shame was particularly important and as one student put it "[I] didn't want to screw it up". In this context thorough research was perceived as a protection against humiliation. There was emotional investment in the preparations made for sessions and students wanted to stand by their work, if it failed them, they expected to experience a sense of embarrassment. Some metaphors include concepts of fault and forgiveness drawn from religion with strong overtones of personal guilt as an associated response to public shame. This was especially the case for mock and final assessments where work was performed in more private one-to-one sessions or by the submission of written work. The language employed revealed that some students viewed making errors in the law as a grave failing that required something akin to forgiveness. Formal assessments were perceived as being the "last chance" to get the law right almost as if previous errors had been corrected or tolerated but not forgotten up to this point. In light of the individualistic nature of research it is not surprising that anxiety plays a role as a driver for good performance, and its role as a motivator for undertaking it to the best of one's ability has already been revealed. However, these metaphors illustrate the public shame and personal guilt that can be associated with evaluations of student's endeavours and abilities. They also suggest that learners perceive classroom performance and assessments as forums for public judgments with the ever-present threat of humiliation.

If these negative emotions reflect the unevenness of the tutor-student relationship there are also those of conflict between students. Competition for finite resources was a major contributing factor to tension: accusations of "book hogging" and theft were levelled and tales of physical strife over books

were also recounted. Students in possession of a coveted text fearfully guarded their possession of it, and were scared to leave them unguarded for fear of abduction. There were rumours of books disappearing altogether and of others having their pages ripped out. A student in one focus group described the atmosphere in library during assessment periods as “crazy” and another said that it was “frantic” at these times. These characteristics and problems were echoed in the comments made on the student surveys: “I commute 5 hours a day so the library resources are not helpful, when I have made it into the library I’ve found it impossible to even see the books I need as students jealously guard them – so very unhelpful”. A part time student reported that “[f]ull time students tend to hog books in library and this can be frustrating”. Some went so far as to use the language of open conflict. “When all students have to use the same few books we are practically fighting over them.” Another student reported “Materials e.g. practitioner texts difficult to come by so need to start early and fight for books”. Other comments confirmed that course design had created pressure points that lead to conflict: “When hundreds of students receive the same exercise on the same week – [there are] simply not enough books in the library and it spoils all the time management”. “Generally the resources available are more than adequate. It is sometimes difficult, however, to get hold of practitioner works when all the students on the BVC are working on the same exercises”. There were several other comments about the pressure on resources caused by all students working on the same exercise or assessment at the same time. One student had a solution albeit a rather archaic one: “[The library] should chain one copy of each volume of Halsbury’s Statutes and Laws to the shelves”.

These comments should be treated with some caution. The offensive behaviour was observed in other students or groups such as the full-time students or students in other tutorial groups. Defensive behaviour, where admitted, was justified for example other students “hogged” books but the fear of adverse possession explained the need to protect possession fiercely. Levels of distrust were at their highest at times of pressure on resources such as assessment and formal feedback, but, as has been seen, there was high degree of competitiveness from the start of the course. The anxiety exhibited at that time may emanate from weak social ties and a general sense of vulnerability. At the same time some students probably wished to prove themselves through good performance in class and realised that access to legal resources for preparation was a key to success. This period of high-anxiety created by intellectual sparring and jockeying was short-lived; by the time of the focus groups these behaviours were looked back upon by some students as highly negative but already in the past.

Conclusion

Certain language and qualities were absent from the students’ accounts or did not surface in the data. Amongst the notable absences are pride in one’s work and learning achievements. Although many students in the focus groups and survey stated that they wanted to give tasks their best none explicitly mentioned their achievements and much less their triumphs. Enthusiasm for the law and interest in it were not mentioned, and appreciation of the value of legal skills only featured in passing in the students’ comments. The concepts

of professionalism and qualification did not appear at all. The survey and the focus groups centred on what students said that they did rather than why they did it and so it would therefore be wrong to make significant claims for these gaps. However, they stand in stark contrast to the strongly felt and sometimes passionately expressed views stated about other aspects such as access to resources and the conflicts experienced in the library. Some of the students' metaphors were retold to colleagues. One stated his surprise that going to the library, which he had previously thought of as all about getting out a book and reading it quietly, could be a site for conflict and struggle. The school's librarian has taken on board many of the tangible complaints and service provision has been adapted accordingly. This has included revisions to the short loan collection, an increase in tailored training sessions on paper and online legal resources, and an increase in telephone and email support for students working away from the library. The programme designers have also attempted to spread more evenly the demanding research tasks across the academic year and specifically to ask students in personal supervision session how they are coping with the level and complexity of the law on the programme.

The Lone Worker I – The Lack of Collaborative Study Habits amongst Students

The questionnaire was designed to investigate individual's engagements with legal resources, but some responses suggested that contact with other learners was of some significance. At the focus groups students were therefore specifically asked whether they used such engagements to prepare for sessions. Students in group A did not believe that collaborative working habits happened often and there was some resistance to them. Both groups thought it would be counterproductive to their development as researchers to have someone show them the law. Students acknowledged that others worked collectively and suggested that this was influenced by the tutorial groups' ethos. At focus group B a more complex picture emerged. The consensus was that some students habitually worked with one another, but the groups were formed amongst friends across tutorial groups. The part-time student noted that the structure of that course made face to face meetings and encounters unlikely and infrequent: students were only likely to be on site twice a week at times when they had classes scheduled. Encounters that were recalled included "chat" and were characterised by their impromptu and temporary nature. Low levels of assistance were expected, for example checking whether one was "working along the right lines".

When asked why more collaborative work did not take place the students were quick to identify the de-motivators for collaboration and sharing. Group B identified an atmosphere of ultra competitiveness amongst students especially at the start of the programme, the levels of which were sufficiently high to be described as common and unpleasant. Secretiveness was another commonly identified reason for uncooperativeness. There was evidence of avarice amongst students that might be exhibited through book "hogging", which exacerbated the competition for key texts. Another de-motivator for studying together was the desire to avoid distraction by other students – hence the

strong preference for working away from the school library. In contrast students who favoured working in the school library noted a tolerance for the noise and bustle encountered, which they deemed to be infrequent and intermittent rather than constant. But even students who worked in close proximity to their peers did not value access to them for direct assistance. There was a clearly stated reluctance to bounce ideas off other students when that work was associated with assessment, and a similar unwillingness to ask library staff for assistance at this time. In both cases there was an apprehension of accusations of cheating and plagiarism. In conclusion there is no evidence of the existence of communities of practice[14], and such collective study habits as do emerge point towards short communications and brief interventions rather than sustained collaboration. This confirms that preparation for performance and the legal research that underpins it are individualistic endeavours.

Conclusion

Legal research is perceived by students as an intellectual task for the individual. As has been shown access to key data will be sacrificed when impediments are encountered or where a preferred working environment compromises it. Meeting with other learners will also of course be severely limited when a learner chooses or is required to work away from the teaching institution. When designing this project, the author was conscious of the social constructivist perspective that values the integration of individuals' cognitive processes and their social environments.[15] In formal programmes such as the BVC one might expect learners to develop research strategies for their learning of the law supported by collaborative interaction through classroom encounters and informal ones outside of it. Indeed it is commonly claimed that collaborative engagements enable learners to accomplish tasks and develop understanding that they could not achieve alone.[16] However, an analysis of the results from the student survey suggests that the nature and frequency of social intercourses on the BVC are at most fleeting, chance encounters that are not acknowledged as learning engagement by its participants. As will be shown, this reflects the work-based experience of the small group of practitioners who supplied examples of their own research habits. At most such encounters would appear to be designed merely to check understanding rather than to be sustained learning dialogues. Albeit brief these informal learning encounters did enable at least some of the students to address gaps in their knowledge. Thus the primary – and sometimes sole – creator of research strategies is the individual. This suggests that that each learner must develop high levels of independence on the programme to execute simulated legal tasks to the exit standard of ready for pupillage.

Practitioner Survey Results and Analysis

[14] E. Wenger, E., *Communities of Practice: Learning, Meaning and Identity*, (New York, Cambridge University Press, 1998)

[15] J. Lave and E. Wenger, *Situated Learning: Legitimate peripheral participation*, (New York, Cambridge University Press, 1991)

[16] M. Thorpe, "From Independent Learning to Collaborative Learning: New Communities of Practice in Open, Distance and Distributed Learning", in M. Lea and K Nicoll (eds), *Distributed Learning: Social and Cultural Approaches to Practice*, (Routledge Falmer, London, 2002)

Purposes of Research and Application

The practitioners were asked to select a recent significant piece of research, and the majority (8) chose preparation for advice-giving tasks, either a conference to advise a lay client about their case (4) or a written opinion (4). These practitioners conducted significant research for interpersonal as well as written tasks, which contrasts with the priority given to the latter by most students. However, the pressing need to conduct the research in preparation for these advice giving functions reflects the students' utilitarian approach. Two respondents specifically noted that the research that they had undertaken would expand their knowledge with the expectation that it could beneficial in subsequent cases. This speculative investment by way of research was not encountered amongst the students, which suggests that on the BVC they do not employ such strategies at that stage in their professional development. Students, not surprisingly given the heavy assessment schedule and programme requirement to be prepared for all taught sessions, were focused on the here and now and engaged with legal resources on a just-in-time basis.

Research Methodologies

The practitioners did not find it easy to describe their research methodologies. The paucity of detail about methodologies employed makes it impossible to say with any confidence whether these practitioners are more efficient at research than the students. Working on the presumption that barristers exhibit success through their practice and that none of the respondents admitted defeat in their research one may tentatively imply that appropriate research methods were employed. On the other hand, perhaps the haphazard descriptions provided suggest that these practitioners conducted research in ways that are less structured than students, who tend to adopt the methodologies promoted on the BVC in the discrete Legal Research Skills taught sessions. Where more consistent descriptions were given by the practitioners they were brief and simple. The most common was the general-to-particular pattern that is promoted to BVC students. In this method once the legal issues in the problem have been identified, the researcher locates summaries of the legal principles within reliable commentaries, selects the most appropriate ones for the case in hand, follows through to the primary law with the aid of footnotes and hyperlinks to it, and finally applies the principles to the facts of that legal problem. A particular-to-general methodology would be discouraged because starting with the primary law often narrows the field of research, for example it can result in searches and selections being made on the false premise of similarity of fact patterns in case reports rather than commonalty of the underlying legal principles. (It would not be wrong, however, to work from the particular to the general if one had existing knowledge of the relevant primary law and was merely seeking examples of its application.)

Practitioner Motivators for Research and Their Language

In the survey responses from the junior barristers, 6 respondents stated that the research task took them into established areas of law that were new to them. The practitioners also identified refreshing their memory (2) and

pursuing recent developments in the law (3) as motivators. It would be relatively straightforward to incorporate such motivators into the vocational programme if students were aware that they cannot rely on their memory of what they learnt at the academic stage and that the law is not a static body of knowledge.

Some searches were described by the practitioners as “detailed” and the information sought as “narrow and technical”. One respondent employed sifting and pile-making metaphors to describe the selection process. Otherwise the descriptions of their research methods were not rich in metaphor and no emotive language was employed all of which reflects the workaday nature of the tasks and the limitations of the survey instrument.

The Lone Worker II – The Lack of Collaborative Study Habits amongst Practitioners

Half of respondents (6/12) either stated that they had no contact with other people during their research or did not respond to the question on this topic. Responses to these questions were terse and practitioners were not forthcoming about the contributions made. Human contributions, even those made by fellow barristers, were evaluated to be of little significance compared to the value researchers placed on their own interactions with the legal resources. Some respondents placed little or no value at all on the human interactions that occurred, for example, one who made contact with a member of chambers face to face, described the contribution made as “none”. This is consistent with the experience of another who had a brief discussion with a more senior barrister, whose value again was rated as “none”. Even where contributions were viewed positively they were incidental to the task. A third practitioner, who made contact with a fellow member of chambers by telephone and who later met with that barrister, explained that the purpose of these contacts were merely to give “a feel for how the law was being applied in practice and in court”. Only one practitioner’s experience stands out as an altogether more collegiate, if drawn-out, experience.

> Instructing solicitor and I had a general discussion before I appeared at the judgment in default hearing. Eleven months later, the solicitor required an advice on the point. At the judgment in default hearing I had outlined the point to the District Judge who did not know the answer but indicated that I may be correct. I had a brief conversation with a 3rd six pupil because he was interested in my written advice. It was a general discussion and ‘brainstorm’.

But when asked to evaluate the contributions made, that barrister reported “no one offered any direct assistance”. In all instances no detail was provided about how long these engagements lasted or how they were conducted, but it is apparent that they were not sustained. That half of the respondents neither received nor sought human assistance suggests that having no human contact when undertaking the sorts of research tasks reported upon was typical for this group and that where contact had occurred it was of little direct value to the researcher. This very small sample suggests then that legal

research in practice is perceived as an exercise for the individual, and if this is the case it is comparable to the BVC students' characterisation of research as a lone endeavour undertaken almost exclusively through engagement with textual resources. However, this area requires further investigation not least because there were hints that some formal instruction about how to conduct legal research at an appropriate level takes place during pupillage.

Final Conclusions

The main findings of the project are that vocational students perceive legal research as an intellectual task to be performed by themselves and that the strategies they use to perform it can be categorised as needs driven. Infrequent and brief interventions in social contexts do occur, but there is little evidence of sustained collaboration by students when researching the law. Access to professional legal resources may be sacrificed when students can rely on their prior learning or where a preferred working environment compromises recourse to printed practitioner texts. Some concepts were notably absent from the students' motivations for undertaking research including pride in their work, enthusiasm for the law and emergent professionalism. However, their accounts do suggest that the library can be a site of conflict and the programme sometimes unpleasantly competitive. The negative and passionate stories recounted by students also reveal internal struggles that largely go unarticulated by students in the normal course of their education and unacknowledged by their tutors.

Vocational students are novices hoping to develop professional working practices. This project suggests that unlike practitioners they have to be encouraged to engage with the law at a deep level when preparing for interpersonal skills sessions. The privileging of legal research in preparation for written work was explained by students by the high risk of correction of errors or gaps in the law anticipated in the classroom. On the other hand, in advocacy, which is the defining skill of a barrister, some students thought that "winging it" was not merely acceptable but even practitioner-like. Here perhaps more than anywhere some students are confused about what is meant by the standard "ready for pupillage". This project raises the possibility that the skills required to support effective research in independent practice are developed by barristers working alone drawing on their own experiences. Sets of chambers have weakly defined hierarchies whose members only meet infrequently for law-related tasks as opposed to management ones. This phenomenon as well as the practitioners' erratic work patterns result in infrequent interactions with colleagues whilst undertaking legal research. One of the more sustained relationships in chambers is that between pupils and their supervisors, but it typically lasts for no more than six months. On a couple of occasions pupils were mentioned by the practitioners surveyed as participants in discussions about their research. Pupillage is comparable to an apprenticeship and it may provide the appropriate conditions to share research strategies, however, this requires further study. Understanding students' research habits and how they incorporate new knowledge into their professional competencies requires a more ambitious project than this one. Students and barristers engage with textual resources through internalised

processes in private settings in tacit rather than explicit ways.[17] Research into these processes would have to include a study of both groups' knowledge creation processes which are notoriously difficult to observe. However, it could yield explanations of the strategies that barristers employ to exploit legal resources in the context of client-centred and problem-solving work. If these outcomes were achieved and existing misconceptions were corrected, vocational students would be greatly assisted in their transition from academic learners to legal professionals.

[17] See R. Sternberg and J.Horvath, (eds) *Tacit Knowledge in Professional Practice: Researcher and Practitioner Perspectives*, (New Jersey, Lawrence Erlbaum Associates, 1999)