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LEGAL EDUCATION INTRODUCTION

LEGAL EDUCATION FOR COMPETENCE—A SHARED RESPONSIBILITY

DAVID R. BRINK*

Practicing lawyers today are acutely conscious of being a new focal point of public attention. Older lawyers, at least, remember a time when their roles in society were well defined and relatively static. In the last decade particularly, numerous forces have converged to make the practice of law change with alarming rapidity. Lawyers find new evidence of affirmative interest in law and lawyers—the "explosions" of law school applicants, new lawyers, and litigation; the automatic success of books, movies, television programs, and media coverage of lawyers and courts; and new consumer demands for access and public information. At the same time lawyers also confront unprecedented, and often unwarranted, criticism of their ethics, competence, fees, and what is called their monopoly, their self-regulation, their self-discipline.

Lawyers are sensitive to these criticisms because they believe that no other profession is as well disciplined, contributes so many and varied services *pro bono publico*, or is subject to such close scrutiny by courts, legislatures, and consumers. Lawyers have not chosen merely to react negatively to criticism, but rather, through painful introspection, are

* President, American Bar Association. B.A., 1940, B.S.L., 1941, J.D., 1947, University of Minnesota. Mr. Brink is a partner in the firm of Dorsey, Windhorst, Hannaford, Whitney & Halladay in Minneapolis, Minnesota.

seeking new solutions in any area in which criticism may have some foundation.

The criticisms of lawyers during the 1970s centered on problems of access to legal services and information about law and lawyers. The bar responded by providing greater access. This development was originally stimulated by decisions of the Supreme Court abolishing the ban on advertising and minimum fee schedules. But access was partially achieved by lawyers through broader delivery of legal services using such new devices as legal clinics, prepaid and group legal service plans, lawyer referral services sponsored by both bar associations and private entrepreneurs, field advertising, specialization plans, and participation in delivery of *pro bono* and federally financed services to the poor. The availability of hordes of new lawyers itself contributed to solving the problem of access.

As the goal of access is more nearly achieved, public demands in the 1980s seem likely to shift more to phases of lawyer accountability. Accountability will be seen in many aspects—legal ethics, delivery of legal services, public and media relations with lawyers, and changes in the practice of law and the manner of payment for legal services. But surveys of bar leaders seem to agree on the prime issue of accountability in the decade ahead: the competence of lawyers.

New emphasis is already being placed by the bar on existing or developing means of measuring, enhancing, and motivating competence. The American Bar Association, at my instance, has created a Task Force on Professional Competence to study and make recommendations for our future evaluation and pursuit of the most promising means. Clearly, the Task Force should investigate self-assessment tests, self-study, voluntary CLE, mandatory CLE, mandatory standards for trial practice such as those recommended by the Committee to Consider Standards for Admission to Practice in the Federal Courts (the Devitt Committee), and proposals for periodic reexaminations and relicensure for all lawyers. The Task Force should also investigate programs of peer review (both voluntary and mandatory), calendar and quality control systems, alcohol and drug abuse intervention and counseling programs for lawyers, "mentor" and consulting panel programs for young lawyers and sole practitioners, disciplinary enforcement of the Canons of Professional Responsibility requiring competence and truth in advertising, transitional practical skills education, post-graduate specialized education, and voluntary (and perhaps even mandatory) specialization plans.

The most noteworthy fact about this list of possible means to competence is that virtually all of its items relate solely to the continuing competence of lawyers already admitted to practice. The list does not cover the elements of competence in their original qualification for practice: the pre-selection of potential law students, required pre-law studies, aptitude tests, law school standards and curricula, and bar examinations. But the omission of these elements does not mean that they are unimportant to the practicing profession.

The fact is that, until the very recent past, a widening schism had grown between the practicing bar and legal educators over the selection and preparation of law students to engage in a career of lawyering. The bar increasingly questioned whether law students were selected by appropriate criteria, whether they emerged from law schools ready to practice law, and whether legal educators were either equipped or willing to teach those skills needed by the great majority of law students who intend to practice law. Educators responded that the role of law schools was to train law students in the theories and substance of the law and "how to think like lawyers" and was not to function as trade schools. Practitioners urged accreditation standards that required clinical and practical experience, while academicians argued in reply that such mandates would violate the principle of academic freedom.

This dispute was sharpened by concurrent increasing complexity and specialization in substantive legal areas and changes in the economic and organizational bases of law practice. These changes all militated against the traditional practice whereby young lawyers learned through long apprenticeships or mentor relationships with more experienced lawyers. The bar believed that the law schools should "bridge the gap," and educators claimed that this responsibility belonged to the practicing bar.

Recently there have been signs of accommodation between these polarized views. The bar has promoted continuing legal education and, particularly, programs that "bridge the gap" and expose young lawyers to practical skills. It has established institutionalized mentor programs and consulting panels. Perhaps even more significant, however, is the quiet revolution taking place within the law schools. Experiments in clinical legal education, simulated education, introduction of practical experience into substantive courses, computer learning, and even internships were attempted. Those experiments were encouraged by the

bar, by students, and through governmental funding. Yet, initially, these experiments appeared to the bar as more show than reality. They tended to flourish most at the less prestigious law schools, and the faculty members involved were often regarded as second-class citizens even in their own institutions.

More recently, however, clinical and practical education has attained greater academic respectability as recognized thinkers at the leading law schools began to question whether the hallowed case-method approach, with its Socratic component, was the most effective way to prepare students for practice or even for careers of legal teaching and scholarship. These trends culminated in the 1979 *Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools* (the *Cramton Report*), sponsored by the American Bar Association's Section of Legal Education and Admissions to the Bar, and in amendments to the American Bar Association standards for accreditation of law schools. These developments underscored the principle that law schools should provide additional opportunities for writing, negotiating, counseling, trial and appellate advocacy, and other professional skills, and should consider abilities in those areas in admitting applicants.

These developments are not a *final* culmination; our task of selecting and training students to be competent practicing lawyers may be nearer its beginning than its end. But a necessary preface to longer-term solutions has been achieved. The rigidity of the opposing positions previously taken by the bar and educators has given way to a perception that all segments of the profession share a common goal of assuring competence from the start to the finish of each lawyer's career. The bar and educators are now working together, exploring innovative ways in selection and training for better lawyering. This examination is not only focusing on aspects of the traditional law school career, but also activities before law school, after graduation and before licensing, at the time of bar admission, and throughout the lawyer's professional life. Law schools are recognizing that skilled practitioners can contribute practical insights to law school classes. At the same time, the bar is acknowledging that law professors can enhance continuing legal education programs and other methods of ensuring greater competence for lawyers already in practice. Both practicing lawyers and legal educators attended, conducted, and contributed to the Conference on Enhancing the Competence of Lawyers, sponsored by the American Law Institute-

American Bar Association (ALI-ABA) Committee on Continuing Professional Education and held in Houston in February 1981. It signalled the new cooperative spirit in addressing competence at all times in the lawyer's career.

The number of possible outcomes in the single problem of legal education for competence is immense, and the need for solutions is critical. We should direct the energies of those who are now addressing that problem—members of the bar and law professors alike—toward solutions. This effort should take priority over such other enticing law school projects as educating legal assistants, public servants, or the public at large. The proven abilities and dedication of those in the bar and the law schools who are now working together on the central problem of education for lawyer competence are very great. If we persist, we can forecast with confidence that ever better solutions will be achieved.