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LAWYER COMPETENCE AND THE LAW SCHOOLS\*

*Roger C. Cramton\*\**

Chief Justice Burger and other prominent jurists have spoken in recent years about a serious problem of "lawyer competency." The Chief Justice was widely quoted as stating that as many as fifty percent of trial lawyers in federal district courts were "incompetent;"<sup>1</sup> and later he observed that if the same standards of quality were applied to recent law graduates as are applied to automobiles, the rate of recall would be very high.<sup>2</sup>

Implicit, if not explicit, in these statements is an argument along the following lines: First, inadequate performance by lawyers is a major weakness in the administration of justice in the United

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\* This article draws on several experiences of the past few years, especially my service as chairman of the American Bar Association Task Force on Lawyer Competency: The Role of the Law Schools. I have drawn on the Report of the Task Force in preparing this lecture. I have also drawn on a paper prepared for the October 1979 national conference on legal education held at Key Biscayne, Florida, under the auspices of the Council on Legal Education for Professional Responsibility. Some of the same material is also included in an earlier article, *The Law Schools and Lawyer Competence*, 51 N.Y.S.B.J. 543 (1979).

This article was the basis for the Alzheimer Lecture at the University of Arkansas at Little Rock in April 1980. The Alzheimer series, funded by The Ben J. Alzheimer Foundation, brings legal scholars of national reputation to the UALR School of Law.

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1. See, e.g., Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 234 (1973).

2. See Address by Chief Justice Burger, American Bar Association Annual Meeting, New York City (Aug. 9, 1978).

States today; second, lawyer inadequacy is attributable in large part to deficiencies in legal education; and, therefore, the solution is to encourage or to require improvements in legal education that will gradually upgrade the profession.

The Chief Justice, it should be noted, has not stated the argument in this bald fashion. He would probably disavow it as an unfair characterization of his views, pointing out that he has repeatedly urged other measures to improve lawyer competence, such as lawyer discipline, peer review, institutional reforms, and continuing legal education.

Nevertheless, the argument is worth examining in its extreme form because it has been voiced by others and lurks behind much of the controversy over the so-called Clare<sup>3</sup> and Devitt Committees.<sup>4</sup> The reports of these groups, proposing at preliminary stages that particular courses be required of law graduates before they become eligible for practice in the federal courts, have stirred heated discussion focusing on the desirability of basic change—voluntary or mandated—in legal education.

The ensuing debate has frequently had an adversarial and confrontational tone. Some members of the bench and bar have argued

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3. The Clare Committee was appointed by then Chief Judge Irving Kaufman of the United States Court of Appeals for the Second Circuit in January 1974 to develop proposals to improve the quality of representation in the federal courts in that circuit. Headed by Robert L. Clare, Jr., it included trial lawyers, judges, and legal educators in its membership. Its report, recommending completion of five courses prior to admission to practice before the federal courts in the Second Circuit, received a barrage of criticism and resulted in little in the way of formal action. *See* Final Report of the Advisory Committee on Proposed Rules for Admission to Practice, 67 F.R.D. 159 (1975) (Clare Committee report); Ehrlich, *A Critique of the Proposed New Admission Rule for District Courts in the Second Circuit*, 61 A.B.A.J. 1385 (1975); Sovern, *A Better Prepared Bar—The Wrong Approach*, 50 ST. JOHN'S L. REV. 473 (1976).

4. The Committee to Propose Standards for Admission to Practice in the Federal Courts, known as the Devitt Committee after its chairman, was appointed by Chief Justice Burger in September, 1976. Its initial report tentatively recommended that a written examination on federal practice subjects and a minimum of four supervised trial experiences be required for admission to practice in federal district courts. *See* Report and Tentative Recommendations of the Committee to Consider Standards for Admission to Practice in the Federal Courts to the Judicial Conference of the United States, 79 F.R.D. 187 (1978). The final report of the Devitt Committee abandoned its earlier proposals for a more modest experimentation of examination and experience requirements in particular district courts and a recommendation that the American Bar Association consider amending its law school accreditation standards to require that all schools provide courses in trial advocacy. In this form, the recommendations were adopted by the Judicial Conference of the United States on September 20, 1979. *See* Final Report of the Committee to Consider Standards for Admission to Practice in the Federal Courts to the Judicial Conference of the United States, 83 F.R.D. 215 (1980).

that legal educators are stuck in traditional ways of doing things which they find convenient and comfortable; that law faculties are reluctant to grapple with the very real weaknesses of legal education; and that the hidebound conservatism of legal educators suggests that improvements may have to be forced on the law school world from the outside.<sup>5</sup>

Spokesmen for legal education, on the other hand, have responded with considerable heat. Some have characterized the attack on legal education as a form of anti-intellectualism that would convert educational institutions into trade schools.<sup>6</sup> The threat of external regulation of legal education is viewed as limiting flexibility and mandating a mediocre uniformity. Legal educators have also emphasized the limits of formal education as a technique for social change and the limited resources available to law schools. Even when legal educators concede that some of the criticisms of legal education have force, their response is often put in a defensive burden-shifting manner: "Give us the money to undertake these new and challenging tasks, and then we will go about improving legal education."

An adversary relationship between important elements of the legal profession and legal educators is bound to be harmful over time. Modest tension may stimulate creative dialogue and interaction, but active hostility is bound to be destructive. A cooperative attack on a shared concern—the role of legal education in improving the quality of the legal profession—will be more effective. A sound understanding of the dimensions of the problem and of useful avenues of reform is an essential predicate of a cooperative approach.

In the initial portion of this lecture I will explore two questions raised by the current debate: First, is there a serious problem of inadequate performance by lawyers? Second, are the inadequacies of lawyers properly attributable to deficiencies in legal education? A concluding section, setting out on a more constructive task, explores the dimensions of "lawyer competency" and advances some proposals for improving legal education in ways that may result in a more highly qualified profession.

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5. See, e.g., Pincus, *Clinical Training in the Law School: A Challenge and a Primer for the Bar and Bar Admission Authorities*, 50 ST. JOHN'S L. REV. 479 (1976).

6. See, e.g., Allen, *The Causes of Popular Dissatisfaction with Legal Education*, 62 A.B.A.J. 447 (1976).

## I.

How serious is the "lawyer competency" problem? My conclusion is that it is much less serious than stated by Chief Justice Burger. There is no crisis situation demanding extraordinary measures, but only a continuing question of what we want to do (and how much we are willing to pay) to reduce instances of poor performance or to raise the average level of performance.

What evidence supports the striking assertions of Chief Justice Burger? Initially his comments were based on his own experience and that of other judges, but more recently he has relied on two studies as supporting his claim: A Federal Judicial Center study of trial lawyer performance in United States district courts, as viewed by district judges,<sup>7</sup> and a study by Leonard Baird of the Educational Testing Service of the views of law graduates of their legal education.<sup>8</sup>

At the outset it should be noted that most of the debate about competence has been limited to trial lawyers, who constitute only about one-fourth of all lawyers. However, there is no reason for thinking that lawyers who operate in public view—in the presence of a judge, an adversary, and members of the general public—are less competent than the bulk of lawyers who carry on their activities in the privacy of the law office. If there is a lawyer competency problem, it is likely to be at least as serious among counselors as it is among litigators.

The Federal Judicial Center study, dealing with judicial perceptions of lawyer performance in federal trial courts, does not support the sweeping statements of incompetence. This study reports that only about nine percent of lawyers' performances were rated less than adequate by federal judges.<sup>9</sup>

As in many studies in which individuals are asked to evaluate human behavior along a broad spectrum of quality, the resulting distribution is the usual bell-shaped curve with a fairly small number of instances in the extreme categories at either end of the spectrum. Individual judges, like individual teachers, also differ in the standards which they apply to observed performances; some are higher graders than others. In general, the more experienced the

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7. A. PARTRIDGE & G. BERMANT, *THE QUALITY OF ADVOCACY IN THE FEDERAL COURTS* (1978).

8. Baird, *A Survey of the Relevance of Legal Training to Law School Graduates*, 29 J. LEGAL EDUC. 264 (1978).

9. A. PARTRIDGE & G. BERMANT, *supra* note 7, at 5.

judge, the more tolerant he is of the disparate performance of lawyers in the sample; the newest judges apply the highest performance standards.<sup>10</sup>

In addition to the general tendency to rate lawyer performance on varying scales, there are indications in the study that evaluation of trial lawyer performance involves important aspects of subjective judgment. When asked to evaluate identical videotaped performances, eighty-nine federal judges disagreed widely on the quality of any one performance.<sup>11</sup> Although most of the assessments were clustered in the middle, the range of assessments was extremely great, with some ratings falling in most or all of the possible categories. The Federal Judicial Center study suggests that differences in grading standards are not responsible for all of the discrepancy; disagreements about the essential ingredients of a good performance, perhaps related to personal style in performing a particular task of advocacy, also appear to be involved.

## II.

Attributing inadequate lawyer performances to deficiencies in the legal education of recent law graduates also fails to find support in these studies.

There is a logical problem in attributing the deficiencies of a large portion of the legal profession to *recent* graduates, since they inevitably constitute a small portion of the profession as a whole. If fifty percent of lawyers really were incompetent, it could not be a new problem, since only a small proportion of the bar (perhaps five to seven percent) are new entrants each year.

The studies cited by the Chief Justice indicate that there is little relation of age or experience to inadequate performance by trial lawyers.<sup>12</sup> Although extremely young attorneys and extremely old ones are slightly more likely to be inadequate performers, the differences are not marked. Nor does experience appear to be a critical factor after a very low threshold. Once a lawyer has been in two or three trials, no further increase in performance as a result of experience alone can be identified.

Similarly, there is no positive correlation of trial lawyer performance with courses taken or not taken.<sup>13</sup> An amusing anomaly

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10. *Id.* at 25-26.

11. *Id.* at 19-30.

12. *Id.* at 38-41.

13. *Id.* at 42-44.

of the initial Devitt Committee report, which proposes that courses in trial advocacy be required of those desiring to practice in federal trial courts, is that the study on which the report relies indicates that trial lawyers who had *not* taken trial advocacy courses in law school were less likely to be inadequate performers than those who had!

There is a much clearer relationship of level of performance to the type of law practice.<sup>14</sup> Solo practitioners are more likely to be inadequate performers than lawyers in large law firms. Similarly, lawyers assigned by judges to defend indigent criminal defendants were much more likely to be inadequate performers than lawyers in public defender systems. These results tell us more about institutional selection and supervision of lawyers than they do about legal education.

Although not emphasized in the report, the data suggests the unsurprising conclusion that the quality of the law school is an important indicator of the likelihood of inadequate lawyer performances.<sup>15</sup> There were no graduates of nine "elite" law schools among the inadequate performers. This finding supports a common sense view that, since better law schools recruit better students and provide them with a better education, their graduates are more likely to be better lawyers.

These results indicate that reforms tailored to the improvement of marginal law schools or to particular problems such as the method of assigning counsel in criminal cases are more likely to bear fruit than more generalized approaches that impose costs on all entrants to the profession. For example, substitution of a good public defender system for an assigned counsel system will reduce substandard performances in a situation in which it really matters—the representation of the poor in serious criminal cases—more than generalized prescriptions concerning preparation for the bar.

Changes in legal education since World War II also suggest that recent graduates are better qualified than graduates of former years. Law schools have improved tremendously in faculty, facilities, and programs. In particular, the upgrading of the bottom one-half of American law schools in the last twenty-five years has been substantial.

Competition for entry into law school has probably had even more significant effects since it has resulted in a law student population of higher average intelligence and better academic credentials

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14. *Id.* at 31-38.

15. *Id.* at 42-43.

than in the past. The change over the past twenty-five years amounts to an average increase of at least one hundred points in LSAT scores and one-half of a point in college grade-point averages.<sup>16</sup> Several years ago about 90,000 college graduates were competing for no more than 45,000 places in the first year classes of American law schools. Although demand for legal education has declined slightly since then, competition for admission to law school continues to be a significant selective factor. This selectivity has now continued for so long that it is bound to have a substantial effect in the years ahead on the average quality of the bar.

The Baird study cited by the Chief Justice is not inconsistent with these propositions. It tells us that law graduates perceive that their law school training was exceedingly helpful in preparing them for some tasks that are of crucial importance in their everyday work.<sup>17</sup> This is especially true of such fundamental skills as the ability to synthesize law and facts and the ability to do legal research—cognitive and analytical skills that are at the heart of “thinking like a lawyer.”

The Baird study also indicates, not surprisingly, that law graduates found their legal education less helpful in preparing them for certain other lawyering tasks: counseling clients, negotiating, organizing office work flow, interviewing clients, and the like. The study does not tell us what can or should be taught in law school, a question it does not address, nor does it demonstrate that legal education fails to produce competent lawyers.

My conclusion, then, is that the available evidence does not support charges of incompetence on a massive scale or justify attributing the alleged inadequacies of the bar to legal education. Chief Justice Burger and others have raised important questions concerning the quality of lawyering and how to improve it. These questions should be addressed in a constructive fashion.

I now turn to some thoughts on the general problem of lawyer competency—what it is and how it can be improved<sup>18</sup>—and then

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16. See Cramton, *Rising Expectations in Law Practice and Legal Practice Education*, 7 N. KY. L. REV. 157 (1980).

17. Baird, *supra* note 8. The Baird study is discussed in Cramton & Jensen, *The State of Trial Advocacy and Legal Education: Three New Studies*, 30 J. LEGAL EDUC. 253 (1979), and Cramton, *Rising Expectations in Law Practice and Legal Education*, 7 N. KY. L. REV. 157 (1980).

18. For good discussions of lawyer competency, see Carrington, *The University Law School and Legal Services*, 53 N.Y.U.L. REV. 402 (1978), and Rosenthal, *Evaluating the Competence of Lawyers*, 11 LAW & SOC'Y REV. 257 (1976).



advance some constructive suggestions for the improvement of legal education.

Too much of the discussion of the "problem of lawyer incompetence" has failed to distinguish between competence and performance. Inadequate lawyer performance—the failure to meet a satisfactory standard in some task undertaken for a client—is not synonymous with lawyer incompetence. "Competency" properly refers to an individual's capacity to perform a particular task in an acceptable manner. A lawyer's actual performance may fall short of the appropriate standard for any number of reasons unrelated to capacity: inattention, laziness, the press of other work, economic factors, or sheer mistake. Available evidence suggests that reasons such as these, not a lack of capacity to do a proper job, are the cause of most instances of lawyer failure.<sup>19</sup>

The notion of competence must include elements of character and professional responsibility in order to comprehend most of the factors necessary to assure an adequate level of professional service. Technical virtuosity does not translate into the routine rendition of high quality professional service unless it is disciplined and informed by proper attitudes, work habits, and values.

We continue to be troubled by the myth of the unitary lawyer—the all-competent generalist—long after the intricacy of the law and the ever-increasing specialization of the bar has rendered it dangerous to think of any law graduate as competent to perform all of the functions performed by lawyers. No lawyer, no matter how experienced or able, is competent to do everything, especially if constraints of time and resources are considered.

An indispensable trait of the truly competent lawyer, at whatever stage of career development, is that of knowing the extent and limits of his competence: what he can do and what requires the assistance of others. Although critics talk loosely of the neophyte lawyer performing the legal equivalent of brain surgery on the day after admission to the bar, law graduates are aware of their limited competence and respect those limitations. Consumers of legal services, even individual clients, are also aware of the limitations of inexperience; except in situations in which they have no alternative (such as indigents served by a public defender office), they are not so

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19. See Carrington, *supra* note 18, at 426; Marks & Cathcart, *Discipline Within the Legal Profession: Is It Self-Regulation?* 1974 ILL. L. FORUM 193; Carlson, *Measuring the Quality of Legal Services: An Idea Whose Time Has Not Come*, 11 LAW & SOC'Y REV. 287, 297 (1976); Rosenthal, *supra* note 18.

rash as to invite new entrants to undertake the legal equivalent of open heart surgery.

Our understanding of how to evaluate lawyer competence is at a relatively primitive level; most of what has been written is intuitive, impressionistic, and anecdotal.<sup>20</sup> Like obscenity, we know competent lawyering when we see it, but we have trouble defining it. Although law firms have accumulated a great deal of experience in the evaluation of attorney talent, there are no published criteria or generally accepted standards. Law firms follow a cautious approach by exercising great care in the initial selection of new lawyers and then hedging their bets by reserving permanent commitments until the lawyer's development can be assessed over some five to eight years of continuous scrutiny.

This practice suggests both the importance of character to superior professional performance and the difficulty of evaluation, given the enormous variety in what lawyers do. Personal characteristics such as enthusiasm, energy, motivation, and integrity lead the best lawyers to be thoroughly prepared and to put extra effort into consideration of alternative strategies and approaches.

The most important ingredient of the good lawyer is probably that sense of craftsmanship—pride in one's work—that sustains and is nourished by internalized standards of good lawyering. One reason that good law firms make an overall judgment of a lawyer on the basis of a number of years' work experience is that they recognize that intangible aspects of heart and spirit are as vital to lawyer performance as is technical competency.

Simplistic assertions that "it stands to reason" that additional educational and experience requirements will improve average lawyer performance are not supported by the few instances of detailed empirical studies of the performance of professionals. A landmark study of general practice physicians in North Carolina found:

[T]here was no relationship between a physician's level of performance and the medical school attended, the physician's age, or years of clinical experience. . . . [C]ompetence was positively related to medical school class standing, as well as attendance at post-graduate instructional programs held out-of-town. Attendance at local programs bore no relation to competence. . . . [There was] a positive association between number of subscrip-

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20. See, e.g., Gellhorn, *Preaching That Old Time Religion*, 63 VA. L. REV. 175 (1977); Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U.L. REV. 695.

tions to medical journals purchased and competent performance.<sup>21</sup>

The good physicians cared about medicine, about their patients, and about doing a good job!

Similar results will emerge when lawyer performances are given an exacting and consistent examination. As with physicians, the most vital factors, apart from intellectual qualifications, are such intangibles as intellectual curiosity, continuing pursuit of self-learning, and pride in one's work—factors that may be reflected by class standing or journal subscriptions, but not by years of experience, courses taken, or similar matters.

Common sense and accumulated experience tell us that deficiencies in lawyer performance are not likely to be distributed evenly across the lawyer population. Identification of lawyer characteristics commonly associated with inadequate performance may provide the basis for remedial measures targeted at those lawyers who constitute the problem. Measures applicable to all lawyers, especially at the educational stage, increase entry costs to the profession and increase the cost of legal services to consumers, even though most of those affected are not part of the problem.

Skillful professional performance has at least three essential components: (1) analytical ability and knowledge of the law, (2) ability to perform basic legal tasks, and (3) diligence and ethical responsibility in the application of that knowledge and skill. Lawyer competency can and should be improved in all three respects. Doing so calls for more than better training for those entering the profession. Improving lawyers' performance requires measures bearing directly on those presently engaged in practice, including peer review, professional discipline, and expanded malpractice liability. Improvements in the professional education offered by law schools, however, constitute an important part of any comprehensive program for improving future lawyer competence.

Improving legal education requires the law schools to address the durable and fundamental aspects of lawyer competence. Legal education should be viewed in long-run terms as preparation for a lifetime career involving continuous growth and self-development over a forty year period. It is a terrible mistake to think of legal

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21. Rosenthal, *supra* note 18, at 261 (discussing Peterson, Andrews, Spain & Greenberg, *An Analytical Study of North Carolina General Practice, 1953-1954*, 31(2) J. MED. EDUC. 1, 82, 86 (1956)).

education as preparation for an immediate bar examination or a first job.

Law students proceed upon graduation in many different directions. During the careers that follow they frequently move from one practice setting to another. Inevitably, they encounter dramatic change in the law and legal institutions. Continuing command of relevant knowledge about law and legal institutions thus depends more on intellectual curiosity, character and professional responsibility, and skills of self-learning than it does on the information content of law school courses. As Whitehead truly said: "Information doesn't keep any better than fish."

From this perspective on competency, much that otherwise might appear to be "speculative" or "theoretical" in a law school curriculum, including courses in comparative law, jurisprudence, legal process, and legal history, deserves to be thought of as vital, useful, and practical training. These and similar courses may help lay the theoretical or conceptual base for forty years or more of continuing self-learning about an ever-changing set of laws and legal institutions.

What should be taught in law school? The Baird study cited by Chief Justice Burger suggests that several items thought to be important to many lawyers are not emphasized in law school. Whether they should be emphasized in law school turns on teachability, priorities and trade offs, the comparative advantage of other modes of learning, and available resources. Not all law schools can or should make the same choices, for each has a somewhat different mission and situation.

The question of teachability is still an open one concerning some lawyer skills, although there is growing evidence that many can be taught effectively in the law school setting. Until the development by the National Institute of Trial Advocacy of a new approach to the teaching of trial advocacy, utilizing a structured series of exercises, simulations, and demonstrations, there was considerable doubt whether litigative skills could be effectively taught in law school. Today that answer is no longer in doubt.

In other skill areas, such as interviewing, counseling, negotiation, and fact investigation, the development of teaching techniques and materials is at an earlier stage, but progress is apparent. However, a lengthy period of curriculum development and teacher training is necessary in these areas before it is established that enhanced

skill can be conveyed through readily available materials in the hands of ordinary teachers.

The law school experience does not encompass three full years but a mere ninety-six weeks of instruction. Much has to be done in that period and resources are limited.<sup>22</sup> Choices must be made so that the important tasks are accomplished. The question of priorities and trade offs asks whether the law schools can undertake a new function without impairing what they now do well. It would be unproductive to turn out students who could establish marvelous interpersonal rapport with their clients but were unable to analyze their legal problems or to formulate strategies for effective resolution!

Although the question is a serious one, I believe there is sufficient slack in the law curriculum to permit the assumption of additional tasks without threatening the success story of law school analytical training. Infusion of more real-life problem-solving, using both simulations and live clients, will enhance the excitement of law school, provide a desirable progression from simpler to more complex judgmental tasks, and improve analytical capacity by demonstrating the inter-relatedness of law and fact, reason and emotion, and theory and practice—artificial dichotomies that sever the reality of things in unproductive ways. Thus my personal choice is for wide-ranging experimentation with the teaching of lawyer skills and with scholarly inquiry about these lawyer skills. For unless law teachers find intellectual interest in such skill areas as interviewing, negotiation, and trial advocacy, instruction in these areas will be perfunctory and will remain a sideshow rather than a central focus of law school.

The area of greatest deficiency in current legal education is not in skills related to litigation but in those involved in interviewing, counseling, and planning—functions that are vital to office lawyers as well as courtroom lawyers. One of the dangers of the current emphasis on the competence of *trial* lawyers is that it may further skew legal education toward the adversarial, litigative, and confrontational. Law students are given too little exposure to working cooperatively with others, to reaching acceptable solutions without an adversary confrontation, and to devising and drafting private and public regimes of law to guide parties through an uncertain future—statutes, regulations, estate planning and the like. Legal education is frequently criticized as being too absorbed in appellate

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22. See P. SWORDS & F. WALWER, *THE COST AND RESOURCES OF LEGAL EDUCATION: A STUDY IN THE MANAGEMENT OF EDUCATIONAL RESOURCES* (CLEPR 1974).

judicial opinions; the broader and more valid criticism is that it is too absorbed in adversary litigation, neglecting the planning and counseling functions that bulk large in the work of most law graduates.

The recent report of the American Bar Association Task Force on *Lawyer Competency: The Role of the Law Schools*, contains a number of constructive suggestions for the improvement of legal education.<sup>23</sup> In what follows, I paraphrase some of the recommendations in that report.

First, legal writing and other communication skills are of central importance. Lawyers who cannot express their ideas in understandable English prose probably are as disorderly in thought as they are unintelligible. Too few law students receive rigorous training and experience in legal writing during law school. Ideally, each student should receive at least one *rigorous* legal writing experience in each year of law study.<sup>24</sup>

Second, the fundamental skill dimensions of fact gathering, oral communication, interviewing, counseling, and negotiation should receive more emphasis in law school. Effective instruction can be provided in these fundamental lawyer skills, which should be approached no less rigorously than those traditionally emphasized in law schools. Nor should these skill areas be viewed as "training" that is somehow detached from the research and academic mission of the school. Interviewing and counseling, for example, are the subjects of a large and rich scholarly literature. Much of the valuable research has been done in other disciplines. Law school teaching materials and methods drawing on the best and most relevant of that work demand more of the student and teacher, not less. The opportunities for challenging research by law faculty members on skills of interviewing and counseling are enormous. The same is true of other relatively neglected areas of lawyer behavior.<sup>25</sup>

In fulfilling their vital research role, law schools and law faculty members should give greater attention to what courts, lawmakers, and lawyers do, how they do it, how the relevant skills are learned, how legal services can better be performed, and how the legal system in operation can be improved. These areas of inquiry have an

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23. ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS (1979).

24. *Id.* at 15.

25. *Id.* at 3, 15-16.

intrinsic interest and importance as well as a vital interdisciplinary aspect.<sup>26</sup>

Students should be given an opportunity to attempt lawyer tasks assisted by guidance, models of excellence, and constructive criticism. Trial practice courses built around simulated trial experiences and clinical courses giving students closely supervised trial experience with clients are appropriate vehicles. Other types of problem-solving courses should also be employed, for example, advanced estate planning courses that require students to do both planning and drafting. Law schools should work toward a goal of making effective courses in trial advocacy and other important lawyer skills available to all students desiring such instruction.<sup>27</sup>

Law school policies and practices of faculty appointment, promotion, and tenure should give adequate attention to excellent teaching, including teaching by techniques that foster skills development. Experimentation with and creation of new teaching methods and materials that focus on the improvement of such fundamental lawyer skills as legal writing, oral communication, interviewing and counseling, and trial advocacy should be valued no less highly than research on legal doctrine.<sup>28</sup>

Third, the rigor and intellectual discipline of law school should be enhanced. Some current tendencies in the opposite direction should be opposed. There is a disturbing sense that the hidden curriculum of law schools conveys the impression to some students that diligent work and high standards do not pay. The upperclass behavior of many law students is characterized by cycles of extended periods of lethargy or outside work followed by bouts of cramming. During the second and third years of law study, student effort declines and disbelief in the value of the standard techniques and expectations of legal education increases. On too few occasions is a student called upon to do and redo a task until a professionally acceptable job results.<sup>29</sup>

Important opportunities exist in the working environment of law school to nurture and support high professional standards and constructive work habits. More individualized instruction, more detailed critique of student work, and more comprehensive and varied methods of measuring student performance would reinforce the de-

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26. *Id.* at 5.

27. *Id.* at 18.

28. *Id.* at 26.

29. *Id.* at 16-17.

velopment of important personal and professional qualities. Since lawyers today commonly work in teams or in organized groups, more cooperative law student work should be encouraged.<sup>30</sup>

The intellectual challenge and work demands of law school should also be increased, especially in the upperclass years. In most law schools the upperclass program offers too much repetition of method and substance and too little challenge.

Law schools should seek to achieve greater coherence in their curricula. Even if it entails the loss of some teacher autonomy, the three-year program should build in a structured way: to present students with problems of successively broader scope and challenge, to enable students to teach themselves, and to utilize skills and knowledge acquired earlier.<sup>31</sup> Law faculty members should acknowledge a greater obligation on the part of the faculty as a whole to ensure that law graduates have an adequate level of lawyer competence.<sup>32</sup>

I have fired shots in enough directions to make many unhappy. Your response to this scattered fire will be influenced by your assessment of the nature and seriousness of deficiencies in legal education and of the positive and negative aspects of my proposed remedial measures.

Some will say, "right on," with the old fashioned American commitment to tinkering with social institutions, an impulse sometimes going to the extreme of change for change's sake. Other more conservative souls may espouse the attitude expressed by an English lord in the 1840s when discussion of a particular piece of reform legislation had taxed his patience unduly: "Reform, sir! I've heard enough about reform. Things are bad enough as they are."

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30. *Id.*

31. *Id.* at 4, 17.

32. *Id.* at 27.



