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A DEFENSE OF LEGAL EDUCATION IN THE 1990s

THOMAS D. MORGAN*

"I can't find many people who are that happy with legal education," writes Talbot "Sandy" D'Alemberte, President-elect of the American Bar Association (ABA). "The profession is not benefitting, the students are not benefitting. In whose interest are we running legal education?"¹

Harsh words, not unique to Mr. D'Alemberte, but potentially influential because they come from a bar leader with experience as a law school dean.² I believe that we in legal education are in for even more criticism as the years go on. The 1990s promise to be an unsettled time for the practice of law generally, as forms of practice change and competition intensifies. The demands of persons with competing visions of what law schools should and should not be doing are likely to be pressed with increased fervor.

Honest self-examination is healthy for any institution, and legal education is no exception. But I believe that much of the criticism of legal education is based on a mistaken view of what is going on in the nation's law schools. The criticism is particularly ironic coming at a time when the demand of outstanding students for a legal education—and the demand of lawyers for our graduates' services—has never been greater. I believe that reflection on the real state of legal education today will lead lawyers and

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1. *Talbot D 'Alemberte on Legal Education*, 76 A.B.A. J. 52, 52 (Sept. 1990).

2. Mr. D'Alemberte came out of private practice to serve as Dean of the Florida State University College of Law from 1984 to 1989. He has since returned to private practice. He will serve as President of the American Bar Association (ABA) from August 1991 to August 1992.

educators alike to conclude that legal education serves the legal profession, law students, and the public very well indeed.

I. HOW TO TRAIN LAWYERS HAS NEVER BEEN A MATTER OF CONSENSUS

Participants in the legal education debate should not deceive themselves into thinking that there was once a simple time when legal education was beloved, a time when there was consensus about what should be taught and how. Too often we hear of a mythical past when the legal profession was free of rogues, when lawyers universally placed public service above making a living, and when law schools took pride primarily in training practicing lawyers.

In fact, of course, while individual law schools, law students, and lawyers certainly shared parts of such a vision, there never was anything that approached a consensus. America's first century, for example, was characterized by at least three competing models of legal education.

The first held that formal legal training was not necessary at all to make one qualified for admission to practice. Legal doctrine was, according to this view, contained in a series of great books—*Coke Upon Littleton*, Blackstone's *Commentaries*, Bacon's *Abridgement*, and the works of civil law scholars such as Grotius, Justinian, and Pufendorf.³ In this view, what most distinguished a lawyer from a lay person was access to those books. The term "reading law" in a lawyer's office described literally what a lawyer's apprentice did most of the time.

Then, a second approach to law study arose that consisted of lectures explaining, and adapting to the American situation, the content of the basic books. These lectures, presented by thoughtful lawyers and judges, were sometimes published and became the great treatises on American law. James Kent's *Commentaries* and St. George Tucker's "republicanized version" of Blackstone, for example, became staples for the American lawyer.⁴ More important, these lecture series in effect became the nation's first proprietary law schools. The most prominent of these was Tapping Reeve's law school in Litchfield, Connecticut. David Daggett's program in New Haven was another, as was John Ashmun's law school in Northampton, Massachusetts.⁵

But a third view of legal education coexisted and competed with reading law and attendance at lectures as a form of professional education. This approach saw the study of law as the study of government and governing—an appropriate subject for a liberal, nonprofessional education. Thus,

3. The dominance of this approach in the colonial period is discussed in McManis, *The History of First Century American Legal Education: A Revisionist Perspective*, 59 WASH. U.L.Q. 597, 602-06 (1981). Patrick Henry is reported to have become a lawyer after six weeks of reading Coke and the Virginia statutes. *Id.* at 603.

4. See, e.g., W.R. JOHNSON, *SCHOOLED LAWYERS: A STUDY IN THE CLASH OF PROFESSIONAL CULTURES* 8-9 (1978).

5. See, e.g., R. STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s* 3-5 (1983).

George Wythe, Thomas Jefferson's preceptor, generally is seen as having become the first American academic lawyer when he was appointed to the chair in Law and Police at the College of William and Mary in 1779. In Wythe's view, and Jefferson's, the availability of law study was a necessary part of a university in a free society.⁶ Jefferson's University of Virginia took this broad view of the academic study of law, as did schools such as Columbia under James Kent, Transylvania under George Nicholas and the patronage of Henry Clay, and the University of Maryland under David Hoffman.⁷

In this world of competing visions of law study, a number of liberal arts institutions concluded that law was an appropriate part of their curriculum. Many university law schools were born out of this conclusion. We cannot be sure today whether the universities took that route solely because law universally was seen as a proper part of a broad classical education or because the universities needed the support of lawyers and other leading citizens to continue their growth and development.⁸ Probably both were involved, but the way many universities began their law schools was by incorporating formerly proprietary institutions into the university's fold. The Daggett school in New Haven was taken over by Yale in 1824, for example, and one of the early classes at Harvard's Law School was composed primarily of the students John Ashmun brought along from Northampton when Harvard appointed him Royall Professor in 1829.⁹ Washington and Lee, in turn, was formed when the local Lexington Law School was incorporated into Washington College in 1870.

Thus began much of the tension about the role of law in a liberal education and the place of a profession-oriented law school in a serious university. Thus, too, began the tension between the view of law schools as accountable to scholarly standards of the academic community and the view of legal education as a professional activity located in universities primarily for reasons of mutual convenience. Not surprisingly, those tensions continue to exist today.¹⁰

I believe what some perceived as a former hegemony in legal education derived from and contributed to the transition to the regulation of law training we know today. The plethora of law schools and law students today would have been unthinkable during most of the nation's first century. It was 1870 before the country had 40,000 lawyers, for example; we now produce almost that number of new lawyers each year. To the nineteenth

6. See, e.g., McManis, *supra* note 3, at 609-10.

7. *Id.* at 611-17.

8. See R. STEVENS, *supra* note 5, at 5.

9. See *id.*; W.R. JOHNSON, *supra* note 4, at 11.

10. The three models of legal education coexisted throughout the 19th Century, although the market seemed to favor practical instruction over classical education. David Hoffman, for example, assembled what widely was seen as an impressive classical curriculum for the University of Maryland, but the program did not attract enough students to survive. The same fate befell the program at the University of Virginia. See W.R. JOHNSON, *supra* note 4, at 9-11.

century practitioner, however, there was a lawyer surplus; the number of American lawyers almost tripled between 1850 and 1880. Predictably, the growth was accompanied by expressions of concern about alleged deficiencies in the quality of the young lawyers.

Then, in 1878, a new national organization, the ABA, was formed. It established control and improvement of legal education as one of its top priorities. The ABA established a Committee on Legal Education in the 1880s, and the committee, in turn, helped found the Association of American Law Schools (AALS) in 1900. Both organizations were devoted to the raising of law school standards, although Robert Stevens suggests that the alliance often seemed designed more to serve the interests of the two organizations than potential lawyers or their clients.¹¹ In significant part, higher standards were defined primarily in terms of the need to hire more full-time law teachers.

The case method, attributed to Dean Langdell at Harvard about 1870, must have seemed an ideal improvement of both practitioner training and university education. Basically, Langdell believed that cases were analogous to data that a scientist might observe. They provided observations from which a law student could derive a "scientific" understanding of the law.¹²

The case method offered advantages craved by the bar and legal education alike. First, its "scientific" approach was at least nominally academic but also sought to provide objectively correct answers to the practicing lawyer's questions. Second, the case method required new teaching techniques and materials unlike the treatises and lectures one could peruse while serving a law firm apprenticeship. Third, the method was consistent with teaching law in large classrooms and was little more expensive for the law schools to use than the lecture method had been.

Even though their interests overlapped, tension between the academy and many in the practicing bar remained significant. The late nineteenth century was still a period in which many practitioners had not been to law school at all and tended to oppose requirements that implied they had been trained inadequately. When law professors from AALS member schools put together a significant voting block at the ABA convention in 1913, the ABA moved its 1914 convention to a time in the academic year that cut down on professors' attendance. The effort to minimize professors' roles in ABA activities has been largely successful for the ensuing 75 years.¹³

11. R. STEVENS, *supra* note 5, at 92-103.

12. Any description of Langdell's vision runs the risk of being a caricature, if only because he himself wrote very little about it. In fact, Langdell's approach did not conquer Harvard immediately, much less the rest of the country. Langdell himself was reputed to be a poor teacher. It was his student Ames that seems to have made the technique work in his own classes and who popularized it for others. R. STEVENS, *supra* note 5, at 55-56; W.R. JOHNSON, *supra* note 4, at 103-05.

13. See, e.g., ASSOCIATION OF AMERICAN LAW SCHOOLS, REPORT OF THE LONG RANGE PLANNING COMMITTEE (1989). The ABA recently has attempted to reach out to law teachers with an institutional membership program designed to reduce the cost of professors' participation in ABA activities.

By the end of the 1920s, an alliance of sorts had again formed. Efforts to have states require graduation from an ABA accredited (not just academically accredited) law school as a prerequisite for admission to the bar had been largely successful. This was a joint effort of law schools and the bar. It is important to realize that, at the same time, the bar was lobbying for and enforcing legal prohibitions against the unauthorized practice of law. These prohibitions had as their premise that lawyers have unique insights and understandings that others should be forbidden to try to duplicate. The idea that law training should be seen as separate, specialized, and subject to professional control was entirely consistent with lawyers' earning that legal protection.

Even then, however, one could not long erect barriers to law professors' intellectual curiosity. Roscoe Pound, as dean at Harvard, defended and built upon the Langdell tradition of "scientific" legal study. As early as 1910, however, Pound had issued a call for "a science of social engineering" in which the "modern teacher of law should be a student of sociology, economics, and politics."¹⁴

At Yale, Jerome Frank offered a then-radical theory that looking at traditional legal rules is less important to an understanding of judicial decisionmaking than is ascertaining the psychological makeup of the judge.¹⁵ Underhill Moore and Charles Callahan, also at Yale, became empiricists and counted cars on New Haven streets to develop data on the relation between changing police standards for issuing traffic tickets and the drivers' behavior.¹⁶ The father of the Uniform Commercial Code, Karl Llewellyn, spent part of his career doing field research on the traditions of the Cheyenne Indians.¹⁷ Even at Harvard, stereotypical home of the conceptual approach to law, someone such as Felix Frankfurter could take an iconoclastic approach to the new field of administrative law.¹⁸

Legal education, then, has always had competing themes within it, and this internal conflict long has been the source of tension between the academy and the practicing bar. We should not be surprised to find the same tension present today.

II. TODAY'S RICH, COMPLEX LANDSCAPE OF LAW AND LEGAL EDUCATION

Picture yourself among a group of people scattered at various points around the Grand Canyon. Imagine that each of you tried to describe to each other what you saw. In part, your reports would be consistent. Everyone probably would agree on the beauty of the region and on the sense of wonder that it inspired. The details of your accounts would differ,

14. See L. KALMAN, *LEGAL REALISM AT YALE, 1927-1960* 45 (1986) (citing Pound, *Law in Books and Action*, 44 AM. L. REV. 12 (1910)).

15. L. KALMAN, *supra* note 14, at 7.

16. *Id.* at 18.

17. *Id.*

18. *Id.* at 50.

however. First, what you saw would depend on where you stood; no one could see and experience the whole diverse area and even reporting accurately, each person would describe different things. Second, the canyon itself is so varied and complex that verbal formulations would prove to be inadequate to capture the experience for the others.

I believe the critics of legal education have a problem much like that of Grand Canyon visitors. Most often, they see only a part of what is going on both in law schools and the legal profession. Further, their view depends on where they stand, that is, on their own role in the profession. Thus, they too often condemn what they ought to applaud. I believe that today's law school curriculum is broader, and prepares students better for their future careers, than at any time in history. My words will be inadequate to describe all of legal education just as I am too poor a poet to convey to someone the wonder of the Grand Canyon, but a brief description of a dozen themes running through legal education may suggest how rich the experience of today's law student can be.

First, doctrinal analysis—training in how to “think like a lawyer”—never has been pursued more actively in law schools than it is today.¹⁹ Throughout at least the first year, most law schools place primary emphasis on creative integration of the holdings of cases into expressions of legal doctrine. At least five major publishers produce full lines of casebooks and other teaching materials primarily with this aim in mind.²⁰ Legal scholars continue to publish ambitious treatises, even in such complex fields as constitutional law and legal ethics.²¹ Indeed, no matter what teaching technique is used—whether the traditional case method, the problem method, simulation, or something else entirely—the pursuit of legal doctrine remains a major part of teaching at American law schools.

Second, law school curricula reflect a discernably increased interest in student research and writing. Lawyers fill many roles in society, but almost all of them require the ability to write clearly and well. Law schools properly could be criticized for doctrinal instruction in large classes if that were the only way students studied law. Many law schools, however, now have created writing requirements extending over all three years of a student's education. These writing programs often include drafting instruments, preparing of briefs, and involving students in in-depth projects analyzing particular legal issues through law review experience, moot court, traditional seminars, or problem courses.

Third, law schools today help students cope with the variety of ways in which they ultimately may use their legal skills. Students know that

19. Nor has it ever been more necessary. The number of cases today is so great and so diverse that lawyers must develop the skill to make sense of them, in addition to all the other skills it takes to practice law.

20. The five largest are West Publishing Co., The Foundation Press, Inc., Little, Brown & Co., Matthew Bender & Co., and The Michie Company.

21. *E.g.*, J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW (3d ed. 1986); C. WOLFRAM, MODERN LEGAL ETHICS (1986).

clients rarely ask "What is the law of products liability?", and even less "What is the law of torts?" A client's products liability questions arise in the context of the lawyer's helping the client shop for a new insurance package, advising the client in the midst of a public relations crisis, helping the client decide whether to settle a lawsuit, or helping design a quality assurance program in the client's facility. Furthermore, lawyers deal with problems of products liability in contexts other than representing clients. Lawyers act as public interest advocates, legislators, business people, media analysts, and in countless other roles. Law schools today recognize that reading appellate opinions alone is not sufficient to make a student competent to perform almost any of these varied functions. The vast majority of new law teachers have had experience outside the academic realm, in the traditional practice of law or some other nonacademic role. Law professors can call upon that experience, where appropriate, in both their teaching and their scholarship.

Fourth, law schools today help students understand that we live in a world of choices. We have not yet found a way to give all people everything they want whenever they want it. The challenge is to understand the costs inherent in our individual and social decisions. Interests must be identified and given appropriate recognition. It should not be surprising that in such analyses, economic theory has had a profound influence on the nation's law schools.²² Economic analysis today may be found in casebooks, student papers, and professors' scholarship. Indeed, through the work of lawyers, judges, and legislators, economics now pervades much of legal doctrine.

Fifth, law schools today look at the world to test the effects of legal rules and the need for changes in them. Students and faculty use economic and other social science analysis to create testable hypotheses about the effects of changes in legal requirements. Then, they look to actual experience to confirm or refute results that their analysis assumes or predicts.²³ At least one law school even requires that all its students take a course in statistical methods that its graduates can employ no matter what directions their careers take.²⁴ Faculty work supported by the National Science Foundation, the American Bar Foundation, and the Administrative Conference of the United States is also actively underway at law schools all over the country as legal scholars seek to keep their theories tied to reality.

Sixth, law schools help students explore the political assumptions and implications inherent in legislation and judicial decisions. The Critical Legal Studies movement has many facets, but its concerns about the ambiguities of language and the risk that apparently neutral legal concepts mask significant political preferences have merged the insights of legal realists

22. See, e.g., *The Place of Economics in Legal Education*, 33 J. LEGAL EDUC. 183-368 (1983).

23. See, e.g., *Social Science in Legal Education*, 35 J. LEGAL EDUC. 465-506 (1985).

24. The school is George Mason University in Arlington, Virginia.

with the energy of political activists.²⁵ Far from all professors and students share the politics of the "Crits." Theirs also is far from alone as an active jurisprudential style. Concepts such as "original intent" and "judicial restraint," now grist for public debate, equally often are debated in the nation's law schools.

Seventh, law students today are encouraged not to accept the present state of the legal system as the best that could be designed. At their best, law schools propose methods of possible reform of the justice system itself.²⁶ Alternative dispute resolution is one example of an effort to try to reform the system from within, using techniques that are often more effective, less costly, or both. Challenges to the adversary system are a major part of discussions of legal ethics. Public choice theory likewise stimulates disquiet about the work of legislatures and courts. Regardless of the content of any specific proposal, this kind of dialogue helps assure that the next generation will be concerned about the structure and impact of the legal system itself.

Eighth, law schools now focus increased attention on taking advantage of students' personal experiences and reinforcing the positive qualities of their students. Feminists have been particularly influential in contributing to sensitivity and insight among lawyers of both sexes. Feminist jurisprudence has several focuses, but most feminists tend to argue at least that women have different experiences and feelings than men that should be given increased weight in the development of legislation and judicial decisions.²⁷ The insights we all gain by seeing the world through eyes not our own can help lawyers recognize just how rich and diverse American society really is, and ultimately how illusory any search for "scientific" certainty in doctrinal analysis must be.

A ninth theme in legal education today is derived from religious and moral philosophy. I am not speaking here of sectarian thought, but rather a tradition that provides a basis for reflection on what an earlier generation called "character" in lawyers. Leaders of the bar today properly are concerned about the state of lawyer professionalism. Professionalism is a subject with almost as many definitions as it has proponents, but law

25. See, e.g., Unger, *The Critical Legal Studies Movement*, 96 HARV. L. REV. 563 (1983); Tushnet, *Critical Legal Studies: An Introduction to its Origins and Underpinnings*, 36 J. LEGAL EDUC. 505 (1986). For an extended debate on the place of critical legal studies in legal education, see Carrington, *Of Law and the River*, 34 J. LEGAL EDUC. 222 (1984); "Of Law and the River", and of Nihilism and Academic Freedom, 35 J. LEGAL EDUC. 1-26 (1985); Finman, *Critical Legal Studies, Professionalism, and Academic Freedom: Exploring the Tributaries of Carrington's River*, 35 J. LEGAL EDUC. 180 (1985).

26. Judge (and former Professor) Harry T. Edwards has suggested that law schools could do much more in this area. See Edwards, *The Role of Legal Education in Shaping the Profession*, 38 J. LEGAL EDUC. 285 (1988).

27. See, e.g., Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990); Minow, *Feminist Reason: Getting It and Losing It*, 38 J. LEGAL EDUC. 47 (1988). The idea that women have a single common perspective is challenged in Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

schools today are using ethics classes, clinics, and other resources to help produce lawyers who take personal moral issues seriously.²⁸

A tenth direction of legal education is an increased emphasis on the importance of attention to facts in a lawyer's work. A critical weakness of the case method of instruction is its primary use of appellate decisions in which the facts are seen as unambiguous. If clinical teaching contributed nothing else to modern legal education, it would contribute immeasurably because it is not so limited. Whether students work with live clients or in simulations, they can see that even when parties are equally honest, they rarely all agree on the facts. Furthermore, they learn that the making of a factual record is both dependent on and crucial to development of the client's legal theory. However a student ultimately uses his or her legal education, attention to the critical role of facts will be one of the primary benefits today's student takes away from it.

Work with clients in a clinical setting serves an eleventh function of legal education by reminding students of the importance of human skills in the delivery of legal services. Clients fail to remember, digress, sometimes even dissemble. They are frightened and misinformed. They often expect too much of their lawyers. A student's personal realization of the need for interpersonal skills, sometimes formed after the bitter experience of having failed to establish trust or convey the right messages, can minimize the chance of making the same mistake in practice.²⁹

Twelfth and finally, law schools give students experience helping to meet at least part of the legal needs of that segment of the public least served by private attorneys.³⁰ Nor is this experience limited to delivery of routine services of modest intellectual content. There are now tax clinics, capital case clinics, clinics serving small start-up companies, clinics litigating rights of the disabled, and the like.³¹ These clinics can press state of the art claims and press for legal change. Indeed, our lack of imagination is by far the largest limit on services students can provide if well supervised and supported.

Doctrinal analysis, effective writing, preparation for diverse lawyer roles, an understanding of economics, appreciation of the effects and social impact of legal rules and processes, sensitivity to diverse clients and to the moral issues a lawyer faces, attention to facts, people, and public service—are any

28. See, e.g., Shaffer, *Moral Implications and Effects of Legal Education (or: Brother Justinian Goes to Law School)*, 34 J. LEGAL EDUC. 190 (1984); *Beyond the Ordinary Religion [of the Law School Classroom]*, 37 J. LEGAL EDUC. 509-34 (1987); Elkins, *The Quest for Meaning: Narrative Accounts of Legal Education*, 38 J. LEGAL EDUC. 577 (1988).

29. See, e.g., Meltsner, *Feeling Like a Lawyer*, 33 J. LEGAL EDUC. 624 (1983). Cf. Condlin, "Tastes Great, Less Filling": *The Law School Clinic and Political Critique*, 35 J. LEGAL EDUC. 45 (1986).

30. At least five law schools impose a public service requirement on their students as a condition to graduation. The schools are Florida State University, the Universities of Pennsylvania and South Carolina, and Tulane and Valparaiso Universities.

31. Cf. Leleiko, *Clinical Law and Legislative Advocacy*, 35 J. LEGAL EDUC. 213 (1985).

of those themes irrelevant to the practicing lawyer? Are any irrelevant to the things lawyers do besides practice law? Of course not.

We should celebrate, not condemn, the richness and diversity that characterizes legal education today. Not all law schools do these things or do them equally well. There even may still be teachers who teach exclusively case oriented courses from notes a decade old, but in my experience they are few. We may not do everything right, but there has never been a time when legal education has done its many jobs better than it does them now.

III. THE WEAKNESS OF THE CASE AGAINST LEGAL EDUCATION

But if legal education is doing so well, why can a bar leader like Dean D'Alemberte not "find many people who are that happy with" it?³² None of us can know for sure. One reason simply may be that hard times demand a scapegoat. While the practice of law has never been more lucrative for many lawyers, the conditions of the practice are often discernably unpleasant. Competition for clients is intense. High salaries often cannot compensate for long hours and time away from family.³³ Objectively, none of those problems can be laid at the feet of the nation's law schools, but my experience as reporter to the ABA Commission on Professionalism suggests to me that when the bar needs a scapegoat, law schools are a convenient target.³⁴

Then, too, one basis for the critics' hyperbole that "the profession is not benefitting; the students are not benefitting" may simply be the litigator's tendency to overstate for effect. A legitimate argument that "things could be better" comes out sounding like "things could not be worse".

In any event, the specific criticisms of law schools most often heard simply do not withstand scrutiny. For example, one hears the charge that today's graduates lack the skills necessary to represent their clients competently. It certainly is true that young lawyers lack the wisdom provided by experience in practice. That always has been so and always will be. But hard data clearly shows that new lawyers tend to do a good job for their clients. In a recent comprehensive ABA study of lawyer malpractice, for example, the roughly fifty percent of American lawyers who have been in practice more than ten years were involved in sixty-six percent of the malpractice cases. The twenty percent of the bar in practice less than four

32. See, e.g., *Talbot D'Alemberte on Legal Education*, 76 A.B.A. J. 52 (Sept. 1990); Auerbach, *Legal Education and Some of Its Discontents*, 34 J. LEGAL EDUC. 43 (1984).

33. See, e.g., ABA YOUNG LAWYERS DIVISION, *THE STATE OF THE LEGAL PROFESSION, REPORT #1* (1990) (reporting, e.g., that pressures on today's practitioner cause 13% of all lawyers to report that they consume six or more alcoholic drinks a day).

34. One particularly memorable conversation involved a distinguished bar leader who decried the trend to hourly rate billing by his law firm. He was also upset at the long hours worked by associates. He had convinced himself that law schools must have been behind both developments. He knew that he had not made the decision to go in those directions, and he could not believe that his younger partners on the management committee could be solely bottom-line oriented.

years were involved in only four percent of the cases.³⁵ It is experienced lawyers, not new ones, whose incompetence tends to injure clients. We are not sure why; it may be because new lawyers are smart enough to know what it is they do not know. But it also may be that today's graduates are trained quite well indeed—not for all lawyer jobs—but for those for which they choose to use their education.

Some critics would try to improve the last argument by saying simply that not all young lawyers are trained in the skills they would need if they were to start out in solo practice. Young lawyers today often lack a mentor relationship with a senior lawyer, for example, and lack the experience necessary to carry on a practice well without help. Arguably, law schools should eliminate the need for start up assistance. Whatever the validity of this concern, of course, it is certainly nothing new. We have not had preceptor programs in this country for many years. Lawyers in solo practice have long had to work harder than lawyers who had someone to turn to for help.

Further, this argument is no better than the case for general incompetence. There are many fewer young lawyers going solo today or going into small firm practice with inexperienced colleagues. Recent figures show only about ten percent of young lawyers so electing.³⁶ This case for overhauling legal education, then, is addressed to a largely disappearing problem. Moreover, the charge is usually not that a young lawyer *cannot* tailor his or her law school experience to prepare for solo practice, but that not everyone does so. Surely it makes no sense to remodel all of legal education to meet the special needs of a distinct minority of students.³⁷

Finally, instead of a concern about solo practice, sometimes the incompetence argument seems to reflect a concern on the part of some practitioners that young lawyers coming into their firms require too much training by the firm. They want the law schools to pick up a greater part of the costs of "finishing" young lawyers that the firms now absorb. Again, finishing costs are nothing new. What is new is the apparent unwillingness of the firms to undertake the burden of sharing "nuts and bolts" insights about law practice.

However, just as lawyers do not all go into solo practice, neither do they all go into firms. Further, firms' expectations and procedures differ. The varieties of roles which lawyers play and the changing levels of responsibility they assume mean that their education inevitably must continue while in practice. Law schools perhaps can teach practice skills in general,

35. NATIONAL LEGAL MALPRACTICE DATA CENTER, REPORT ON CHARACTERISTICS OF LEGAL MALPRACTICE (1989).

36. I have tried to be conservative here. The National Association for Law Placement 1988 Annual Employment Report and Salary Survey puts the figure for students going into firms of *ten* or fewer lawyers at 17.8%.

37. Concerned members of the bar could and should volunteer to act as preceptors to young lawyers. Whenever such proposals have been made, however, volunteers from the bar have been few.

but any system one can devise will require significant effort by lawyers in diverse professional settings to help complete young lawyers' education after the law schools are through with them.

IV. THE REAL PROBLEMS FOR LAW SCHOOLS

Does all this mean that legal education has no problems? Clearly not. Not only in the bar, but in law schools themselves there is disquiet that needs to be addressed openly and clearly. I believe that our principal problem can be stated easily. It is that no law professor has enough skill and no law school has enough resources to perform in an ideal manner the twelve functions that I outlined earlier, plus others that a school might identify. Gone are the days, if indeed they ever existed, when the education of lawyers seemed easy—one dimensional, a way of thinking, no more. When we set the standard higher, we find—individually and collectively—that we fall short.

That should not be taken as a concession of defeat. Perfection will always be out of reach. I believe that the quality of legal education generally, and the quality of individual law schools, can begin to be evaluated in terms of their success in each of my twelve areas, and probably others. The qualities are all subjective. They will never fit the neat statistics of a news magazine.³⁸ Do students at a given law school learn how to read carefully? Do they learn to integrate cases and other materials into applicable legal principles? How well does the school help its students learn to write? Are students made ready to use their legal education in the multiple roles they may fill over their career? Do students develop an appreciation of the importance of getting the facts straight about a case? Do they achieve a deeper sense of how they and others of different backgrounds see themselves as professionals? Do they graduate with a "calling," a sense of personal and social obligation greater than when they came to school?

May an individual school responsibly elect not to pursue such multiple objectives? Virtually all schools must do so to some degree because of limited resources. Some schools have done so more than others. Howard and other historically black institutions have focused on the training of minority lawyers, for example. Yeshiva and some other schools with a strong religious tradition may also tend to concentrate their view. George Mason tends to focus on the economic analysis of law; City University of New York stresses clinical education and education for public service jobs. All seek to be distinctive by concentrating on particular strengths. From the perspective of legal education in general, such institutions contribute to

38. One implication of such an inevitably subjective analysis clearly is to see anew the futility of ranking law schools. No one has yet produced the perfect law school, nor are they likely to do so. Some schools will do a number of things better than their peers, but there are simply too many things for any school to do to be the best at everything. Each school will develop its own personality. Each will choose different routes to similar objectives; indeed, observers reasonably may disagree about which approaches are more likely to succeed.

diversity and student choice, not limit it. Law schools that differ from each other in important ways are part of the richness of legal education and a source of varied experiments for the future. Indeed, success on all fronts might well be a waste of resources. Ultimately, however, students at all schools should be introduced to themes other than the school's strengths. All twelve are relevant. It does students no favor to make them expert in one tradition but indifferent to all others.

A corollary of the inability of each law school to do everything well is the fact that there is not nearly enough time in law school to prepare a new lawyer to meet all the challenges that he or she will face in a practice extending over forty-plus years. In three years, the typical student will have time to take no more than about thirty three-unit courses. While several of my twelve themes might be pursued in a single course, the sheer press of time makes it obvious that no student will graduate capable of doing everything a lawyer might do. Again, that should not be cause for alarm. If we graduate students who get the most possible out of what they do take and who are curious and capable of continuing their learning over the course of their career, our law schools will have met their challenge well.

There is, however, a final danger that I believe is the most serious of all. It is the danger that we will try to regulate our way out of the problem of insufficient diversity in the law school curriculum instead of relying on the creativity and competitive instincts of American law schools to make their programs better and better. There is an intense contest for control of legal education being fought today by multiple groups in the bar and the academy. Each wants control of the accreditation and bar examination process so as to impose on others its own narrow view of the world.

To provide a concrete illustration, in 1989 something called the California Consortium on Competence issued thirteen proposals.³⁹ One proposal would have required all law students who wanted to be admitted to the California Bar to have at least ninety hours of clinical skills instruction, at least 600 hours of supervised internship in a practice setting, and a two year residency after graduation. This kind of proposal represents an important struggle over limited law school resources—money, curricular time, tenured positions, new appointments, and the like. If the California proposals had been adopted, students all over the country who wanted to be licensed to practice in California would have had to comply no matter how they planned to use their law degree.⁴⁰

39. STATE BAR OF CALIFORNIA, OFFICE OF PROFESSIONAL STANDARDS, REPORT OF THE CONSORTIUM ON COMPETENCE (April 1989). Among the proposals not discussed here were a program for control of pre-law education and an integration of a law student division into the State Bar.

40. The controversy is no longer over skills training. No one today is opposed to developing skills. The controversy is in part over defining the skills that are underdeveloped. Doctrinal analysis is a skill, for example, as is persuasive writing and skill in client relations. Observers differ as to the relative importance of each skill and how best to teach it, not over whether "skills" themselves are desirable.

Minimum accreditation standards for law schools have raised the quality of law schools in general. Such standards continue to provide important protection to law students against educational fraud. Imposing particular program obligations on law schools, however, whether through accreditation standards or changes in the bar exam, will wind up limiting options of law schools when what is needed is a way of stimulating their creativity. Legal education's challenge is to fight off proposed changes in accreditation regulation designed to bully all law schools into emphasizing one or another vision of law school training over all others.⁴¹

Legal education long has been the subject of controversy. It probably always will be. It looks both to the academy and the profession, and it probably never will please both—or either—entirely.

Legal education is far from perfect. It simultaneously must expand its horizons and focus its resources on tasks it can do best. But legal education can take great satisfaction in the fact that it provides something that a lawyer gets almost nowhere else in his or her professional life. It provides an overview of the many layers that make up the law and a vision of the best of what the law and lawyers can be. I for one believe that law firms are more in need of understanding what is going on in the law schools than the other way around.

I do not doubt their sincerity, but our critics are wrong about the current state of legal education. I believe that we should not be timid about setting them straight.

41. An important factor in the future of legal education may be the ABA Task Force on Law Schools and the Profession: Narrowing the Gap, commonly known by the name of its chairman, former ABA President Robert McCrate. The Task Force is composed of men and women of prestige and judgment, but one of its first projects has been to develop a detailed "Statement of Skills and Values" that each law graduate should have. If the Task Force prepares only an aspirational statement, it may be a good point of departure for discussions at law schools around the country. Requiring training all lawyers in a uniform set of skills, no matter what they plan to do, however, would risk bringing an end to development of rich and varied programs in the nation's law schools.